STATE OF IDAHO
DIVISION OF PUBLIC WORKS
Professional Services Agreement

DPW Project No. (project number)
(project name)
(location), Idaho

THIS AGREEMENT, made as of (date), between the STATE OF IDAHO, as represented by the DIVISION OF PUBLIC WORKS (DPW), hereinafter referred to as the OWNER, and ( ) hereinafter referred to as the DESIGN PROFESSIONAL:

For the following project: insert project #, title and detailed description of project

This Project is being administered by the OWNER for occupancy by ( ) hereinafter called the Agency.

The OWNER and the DESIGN PROFESSIONAL agree as set forth below:

ARTICLE 1
BASIC SERVICES

The DESIGN PROFESSIONAL'S Basic Services consist of those described in paragraphs 1.1 through 1.9 and any other services identified as a part of Basic Services, including in-house or subcontracted (SUB-CONSULTANT) engineering and consulting services.

1.1. PROGRAM PHASE

1.1.1. The DESIGN PROFESSIONAL shall review and evaluate the existing facility for identification of areas in non-compliance with current codes, and areas needing repair or replacement. The DESIGN PROFESSIONAL shall gather all pertinent data required to develop a complete Project program. This phase shall include, as a minimum, the following tasks:

1.1.1.1. Establish Project and operational goals.

1.1.1.2. Collect all pertinent facts about the Project including, but not limited to, evaluation of existing building and existing systems or structures affecting the Project, state code and regulation review, cost parameters and Project schedule.

1.1.1.3. Meet with agency staff to further identify areas needing correction and alteration.

1.1.1.4. Conduct an analysis study to establish appropriateness and cost effectiveness of existing building renovation.

1.1.1.5. State the problem, as a summary of the significant conditions, and general direction the renovation of the building should take.

1.1.2. The DESIGN PROFESSIONAL shall submit to the OWNER in the program, a statement of program feasibility, reconciling the program requirements with estimated cost and available funding.

1.1.3. The DESIGN PROFESSIONAL shall upload to the OWNER'S web-based Management System (OMS) and provide copies (as requested) of the completed program with all verification documentation in written form, to the OWNER for distribution and review, prior to the final presentation. After review and correction, *alpha* (#) copies (as requested) shall be submitted and uploaded to OMS as final record documents.

1.1.4. At the conclusion of this phase, the DESIGN PROFESSIONAL shall make a presentation to Agency and DPW staff for approval.

1.1.5. Program Documents shall be completed within *alpha* (#) days from the date of the Authorization to Proceed.

1.2. SCHEMATIC DESIGN PHASE

1.2.1. The schematic design phase shall include a pre-design phase for user interviews and a development of the Scope of the Work for the project. This phase shall focus upon analyzing and developing alternative designs to meet space needs and review of the Agency programs to ascertain the requirements of the project. The DESIGN PROFESSIONAL shall arrive at a mutual understanding of such requirements with the OWNER and the Agency.

1.2.2. The DESIGN PROFESSIONAL shall review with the OWNER and Agency alternative approaches to design and construction of the Project.

1.2.3. The DESIGN PROFESSIONAL shall investigate and verify the existing conditions, including utilities and services, at the Project site to the extent required to accomplish the Project.

1.2.4. Based on the mutually agreed-upon approach, program, schedule, and construction budget requirements, the DESIGN PROFESSIONAL shall prepare for approval by the OWNER, Schematic Design Documents consisting of drawings and other documents illustrating the scale and relationship of the Project components along with a completed copy of DPW Utility / Site Checklist and DPW's Design Phase Quality Control Checklist.

1.2.5. The DESIGN PROFESSIONAL shall submit to the OWNER a preliminary estimate of construction cost based on current area, volume or other unit costs and shall include any site or utility work identified.

1.2.6. Schematic Design Documents shall be completed and uploaded to OMS within *alpha* (#) calendar days from the date of authorization to proceed with this phase.

1.3. DESIGN DEVELOPMENT PHASE

1.3.1. Based on the approved Schematic Design Documents and any adjustments authorized by the OWNER in the program, schedule or construction budget, the DESIGN PROFESSIONAL shall prepare, for approval by the OWNER, Design Development Documents consisting of the following:

1.3.1.1. Drawings, to scale, showing building design; floor plans; typical equipment layout; building elevations and sections; and mechanical, electrical, and structural plans as required along with outline specifications, sufficient in detail to fully describe the quantity and quality of the Work.

1.3.1.2. Analyze the Project for the various building code issues, make preliminary contacts with the appropriate code officials, and provide a summary of the code review analysis.

1.3.1.3. Review of documents with the OWNER, Agency, and others as required, and make revision of documents as required.

1.3.1.4. An updated construction cost estimate.

1.3.2. Design Development Documents shall be completed and uploaded to OMS within *alpha* (#) days from the date of authorization to proceed with this phase. Provide *alpha* (#) sets to the OWNER for distribution and review.

1.3.3. Presentation to the Permanent Building Fund Advisory Council at its regular meeting per approved Work schedule.

****DELETE 1.3.4 &/OR 1.3.5 IF EITHER SOILS INVESTIGATION OR SURVEY IS NOT REQUIRED.**

1.3.4. The DESIGN PROFESSIONAL shall determine the need for and recommend the services of soils engineers, as deemed necessary by the DESIGN PROFESSIONAL, which services may include test borings, test pits, soil bearing values, ground water elevation determination, percolation tests, ground corrosion and resistivity tests, reports, and appropriate professional recommendations.

1.3.5. The DESIGN PROFESSIONAL shall determine the need for a land survey of the site, including as applicable: grades and lines of pavements, adjoining property boundaries and contour of the site; locations, dimensions and data pertaining to existing buildings, other improvements; and information concerning available service and utility lines.

1.4. CONSTRUCTION DOCUMENTS PHASE

1.4.1. Based on the approved Design Development Documents and any further adjustments in the scope or quality of the Project or in the construction budget authorized by the OWNER, the

DESIGN PROFESSIONAL shall prepare, for approval by the OWNER, Construction Documents consisting of:

1.4.1.1. Complete working drawings and specifications as required for the bidding and construction of the Project. Working drawings and specifications for the Project will be completed for approval by all required agencies and submitted to the OWNER and uploaded to OMS within *alpha* (#) days after authorization to proceed with this phase.

1.4.1.2. Final plans shall be sent to DPW after the Agency has approved the documents. The DESIGN PROFESSIONAL shall provide DPW with copies as requested and upload to OMS, review sets of working drawings and specifications plus such documents as required by the Idaho Division of Occupational and Professional Licenses (IDOPL). The DESIGN PROFESSIONAL will upload to IDOPL's web-based electronic plan review system (ProjectDox) after DPW approvals. After review, if additions or corrections are required, the DESIGN PROFESSIONAL shall make such additions and corrections and upload to OMS and IDOPL for approval. Unless otherwise changed or amended IDOPL submittal requirements shall include:

1.4.1.2.1. Building Bureau Plan Review Application showing DPW as agency requesting review and the DPW project manager as applicant. This Application should be completed a minimum of one month prior to uploading final documents to IDOPL.

1.4.1.2.2. Upload to the IDOPL plan review website a PDF (Portable Document Format) of the plans.

1.4.1.2.3. Upload to the IDOPL plan review website a PDF of the specifications.

1.4.1.2.4. Upload to the IDOPL plan review website a PDF of the structural calculations

1.4.1.2.5. Upload to the IDOPL plan review website a PDF of the energy code compliance reports, soils reports, or other documents not included in the above.

1.4.1.3. A detailed, itemized construction cost estimate.

1.4.1.4. DPW's Design Phase Quality Control Checklist.

1.4.1.5. Preparation of documents for DPW staff presentation to the Permanent Building Fund Advisory Council per the DESIGN PROFESSIONAL'S approved schedule.

1.5. BIDDING PHASE

1.5.1. The DESIGN PROFESSIONAL, following the OWNER'S approval of the Construction Documents and of the latest construction cost estimate, shall assist the OWNER in obtaining bids and assist in awarding contracts for construction, including the following:

1.5.1.1. Providing the OWNER with electronic files of the Contract Documents in a format suitable for publication of the documents on the Internet. Electronic Files shall be provided in one of the following formats, listed in order of preference: PDF format, plot files, or raster (scanned images) in TIFF Group 4 format or other format as may be approved by the OWNER. Upload IDOPL approved documents to OMS.

1.5.1.2. Printing and distribution of drawings and specifications to bidders. (Cost of printing and postage is a reimbursable expense.)

1.5.1.3. Schedule and conduct a pre-bid review meeting with the Project Manager, Field Representative, and Agency. The DESIGN PROFESSIONAL shall take meeting minutes and include in addendum as needed.

1.5.1.4. Review of submittals for approval of alternate methods and/or materials prior to the bid date.

1.5.1.5. Issuing of addendum listing alternate materials and/or methods approved under subparagraph 1.5.1.4 above and clarifying drawings and specifications to plan holders prior to bid date. Upload to OMS.

1.6. CONSTRUCTION PHASE – ADMINISTRATION OF THE CONSTRUCTION CONTRACT

1.6.1. The DESIGN PROFESSIONAL'S responsibility to provide Basic Services for the Construction Phase commences with the award of the Contract for Construction and terminates thirty (30) days after final acceptance by the DESIGN PROFESSIONAL and the OWNER, provided the record documents have been submitted and accepted.

1.6.2. Unless otherwise provided in this Agreement and incorporated in the Contract Documents, the DESIGN PROFESSIONAL shall provide administration of the Contract for Construction as set forth below and in the DPW Fixed Price Contract Between the OWNER and Contractor.

1.6.3. The DESIGN PROFESSIONAL shall be a representative of, shall advise and shall consult with the OWNER. Instructions to the Contractor shall be forwarded through the DESIGN PROFESSIONAL. The DESIGN PROFESSIONAL shall have authority to act on behalf of the OWNER only to the extent provided in this Agreement and in the Contract Documents unless otherwise modified by written instrument by the OWNER and the DESIGN PROFESSIONAL.

1.6.4. The DESIGN PROFESSIONAL shall attend the preconstruction conference. The OWNER will establish the date and the OWNER will chair the preconstruction conference. The DESIGN PROFESSIONAL shall take and distribute minutes of the preconstruction conference.

1.6.5. The DESIGN PROFESSIONAL shall attend, prepare an agenda, chair, take minutes, and distribute minutes of the monthly meetings.

1.6.6. The DESIGN PROFESSIONAL shall visit the site at intervals appropriate to the stage of construction or as otherwise agreed by the OWNER and the DESIGN PROFESSIONAL in writing to become generally familiar with the progress and quality of the Work and to determine in general if the Work is proceeding in accordance with Contract Documents. The DESIGN PROFESSIONAL shall not be required to make exhaustive or continuous on-site observations to check the quality or quantity of the Work. On the basis of such on-site observation as a design professional, the DESIGN PROFESSIONAL shall keep the OWNER informed on the progress and quality of the Work, and shall endeavor to guard the OWNER against defects and deficiencies in the Work.

> **1.6.6.1.** The DESIGN PROFESSIONAL and the SUB-CONSULTANTS when appropriate, shall make not less than *alpha* (#) site visits each month. Visits shall include monthly construction conferences throughout the Construction Phase. The engineering SUB-CONSULTS shall confirm that the building systems are installed and operating according to the design. All visits shall be documented and uploaded to OMS.

1.6.7. The DESIGN PROFESSIONAL shall not have control over or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, for the acts or omissions of the Contractor, Subcontractors or any other persons performing any of the Work, or for the failure of any of them to carry out the Work in accordance with the Contract Documents.

1.6.8. The DESIGN PROFESSIONAL shall at all times have access to the Work wherever it is in preparation or progress.

1.6.9. Based on the DESIGN PROFESSIONAL'S observations and evaluations of the Contractor's Applications for Payment, the DESIGN PROFESSIONAL shall review and certify the amounts due the Contractor.

1.6.10. The DESIGN PROFESSIONAL'S certification of a Periodic Payment Estimate shall constitute a representation by the DESIGN PROFESSIONAL to the OWNER, based on the DESIGN PROFESSIONAL'S observations at the site, as provided in subparagraph 1.6.6 and on the data comprising the Contractor's Periodic Payment Estimate, that the Work has progressed to the point indicated and that, to the best of the DESIGN PROFESSIONAL'S knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents (subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to the results of any subsequent tests required by or performed under the Contract Documents, to minor deviations from the Contract Documents correctable prior to completion, and to any specific qualifications stated in the Periodic Payment Estimate Form); and that the Contractor is entitled to payment in the amount certified. The Certification of Payment shall not be a representation that the

DESIGN PROFESSIONAL has made any examination to ascertain how and for what purpose the Contractor has used the moneys paid on account of the Contract Sum.

1.6.11. The DESIGN PROFESSIONAL shall be the interpreter of the requirements of the Contract Documents. The DESIGN PROFESSIONAL shall render interpretations necessary for the proper execution or progress of the Work with reasonable promptness on written request of either the OWNER or the Contractor, and shall render written decisions, within a reasonable time, on all claims, disputes and other matters in question between the OWNER and the Contractor relating to the execution or progress of the Work or the interpretation of the Contract Documents.

1.6.12. Interpretations and decisions of the DESIGN PROFESSIONAL shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in written or graphic form.

1.6.13. The DESIGN PROFESSIONAL shall have authority to reject Work, which does not conform to the Contract Documents. Whenever, in the DESIGN PROFESSIONAL'S reasonable professional opinion, it is necessary or advisable for the implementation of the intent of the Contract Documents, the DESIGN PROFESSIONAL, with the written approval of the OWNER, will have authority to require special inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work be then fabricated, installed or completed.

1.6.14. The DESIGN PROFESSIONAL shall review and approve or take other appropriate action upon the Contractor's submittals, such as Shop Drawings, Product Data and Samples, but only for conformance with the design concept of the Work and with the information given in the Contract Documents. Such action shall be taken with reasonable promptness so as to cause no delay in the Work. The DESIGN PROFESSIONAL'S review of a specific item shall not indicate approval of an assembly of which the item is a component. When professional certification of performance characteristics of materials, systems or equipment is required by the Contract Documents, the DESIGN PROFESSIONAL shall be entitled to rely upon such certification to establish that the materials, systems or equipment will meet the performance criteria required by the Contract Documents.

1.6.15. The DESIGN PROFESSIONAL shall prepare Change Orders and Construction Change Directives with supportive documentation and data as necessary for the OWNER'S approval and execution in accordance with the Contract Documents and shall not make any such changes in the Work without approval of the OWNER. The DESIGN PROFESSIONAL will have authority to order minor changes in the Work not involving adjustment in the Contract Sum or an extension of the Contract Time that are not inconsistent with the intent of the Contract Documents. Except as provided by subparagraph 1.8.1.4, the preparation of Change Orders shall be a part of the Basic Services. Change orders to be processed through OMS.

1.6.16. The DESIGN PROFESSIONAL shall, with the OWNER, conduct inspections to determine the dates of Substantial Completion and final completion. The DESIGN PROFESSIONAL shall receive, review, upload and forward to the OWNER written warranties and related documents required by the Contract Documents and assembled by the Contractor. The DESIGN PROFESSIONAL shall issue a Certificate of Substantial Completion and certify a final payment.

1.6.17. The DESIGN PROFESSIONAL shall issue a statement of the Project's acceptance. If, after issuing such statement, and written acceptance by the OWNER, the DESIGN PROFESSIONAL'S services are further required through no fault of the DESIGN PROFESSIONAL, compensation shall be as in paragraph 13.2.1.

1.6.18. The DESIGN PROFESSIONAL shall assemble drawings of record submitted by the Contractor as required by the specifications and prepare and provide the OWNER one (1) set of mylar reproducibles, one (1) set of prints and electronic media in DWG and PDF format compatible with AutoCAD® 2010 generated documents showing the as constructed conditions. The DESIGN PROFESSIONAL shall also mark up and forward the OWNER with one (1) set of specifications showing materials used in the Project. All record drawings and specifications shall be uploaded to OMS.

1.6.19. The DESIGN PROFESSIONAL, with the OWNER, shall conduct a site visit prior to the expiration of the Contractor's one (1) year period for correction of Work regardless of final payment of compensation to the DESIGN PROFESSIONAL.

1.7. GENERAL RESPONSIBILITIES

1.7.1. The DESIGN PROFESSIONAL agrees to conform to and be bound by standards, criteria, budgetary considerations. and memoranda of policy furnished to him by the OWNER, including but not limited to, current edition of Division of Public Works – Instructions for Design Professionals, hereto attached, and further agrees to design Work in compliance with applicable laws, ordinances, and codes.

1.7.2. The DESIGN PROFESSIONAL agrees to provide without additional compensation all professional services required by the OWNER that relate to errors or omissions or failure to act by the DESIGN PROFESSIONAL, arising out of this Agreement. Further, the OWNER will not reimburse or pay the DESIGN PROFESSIONAL for any additional fee, costs, claims or damages, including legal fees, incurred by the DESIGN PROFESSIONAL in defending or interpreting the contract documents relative to errors and omissions.

1.7.3. The DESIGN PROFESSIONAL'S services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Work. The DESIGN PROFESSIONAL assumes full responsibility for all delays and associated cost proximately caused by the DESIGN PROFESSIONAL'S negligent acts, errors or omissions.

1.7.4. Throughout all phases of service the DESIGN PROFESSIONAL shall endeavor to assure the OWNER that all instruments of service, including, but not limited to, drawings and specifications, whether prepared by the DESIGN PROFESSIONAL or by the DESIGN PROFESSIONAL'S SUB-CONSULTANTS are properly coordinated.

1.8. ADDITIONAL SERVICES

1.8.1. The following Services are not included in Basic Services. They shall be provided if authorized or confirmed in writing by the OWNER, as provided in this Agreement, in addition to the compensation for Basic Services.

1.8.1.1. Providing services relative to future facilities, systems and equipment which are not intended to be constructed during the Construction Phase.

1.8.1.2. Providing coordination of Work performed by separate Contractors or by the OWNER'S own forces.

1.8.1.3. Making revisions in Drawings, Specifications or other documents when such revisions are inconsistent with written approvals or instructions previously given, are required by the enactment or revision of codes, laws or other causes beyond the control of the DESIGN PROFESSIONAL.

1.8.1.4. Preparing Drawings, Specifications and supporting data, and providing other services in connection with Change Orders required by requests of the OWNER for additional Work or for specific changes to previously approved documents. If the DESIGN PROFESSIONAL requires additional compensation, the DESIGN PROFESSIONAL shall obtain written approval from the OWNER prior to initiation of the change request.

1.8.1.5. Providing consultation concerning replacement of any Work damaged by fire or other cause during construction, and furnishing services as may be required in connection with the replacement of such Work.

1.8.1.6. Providing services made necessary by the default of the Contractor, or by major defects or deficiencies in the Work of the Contractor, or by failure of performance of either the OWNER or Contractor under the Contract for Construction.

1.8.1.7. Providing services in connection with a public hearing, arbitration proceeding or legal proceeding except where the DESIGN PROFESSIONAL is party thereto or where the hearing or proceeding involves or is based upon allegations of error or omission or other negligence by the DESIGN PROFESSIONAL.

1.8.1.8. Providing services, other than those required in paragraphs 1.6.17, 1.6.18, and 1.6.19 above, more than thirty (30) days after the final acceptance, unless required due to an error or omission in the provision of the DESIGN PROFESSIONAL'S services.

1.9. SCHEDULE

1.9.1. The DESIGN PROFESSIONAL shall perform Basic and Additional Services as expeditiously as is consistent with professional skill and care and the orderly progress of the Work. Following a notice to proceed, the DESIGN PROFESSIONAL shall submit for the OWNER'S approval, a schedule for the performance of the DESIGN PROFESSIONAL'S services which shall be adjusted as required as the Project proceeds, and shall include allowances for periods of time

required for the OWNER'S review and approval of submissions and for approvals of authorities having jurisdiction over the Project. This schedule, when approved by the OWNER, shall not, except for reasonable cause, be exceeded by the DESIGN PROFESSIONAL. The schedule shall include the following critical occurrences:

Program Review by Agency and the OWNER (delete if none)
Schematic Review by Agency and OWNER
Design Development Review by PBFAC
Construction Document Review by PBFAC
Bid Date
Award of Contract
Substantial Completion

ARTICLE 2
THE OWNER'S RESPONSIBILITIES

2.1. The OWNER shall work with the DESIGN PROFESSIONAL in the refinement and coordination of the program with the Agency.

2.2. The OWNER shall establish and update an overall budget for the Project, including the Construction Cost, the OWNER'S other costs and reasonable contingencies related to all of these costs.

2.3. The OWNER shall designate a Project Manager authorized to act in the OWNER'S behalf with respect to the Project. The Project Manager shall examine the documents submitted by the DESIGN PROFESSIONAL and shall render decisions in a timely manner, to avoid unreasonable delay in the progress of the DESIGN PROFESSIONAL'S services.

2.4. The OWNER shall furnish laboratory tests, inspections and reports as required by law or the Contract Documents.

2.5. If the OWNER observes or otherwise becomes aware of any fault or defect in the Project or nonconformance with the Contract Documents, prompt written notice thereof shall be given by the OWNER to the DESIGN PROFESSIONAL.

2.6. The OWNER will assign Field Representative for regular observation of the Work during the Construction Phase, who will report his observations to the DESIGN PROFESSIONAL and the Project Manager.

2.7. The OWNER will make available existing building and site drawings for the DESIGN PROFESSIONAL'S use. Existing drawings remain the property of the OWNER and shall be returned promptly.

****DELETE 2.8 &/OR 2.9 IF EITHER SOILS INVESTIGATION OR SURVEY ARE NOT REQUIRED.**

2.8. The OWNER shall separately furnish the services of a geotechnical engineer, as deemed necessary by the DESIGN PROFESSIONAL, for determining subsoil conditions, with reports and appropriate professional recommendations.

2.9. The OWNER shall separately furnish a land survey of the site, as deemed necessary by the DESIGN PROFESSIONAL, giving applicable adjoining property boundaries and contours of the site; locations, and data pertaining to existing buildings and other improvements and utilities.

ARTICLE 3
CONSTRUCTION COST

3.1. DEFINITION

3.1.1. The Construction Cost shall be the total cost or estimated cost to the OWNER of all elements of the Project designed or specified by the DESIGN PROFESSIONAL and incorporated into the construction contract.

3.1.2. Construction Cost does not include the compensation of the DESIGN PROFESSIONAL and the DESIGN PROFESSIONAL'S SUB-CONSULTANTS, the cost of the land, rights-of-way, or other costs that are the responsibility of the OWNER as provided in ARTICLE 2.

3.2. CONSTRUCTION COST

3.2.1. Evaluations of the OWNER'S Project budget and estimates of Construction Cost, prepared by the DESIGN PROFESSIONAL, represent the DESIGN PROFESSIONAL'S best judgment as a design professional familiar with the construction industry. It is recognized that neither the DESIGN PROFESSIONAL nor the OWNER has control over the cost of labor, materials or equipment, over the Contractor's methods of determining bid prices, or over competitive bidding or market conditions. Accordingly, the DESIGN PROFESSIONAL cannot and does not warrant or represent that bids will not vary from the Project budget or from any estimate of Construction Cost or evaluation prepared by the DESIGN PROFESSIONAL.

3.2.2. Prior to the Bidding Phase, the DESIGN PROFESSIONAL shall be permitted to include contingencies for design, bidding, and price escalation to determine what materials, equipment, component systems, and types of construction are to be included in the Contract Documents, to make reasonable adjustments in the scope of the Project, and to include in the Contract Documents alternate bids to adjust the Construction Cost to the fixed limit. Fixed limits shall be increased in the amount of any increase in the Contract Sum occurring after execution of the Contract for Construction.

3.2.3. If the Bidding Phase has not commenced within three (3) months after the DESIGN PROFESSIONAL submits the Construction Documents to the OWNER, any Project budget or fixed

limit of Construction Cost shall be adjusted to reflect any change in the general level of prices in the construction industry between the date of submission of the Construction Documents to the OWNER and the date on which proposals are sought.

3.2.4. If a Project budget or fixed limit of Construction Cost (adjusted as provided in paragraph 3.2.3) is exceeded by the lowest bona fide bid, the OWNER shall: (1) give written approval of an increase in such fixed limit; (2) authorize rebidding of the Project within a reasonable time; (3) if the Project is abandoned, terminate in accordance with ARTICLE 5; or (4) cooperate in revising the Project scope and quality as required to reduce the Construction Cost. In the case of (4), the DESIGN PROFESSIONAL, without additional charge, shall modify the Contract Documents, as necessary to comply with the fixed limit. The providing of such service, including rebidding of the Construction Contract, shall be the limit of the DESIGN PROFESSIONAL'S responsibility arising from the establishment of such fixed limit, and having done so, the DESIGN PROFESSIONAL shall be entitled to compensation for all services performed, in accordance with this Agreement, whether or not the Construction Phase commences.

3.2.4.1. As a condition of the Agreement, the fixed limit of the construction cost (this amount is for construction only and does not include architectural fees, testing, surveys or contingencies) is $.00.

ARTICLE 4
COMPENSATION AND PAYMENTS

4.1. For the purposes of the Agreement, hourly rates of employees and SUB-CONSULTANTS engaged on the Project by the DESIGN PROFESSIONAL to perform Additional Services shall be as follows:

Person/Classification	**Cost/Hour**
Architectural - Principal	$.00
Project Architect	.00
Architect-in-training	.00
Draftsperson	.00
CADD Operator	.00
Clerical	.00
Structural - Principal	.00
Project Engineer	.00
Designer	.00
Draftsperson	.00
Clerical	.00
Mechanical Engineer - Principal	.00
Engineer	.00
Designer	.00
Draftsperson	.00

Clerical	.00
Electrical Engineer - Principal	.00
Project Engineer	.00
Design Engineer	.00
Designer	.00
Draftsperson	.00
Clerical	.00
Civil Engineer-Principal	.00
Project Engineer	.00
Design Engineer	.00
Technical	.00
Clerical	.00

For the purposes of this agreement, principals are as follows:

(names of principals for each discipline)

4.2. REIMBURSABLE EXPENSES

Reimbursable expenses are in addition to the Compensation for Basic and Additional Services and include actual expenditures made by the DESIGN PROFESSIONAL and the DESIGN PROFESSIONAL'S employees and SUB-CONSULTANTS in the interest of the Project for the expenses listed in the following paragraphs.

4.2.1. Reimbursable expenses for authorized out-of-town travel by private vehicle will be reimbursed at the rate established by the Idaho State Board of Examiners and in effect at the time the travel occurred, lodging at cost not to exceed $100 per day and meals at cost not to exceed $50 per day per person. Travel by air and/or rental car (if authorized) will be reimbursed at cost verified by receipt. Reimbursable expenses for out of state travel will be agreed to prior to travel and meal reimbursable will not exceed $50 per day per person.

****FOR PROJECTS LOCATED IN THE TREASURE VALLEY AREA YOU MAY WANT TO ADD THE FOLLOWING SENTENCE TO THE ABOVE PARAGRAPH.**

For the purposes of this agreement travel between the DESIGN PROFESSIONAL'S office or the DESIGN PROFESSIONAL'S SUB-CONSULTANTS' offices and the project site are not considered out of town travel.

4.2.2. Expense of reproductions of plans and specifications when authorized by the OWNER for review purposes, for bidding purposes and for record documents are reimbursable at cost, or if printed in-house at the rate of $.10 per square foot as measured by sheet size for plans and at the rate

of $.05 per page for specifications. Duplexing of specifications is highly encouraged. Postage and/or shipping charges of these documents for bidding purposes will be reimbursed at cost.

4.3. PAYMENTS ON ACCOUNT OF BASIC SERVICES

4.3.1. Payments for Basic Services shall be made monthly and shall be in proportion to services performed within each Phase of services, on the basis set forth in ARTICLE 1. The OWNER payment shall be submitted and processed through OMS. Payments shall become due and payable within forty-five (45) days from date of receipt by the OWNER.

4.3.2. If and to the extent that the Contract Time initially established in the Contract for Construction is exceeded or extended by more than ninety (90) days through no fault of the DESIGN PROFESSIONAL, compensation for any Basic Services required during extended period of Administration of the Construction Contract shall be computed as set forth in paragraph 13.2.1 for Additional Services.

4.4. PAYMENTS ON ACCOUNT OF ADDITIONAL SERVICES

4.4.1. Payments on account of the DESIGN PROFESSIONAL'S Additional Services, as defined in paragraph 1.8, and for Reimbursable Expenses, as defined in ARTICLE 4, shall be made monthly upon presentation of the DESIGN PROFESSIONAL'S statement of services rendered or expenses incurred. Itemized statements including employee hours worked, rates, and invoices shall be submitted in addition to the payment form. A summary sheet shall be included with items totaled.

4.5. PAYMENTS WITHHELD

4.5.1. No deductions shall be made from the DESIGN PROFESSIONAL'S compensation on account of liquidated damages or other sums withheld from payments to Contractors.

4.5.2. The OWNER may withhold a reasonable retainage from the DESIGN PROFESSIONAL'S compensation when the OWNER has reason to believe the OWNER has been damaged by errors and/or omissions of the DESIGN PROFESSIONAL. If such a retainage is withheld, the OWNER shall so notify the DESIGN PROFESSIONAL in writing.

4.6. ACCOUNTING RECORDS

4.6.1. Records of reimbursable expenses and expenses pertaining to Additional Services shall be kept on the basis of generally accepted accounting principles and shall be available to the OWNER or the OWNER'S authorized representative with each pay request.

ARTICLE 5
TERMINATION

5.1. If the Project is suspended or abandoned in whole or in part for more than six (6) months, the DESIGN PROFESSIONAL shall be compensated for all services performed prior to receipt of

written notice from the OWNER of such suspension or abandonment, together with reimbursable expenses then due. If the Project is resumed after being suspended for more than six (6) months, the DESIGN PROFESSIONAL'S compensation shall be equitably adjusted.

5.2. This Agreement may be terminated by either party upon seven (7) days' written notice should the other party fail substantially to perform in accordance with its terms through no fault of the party initiating the termination.

5.3. This Agreement may be terminated by the OWNER upon at least seven (7) days' written notice to the DESIGN PROFESSIONAL in the event that the Project is permanently abandoned.

5.4. In the event of termination, not the fault of the DESIGN PROFESSIONAL, the DESIGN PROFESSIONAL shall be compensated for all services performed to the termination date, together with reimbursable expenses then due.

5.5. The OWNER may terminate this Agreement for convenience at any time upon thirty (30) days' written notice. Upon such termination for convenience, the sole obligation of the OWNER shall be to pay for work satisfactorily completed to the date of termination. In the event that the OWNER terminates the Agreement for default under paragraph 5.2 and it is later determined, either by mutual agreement or in a legal proceeding, that there was no default, the termination shall be deemed a termination for convenience.

ARTICLE 6
SUB-CONSULTANTS, SUCCESSORS AND ASSIGNS

6.1. The OWNER and the DESIGN PROFESSIONAL, respectively, bind themselves, their partners, successors, assigns, and legal representatives to the other party to this Agreement and to the partners, successors, assigns, and legal representatives of such other party with respect to all covenants of this Agreement. Neither the OWNER nor the DESIGN PROFESSIONAL shall assign, sublet or transfer any interest in this Agreement without the written consent of the other.

6.2. Approval by the OWNER of the DESIGN PROFESSIONAL's request to subcontract engineering or consulting (SUB-CONSULTANT) services or acceptance of or payment for sub-consultant work by the OWNER shall not in any way relieve the DESIGN PROFESSIONAL of any responsibility under this Agreement. The DESIGN PROFESSIONAL shall be and remain liable for all damages to the OWNER caused by negligent performance or non-performance of work under this Agreement by the DESIGN PROFESSIONAL'S SUB-CONSULTANT(s).

6.3. The DESIGN PROFESSIONAL shall require the SUB-CONSULTANT to maintain such Commercial General Liability insurance that it deems necessary and advisable with minimum limits of $1,000,000/$1,000,000 to protect its interest and that of the OWNER. The State of Idaho, DPW, (name of agency) will be named an Additional Insured on any general liability and property policies carried and required by this Agreement.

6.4. The DESIGN PROFESSIONAL shall require the SUB-CONSULTANT to carry Worker's Compensation Insurance to cover obligations imposed by federal and state statutes covering all employees and employers' liability insurance with a minimum limit of $100,000.

6.5. The DESIGN PROFESSIONAL shall require the SUB-CONSULTANT to carry Commercial Auto Liability insurance with a combined single limit for bodily injury and property damage of not less than $1,000,000 per occurrence with respect to their owned, hired or non-owned vehicles, assigned to or used in the performance of the Work.

6.6. The DESIGN PROFESSIONAL shall require the SUB-CONSULTANT to obtain Professional Liability Insurance, in an amount no less than $1,000,000 per claim/aggregate. combined single limit. The DESIGN PROFESSIONAL shall be responsible to pay all premiums, deductibles and all costs not covered by such insurance.

ARTICLE 7
PREPARATION, OWNERSHIP AND USE OF DOCUMENTS

7.1. Except as provided in paragraph 7.2, drawings, specifications, and architectural calculations, as instruments of services, are and shall remain the property of the DESIGN PROFESSIONAL, whether the Project for which they are made is executed or not. The OWNER shall be permitted to retain copies, including reproducible and electronic copies, of drawings, specifications and architectural calculations for information and reference in connection with the OWNER'S use and occupancy of the Project. The OWNER may utilize the drawings for reference as a basis for future renovations, remodels and additions and may use designs, concepts, details, and similar features for the purpose of matching future construction with existing construction. The drawings, specifications, and architectural calculations shall not be used by the OWNER on other projects, except by agreement in writing of the DESIGN PROFESSIONAL.

7.2. In the case of termination, for cause, of the DESIGN PROFESSIONAL'S services, the designs, drawings, specifications, and architectural calculations, as progressed to the date of termination, shall become the property of the OWNER and will be made available to the OWNER and any successor architect for continuation of the Project. Any reuse by the OWNER or by third parties shall be at the sole risk of the OWNER.

7.3. Submission or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the DESIGN PROFESSIONAL'S rights.

ARTICLE 8
DISPUTES AND REMEDIES

8.1. Any dispute concerning a question of fact arising under this contract shall be determined as provided by Idaho law.

ARTICLE 9
INSURANCE

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

9.2. The DESIGN PROFESSIONAL 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, Division of Public Works, (name of agency) will be named an Additional Insured on any general liability and property policies carried and required by this Agreement. The insurance afforded by the DESIGN PROFESSIONAL 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 DESIGN PROFESSIONAL or its SUB-CONSULTANTS.

9.3. The DESIGN PROFESSIONAL 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.

9.4. The DESIGN PROFESSIONAL shall carry Commercial Auto Liability insurance with a combined single limit for bodily injury and property damage of not less than $1,000,000 per occurrence with respect to their owned, hired or non-owned vehicles, assigned to or used in the performance of the Work.

****REVISE AMOUNT OF PROFESSIONAL LIABILITY INSURANCE REQUIRED IN 9.4 BELOW PER THE CURRENT SCHEDULE OF PROFESSIONAL LIABILITY INSURANCE REQUIREMENTS.**

9.5. The DESIGN PROFESSIONAL shall provide Professional Liability Insurance, in an amount no less than $1,000,000 per claim. The DESIGN PROFESSIONAL shall be responsible to pay all premiums, deductibles, and all costs not covered by such insurance.

9.6. 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 DESIGN PROFESSIONAL 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.

9.7. The DESIGN PROFESSIONAL shall indemnify, defend and save harmless the STATE OF IDAHO, THE DIVISION OF PUBLIC WORKS, (name of agency), their officers, agents and employees from and against any liability, claims, damages, losses, expenses, actions and suits whatsoever, including injury or death of others or any employees of the DESIGN PROFESSIONAL or the DESIGN PROFESSIONAL'S SUB-CONSULTANT caused by or arising out of the negligent performance, act or omission by the DESIGN PROFESSIONAL of any term of this contract.

9.8. All express representations, indemnifications or limitations of liability made in or given to this Agreement will survive the completion of all services of the DESIGN PROFESSIONAL under this Agreement or the termination of this Agreement for any reason.

ARTICLE 10
INDEMNIFICATION

10.1. GENERAL LIABILITY

10.1.1 Design Professional shall indemnify, defend, and hold harmless the State, its officers, agents, employees, and volunteers from and against any and all liability, claims, damages, losses, expenses, actions, settlements, attorneys' fees, and suits whatsoever caused by, arising out of, or in connection with Design Professional's acts or omissions under the Contract or Design Professional 's failure to comply with any State or federal statute, law, regulation, or rule ("Liability"). For purposes of section 10.1, Liability shall not include "Professional Services," defined in section 10.2.

10.1.2 Upon receipt of the State's tender of indemnity and defense for Liabilities defined in section 10.1.1, Design Professional shall immediately take all reasonable actions necessary, including, but not limited to, providing a legal defense for the State, to begin fulfilling its obligation to indemnify, defend, and save harmless the State. Design Professional's indemnification and defense liabilities described herein shall apply regardless of any allegations that a claim or suit is attributable in whole or in part to any act or omission of the State under the Contract. Design Professional shall not be required to hold the State harmless for damages attributed to the State in a final order issued by a court of competent jurisdiction.

10.2. PROFESSIONAL SERVICES

10.2.1 Design Professional shall indemnify and hold harmless the State, its officers, agents, employees, and volunteers from and against any and all liability, claims, damages, losses, expenses, actions, settlements, attorneys' fees, and suits whatsoever caused by, arising out of, or in connection with Design Professional's acts or omissions under the Contract or Design Professional's failure to comply with any State or federal statute, law, regulation, or rule relating to Professional Services.

10.2.2 As used in this section 10.2, "Professional Services" means those services performed by a licensed professional employed by Design Professional under the scope of such license or a person performing such services under the direct supervision of a licensed professional.

10.2.3 Notwithstanding the foregoing, Design Professional's indemnity under this paragraph arising from "Professional Services" is limited to those liabilities arising from the Design Professional's negligence, or error, omissions, or failure to perform Professional Services.

10.2.4 The Owner shall provide Design Professional with timely notice of Professional Services claims. Upon receipt of claims under this section, Design Professional is required to immediately report all claims to its insurance carrier.

10.3. Any legal defense provided by Design Professional to the State under Article 10 must be free of any conflicts of interest, even if retention of separate legal counsel for the State is necessary. Any attorney appointed to represent the State must first qualify as and be appointed by the Attorney General of the State of Idaho as a Special Deputy Attorney General pursuant to Idaho Code Sections 67-1401(13) and 67-1409(1). The State must approve all settlement offers and agreements made on its behalf and has the option to attend any settlement or alternative dispute resolution proceedings.

ARTICLE 11
NO WAIVER OF SOVEREIGN IMMUNITY

11.1. 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.

ARTICLE 12
EXTENT OF AGREEMENT

12.1 This Agreement represents the entire and integrated Agreement between the OWNER and the DESIGN PROFESSIONAL and supersedes all prior negotiations, representations or agreement, either written or oral. This Agreement may be amended only by written instrument signed by both the OWNER and the DESIGN PROFESSIONAL.

ARTICLE 13
MISCELLANEOUS PROVISIONS

13.1. Unless otherwise specified, this Agreement shall be governed by the laws of the State of Idaho.

13.2. Defined terms in this Agreement shall have the same meaning as those in the current edition of the Division of Public Works, Fixed Price Construction Contract.

13.3. As between the parties to this Agreement: as to all acts or failures to act by either party to this Agreement, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events in accordance with Idaho law.

13.4. The DESIGN PROFESSIONAL waives all rights against the OWNER and its employees for damages covered by any property insurance during construction as set forth in the current edition of the Division of Public Works, Fixed Price Construction Contract. The DESIGN PROFESSIONAL shall require appropriate similar waivers from its SUB-CONSULTANTS and agents.

13.5. The DESIGN PROFESSIONAL shall report to the OWNER the presence and location of any hazardous material which the DESIGN PROFESSIONAL notices or which a design professional of similar skill and experience should have noticed. The DESIGN PROFESSIONAL agrees to exercise reasonable care and diligence during normal on-site observations, visits, and investigations of the premises for potential or current health hazards.

13.5.1. Discovery of asbestos will be considered a changed condition and will be handled as an additional service or may be handled under a separate contract.

13.6 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 (10) 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.

13.7 Ownership or Operation by China. Pursuant to Idaho Code section 67-2359, Contractor 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.

ARTICLE 14
BUSINESS ORGANIZATION

14.1. Knowing that the OWNER is relying upon the truth of these representations and warranties as an inducement to enter into this agreement, the DESIGN PROFESSIONAL represents and warrants to the OWNER as follows:

14.1.1. The DESIGN PROFESSIONAL is organized as a ( ).

14.1.2. The name and address of the DESIGN PROFESSIONAL is:

(firm's name and address)

14.1.3. Partners/Corporate Officers: (name corporation officers)
(name partners)
(sole proprietor)

14.1.4. The person executing this Agreement, by signing below, is duly authorized by the DESIGN PROFESSIONAL to bind them to the terms of the Agreement.

ARTICLE 15
BASIS OF COMPENSATION

15.1. The OWNER shall compensate the DESIGN PROFESSIONAL for the Scope of Services provided, in accordance with ARTICLE 4, Compensation and Payments, and the other Terms and Conditions of this Agreement, as follows:

15.1.1. BASIC COMPENSATION

15.1.1. THE TOTAL COMPENSATION FOR BASIC SERVICES shall be a fixed fee in the amount of $.00.

15.1.2. The DESIGN PROFESSIONAL shall be compensated in the following portions:

Programming	$.00
Schematic Design	.00
Design Development	.00
Construction Documents	.00
Bidding	.00
Construction	.00
Closeout	.00

15.2. ADDITIONAL COMPENSATION

15.2.1. For Additional Services of the DESIGN PROFESSIONAL, as described in paragraph 1.8, including Additional Services of SUB-CONSULTANTS, Compensation shall be computed by multiplying the actual hours involved times the hourly rates listed in ARTICLE 4.

15.2.2. If the scope of the Project or the DESIGN PROFESSIONAL'S Services is changed, the DESIGN PROFESSIONAL and the OWNER shall establish compensation prior to commencing Work.

15.2.3. If the services covered by this Agreement (exclusive of the construction warranty period) have not been completed within *alpha* (#) months of the date hereof, through no fault of the DESIGN PROFESSIONAL, the amounts of compensation and rates set forth herein shall be subject to renegotiation.

ARTICLE 16
DEFINITIONS

16.1. The "Contract Documents" consist of this Agreement, the Contract with the General Contractor (the "Contract"), the drawings and specifications for the Project (the "Drawings and Specifications") identified in Exhibit C of the Contract and any Addenda thereto issued prior to execution of the Contract, written amendments signed by both the OWNER and the Contractor, Change Orders signed by both the OWNER and the Contractor, Construction Change Directives and any written orders by the DESIGN PROFESSIONAL for minor changes in the Work (the "Contract Documents"). Documents not included or expressly contemplated in this Article do not, and shall not, form any part of the Contract Documents.

[*Signature page follows*]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

OWNER:

State of Idaho
Division of Public Works
Boise, Idaho

By: _____
Kelly Berard, Administrator

DESIGN PROFESSIONAL:

By: _____
Signature, Duly Authorized

Printed _____

Title _____

TAX ID #(_)