

**STATE OF IDAHO**  
**DEPARTMENT OF LANDS**



**ELECTRIC HEATING UNITS REPLACEMENT**  
**REQUEST FOR QUOTE NO. 17-0210**  
**DUE BEFORE 3:00:00 PM MST ON DECEMBER 16, 2016**

**STATE OF IDAHO  
DEPARTMENT OF LANDS  
REQUEST FOR QUOTATIONS #17-0210**

**ELECTRIC HEATING UNITS REPLACEMENT**

**RESPONSES DUE BEFORE 3:00:00 PM MST ON DECEMBER 16, 2016**

The purpose of this Request for Quotations (RFQ) package is to solicit quotes for the efficient completion of the removal and replacement of current heating units and installation of wall mounted thermostats in two buildings located at our Bonners Ferry office as outlined in the attached project descriptions and contract documents.

**SITE VISIT:**

A non-mandatory site visit will be held at **9:00 a.m., PST, on DECEMBER 5, 2016** at 6327 Main Street, Bonners Ferry, ID 83805. Interested Contractors are encouraged to attend to verify project requirements.

**INSTRUCTIONS:**

All price quotes will be entered on the attached Schedule A. Print the blank form and enter quotes by hand and sign it. The signed Schedule A may be returned to either the Email or physical address listed below. Idaho Department of Lands shall award the quote to the qualified respondent submitting the lowest responsive quote.

**QUESTIONS:**

Questions pertaining to this RFQ must be submitted in writing by email to [mdoan@idl.idaho.gov](mailto:mdoan@idl.idaho.gov) . The deadline for receiving questions is 5:00 p.m., MST on Friday, December 9, 2016. Responses to all questions received will be posted on the IDL website at [www.idl.idaho.gov](http://www.idl.idaho.gov) . Verbal questions will not be accepted.

**RFQ DEADLINE AND DELIVERY REQUIREMENTS:**

Quotes must be received by the Idaho Department of Lands at 300 N. 6<sup>th</sup> St. Suite 103, Boise, Idaho, 83702 before 3:00:00 PM MST on DECEMBER 16, 2016. The Department of Lands is not responsible for lost or undelivered quotations or for failure of the United States Postal Service or the Idaho State Capital Mall Central Mail Room to deliver quotations to the Idaho Department of Lands by the RFQ closing deadline. The Idaho Department of Lands assumes no responsibility for failure of any electronic submission process, including any computer or other equipment to deliver all or a portion of the quote at the time, or to the location, required by the Solicitation. The date and time of electronically received quotes, to the Idaho Department of Lands email address listed below, will be used to determine if electronically submitted quotes were received by the due date and time specified.

**Late quotes will not be accepted. Fax quotes will not be accepted.**

Delivery Address:

Idaho Department of Lands  
ATTN: Melinda Doan, Senior Buyer  
300 N. 6<sup>th</sup> St Suite 103  
Boise, ID 83702

OR

[mdoan@idl.idaho.gov](mailto:mdoan@idl.idaho.gov)

**Mailed** quotes are to be marked in the lower left hand corner of the envelope with the following information:

Quote For:	RFQ #17-0210 – Electric Heating Units Replacement
Responses due:	Before 3:00:00 PM MST on 12/16/16

A quote submitted using “Express/Overnight” services must be shipped in a separate sealed inner envelope identified as stated above and enclosed inside the “Express/Overnight” shipping envelope.

**Emailed** quotes are to be marked in the subject line with the following information:

Quote For:	RFQ#17-0210–Electric Heating Units Replacement-DUE 3 PM MST 12/16/16
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## **IDAHO DEPARTMENT OF LANDS**

### **STANDARD INFORMATION**

#### **ADDENDA**

It will be the respondent's responsibility to check for any addenda prior to submitting a quotation. In the event it becomes necessary to revise any part of the solicitation documents, addenda will be made available. Information given to a respondent will be available to all other respondents if such information is necessary for purposes of submitting a quotation or if failure to give such information would be prejudicial to uninformed respondents.

#### **BURDEN OF PROOF**

ANY VARIATIONS of brand names or deviations from the specifications MUST BE CLEARLY STATED. It shall be the responsibility and burden of the submitting vendor to furnish the State WITH ITS ORIGINAL SUBMISSION sufficient data to determine if the goods or services offered conform to the specifications.

#### **ORAL INFORMATION**

The State will not be responsible for any verbal or oral information regarding a quote.

#### **DISQUALIFICATION AND AWARD INFORMATION**

The state reserves the right to make reasonable inquiry to determine the responsibility of a contractor. Such requests may include but not be limited to financial statements, credit ratings, statements of experience and past performance, references, etc. Successful contractors must show to the satisfaction of the Idaho Department of Lands that they have sufficient equipment and work crews to complete the work contracted by the time specified. The unreasonable failure of a contractor to promptly supply information in connection with such a request is reason for disqualification. Except as otherwise provided by law, information furnished by the contractor pursuant to this provision may not be disclosed outside the Idaho Department of Lands without prior written consent of the Contractor. Disqualification of a high ranking contractor may be pursued when their reputation, experience or references are such as to create a doubt about satisfactory job completion or if the price quotes are considerably below Department estimates and the other quotes. The purchasing agent will contact the contractor and request that they disqualify themselves by withdrawing in writing. If the contractor refuses to withdraw, the purchasing agent may notify the contractor in writing or email that the Department will not offer the contractor a contract and proceed with an award to the next responsible contractor.

#### **PARTNERSHIPS**

Contractors responding as partners must furnish the Idaho Department of Lands the name of the partnership, names of the partners, and the partnership's federal taxpayer ID number. All payments will be made to the partnership.

#### **INTERNAL REVENUE SERVICES REPORTING REQUIREMENT**

IRS rules and regulations require employers to submit a miscellaneous income form (IRS form 1099) for all contractual persons who receive \$600 or more in a calendar year. Incorporated firms are exempt from this reporting requirement. The contractor's taxpayer identification number (Social Security or employer number) must be listed on the signature page of the contract.

#### **PUBLIC RECORDS**

The Idaho Public Records Law, Idaho Code Sections 74-101 through 74-126, 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. ALL, OR MOST (there are exceptions), OF THE INFORMATION CONTAINED IN YOUR RESPONSE TO THE STATE'S SOLICITATION WILL BE A PUBLIC RECORD SUBJECT TO DISCLOSURE UNDER THE PUBLIC RECORDS LAW.

## WORKERS COMPENSATION INSURANCE

All persons working for the State under any contract of hire, expressed or implied, must be covered by worker's compensation insurance. (Reference Title 72, Idaho Code).

Any contractor who hires employees to accomplish the contracted work must provide a certificate of worker's compensation insurance.

The Department of Lands may pay worker's compensation insurance premiums on behalf of the contractor if the contractor has no employees and, except for the provisions in this contract, is not otherwise required to carry worker's compensation insurance. The contractor must indicate they do not carry worker's compensation by checking the appropriate statement on the response form. The cost of the premium will be tallied in the quote evaluation so that a contractor paying worker's compensation premiums is not penalized. In no event will the premium be paid to the contractor.

Example: Contractor #1 quote total = \$8,000.00  
Contractor does not provide worker's compensation

Contractor #2 quote total = \$9,000.00  
Contractor provides worker's compensation

The following procedure will be used to evaluate the quote without worker's compensation.

(EXAMPLE – ALL RATES ARE EXAMPLES ONLY)

Quote times applicable worker's compensation rate times current Department of Lands' percentage reduction rate added to quote.

<u>Contractor #1</u>	<u>Worker's Class Rate</u>		<u>Reduction Rate</u>	<u>Premium Amt.</u>
\$8,000.00	x rate \$31.00 per/100	x	67.5	= \$1,674.00
			Plus quote amount	+8,000.00
			Total quote price	\$9,674.00

Contractor #2 would be the successful respondent and furnish a certificate to the Idaho Department of Lands

## PREFERENCES

Section 67-2349, Idaho Code, requires application of a preference in determining which contractor submitted the lowest responsible quote. If the contractor who submitted the lowest quote is domiciled in a state which has a preference law that penalizes Idaho domiciled contractors, then the State must apply a preference. The penalty applied to out-of-state contractors competing against Idaho contractors is determined by the penalty applied by the contractor's domiciliary state to its out-of-state contractors.

In determining domicile, the following "rule of thumb" will be used: Corporations – the state in which the corporation is chartered or incorporated; Sole proprietor or partnership – the state in which the permanent headquarters of the business is located.

A contractor domiciled outside the boundaries of the state of Idaho may be considered as an Idaho domiciled contractor provided that there exists for a period of one year preceding the date of the quote a significant Idaho economic presence as defined herein. A significant Idaho economic presence shall consist of the following: (a) That the contractor maintain in Idaho fully staffed offices, or fully staffed sales offices or divisions, or fully staffed sales outlets, or manufacturing facilities, or warehouses or other necessary related property; and (b) if a corporation, that it be registered and licensed to do business in the state of Idaho with the office of the secretary of state.

## REJECTION OF QUOTES AND CANCELLATION OF QUOTE SOLICITATION

Prior to the issuance of a contract, the State shall have the right to accept or reject all or any part of a quote when: (i) it is in the best interests of the State of Idaho; (ii) the quote does not meet the minimum quote specifications; (iii) the quote is not the lowest responsible quote; (iv) a finding is made based upon available evidence that a respondent is not responsible or is otherwise incapable of meeting specifications or providing an assurance of ability to fulfill contract requirements; or (v) the item offered deviates to a major degree from the quote specifications, as determined by the State (minor deviations, as determined by the State, may be accepted as substantially meeting the quote requirements of the State of Idaho). Deviations

will be considered major when such deviations appear to frustrate the competitive solicitation process or provide a respondent an unfair advantage. Prior to the issuance of a contract, the State shall have the right to reject all quotations or to cancel a solicitation or request for quotations. Cancellation may be for reasons that include but are not limited to: (i) inadequate or ambiguous specifications; (ii) specifications have been revised; (iii) property is no longer required; (iv) there is a change in requirements; (v) all quotes are deemed unreasonable or sufficient funds are not available; (vi) quotes were not independently arrived at or were submitted in bad faith; (vii) it is determined that all requirements of the solicitation process were not met; (viii) insufficient competition; or (ix) it is in the best interests of the state of Idaho.

#### **AWARD PROCEDURES**

For contracts with a total solicitation value of \$100,000 or less, the State will email all respondents within five (5) working days following the solicitation closure of its intent to award a contract(s) and the party(ies) to whom the contract(s) will be awarded and will then email a contract award to the successful respondent(s).

For contracts with a total solicitation value of more than \$100,000, the State will notify all respondents within five (5) working days following the solicitation closure, by mail and/or email, of its intent to award a contract and the party(ies) to whom the contract will be awarded. After elapse of the five (5) day appeal period set forth in Idaho Code, and there being no appeals received, the State will award a contract to the successful respondent(s).

Respondents to whom a contract has been awarded will have fourteen (14) calendar days from the mailing date of the award notice to return to the State a signed copy of the contract along with the required bonding and certificates of insurance. If the State does not receive such documents within the specified time period, the State may declare, at its sole discretion, that all respondent's rights to the contract are forfeited, and the State may proceed without further delay or notice to award the contract to the next low respondent.

## SCHEDULE A

STATE OF IDAHO  
DEPARTMENT OF LANDS  
**REQUEST FOR QUOTE**  
*THIS IS NOT AN ORDER*

**Number 17-0210**

Date \_\_\_\_\_

**INSTRUCTIONS:**

The right is reserved to accept or reject quotations on each item separately or as a whole.  
Contractors must hold current, active State of Idaho contractor licensing.  
Contractors quote must include price for any required permits and inspections.  
*Insurance is required for this contract.*  
*Public Works Contractors license and payment and performance bonding is required for all projects over \$10,000.*

**Responders will use this form in submitting prices.**

Destination: 6327 Main Street, Bonners Ferry, ID 83805

ARTICLES	TOTAL ESTIMATED PRICE								
<p><b>Engine Bay Building:</b> All parts and labor to remove existing wall mounted electric heating units and install with new, ceiling mounted, electric heating unit(s), wiring (if required), and wall thermostat, Equivalent to or better than the 2, TPI Corporation, Models FIFUH05003T</p>	\$ _____								
<p><b>Cache Building:</b> All parts and labor to remove existing wall mounted electric heating unit and install with new ceiling mounted, electric heating unit, wiring (if required), and thermostat, Equivalent to or better than the 1 Cadet, Hot One</p>	\$ _____								
<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 50%;">Action</th> <th style="width: 50%;">Due Date</th> </tr> </thead> <tbody> <tr> <td><i>Request for Quote Responses Due Before:</i></td> <td style="text-align: center;"><i>12/16/2016</i></td> </tr> <tr> <td><i>Job Completion Required by:</i></td> <td style="text-align: center;"><i>1/13/2017</i></td> </tr> <tr> <td colspan="2"><i>Public Works Contractors license and payment and performance bonding is required for all projects over \$10,000.</i></td> </tr> </tbody> </table>		Action	Due Date	<i>Request for Quote Responses Due Before:</i>	<i>12/16/2016</i>	<i>Job Completion Required by:</i>	<i>1/13/2017</i>	<i>Public Works Contractors license and payment and performance bonding is required for all projects over \$10,000.</i>	
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<p>Delivery requested <u>per specifications</u></p> <p><b>MAIL QUOTE TO:</b> Idaho Department of Lands Attn. Melinda Doan 300 N. 6<sup>th</sup> St Suite 103 Boise, ID 83702</p> <p>OR</p> <p><b>EMAIL QUOTE TO:</b> <a href="mailto:mdoan@idl.idaho.gov">mdoan@idl.idaho.gov</a></p>	<p>We have stated hereon the prices at which <u>we will furnish and at destination named above</u>, the articles or services as specified. Delivery will be made as specified above.</p> <p>Firm _____</p> <p>Street _____</p> <p>City _____ State _____ Zip Code _____</p> <p>Phone _____ Fax _____</p> <p>E-Mail _____</p> <p>Taxpayer ID# _____</p> <p>HVAC License # _____</p> <p>Public Works License # _____, if required</p> <p>Signed by _____</p> <p>Printed Name _____</p> <p>Title _____</p>								

STATE OF IDAHO  
DEPARTMENT OF LANDS



ENGINE BAY/CACHE HEATING UNITS REPLACEMENT

CONTRACT NO. 17-0210

**CONTRACTOR**

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Sample

**STATE OF IDAHO  
DEPARTMENT OF LANDS  
CONTRACT # 17-0210**

THIS FIXED PRICE CONSTRUCTION AGREEMENT is by and between the STATE OF IDAHO, acting through the DEPARTMENT OF LANDS on behalf of the Idaho State Board of Land Commissioners, hereafter referred to as the "IDL", and [REDACTED], hereafter referred to as the "CONTRACTOR."

- a. Agreement: This duly executed written agreement between IDL and the Contractor resulting from a solicitation, which shall include these Terms and Conditions, the Statement of Work, the Cost Proposal, and all attachments thereto.
- b. Contracting Officer: the IDL employee with the authority to enter into, administer, modify, and/or terminate this contract, and make related determinations and findings. The Contracting Officer is responsible for handling the contractual relationship with the contractor.
- c. Contracting Officer Representative: The designated Department of Lands representative, also referred to as "COR" or "Representative", who will provide daily technical oversight to the contractor and ensure the contractor performs according to the Scope of Work. The COR cannot modify the stated terms of the contract unilaterally or direct the contractor to perform work not specified in the contract. Only the Contracting Officer and the Contractor can do so bilaterally.
- d. Contractor: The individual or business who has been awarded this Agreement to furnish goods or services for a certain price.
- e. IDL: The Idaho Department of Lands.
- f. Property: Goods, services, parts, supplies and equipment, both tangible and intangible, including, but not exclusively, designs, plans, programs, systems, techniques and any rights and interest in such property.
- g. Procurement Manager: The Contracting Officer for the Idaho Department of Lands.
- h. Scope of Work: Detailed outline of the location, project description, timeline, and deliverables.
- i. Services: Includes services performed, workmanship, and materials furnished or utilized in the performance of services, including any deliverables.
- j. State: The State of Idaho including each agency unless the context implies other states of the United States.
- k. State of Idaho Board of Land Commissioners or Land Board: The State Board of Land Commissioners (Land Board) is comprised of Idaho's Governor, Secretary of State, Attorney General, Superintendent of Public Instruction, and State Controller. The Land Board serve as the trustees for more than 2.4 million acres of state endowment trust lands in Idaho, with the IDL acting as the administrative arm of the Board, carrying out the executive directives necessary to meet the mandated Constitutional charge codified in Article IX Section 8 of the Idaho Constitution. The Land Board also oversees the work of the IDL in its regulatory and assistance duties, and in managing Idaho's public trust lands.

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, IDL and the Contractor agree:

**ARTICLE 1  
CONTRACT DOCUMENTS**

**1.1** The Contract Documents consist of this Contract, the scope of work, identified in Exhibit A and any Addenda thereto issued prior to execution of this Contract, written amendments signed by both IDL and the Contractor, Change Orders signed by both IDL and the Contractor, Construction Change Directives for minor changes in the Work (the "Contract Documents"). Documents not included or expressly contemplated in this Article 1 do not, and shall not, form any part of the Contract Documents.

**1.2** The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations.

## **ARTICLE 2 REPRESENTATIONS AND WARRANTIES OF THE CONTRACTOR**

In order to induce IDL to execute this Contract and recognizing that IDL is relying thereon, the Contractor, by executing this Contract, makes the following express representations to IDL:

**2.1** The Contractor is fully qualified to act as the Contractor for the Project and has, and shall maintain, any and all licenses, permits or other authorizations necessary to act as the Contractor for, and to construct, the Project.

**2.2** The Contractor has become familiar with the Project site and the local conditions under which the Project is to be constructed and operated particularly in correlation to the requirements of the Contract.

**2.3** The Contractor has received, reviewed, compared, studied and carefully examined all of the documents which make up the Contract Documents, including the Drawings and Specifications, 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 contractor believes that the documents are complete and the Project is buildable as described except as reported.

**2.4** The Contractor warrants that the Contract Time is a reasonable period for performing the Work.

**2.5** The Contractor warrants to IDL that all labor furnished on this Project shall be competent to perform the tasks undertaken; materials and equipment furnished under the Contract will be new and of high quality unless otherwise required or permitted by the Contract Documents; that the Work will be complete, of high quality and free from defects not inherent in the quality required or permitted; and that the Work will strictly conform to the requirements of the Contract Documents. Any Work not strictly conforming to these requirements, including substitutions not properly approved and authorized, shall be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse by IDL or its representatives, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by IDL, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. This warranty shall survive the completion of the Contract and final payment to the Contractor.

## **ARTICLE 3 INTENT AND INTERPRETATION**

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

**3.1** This Contract constitutes the entire and exclusive agreement between the parties with reference to the Project, and supersedes any and all prior discussions, communications, representations, understandings, negotiations or agreements. This Contract also supersedes any bid documents.

**3.2** The intent of the Contract is to include all items necessary for the proper execution and completion of the Project and anything that may be required, implied or inferred by the documents which make up this Contract, or any one or more of them, shall be provided by the Contractor for the Fixed Price Contract Amount. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all.

**3.3** Nothing contained in this Contract shall create, nor be interpreted to create, private or any other relationship whatsoever between IDL and any person or entity except the Contractor is entitled to performance and enforcement of obligations under the Contract intended or necessary to facilitate its duties. Any reference to IDL or the Contractor shall be deemed to include authorized representatives.

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

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

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

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

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

**3.9** In the event of any conflict among any of the documents which make up this Contract, and the interpretation shall be binding on both IDL and Contractor; provided, however, that this does not change IDL's right to make decisions regarding Claims in accordance with Article 12 and Article 13. If no interpretation is provided, the most stringent requirement in the Contract Documents will apply.

#### **ARTICLE 4 IDL OWNERSHIP OF DOCUMENTS**

**4.1** Unless otherwise agreed, the party that prepared the drawings, specifications and other documents is the author of such with all copyright, common law, statutory and other reserved rights. The Contractor may retain one (1) record set of the Drawings and Specifications and other documents but shall not own or claim any copyright in them.

**4.2** The Drawings and Specifications and other documents, and any copies, are to be used solely for this Project, and not on any other project, or additions to this Project outside this Contract, without written consent of IDL; 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.

**4.3** Submission to or use by a regulatory body related to this Project is an acceptable use.

#### **ARTICLE 5 CONTRACTOR'S PERFORMANCE**

The Contractor shall perform all of the Work required, implied or reasonably inferable from this Contract, including the following:

**5.1** Construction of the Project.

**5.2** The furnishing of any required surety bonds and insurance.

**5.3** The provision or furnishing, and prompt payment therefore, of labor, supervision, services, materials, supplies, equipment, fixtures, appliances, facilities, tools, transportation, storage, power, fuel, heat, light, cooling or other utilities required for construction and all necessary permits, including any required elevator permits, required for the construction of the Project. Construction projects for the State of Idaho require a building permit issued by the Division of Building Safety.

**5.4** The creation and submission of a detailed and comprehensive set of marked up blue or black-lined record drawings. Said record drawings shall be submitted and approved by IDL as a condition precedent to final payment to the Contractor.

#### **ARTICLE 6 TIME FOR CONTRACTOR'S PERFORMANCE**

**6.1** The Contractor shall commence the performance of this Contract and shall diligently continue its performance to and until final completion of the Project. The Contractor shall accomplish Substantial Completion of the Project on or before the time indicated in Exhibit A. The period of time, including any adjustments made under this Contract, for the Contractor to reach Substantial Completion is the "Contract Time."

**6.2** The Contractor may be assessed by and be responsible to IDL for the amount indicated in Exhibit A per day for each and every calendar day of unexcused delay in achieving Substantial Completion beyond the date set forth for

Substantial Completion. Any sums owed hereunder by the Contractor shall be payable not as a penalty but as liquidated damages, representing an estimate of delay damages likely to be sustained by IDL estimated at the time of this Contract. When IDL reasonably believes that Substantial Completion will be inexcusably delayed, IDL shall be entitled, but not required, to withhold from any amounts otherwise due the Contractor an amount then believed by IDL to be adequate to recover liquidated damages applicable to such delays. If and when the Contractor overcomes the delay in achieving Substantial Completion, or any part thereof, for which IDL has withheld payment, IDL shall promptly release to the Contractor those funds withheld, but no longer applicable, as liquidated damages. IDL's right to liquidated damages is not, and shall not be deemed to be, an exclusive remedy for delay and IDL shall retain all remedies at law or in equity for delay or other breach.

**6.3** The term "Substantial Completion," as used herein, shall mean that point at which, as certified by IDL, the entire Project is at a level of completion in strict compliance with the Contract Documents, such that IDL or its designee can enjoy beneficial use or occupancy and can use or operate it in all respects for its intended purpose. If, in the reasonable determination of IDL, 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. Partial use or occupancy of the Project shall not result in the Project being deemed substantially complete, or accepted as substantially complete, and such partial use or occupancy shall not be evidence of Substantial Completion. The Project shall not be deemed accepted until it is finally complete.

## **ARTICLE 7 FIXED PRICE AND CONTRACT PAYMENTS**

**7.1** IDL shall pay, and the Contractor shall accept, as full and complete payment for the Contractor's timely performance of its obligations hereunder, the Fixed Price Contract Amount indicated in Exhibit A according to Idaho Code 67-2302. The Fixed Price Contract Amount shall not be modified except as provided in this Contract.

**7.2** Prior to submitting its first pay application, the Contractor shall prepare and present to IDL the Contractor's Schedule of Values apportioning the Fixed Price Contract Amount among the different elements of the Project for purposes of periodic and final payment. The Contractor's Schedule of Values shall be presented in whatever format, with such detail, and backed up with whatever supporting information IDL reasonably requests. The Contractor shall not imbalance its Schedule of Values nor artificially inflate any element thereof. The violation of this provision by the Contractor shall constitute a material breach of this Contract. The Contractor's Schedule of Values will be utilized for the Contractor's requests for payment but shall only be so utilized after it has been approved in writing.

**7.3** IDL shall pay the Fixed Price Contract Amount to the Contractor in accordance with the procedures set forth in this Article. The Contractor shall submit a Contractor's Request for Payment, on or before the day of each month indicated in Exhibit A or otherwise agreed to, after commencement of performance, but no more frequently than once monthly. Said payment request shall be on IDL's standard form, or an alternate form approved by IDL, and shall include whatever supporting information as may be IDL. Therein, the Contractor may request payment for one hundred percent (100%) of the Work satisfactorily completed to the date of the Contractor's Request for Payment, less five percent (5%) retainage, based on the Fixed Price Contract Amount allocated on the Schedule of Values. The Contractor's Request for Payment may include only: properly provided labor, materials or equipment properly incorporated into the Project, and time and materials or equipment necessary for the Project or that will be incorporated into the Project and are properly stored at the Project site (or elsewhere if off-site storage is approved in writing by IDL). The Contractor's Request for Payment must exclude the total amount of previous payments received from IDL. Any payment on account of stored materials or equipment will be subject to the Contractor providing written proof that IDL has title to such materials or equipment and that they are fully insured against loss or damage. Each such Contractor's Request for Payment shall be signed by the Contractor and its submission shall constitute the Contractor's affirmative representation that the quantity of Work has reached the level for which payment is requested; that the Work has been properly installed or performed in strict compliance with the Contract; that all Work for which IDL has previously paid is free and clear of any lien, claim or other encumbrance of any person whatsoever; and that the Contractor knows of no reason why payment should not be made as requested. As a condition precedent to payment, the Contractor shall, if required by IDL, furnish to IDL properly executed waivers or releases, in a form acceptable to IDL, from all subcontractors, materialmen, suppliers or others having any claims or alleged claims, wherein said subcontractors, materialmen, suppliers or others shall acknowledge receipt of all sums due pursuant to all prior Contractor's Requests for Payment, and waive and relinquish any rights or other claims relating to the Project or Project site. The submission by the Contractor of the Contractor's Request for Payment also constitutes the Contractor's affirmative representation that, upon payment of the Contractor's Request for Payment submitted, title to all Work included in such payment shall be vested in IDL.

Thereafter, IDL shall review the Contractor's Request for Payment and may also review the Work at the Project site or elsewhere to determine whether the quantity and quality of the Work are as represented in the Contractor's

Request for Payment and as required by this Contract. IDL shall approve in writing the amount which is properly owing to the Contractor and such approval is required before IDL shall have any payment obligation. IDL may withhold such approval, in whole or in part, as necessary to protect IDL if it reasonably believes that the quantity or quality of the Work is not as represented in the Contractor's Request for Payment or is not in strict conformance to the Contract Documents.

**7.4** IDL shall make payment to the Contractor according to Idaho Code 67-2302 following receipt by IDL Contractor's Request for Payment. The amount of each such payment shall be the amount approved for payment by the less such amounts, if any, otherwise owing by the Contractor to IDL or which IDL shall have the right to withhold as authorized by this Contract. The approval of the Contractor's Request for Payment shall not preclude IDL from the exercise of any of its rights it may have in this Contract, at law or in equity, as set forth in Paragraph 7.8 hereinafter.

**7.5** 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 Contractor 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 IDL Project number and as being the "Property of the State of Idaho;"

**.3** IDL's Field Representative 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 Contractor 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 Contractor must maintain and must provide, upon request, a current log of stored materials and equipment, which reflects when materials and equipment are used or added; and

**.6** The Contractor 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.

**7.6** When payment is received from IDL, the Contractor shall immediately pay all subcontractors, materialmen, laborer and suppliers the amounts they are due for the Work covered by such payment. The Contractor shall not withhold from a subcontractor or supplier more than the percentage withheld from a payment certificate for the subcontractor's or supplier's portion of the Work. In the event IDL becomes informed that the Contractor has not paid a subcontractor, materialmen, laborer or supplier as provided herein, IDL shall have the right, but not the duty, to issue future checks and payment to the Contractor of amounts otherwise due hereunder naming the Contractor and any such subcontractor, materialmen, laborer or supplier as joint payees. Such joint check procedure, if employed by IDL, shall create no rights in favor of any person or entity beyond the right of the named payees to payment of the check and shall not be deemed to commit IDL to repeat the procedure in the future.

**7.7** Payment to the Contractor, utilization of the Project for any purpose by IDL, or any other act or omission by IDL shall not be interpreted or construed as an acceptance of any Work of the Contractor not strictly in compliance with this Contract.

**7.8** IDL shall have and be entitled to the right to refuse to make any payment, including by reducing payment under any Contractor's Request for Payment, and, if necessary, may demand the return of a portion or all of an amount previously paid to the Contractor for reasons that include the following:

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

**.2** The quantity of the Contractor's work, in whole or in part, is not as represented in the Contractor's Request for Payment or otherwise;

- .3 The Contractor's rate of progress is such that, in IDL's opinion, Substantial Completion or final completion, or both, may be inexcusably delayed or that IDL will incur additional costs or expense related to repeated Substantial Completion or final completion inspections through no fault of IDL;
- .4 IDL reasonably believes that the Contractor has failed to use Contract funds, previously paid the Contractor by IDL, to pay Contractor's project-related obligations, including subcontractors, laborers and material and equipment suppliers;
- .5 There are claims made or it seems reasonably likely that claims will be made, against IDL;
- .6 The Contractor has caused a loss or damage to IDL or another contractor;
- .7 IDL reasonably believes that the Project cannot be completed for the unpaid balance of the Fixed Price Contract Amount or IDL reasonably believes that the Project cannot be completed within the Contract Time and that the unpaid balance of the Fixed Price Contract Amount would be inadequate to cover the cost of actual or liquidated damages for the anticipated delay;
- .8 The Contractor fails or refuses to perform any of its obligations to IDL; or
- .9 The Contractor fails to pay taxes as required by Title 63, Chapter 15, Idaho Code.

In the event that IDL makes written demand upon the Contractor for amounts previously paid by IDL as contemplated in Paragraph 7.8, the Contractor shall promptly comply with such demand.

**7.9** If IDL, without cause, fails to pay the Contractor any amounts due and payable sixty (60) days after those amounts are due pursuant to Paragraph 7.4, the Contractor shall have the right to cease the Work until receipt of proper payment. Contractor must first provide written notice to IDL of the Contractor's intent to cease the Work ten (10) days prior to stopping the Work under this Paragraph.

**7.10** When Contractor considers Substantial Completion has been achieved, the Contractor shall notify IDL and the in writing and shall furnish a listing of those matters yet to be finished. IDL will thereupon conduct an inspection to confirm that the Work is, in fact, substantially complete. Upon its confirmation that the Contractor's work is substantially complete, the Contractor will so notify IDL will therein set forth the date of Substantial Completion. IDL and the Contractor must accept the date of Substantial Completion in writing. Guarantees and warranties required by this Contract shall commence on the date of Substantial Completion. At the Contractor's Request for Payment following Substantial Completion, IDL shall pay the Contractor an amount sufficient to increase total payments to the Contractor to ninety-five percent (95%) of the Fixed Price Contract Amount, less any liquidated damages, less the reasonable costs as determined by IDL for completing all incomplete work, correcting and bringing into conformance all defective and nonconforming work, and handling any outstanding or potential claims. If the IDL determines that the Contractor has made or is making satisfactory progress on any uncompleted portions of the Work, IDL may, at its discretion, release a portion of the retainage to the Contractor prior to the actual final completion of the conditions set forth in Paragraph 7.13. It is the intent of the parties that the Project will be accepted only in total (at Substantial Completion and final completion) and not in phases unless provided for in Exhibit A. Any acceptance other than in total shall require written agreement of IDL and Contractor.

**7.11** When Contractor considers the Project is at final completion, it shall notify IDL. Thereupon, the IDL will perform a final inspection of the Project. If the IDL confirms that the Project is complete in full accordance with the Contract Documents and that the Contractor has performed all of its obligations to IDL, IDL will furnish a final approval for payment to IDL certifying to IDL that the Project is complete and the Contractor is entitled to the remainder of the unpaid Fixed Price Contract Amount, less any amount withheld pursuant to this Contract.

**7.12** If the Contractor fails to achieve final completion within a reasonable number of days as established by IDL from the date of Substantial Completion, the Contractor may be assessed and be responsible to IDL for fifty percent (50%) of the daily amount of liquidated damages as established pursuant to Paragraph 6.2 and Exhibit A, per day for each and every calendar day of unexcused delay in achieving final completion beyond the date established for final completion of the Work. Any sums due and payable hereunder by the Contractor shall be payable not as a penalty but as liquidated damages representing an estimate of delay damages likely to be sustained by IDL, estimated at or before the time of executing this Contract. When IDL reasonably believes that final completion will be inexcusably delayed, IDL may withhold from any amounts otherwise due the Contractor an amount then believed by IDL to be adequate to recover liquidated damages applicable to such delays. If and when the Contractor overcomes the delay in achieving final completion, or any part thereof, for which IDL has withheld payment, IDL shall promptly release to the Contractor those

funds withheld, but no longer applicable, as liquidated damages. IDL's right to liquidated damages is not, and shall not be deemed to be, an exclusive remedy for delay and IDL shall retain all remedies at law or in equity for delay or other breach.

**7.13** As a condition precedent to final payment, the Contractor must furnish IDL, in the form and manner required by IDL the following:

- .1 An affidavit that all of the Contractor's obligations to subcontractors, laborers, equipment or material suppliers or other third parties in connection with the Project have been paid or otherwise satisfied;
- .2 A release by the Contractor of all Claims it has or might have against IDL or IDL's property (Exhibit E);
- .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 and things customarily required of the Contractor; and
- .6 A Public Works Contract Tax Release issued by the Idaho Tax Commission (See "Request for Tax Release" form, Exhibit D, to be submitted by Contractor to the Idaho Tax Commission).

**7.14** IDL shall, subject to its rights set forth in this Contract, make final payment of all sums due the Contractor within sixty (60) days of the IDL's execution of a final approval for payment and receipt of documentation required by Paragraph 7.13, whichever is received later.

## **ARTICLE 8 INFORMATION AND MATERIAL SUPPLIED BY IDL**

**8.1** The Administrator of Support Services of IDL or his designee shall be the sole representative of IDL.

**8.2** IDL will assign a Project Manager and a Field Representative to represent IDL, identified in Exhibit B. IDL's Field Representative's duties, responsibilities and limitations of authority are in accordance with IDL's policies and procedures.

**8.3** IDL shall furnish to the Contractor, prior to the execution of this Contract, any and all written and tangible material in its possession concerning conditions below ground at the site of the Project. Such written and tangible material is furnished to the Contractor only in order to make complete disclosure of such material as being in the possession of IDL and for no other purpose. By furnishing such material, IDL does not represent, warrant or guarantee its accuracy, either in whole in part, implicitly or explicitly.

**8.4** IDL will secure and pay for all required easements, the plan check fee required by the Division of Building Safety, conditional use permits and any other permits and fees specifically indicated in the Contract Documents to be secured and paid for by IDL.

**8.5** IDL will provide the Contractor one (1) copy of this complete Contract and the number of sets of Drawings and Project Manuals (including Specifications) as indicated in Exhibit A. The Contractor may purchase additional copies, at its expense.

## **ARTICLE 9 STOP WORK ORDER**

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

**9.2** Any order to stop the Work issued pursuant to Paragraph 9.1 shall not be used to justify any Claim by the Contractor for additional time or money.

**ARTICLE 10  
DUTIES, OBLIGATIONS AND RESPONSIBILITIES OF THE CONTRACTOR**

In addition to any and all other duties, obligations and responsibilities of the Contractor set forth in this Contract, the Contractor shall have and perform the following duties, obligations and responsibilities to IDL:

**10.1** The Contractor's continuing duties set forth in Paragraph 3.7 are by reference hereby incorporated in this Paragraph 10.1. The Contractor shall not perform Work without adequate plans and specifications or, as appropriate, approved shop drawings or other submittals. If the Contractor performs Work knowing or believing it involves an error, inconsistency or omission in the Contract without first providing written notice to IDL, the Contractor shall be responsible for such Work and shall pay the cost of correcting same.

**10.2** The Contractor shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the Contractor with the Contract Documents before commencing Work. Errors, inconsistencies or omissions discovered shall be reported to IDL and IDL's Field Representative immediately. Such examination, review and comparison shall be a warranty that the Contract Documents are complete and the Project is buildable as described except as reported. Reported errors, inconsistencies or omissions will constitute a request for an interpretation by IDL and may constitute a claim pursuant to Article 12 hereof where appropriate.

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

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

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

**10.6** Except as provided in Paragraph 8.4, the Contractor shall secure or provide and pay for all licenses, permits required by the Idaho Division of Building Safety, governmental approvals and inspections, connections for outside services for the use of municipal or private property for storage of materials, parking, utility services, temporary obstructions, enclosures or opening and patching of streets, and for all other facilities and services necessary for proper execution and completion of the Project.

**10.7** The Contractor shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities bearing on performance of the Work.

**10.8** The Contractor shall employ and maintain at the Project site only competent supervisory personnel. Key supervisory personnel assigned by the Contractor to this Project are as listed in Exhibit B.

**10.9** The Contractor shall employ a competent superintendent and necessary assistants, as needed, to oversee execution of the Work. The superintendent shall be in attendance at the Project site during the progress of the Work. The superintendent and any project manager, if the Contractor utilizes a project manager, shall be reviewed and must be approved by IDL, and neither shall be changed except with the consent of IDL, unless the superintendent and/or project manager cease to be employed by the Contractor. Under this circumstance, any new superintendent or new project manager must be satisfactory to IDL. Such approval shall not be unreasonably withheld. The superintendent and any project manager shall represent the Contractor and all communications given to the superintendent or project manager are deemed given to the Contractor.

**10.10** So long as the individuals named above remain actively employed or retained by the Contractor, they shall perform the functions indicated next to their names unless IDL agrees to the contrary in writing. In the event one or more individuals not listed in Paragraph 10.9 subsequently assumes one or more of those functions listed in Paragraph 10.9, the Contractor shall be bound by the provisions of this paragraph as though such individuals had been listed in Paragraph 10.9.

**10.11** The Contractor shall provide to IDL a milestone schedule for completing the Work within the Contract Time. Such schedule shall be in a form specified in Division 1 of the Specifications and be acceptable to IDL. The schedule must be submitted to and accepted by the IDL prior to the first request for payment unless required earlier by Division 1 of the Specifications. The Contractor's milestone schedule must be updated as required by IDL to reflect conditions encountered and shall apply to the total Project. The Contractor's revisions to the schedule shall not constitute a waiver of the requirement to complete the Project in the time allowed by the Contract, unless additional time for performance has been allowed pursuant to a Change Order. Any changes in milestone begin or end dates must be furnished to IDL. Strict compliance with the requirements of this Paragraph shall be a condition precedent to the payment to the Contractor and failure by the Contractor to strictly comply with said requirements shall constitute a material breach of this Contract.

**10.12** Once a month, or at intervals as required by IDL, the Contractor shall advise IDL and of the status of the Work (in duplicate) on the current milestone schedule. If any project milestone dates are not met on schedule, the Contractor shall immediately advise IDL in writing of the proposed action to bring the Work on schedule. The Contractor shall also submit a detailed short term schedule, as required by Division 1 of the Specifications, each month. This short term schedule shall include a description of current and anticipated problem areas, delaying factors and their impact, and explanation of corrective action taken or proposed. If the Work is behind schedule, the Contractor shall indicate what measures it will take to put the Work back on schedule.

**10.13** If the Work is not progressing through no fault of IDL, as shown on the milestone schedule, and IDL does not believe the Contractor's proposed action to bring the Work on schedule is adequate, then the Contractor shall be deemed in default under this Contract and the progress of the Work shall be deemed unsatisfactory. In such event, IDL, at its discretion, may require the Contractor to work such additional time over regular hours, including Saturdays, Sundays and holidays, without additional cost to IDL to bring the Work on schedule.

**10.14** The Contractor shall keep an updated copy of the Drawings and Project Manual (including Specifications) and Addenda at the site. Additionally, the Contractor shall keep a current submittal schedule and a copy of approved shop drawings and other submittals. All of these items shall be available to IDL at all regular business hours. Upon final completion of the Work, all of these items must be updated by the Contractor and provided to the IDL and shall become the property of IDL.

**10.15** The Contractor shall carefully review and inspect for compliance with the Contract Documents, the shop drawings and other submittals (including product data and samples) required by the Contract Documents and shall submit to the IDL only submittals approved in accordance with this section. Such review and submittal shall be done promptly and in a sequence that will not delay its Work under this Contract or the activities of IDL or of separate contractors. Shop drawings and other submittals from the Contractor do not constitute a part of the Contract. The Contractor shall not do any work requiring shop drawings or other submittals unless IDL has verified compliance in writing. All Work requiring verified shop drawings or other submittals shall be done in strict compliance with such approved documents. However, verification of compliance by IDL shall not be evidence that Work installed pursuant thereto conforms with the requirements of this Contract. IDL shall have no duty to review submittals that are not Contractor approved, partial submittals or incomplete submittals. The Contractor shall maintain a submittal log which shall include, at a minimum, the date of each submittal, the date of any re-submittal, the date of any approval or rejection and the reason for any rejection.

**10.16** The Contractor shall maintain the Project site in a reasonably clean condition during performance of the Work. Upon final completion, the Contractor shall thoroughly clean the Project site of all debris, trash and excess materials or equipment.

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

**10.18** The presence or duties IDL's personnel or representatives at the construction site, does not make any of them responsible for those duties that belong to the Contractor or other entities and does not relieve the Contractor or any other entities of their obligations, duties and responsibilities, including any obligation or requirement to have or to implement any health or safety plans or precautions. Except as provided in Paragraph 10.9, IDL's personnel have no authority to exercise any control over any Contractor or other entities or their employees in connection with their work or any health or safety precautions and have no duty for inspecting, noting, observing, correcting or reporting on health or safety deficiencies of the Contractor or other entities or any other persons at the site except their own personnel. The presence of IDL's personnel at a construction site is for the purpose of providing to IDL a greater degree of confidence that the completed Work will conform to the Contract Documents and that the integrity of the design concept as reflected in the Contract Documents has been implemented and preserved by the Contractor. For this Contract only, construction sites include places of manufacture for materials incorporated into the construction Work and Contractor includes manufacturers of materials incorporated into the construction Work.

**10.19** Unless otherwise provided in the Construction Documents, on all projects where the Fixed Price Contract Amount is over \$1,000,000, the Contractor shall schedule and perform the Work in accordance with a Critical Path Method (“CPM”) to indicate the rate of progress and practical order of the Project. The purpose of this scheduling requirement is to assure adequate planning, coordination and execution of the Work. The schedule shall indicate the dates for starting and completing major work activities, project events, major equipment, material and equipment submittals and delivery of major items. Project activities having critical time restraints on action, required by IDL, shall be shown as scheduled milestones. The Contractor's schedule shall demonstrate the order, interdependence and sequence of activities. Critical paths shall be highlighted or distinguished. The schedule shall include all the dates specified in the Contract for Substantial Completion and final completion of the Work.

The time limit set forth in the Contract for Substantial Completion and final completion must govern; the schedule must be adjusted to meet these dates. Schedule float shall belong to the Project. The Contractor shall submit to IDL a CPM schedule within three (3) weeks after award of the Contract and maintain such schedule on a current basis in accordance with the Contract Documents.

## **ARTICLE 11 INDEMNITY**

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

**11.2** The limits of any insurance of the Contractor shall not be, and shall not be deemed to be, a limitation of the Contractor's defense and indemnity obligations contained in this Article.

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

## **ARTICLE 12 CLAIMS**

**12.1** For purposes of this Contract, a “Claim” means a demand by the Contractor to IDL, or by IDL to the Contractor, for a change in the Fixed Price Contract Amount, an extension of the Contract Time, an adjustment to or interpretation of the Contract terms, or other relief with respect to the terms of the Contract, which demand the Contractor or IDL asserts is required or allowed under the Contract Documents and which the Contractor and IDL have previously discussed and failed to agree upon.

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

- .1** The Claim must be in writing;
- .2** The Claim by the Contractor must be signed by an authorized representative of the Contractor, and the Claim by IDL must be signed by an authorized representative of IDL;
- .3** The Claim by the Contractor must be provided to IDL. The Claim by IDL must be provided to the Contractor;
- .4** The Claim must be made no later than ten (10) days after the event or first appearance of the circumstance giving rise to the Claim;
- .5** The Claim must describe in detail all known facts and circumstances that the Contractor or IDL asserts support the Claim;
- .6** The Claim must refer to the provision(s) of the Contract Documents that the Contractor or IDL asserts support the Claim;
- .7** The Contractor or IDL must provide all documentation or other information to substantiate the Claim; and
- .8** The Contractor or IDL must continue its performance under this Contract pending the resolution of any Claim; provided, however, that the Contractor shall not perform any additional or changed work not otherwise authorized in accordance with the Contract Documents.

**12.3** The failure by the Contractor to meet any of the requirements of Paragraph 12.2 shall constitute a complete waiver by the Contractor of any rights arising from or related to the Claim. Similarly, the failure by IDL to meet any of the requirements of Paragraph 12.2 shall constitute a complete waiver by IDL of any rights arising from or related to the Claim.

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

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

**12.5** If the Claim by the Contractor is for an increase in the Fixed Price Contract Amount, the following shall apply in addition to all other provisions applicable to the Claim:

- .1 Any increase in the Fixed Price Contract Amount shall be strictly limited to the direct costs incurred by the Contractor and shall not include any other costs, indirect or other, including any costs for or related to lost productivity, profit, home office overhead and any other overhead, legal fees, claim preparation, any matter previously resolved by a change order, equipment costs, costs related to the services of a project manager unless the project manager was required full time by IDL 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 IDL shall have no liability for, and the Fixed Price Contract Amount shall not be increased related to, any claims of third parties, including subcontractors, unless and until the liability of the Contractor for such has been established in a court of competent jurisdiction and any such liability of IDL shall be limited in the same manner as described in subparagraph 12.5.1.

**12.6** If the Claim by IDL is for a change in the Fixed Price Contract Amount, all other applicable provisions to the Claim apply.

**12.7** If the Claim by the Contractor is for an extension of the Contract Time, the following shall apply in addition to all other provisions applicable to the Claim:

- .1 The Contractor has been delayed in its performance by an act or omission of IDL and through no fault of the Contractor;
- .2 The Contractor has been delayed in its performance by unusually severe weather that could not reasonably have been anticipated or by another event not within its reasonable control;
- .3 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 Contractor's sole and exclusive remedy for any delay except a delay caused by the active interference of IDL with the Contractor's performance which active interference continues after written notice to IDL. IDL'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.

**12.8** If a Claim is made based on an error, inconsistency or omission in the Contract that was reasonably susceptible to discovery by the Contractor and was not reported in accordance with Paragraph 2.3, that Claim shall be denied.

### **ARTICLE 13 RESOLUTION OF CLAIMS**

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

**13.2** No later than seven (7) days from receipt of the Claim by IDL, it shall:

- .1 Make a written request to the Contractor or IDL for more data to support the Claim;
- .2 Attempt to facilitate resolution of the Claim through informal negotiations; or
- .3 If the Claim is by the Contractor, make a written recommendation to IDL, with a copy to the Contractor, that IDL reject or approve all or part of the Claim and state the reasons for the recommendation. If the Claim is by IDL, make a written recommendation to the Contractor, with a copy to IDL, that the Contractor reject or approve all or part of the Claim and state the reasons for the recommendation.

**13.3** If the IDL requests more data from the Contractor under subparagraph 13.2.1, the Contractor or IDL 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, IDL 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 IDL's possession.

**13.4** In evaluating the Claim, IDL may consult with the Contractor, or other persons with knowledge or expertise that may assist the IDL in its evaluation.

**13.5** No later than fourteen (14) days after IDL's recommendation regarding the Contractor's Claim, IDL shall, in writing, notify the Contractor of its decision regarding the Claim. No later than fourteen (14) days after receipt by the Contractor of the recommendation regarding IDL's Claim, the Contractor shall, in writing, notify IDL and of its decision regarding the Claim.

**13.6** IDL's decision regarding the Contractor's Claim is binding on IDL and the Contractor but is subject to mediation in accordance with this Contract, and the Contractor's decision regarding IDL's Claim is binding on IDL and the Contractor but is subject to mediation in accordance with this Contract.

#### **ARTICLE 14 SUBCONTRACTORS**

**14.1** A document shall be completed and submitted upon execution of this Contract and those subcontractors named therein shall match those subcontractors named in the Contractor's bid unless otherwise agreed to in writing by IDL. Also upon execution of this Contract by the Contractor, the Contractor shall identify to IDL, in writing, those parties intended as subcontractors on the Project not otherwise named. IDL shall, in writing, state any objections IDL may have to one or more of such subcontractors. The Contractor shall not enter into a subcontract with an intended subcontractor with reference to whom IDL objects. All subcontracts shall afford the Contractor rights against the subcontractor which correspond to those rights afforded to IDL against the Contractor herein, including those rights of Contract Termination as set forth in this Contract. All subcontractors shall, throughout the duration of this Contract, be properly licensed as Idaho Public Works Contractors.

**14.2** The Contractor conditionally assigns each of its subcontracts related to the Project to IDL. All subcontracts between the Contractor and the subcontractors shall obligate the subcontractor to such conditional assignment. Upon a Termination by IDL for cause under Paragraph 19.1, IDL may accept such conditional assignment by written notification to the applicable subcontractor and to the Contractor. Such acceptance is subject to the rights of the Surety, if any, relating to the Contract.

#### **ARTICLE 15 CHANGES IN THE WORK**

**15.1** General

- .1 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 and elsewhere in the Contract Documents; and
- .2 Changes in the Work shall be performed under applicable provisions of the Contract Documents and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.

## 15.2 Change Orders

- .1 A "Change Order" is a written instrument prepared by the Contractor and signed by IDL, and Contractor, stating their agreement upon: a change in the work, any adjustment in the Fixed Price Contract Amount and any adjustment in the Contract Time;
- .2 Methods used in determining adjustments to the Fixed Price Contract Amount may include those listed in subparagraph 15.3.4;
- .3 The amount allowed for overhead and profit on any Change Order is limited to the amounts indicated in subparagraph 15.3.11;
- .4 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 Fixed Price Contract Amount and Contract Time. In the event a Change Order increases the Fixed Price Contract Amount, the Contractor shall include the Work covered by such Change Order in the Contractor's Request for Payment as if such Work were originally part of the Project and Contract Documents; and
- .5 By the execution of a Change Order, the Contractor agrees and acknowledges that it has had sufficient time and opportunity to examine the change in Work which is the subject of the Change Order and that it has undertaken all reasonable efforts to discover and disclose any concealed or unknown conditions which may to any extent affect the Contractor's ability to perform in accordance with the Change Order. Aside from those matters specifically set forth in the Change Order, IDL shall not be obligated to make any adjustments to either the Fixed Price Contract Amount or Contract Time by reason of any conditions affecting the change in Work addressed by the Change Order, which could have reasonably been discovered or disclosed by the Contractor's examination.

## 15.3 Construction Change Directive (CCD)

- .1 A "Construction Change Directive" is a written order prepared by IDL and signed by IDL and the Contractor directing a change in the Work prior to agreement on adjustment, if any, in the Fixed Price Contract Amount or Contract Time or both. IDL 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 Fixed Price Contract Amount and Contract Time being adjusted accordingly;
- .2 A Construction Change Directive, within limitations, may also be used to incorporate minor changes in the Work agreed to by IDL's Field Representative and the Contractor's superintendent or project manager. The limits of these representatives' authority with regard to Construction Change Directives shall be documented in writing by the IDL and Contractor;
- .3 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order;
- .4 If the Construction Change Directive provides for an adjustment to the Fixed Price Contract Amount, the adjustment shall be based on one (1) of the following methods:
  - .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 subparagraph 15.3.7;
- .5 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the IDL in writing within forty-eight (48) hours of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Fixed Price Contract Amount or Contract Time;

.6 A Construction Change Directive signed by the Contractor indicates the agreement of the Contractor therewith, including adjustment in Fixed Price Contract Amount and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be incorporated into a future Change Order;

.7 If the Contractor does not respond promptly or disagrees with the method for adjustments in the Fixed Price Contract Amount or Contract Time, the method and the adjustment shall be determined by IDL 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 Fixed Price Contract Amount, an allowance for overhead and profit in accordance with subparagraph 15.3.11. In such case of an increase in Fixed Price Contract Amount, and also under subparagraph 1653.4, the Contractor shall keep and present, in such form as the IDL may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this subsection shall be limited to the following:

.1 Costs of labor, including social security, old age and unemployment insurance, 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 Contractor or others;

.4 Costs of 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 The amount of credit to be allowed by the Contractor to IDL for a deletion or change which results in a net decrease in the Fixed Price Contract Amount shall be for the actual net cost of the decrease, confirmed by the IDL. 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 that change;

.9 Pending final determination of the total cost of a Construction Change Directive to IDL, amounts not in dispute for such changes in the Work shall be included in the Contractor's Request for Payment accompanied by a Change Order indicating the parties' agreement with part or all of such costs;

.10 When IDL and Contractor agree with the determination concerning the adjustments in the Fixed Price Contract Amount and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order; and

.11 For purposes of subparagraphs 15.2.3 and 15.3.7, the allowance for combined overhead, profit, bonds and insurance shall be limited as follows, unless otherwise provided in the Contract Documents:

.1 For total changes of \$10,000 or less in direct cost, the amount of overhead, profit, bonds and insurance for the Contractor and all subcontractors of any tier combined shall not exceed twenty percent (20%) of direct costs;

.2 For total changes exceeding \$10,000 in direct cost, the amount allowed for overhead, profit, bonds and insurance for the Contractor and all subcontractors of any tier combined shall not exceed fifteen percent (15%) of direct costs; or

.3 The Contractor will determine the apportionment between the Contractor and its subcontractors of allowable amounts of overhead, profit, bonds and insurance.

15.4 IDL will have authority to order minor changes in the Work not involving adjustment in the Fixed Price Contract Amount or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on IDL and Contractor. The Contractor shall carry out such written orders promptly.

## ARTICLE 16

### DISCOVERING AND CORRECTING DEFECTIVE OR INCOMPLETE WORK

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

**16.2** If any of the Work is covered, concealed or obscured in a manner not addressed by Paragraph 16.1, it shall, if directed by IDL, be uncovered and displayed for IDL's inspection. If the uncovered Work conforms strictly with this Contract, the costs incurred by the Contractor to uncover and subsequently replace such Work shall be borne by IDL. Otherwise, such costs shall be borne by the Contractor.

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

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

**16.5** IDL may, but shall in no event be required to, choose to accept defective or nonconforming Work. In such event, the Fixed Price Contract Amount shall be reduced by the lesser of: (i) the reasonable costs of removing and correcting the defective or nonconforming Work; or (ii) the difference between the fair market value of the Project as constructed and the fair market value of the Project had it not been constructed in such a manner as to include defective or nonconforming Work. If the remaining portion of the unpaid Fixed Price Contract Amount, if any, is insufficient to compensate IDL for the acceptance of defective or nonconforming Work, the Contractor shall, upon written demand from IDL, pay IDL such remaining compensation for accepting defective or nonconforming work.

#### **ARTICLE 17 TERMINATION BY THE CONTRACTOR**

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

- .1 Issuance of an order by a court or by another public authority having jurisdiction and authority which requires all Work to be stopped; or
- .2 An act of government, such as a declaration of national emergency, which requires all Work to be stopped.

**17.2** In such event, the Contractor shall be entitled to recover from IDL as though IDL had terminated the Contractor's performance under this Contract pursuant to Paragraph 19.3.

#### **ARTICLE 18 IDL'S RIGHT TO SUSPEND CONTRACTOR'S PERFORMANCE**

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

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

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

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

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

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

## **ARTICLE 19 TERMINATION BY IDL**

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

**19.1** If the Contractor does not perform the Work, or any part thereof, in accordance with the Contract Documents, or in a timely manner; does not supply adequate labor, supervisory personnel, or proper equipment or materials; fails to pay subcontractors; fails to timely discharge its obligations for labor, equipment, and materials; proceeds to disobey applicable law; or otherwise breaches this Contract, then IDL, in addition to any other rights it may have against the Contractor, may terminate the Contract and assume control of the Project site and of all materials and equipment at the site and may complete the Work. In such case, the Contractor shall not be paid further until the Work is complete. Upon such Termination, IDL may, subject to any superior rights of the Surety, take possession of the site and of all materials,

equipment, tools and construction equipment and machinery thereon owned by the Contractor; accept assignment of those subcontracts conditionally assigned under Paragraph 14.2; and finish the Work by whatever reasonable method IDL may deem expedient.

**19.2** When IDL terminates the Contract for cause as provided in Paragraph 19.1, the Contractor shall not be entitled to receive further payment until the Work is finished and shall only be entitled to payment for Work satisfactorily performed by the Contractor in accordance with the Contract Documents. If the costs of finishing the Work and expenses made necessary thereby, exceed the unpaid balance, the Contractor shall pay the difference to IDL. This obligation for payment shall survive termination of the Contract. The Contractor shall also terminate outstanding orders and subcontracts. The Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders. In the event the employment of the Contractor is terminated by IDL for cause pursuant to Paragraph 19.1 and it is subsequently determined by a court of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a Termination under Paragraph 19.3 and the provisions of Paragraph 19.3 shall apply.

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

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

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

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

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

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

.3 Reasonable costs of settling and paying claims arising out of the Termination of subcontracts or orders pursuant to this Paragraph 19.3.

**19.4** Costs described in subparagraphs 19.3.3.2 or 19.3.3.3 above shall not include amounts paid in accordance with other provisions hereof. In no event shall the total sum to be paid the Contractor under subparagraph 19.3.3 exceed the total Fixed Price Contract Amount, as properly adjusted, reduced by the amount of payments previously or otherwise made and by any other deductions permitted under this Contract and shall in no event include duplication of payment.

**19.5** IDL is a government entity and it is understood and agreed that IDL's payments herein provided for shall be paid from Idaho State Legislative appropriations. The Legislature is under no legal obligation to make appropriations to fulfill this Contract. This Contract shall in no way or manner be construed so as to bind or obligate IDL beyond the term of any particular appropriation of funds by IDL's Legislature as may exist from time to time. IDL reserves the right to terminate this 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 IDL to continue such payments, or requires any return or "give-back" of funds required for IDL to continue payments, or if the Executive Branch mandates any cuts or holdbacks in spending, or if funds are not budgeted or otherwise available, or if IDL discontinues or makes a material alteration of the program under which funds were provided. IDL 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 within ten (10) calendar days after notice to the Contractor. Further, in the event of non-appropriation, IDL shall not be liable for any penalty, expense, or liability, or for general, special, incidental, consequential or other damages resulting therefrom.

## **ARTICLE 20 CONTRACTOR'S LIABILITY INSURANCE**

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

- .1 Claims under workers' or workmen's compensation, disability benefits and other similar employee benefit acts which are applicable to the work to be performed;
- .2 Claims for damages because of bodily injury, occupational sickness or disease or death of the Contractor's employees;
- .3 Claims for damages because of bodily injury, sickness or disease or death of any person other than the Contractor's employees;
- .4 Claims for damages insured by usual personal injury liability coverage which are sustained: (i) by a person as a result of an offense directly or indirectly related to employment of such person by the Contractor; or (ii) by another person;
- .5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting there from;
- .6 Claims for damages because of bodily injury, death of a person or property damage arising out of IDLship, maintenance or use of a motor vehicle;
- .7 Claims for bodily injury or property damage arising out of completed operations; and
- .8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Article 10.

**20.2** The insurance required by Paragraph 20.1 above shall be written for not less than limits of liability specified in this Contract or as required by law, whichever is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from date of commencement of the Work until date of final payment and termination of any coverage required to be maintained after final payment. In addition, for any insurance required that is obtained on a claims-made basis, "tail coverage" is required at the completion of the Work for twenty-four (24) months. Continuous claims-made coverage will be acceptable in lieu of "tail coverage" provided the retroactive date is on or before the effective date of this Contract or twenty-four (24) months "prior acts" coverage is provided.

.1 The insurance required by Paragraph 20.1 above shall be written for not less than the following limits:

.1 Workers' Compensation and Employer's Liability

- (a) State Workers Compensation: Statutory
- (b) Employer's Liability: \$100,000 per Accident  
\$500,000 Disease, Policy Limit  
\$100,000 Disease, Each Employee

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

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

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

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

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

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

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

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

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

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

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

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

**20.3** IDL shall be named as additional insured or loss payee, as applicable, on the insurance required in subparagraphs 20.2.1.2, 20.2.1.3 and 20.2.1.5 above, and the insurance shall contain the severability of interest clause as follows:

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

**20.4** The Contractor may include all subcontractors as insureds under the Contractor's policies in lieu of separate policies by each subcontractor. The Contractor must furnish the State of Idaho, Department of Lands, with the required endorsements or certificates of insurance from each subcontractor which names the subcontractor, its officials, employees and volunteers as insureds.

**20.5** Certificates of Insurance for Workers' Compensation shall be on the standard form. Certificates of Insurance for Commercial or Comprehensive General Liability shall be the most current ACORD Form 25 or 28, must be acceptable to IDL and shall be filed with IDL prior to commencement of the Work. IDL may require proof of coverage by an endorsement. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final Contractor's Request for Payment as required by Article 7. Information concerning reduction of coverage shall be furnished by the Contractor with reasonable promptness in accordance with the Contractor's information and belief.

## **ARTICLE 21 IDL'S LIABILITY INSURANCE**

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

## **ARTICLE 22 PROPERTY INSURANCE**

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

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

**22.3** If the property insurance requires deductibles, IDL shall pay costs of such deductibles.

**22.4** Boiler and Machinery Insurance. IDL will purchase and maintain boiler and machinery insurance, which shall specifically cover such insured objects during installation and testing.

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

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

**22.7** The Contractor authorizes IDL to negotiate and agree on the value and extent of, and to collect the proceeds payable with respect to, any loss under a policy of insurance carried by IDL pursuant to any of the provisions of this Article. IDL shall have full right and authority to compromise any claim, or to enforce any claim by legal action or

otherwise, or to release and discharge any insurer, by and on behalf of IDL and Contractor. IDL shall provide written notice to Contractor of: (i) its having reached any such settlement or adjustment with an insurer; and (ii) the receipt of any funds pursuant to this Article. Any objection by the Contractor to a settlement or adjustment made under this Article must be made in writing to IDL within five (5) business days of the notice from IDL. IDL and the Contractor agree to attempt to resolve the dispute by mutual agreement.

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

**22.9** IDL shall deposit proceeds so received, in a manner in which such proceeds can be separately accounted for, which proceeds IDL shall distribute in accordance with such agreement as the parties in interest may reach. If after such loss no other special agreement is made and unless IDL terminates the Contract pursuant to Article 19, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 15.

**22.10** The Contractor shall pay subcontractors their shares of the insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require subcontractors to acknowledge IDL's authority under this Article 22 and make payments to their sub-subcontractors in similar manner.

**22.11** Nothing contained in this Article 22 shall preclude the Contractor from obtaining, solely at its own expense, additional insurance not otherwise required.

### **ARTICLE 23 PERFORMANCE AND PAYMENT BONDS**

**23.1** The Contractor shall furnish separate performance and payment bonds to IDL. Each bond shall set forth a penal sum in an amount not less than the Fixed Price Contract Amount and shall include a power of attorney attached to each bond. The signature of both the Contractor (principal) and the Surety are required. If the Surety is incorporated, both bonds must have the corporate seal. Each bond furnished by the Contractor shall incorporate by reference the terms of this Contract as fully as though they were set forth verbatim in such bonds. In the event the Fixed Price Contract Amount is adjusted by Change Order executed by the Contractor, the penal sum of both the performance bond and the payment bond shall be deemed increased by like amount. The performance and payment bonds furnished by the Contractor shall be AIA Document A312, or a standard surety form certified approved to be the same as the AIA Document A312, and shall be executed by a Surety, or Sureties, reasonably acceptable to IDL and authorized to do business in the State of Idaho.

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

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

### **ARTICLE 24 PROJECT RECORDS**

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

### **ARTICLE 25 MISCELLANEOUS PROVISIONS**

**25.1** The law is hereby agreed to be the law of the State of Idaho. The parties further agree that venue for any proceeding related to this Contract shall be in Boise, Ada County, Idaho.

**25.2** Pursuant to Section 54-1904A, Idaho Code, within thirty (30) days after award of this Contract, the Contractor shall file with the Idaho State Tax Commission, with a copy to IDL, a signed statement showing the date of Contract

award, 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.

**25.3** The Contractor, in consideration of securing the business of erecting or constructing public works in the State of Idaho, recognizing that the business in which it is engaged is of a transitory character, and that in the pursuit thereof, its property used therein may be without the state when 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 department, officer, board or taxing unit entering into this Contract may withhold from any payment due it hereunder the estimated amount of such accrued and accruing taxes, excises and license fees for the benefit of all taxing units to which said Contractor is liable.

**25.4** Before entering into a Contract, the Contractor shall be authorized to do business in the State of Idaho and shall submit a properly executed Contractor's Affidavit Concerning Taxes (Exhibit C).

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

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

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

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

**25.9** The Contractor is and shall remain in compliance with Executive Order 2009-10 which requires that the Contractor does not knowingly hire or engage any illegal aliens or persons not authorized to work in the United States and that it takes steps to verify that it does not hire or engage any illegal aliens or persons not authorized to work in the United States. Any misrepresentation in this regard or any employment of persons not authorized to work in the United States constitutes a material breach and shall be cause for the imposition of monetary penalties not to exceed five percent (5%) of the Fixed Price Contract Amount per violation and/or Termination of this Contract. The Contractor 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.

## **ARTICLE 26 EQUAL OPPORTUNITY**

The Contractor shall maintain policies of employment as follows:

**26.1** The Contractor and the Contractor's subcontractors shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age or national origin. The Contractor shall take affirmative action to insure that applicants are employed, and that employees are treated during employment, without regard to their race,

religion, color, sex, age or national origin. Such action shall include the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the policies of non-discrimination.

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

## **ARTICLE 27 SUCCESSORS AND ASSIGNS**

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

## **ARTICLE 28 SEVERABILITY**

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

## **ARTICLE 29 MEDIATION**

**29.1** Contractor Claims for additional cost or time are subject to Article 12, shall be reviewed as provided in accordance with that Article and, as a condition precedent to litigation, are subject to dispute resolution attempts and mediation in accordance with this Article. All other issues and disputes arising from this contract are also subject to dispute resolution attempts & mediation in accordance with this Article, as a condition precedent to litigation.

**29.2** 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.

**29.3** The parties agree to make every reasonable attempt to resolve any issues or disputes informally. The parties further agree that prior to the institution by either of legal or equitable proceedings of any kind, and as a condition precedent thereto, any dispute between the Contractor and IDL related to the Contract, including a dispute over IDL'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 IDL. If the issue to be mediated involves a Claim or other financial dispute, no request to mediate shall be made unless the amount is \$50,000 or more or until there are cumulative Claims or disputes amounting to \$50,000 or more; provided, however, that a mediation request can be made as to any Claim or financial matter at any time after Substantial Completion;
- .2** The party seeking mediation shall notify the other party in writing of its mediation request. In such written request, the requesting party must clearly describe the issues it believes are subject to mediation;
- .3** Within fifteen (15) days of receipt of the mediation request, the non-requesting party shall respond in writing to the request;
- .4** Unless IDL and the Contractor agree to other rules for mediation, mediation shall be in accordance with the Construction Industry Rules of Arbitration and Mediation Procedures in effect at the time of the mediation;
- .5** The parties shall share the mediator's fee and any filing fees equally; provided, however, that if a party makes a written request to the mediator without satisfying the requirements of this section and by doing so incurs any costs or fees, that party shall be solely responsible for the costs or fees;
- .6** Unless otherwise mutually agreed to by the parties, the mediation shall be in Boise, Ada County, Idaho;
- .7** The parties shall cooperate in arranging the other details of mediation, such as selection of the mediator, mediation dates and times;

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

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

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

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

### **ARTICLE 30 WAIVER OF CONSEQUENTIAL DAMAGES**

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

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

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

30.2 This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Articles 17 and 19. Nothing contained in this paragraph shall be deemed to preclude an award of the assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

### **ARTICLE 31 USE OF THE IDAHO DEPARTMENT OF LANDS NAME**

31.1 Contractor agrees that it will not, prior to, in the course of, or after performance under this contract, use IDL's name in any advertising or promotional media as a customer or client of Contractor without the prior written consent of IDL.

### **ARTICLE 32 PUBLIC RECORDS**

32.1 Pursuant to Idaho Code Sections 74-101 through 74-126, et seq., information or documents received from the Contractor may be open to public inspection and copying unless exempt from disclosure. The Contractor shall clearly designate individual documents as "exempt" on each page of such documents and shall indicate the basis for such exemption. IDL will not accept the marking of an entire document as exempt. In addition, IDL will not accept a legend or statement on one (1) page that all, or substantially all, of the document is exempt from disclosure. The Contractor shall indemnify and defend IDL against all liability, claims, damages, losses, expenses, actions, attorney fees and suits whatsoever for honoring such a designation or for the Contractor's failure to designate individual documents as exempt. The Contractor's failure to designate as exempt any document or portion of a document that is released by IDL shall constitute a complete waiver of any and all claims for damages caused by any such release. If IDL receives a request for materials claimed exempt by the Contractor, the Contractor shall provide the legal defense for such claim.

### **ARTICLE 33 CONFIDENTIAL INFORMATION**

33.1 Pursuant to this Agreement, Contractor may collect, or IDL may disclose to Contractor, financial, personnel or other information that IDL regards as proprietary, confidential or exempt from disclosure ("Confidential Information"). Confidential Information shall belong solely to IDL. Contractor shall use such Confidential Information only in the performance of its services under this Agreement and shall not disclose any Confidential Information to any third party, except with IDL's prior written consent or under a valid order of a court or governmental agency of competent jurisdiction, and then only upon timely notice to IDL. IDL may require that Contractor's officers, employees, agents or subcontractors separately agree in writing to the obligations contained in this section or sign a separate confidentiality agreement. Confidential Information shall be returned to IDL upon termination of this Agreement. The confidentiality obligation contained in this section shall survive termination of this Agreement. Confidential Information shall not include data or information that:

- a. Is or was in the possession of Contractor before being furnished by IDL, provided that such information or other data is not known by Contractor to be subject to another confidentiality agreement with or other obligation of confidentiality to IDL;
- b. Becomes generally available to the public other than as a result of disclosure by Contractor; or
- c. Becomes available to Contractor on a non-confidential basis from a source other than IDL, provided that such source is not known by Contractor to be subject to a confidentiality agreement with or other obligation of confidentiality to IDL.

**ARTICLE 34  
SIGNATURE PAGE**

**IN WITNESS WHEREOF**, the parties have caused this contract to be executed

effective this \_\_\_\_\_ day of \_\_\_\_\_, 2016, in Boise, Idaho.

IDAHO DEPARTMENT OF LANDS

**CONTRACTOR**

By \_\_\_\_\_

By \_\_\_\_\_

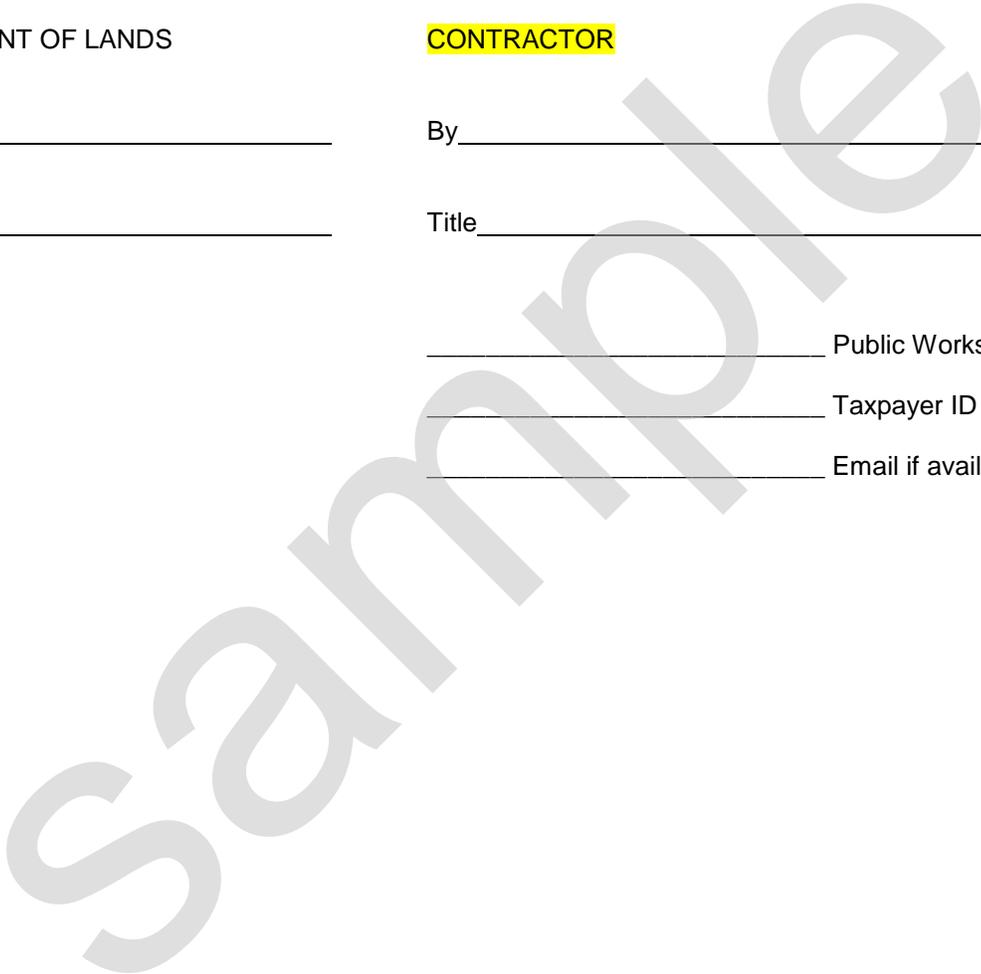
Title \_\_\_\_\_

Title \_\_\_\_\_

\_\_\_\_\_ Public Works License Number

\_\_\_\_\_ Taxpayer ID Number

\_\_\_\_\_ Email if available



## EXHIBIT A

### IDL CONTRACT 17-0210 SCOPE OF WORK

**PROJECT NAME:** Engine Bay/Cache Heater Replacement

**LOCATION:** Idaho Department of Lands  
Kootenai Valley Area Office  
6327 Main Street  
Bonners Ferry, Idaho 83805

#### **PROJECT REQUIREMENTS:**

1. Contractor shall have and maintain all applicable Idaho Contractor Licenses including but not limited to those required from Idaho Bureau of Occupational Licensing and Division of Building Safety. All work shall be completed in accordance with all applicable State and Federal laws.
2. All permits will be the responsibility of the Contractor and any permit fees will be paid for by the Contractor and should be included in the Contractor's bid price.
3. Contractor will uninstall existing wall mounted heating units from both the Engine Bay building and the Cache building.
4. Contractor will furnish all parts and labor to install new wall mounted, electric heating units, wiring (if required), and wall mounted thermostat to replace the current wall mounted, electric heating units with equivalent or better in the following buildings:
  - a. **Engine Bay** - The building is approximately 1,680 square feet.
    - Current Units are: TWO (2), wall mounted, TPI Corporation, Model FIFUH05003T, 208 Volt, 5 KW 1 Phase, 24.3 amps. See Attachment 1.
    - \*One single larger unit may be acceptable if it provides the same heat as the two TPI Corporation model currently in use.*
    - Install wall mounted thermostat.
  - b. **Cache Building** - The building is approximately 500 square feet.
    - Current Unit is: ONE (1), wall mounted, Cadet, Hot One, 220 Plug. See Attachment 2.
5. All Work should be scheduled to occur between regular business hours of 8:00 am to 5:00 pm Monday – Friday.
6. The contractor shall remove old heating units and any materials not utilized in the work upon completion of the job, resulting in the premises being left in a clean and tidy condition.

#### **SAFETY:**

Contractor shall comply with all applicable local, state, and federal safety regulations including:

- Federal Occupational Safety and Health Administration (OSHA) Standards

The contractor will be solely responsible for safety at the site.

#### **PERIOD OF PERFORMANCE:**

Work may commence once the Contractor has received a signed copy of the contract and has had a pre-work conference with the Contracting Officer's Representative. All work will be completed by January 13, 2017.

**PAYMENT:**

Fixed Price Payments shall not exceed \$ TBD.00. Invoices shall be submitted upon acceptance of completed work by the Contracting Officer's Representative.

**INFORMATION:**

Further information is available by contacting the Contracting Officer's Representative:

Ken Homik, Fire Warden  
Phone: 208-267-5577  
Email: [khomik@idl.idaho.gov](mailto:khomik@idl.idaho.gov)

**ATTACHMENTS:**

1. Photographs – Engine Bay
2. Photograph – Cache

ATTACHMENT 1  
PICTURES OF ENGINE BAY HEATERS/ELECTRICAL





**ATTACHMENT 2**  
**PICTURE OF CACHE HEATER/ELECTRICAL**



**EXHIBIT B**

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

**OWNER:** State of Idaho  
Department of Lands  
300 N 6<sup>th</sup> Street Ste 103  
Boise, ID 83702

**Project Manager:** Name: Ken Homik, Fire Warden  
Telephone: 208-267-5577  
E-mail: [khomik@idl.idaho.gov](mailto:khomik@idl.idaho.gov)  
Fax: 208-267-8301

**CONTRACTOR:**

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

**Officer:** \_\_\_\_\_ (name and title)  
\_\_\_\_\_ (telephone)  
\_\_\_\_\_ (E-mail)

**Contractor's Project Manager:** \_\_\_\_\_ (name)  
\_\_\_\_\_ (telephone and FAX)  
\_\_\_\_\_ (E-mail)

May sign for Contractor: Yes [ ] No [ ]  
Change Orders: up to: \$\_\_\_\_.00  
Construction Change Authorizations: up to: \$\_\_\_\_.00  
Contractor's Request for Payment

**Contractor's Superintendent:** \_\_\_\_\_ (name)  
\_\_\_\_\_ (telephone and FAX)  
\_\_\_\_\_ (E-mail)

May sign for Contractor: Yes [ ] No [ ]  
Construction Change Authorizations: up to \$\_\_\_\_.00

**EXHIBIT C**

**CONTRACTOR'S AFFIDAVIT CONCERNING TAXES**

STATE OF IDAHO

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.

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

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

Commission expires:

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

**EXHIBIT D**



**REQUEST FOR TAX RELEASE**

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

RE: IDL Contract Number: 17-0210  
Project Name: Engine Bay/Cache Heating Units Replacement  
Project Location: 6327 Main Street, Bonners Ferry, ID 83805

Contractor Requesting Release – Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Contact Name: \_\_\_\_\_  
Telephone Number: \_\_\_\_\_  
Federal Employer Identification No.: \_\_\_\_\_

**Project Information:**

Project is Complete: \_\_\_\_\_  
Project is Substantially Complete: \_\_\_\_\_  
Project Start Date: \_\_\_\_\_  
Project Complete Date: \_\_\_\_\_  
Final Contract Amount (including change orders): \_\_\_\_\_

Did any public works or other governmental agency supply materials, which were installed by this Contractor or his subcontractors?  
Yes \_\_\_\_\_

No \_\_\_\_\_

If yes, list these materials and their dollar values: \_\_\_\_\_

To request a Tax Release, please send this form to:

Idaho State Tax Commission  
Attn: Contract Desk; Sales Tax Audit  
PO Box 36  
Boise, ID 83722

EXHIBIT E

**RELEASE OF CLAIMS**

(TO BE COMPLETED FOR FINAL PAYMENT)

I, \_\_\_\_\_, do hereby release the State of Idaho from any and all claims of any character whatsoever arising under and by virtue of contract number 17-0210, Dated \_\_\_\_\_ as amended, except as herein stated.

Dated \_\_\_\_\_ Contractor \_\_\_\_\_