

STATE OF IDAHO
DEPARTMENT OF LANDS



IDL BLUE SKY ORCHARD WATER PRODUCTION WELL
REQUEST FOR PROPOSAL 23-200-000066
DUE BEFORE 2:00 P.M., MT SEPTEMBER 26, 2022

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SCHEDULE OF EVENTS

23-200-000066 IDL BLUE SKY ORCHARD

Request for Proposal Release	August 16, 2022
Pre-Proposal Meeting	August 24, 2022 10:00 A.M. PT
Deadline for Receipt of Written Inquiries	August 31, 2022
Proposal Due Date	BEFORE 2:00 PM MT, September 26, 2022
Evaluation/Negotiation Period	October 3, 2022 – October 14, 2022
Anticipated Intent to Award Date	October 17, 2022
Anticipated Contract Award Date	October 26, 2022

REQUEST FOR PROPOSALS

1 **PROPOSER INSTRUCTIONS**

The Idaho Department of Lands (IDL) is seeking proposals for the infrastructure design, well drilling, construction, equipment acquisition and installation of an Irrigation Water Production Well.

1.1 **PRE-PROPOSAL MEETING**

A pre-proposal meeting will be held at **10:00 A.M. PT on August 24, 2022**. Meeting location off Volmer Rd. This will be an opportunity for proposers to ask questions with the Idaho Department of Lands (IDL) staff responsible for the administration of the contract activities. Potential proposers interested in attending the meeting can RSVP to IDL via email sramirez@idl.idaho.gov by 3:00 PM **Monday, August 22, 2022** to obtain meeting details and exact location. Proposers are highly encouraged to attend; however, mandatory attendance is not required. IDL will issue an Addendum with official answers to any/all questions asked during the meeting.

1.2 **QUESTIONS / ADDENDA**

All questions related to this Request for Proposal (RFP) must be submitted in writing through the document titled “*Attachment 1 – Proposers Questions*” via email to sramirez@idl.idaho.gov by **midnight August 31, 2022**. No verbal inquiries will be accepted. Only inquiries responded to in an addendum are considered binding. Executed addendum(s) will be posted on the IDL website <https://www.idl.idaho.gov/about-us/current-contracting-opportunities/>. It is the responsibility of interested parties to monitor IDL’s website for any updates or issued addenda(s).

Inquiries related to the draft Contract must also be submitted on the Proposers Questions document. Concerns/requested changes related to IDL terms and conditions will not be considered at the time of contract award.

1.3 **SUBMISSION INSTRUCTIONS**

Sealed proposals must be received and time stamped by IDL at 300 N. 6th St. Ste. 103, Boise ID 83702 before **2:00 PM MT on September 26, 2022**. IDL is not responsible for lost, undelivered responses or failure of the United States Postal Service or any other courier service to deliver responses to IDL by the deadline specified. The date and time of receipt of a manual submission will be IDL’s clock at the front desk in Boise.

Late, faxed, electronic, or multiple responses will not be accepted.

The date and time of the final timely received response from a Proposer will be accepted as its entire Proposal. If modifications to a particular section of the response is needed; a resubmission of the entire response prior to the specified deadline is required. Only one Proposal will be evaluated per Proposer.

Proposals must be submitted manually (USPS or any other courier service).

The complete RFP package, Technical and Cost Proposal must be sealed, and outside packaging identified/labeled as “**IDL RFP #23-200-000066 - BLUE SKY ORCHARD**”. Include company name on the outside of the package.

Submissions must include both the Technical and Cost Proposal in separate sealed envelopes and clearly identified as "Technical Proposal" and "Cost Proposal".

The Technical Proposal shall include one (1) ORIGINAL hard copy and one (1) USB device containing an electronic copy of **ALL** submitted proposal documents. Label the Technical Proposal as "**TECHNICAL PROPOSAL - IDL #23-200-000066 - BLUE SKY ORCHARD**", the cost proposal shall be its own separate file uploaded on the USB drive and titled "COST PROPOSAL".

The Cost Proposal shall include one (1) ORIGINAL hard copy and sealed in its own identified envelope as "**COST PROPOSAL - IDL RFP #23-200-000066 - BLUE SKY ORCHARD**".

Delivery Address

Idaho Department of Lands
Attn: Sandra Ramirez, Contracts Officer
300 N. 6th St. Ste. 103
Boise, ID 83702

Manual responses must be sealed and marked in the lower left-hand corner as follows:

<i>Sealed RFP #: 23-200-000066 IDL BLUE SKY ORCHARD</i> <i>Company Name</i>
--

Responses submitted via courier service, must be shipped in a separate sealed inner envelope identified as stated above and enclosed inside the courier's shipping package.

1.4 PUBLIC OPENING

There will be a public opening at the Idaho Department of Lands at 2:30 PM MT on **September 26, 2022**. Participants may attend via telephone conferencing solution by calling 208-334-0200 and asking to be transferred to MEET ME extension 5055. Only proposer names will be released at that time and is not confirmation that submitted proposals are responsive.

2.0 PROJECT SPECIFICATIONS & GENERAL INFORMATION

2.1 PURPOSE / BACKGROUND

The Idaho Department of Lands (IDL) is seeking sealed proposals from contractors qualified to provide the design and construction of an Irrigation Water Production Well to support the Blue Sky Orchard located approximately 5 air miles south of the Lewiston Airport. The Blue Sky Orchard will contain approximately 8,100 total conifer trees distributed amongst 15 zones and established over a period of 15-20 years. Irrigation needs are anticipated three (3) months out of the year (June, July, and August). Actual irrigation requirements for the various zones are highly speculative at this point. It is estimated that 1.5 million gallons shall be required on an annual basis. The purpose of this Request for Proposal (RFP) is to solicit proposals from Contractors who can establish a plan to support the needs of the IDL Orchard.

The IDL Blue Sky Orchard is currently being utilized as dry farmland ground. The orchard is located within the boundaries of the Lewiston Plateau Ground Water Management Area (LPGWMA). Primary access to the site is gained via the Volmer Rd., maintained by Nez Perce County. Volmer Rd. runs East-West along the Northern boundary of section 9 and 10 township 34N range 05W Boise Meridian.

2.2 GENERAL INFORMATION

2.2.1 ADDENDA

It will be the proposer's responsibility to check the IDL website for any addendums prior to submitting a proposal. In the event IDL revises any part of the solicitation documents, it will make the addendum available on the IDL website. Information given to a proposer will be available to all other proposers if such information is necessary for purposes of submitting a proposal or if failure to give such information would be prejudicial to uninformed proposers.

2.2.2 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 proposer to furnish IDL with its original submission sufficient data to determine if the services offered conform to the specifications.

2.2.3 ORAL INFORMATION

IDL will not be responsible for any verbal information regarding this RFP.

2.2.4 DISQUALIFICATION

IDL's procurement lead will review each proposal to determine if that proposal is responsive. Additionally, IDL may make reasonable inquiry to determine the responsibility of a proposer. Such requests may include but not be limited to financial statements, credit ratings, statements of experience and past performance, references, etc. Successful proposers must show to the satisfaction of the Idaho Department of Lands that they have sufficient equipment and staff to complete the work contracted by

the time specified. The failure of a proposer to promptly supply information in connection with a proposal is reason for disqualification.

2.2.5 PUBLIC RECORDS

Pursuant to Idaho Code Sections 74-101 through 74-127, information or documents received from a proposer, or the awarded contractor may be open to public inspection and copying unless exempt from disclosure. The proposer 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. IDL is not obligated to deny public records requests for such material or to defend a challenge to such a denial; however, the proposer (and by extension the awarded contractor) shall indemnify and defend IDL against all liability, claims, damages, losses, expenses, actions, attorneys' fees, and suits whatsoever arising out of IDL's denying a public records request for such records, or the proposer's failure to designate individual documents as exempt. The proposer'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 against IDL for damages alleged to have been caused by any such release.

2.2.6 REJECTION OF PROPOSAL AND CANCELLATION OF SOLICITATION

Prior to the issuance of a contract, IDL shall have the right to accept or reject all or any part of a proposal or any and all proposals when: (i) it is in the best interest of IDL; (ii) the proposal does not meet the minimum proposal specifications; (iii) the proposal is not the most responsive, responsible proposal; (iv) a finding is made based upon available evidence that a proposer is not responsible or is otherwise incapable of meeting specifications or providing an assurance of ability to fulfill contract requirements; or (v) the proposal deviates to a major degree from the solicitation specifications, as determined by IDL (minor deviations, as determined by IDL, may be accepted as substantially meeting the proposal requirements of IDL). Deviations will be considered major when such deviations appear to frustrate the competitive solicitation process or provide a proposer an unfair advantage. Prior to the issuance of a contract, IDL shall have the right to reject all proposals or to cancel this solicitation.

2.2.7 PROPOSAL AWARD PROCEDURES

Following the evaluation period, IDL will notify all responsive proposers, by email, of its intent to award a contract and the party to whom the contract will be awarded. After elapse of the five (5) working day appeal period, if no appeals are received, IDL may award a contract to the successful proposer.

A proposer to whom a contract has been awarded will have fourteen (14) calendar days from the mailing date of the award notice to return to IDL required certificates of insurance, licenses, certifications, or other documentation necessary to show that the personnel, equipment, and materials to be furnished by the proposer are in full compliance with the contract specifications. If IDL does not receive such documents within the specified time, IDL may declare, at its sole discretion, the proposers' rights to the contract are forfeited, and IDL may proceed without further delay or notice to award the contract to the next highest scoring responsive and responsible proposer. After all

documents are received and accepted, IDL will send the final contract documents to the Contractor for signature and will fully execute the agreement. The award decisions will be made in accordance with the “Method and Evaluation of Award” included below.

2.2.8 PROPOSAL RESPONSE FORMAT & REQUIREMENTS

These instructions describe the format to be used when submitting a Proposal. The format is designed to ensure a complete submission of information necessary for an equitable analysis and evaluation of submitted Proposals. There is no intent to limit the content of Proposals.

3.0 METHOD OF EVALUATION AND AWARD CODES

The following codes will identify required information regarding the review process:

- (M)** Mandatory Specification or Requirement – failure to comply with any mandatory specification or requirement may render Proposer’s submission non-responsive and no further evaluation will occur.
- (ME)** Mandatory and Evaluated Specification – failure to comply may render Proposer’s submission non-responsive and no further evaluation will occur. Proposer is required to respond to this specification with a detailed response identifying its understanding and how it will comply. Points will be awarded based on predetermined criteria.
- (E)** Evaluated Specification – a response is desired and will be evaluated and scored. If not available, respond with “Not Available” or other response that identifies Proposer’s ability or inability to supply the item or service or meet the specification. Failure to respond will result in zero (0) points awarded for the specification. If available, Proposer is to respond to this specification with a detailed response identifying its understanding and how it will comply, and points will be awarded based on predetermined criteria.
- (NE)** Non-Evaluated Specification – optional response/information that is not evaluated but may be utilized and included in the contract.

Note: IDL Procurement Policy 13.XXI.C.1 allows the designated Procurement Lead to waive minor informalities as well as minor deviations. IDL reserves the right to seek clarification on any M, ME, or E requirement.

1. All Proposals will be reviewed first to ensure that they meet the Mandatory Submission Requirements of the RFP (submitted by the deadline, with all deliverables, and in the correct format) as addressed in Sections noted with an (M) or (ME). Any Proposal not including the Mandatory Submission Requirements shall be found non-responsive.
2. Responsive Proposals will then move to the next step of the evaluation process. IDL will use an evaluation committee to score each Technical Proposal using criteria established in this section of the RFP. The evaluation committee will analyze the written responses to the RFP and assign points based upon the quality of the Proposer’s responses. Technical evaluations will be conducted before the Cost Proposal is opened, evaluated, and weighted by IDL Procurement.

3. The criteria listed below shows the required components and those that will be scored. Attachment 2, the Cost Proposal will be opened and evaluated separately. The total points awarded for each component will be added together and weighted to create the final scores and associated vendor ratings. The evaluation criteria, including the maximum points that may be awarded are as follows:

Evaluation Criteria	Points
Cover Letter/Letter of Introduction	PASS/FAIL
Experience: Organizational & Personnel	300
Proposed Project Approach, Phased Timeline	500
Cost	200
Maximum Total Possible Points	1000

4. A group of IDL evaluators will review and score each responsive technical proposal independently based on the criteria above. Evaluator scores for each technical proposal will then be weighted and aggregated to establish a final tabulated technical score for each proposer.
5. Cost Proposals will be evaluated upon completion of the technical evaluation and scoring, the Cost Proposal will be opened by the IDL Procurement Lead for evaluation and scoring. The IDL Procurement Lead will weigh cost proposals and add the weighted cost scores to each respective Proposer's technical score to establish total scores by Proposer. Award will be based on highest overall total score.

a. Best and Final Proposers

IDL may, at its sole option, either accept a Proposer's initial proposal, by award of contract, or enter into discussions with Proposers whose proposals are deemed to be reasonably susceptible of being considered for award. After discussions are concluded, Proposers may be allowed to submit a "Best and Final Offer" for consideration, and the evaluated winner of best and final offers will be awarded.

b. Negotiations

IDL may, if in its best interest, elect to enter into negotiations in accordance with IDL Procurement Policy 13.

c. Award

Award of contract will be made to the respective, responsible Proposer whose Proposal receives the highest number of total points. Please see specific guidance included above regarding contract award.

3.1 **SUBMISSION REQUIREMENTS**

Proposers will use the following format to submit the Technical Proposal:

3.1.2 **TECHNICAL PROPOSAL**

a. (M) Cover Letter / Letter of Introduction

The Technical Proposal must include a cover letter on Proposer's official letterhead. The cover letter must include ALL items listed below:

- The RFP Title and Number.
- Briefly introduce company; to include name, office location responsible for work, identify primary point of contact that will oversee the project (name, email, and telephone), name of agent submitting proposal.
- The Proposer's corporate or business tax identification proving the organization can legally do business within the IDL. Provide the name of the person legally authorized to contract for your company.
 - (NE) If your company has a DUNS number or other federally-recognized classification number, please provide that as well. However, failure to provide this number will not result in a finding of non-responsivity.
- A state of Idaho Public Works License Number and the current classification of that license.
- A brief description of how your organization qualifies to address the requirements of this request for proposal package, and why your organization is interested in the work.
- A statement affirming the Proposal will be firm and binding for 90 calendar days from the Proposal opening date.
- A statement acknowledging receipt and acceptance of any addendums to the RFP.
- A statement certifying the individual signing the cover letter is an authorized representative able to legally bind the submitting Proposer to the submission, accepting all terms and conditions included or incorporated by reference to this RFP.

b. (ME) Experience - Organizational and Personnel

Include detailed descriptions in the Technical Proposal, that include ALL items listed below. The proposal will clearly indicate how many staff will be in the field and any specialized roles that these persons will perform and evidence of technical competence in those roles.

i. **(ME)** Describe in detail your organization's knowledge experience demonstrating involvement with designing and constructing (Design-Build) Well Production projects comparable to what is required in this RFP. Include business history as well as provide specifics of two (2) completed projects similar those outlined in the scope of work required in this RFP. Completed project examples must include, but not limited to project name (type of service), date, on-time and on-budget performance, name of suppliers/sub-contractors (if applicable), and any other information pertinent to your response.

ii. **(ME)** Provide resumes for key personnel, project managers (including the construction manager/supervisor), etc. to include involvement with

similar projects with designing and constructing Irrigation Production Wells. Identify staff responsible for performing services who have specialized expertise relating to the services required in this RFP. Resumes must describe proposed personnel performing Engineering Services, Project Management, Construction Management, Electrical Services, Excavating and Drilling Services. Resumes to include details of education and experience. Describe how the construction manager / team will achieve the following:

- Resolve conflicts between stakeholders (IDL, Prime Contractor, Subcontractors, etc.)
- Evaluate and control the performance of the project requirements (design, construction, subcontractors, etc.)
- Quality control for all project activities

iii. **(NE)** Provide three (3) client references for similar completed projects within the last five (5) years to include Company Name, Primary Point of Contact Name, Telephone Number, and Email Address.

3.1.3 (ME – all points under 3.1.3) Proposed Project Approach & Phased Timeline

Provide your company's approach to the Scope of Work necessary to provide the services required in this RFP. Proposed approach shall include:

Design Priorities

3.1.3.a Stamped Design/Engineering Documents

Provide your capacity for/or plan to develop and submit stamped engineering documents to IDL for review and approval prior to construction activities starting.

3.1.3.b Well Establishment

Provide specifications outlining the proper location of the drilling site, well construction specifications, other relevant requirements pertaining to water appropriation.

3.1.3.c Pump Requirements

Determine the mechanical properties required of the pump. Provide multiple pump options (if available) to include but not limited to:

- Manufacturer
- Size
- Specifications

(NE) Service, Support, and Maintenance

Provide name and contact information of a service provider qualified to service the equipment within (1) hour from site location.

3.1.3.d Electrical Requirements

Determine proper electrical requirements to meet the needs of the pump and any auxiliary systems. Electrical

plans should incorporate the specifications and plan for infrastructure to tie into the existing utilities to terminate at the well-site.

3.1.3.e

Access Road Requirements

Determine proper access to project area and the requirements to create an appropriate approach from the existing road.

Include design/engineering required to build an access road from the approach to the well-site.

- Excavation required.
- Various gradations of crushed rock
- Erosion control and any required culverts.
- There is no expectation this would be a fully-paved access road. A treated gravel road will suffice.

Phased Timeline

3.1.3.f

Include a proposed timeline for the below specialties:

- Design
- Equipment/Materials acquisition
- Construction
 - To include approach, excavation for access road, well drilling, well testing, etc.
- Equipment installation

3.2 COST PROPOSAL

a. (ME) Cost Proposal

Provide a completed "Attachment 2" "Cost Proposal in a sealed separate envelope. The envelope shall be labeled as **"IDL RFP #23-200-000066 - Blue Sky Orchard COST PROPOSAL"**.

4.0 PROJECT SPECIFICATIONS & MAPS

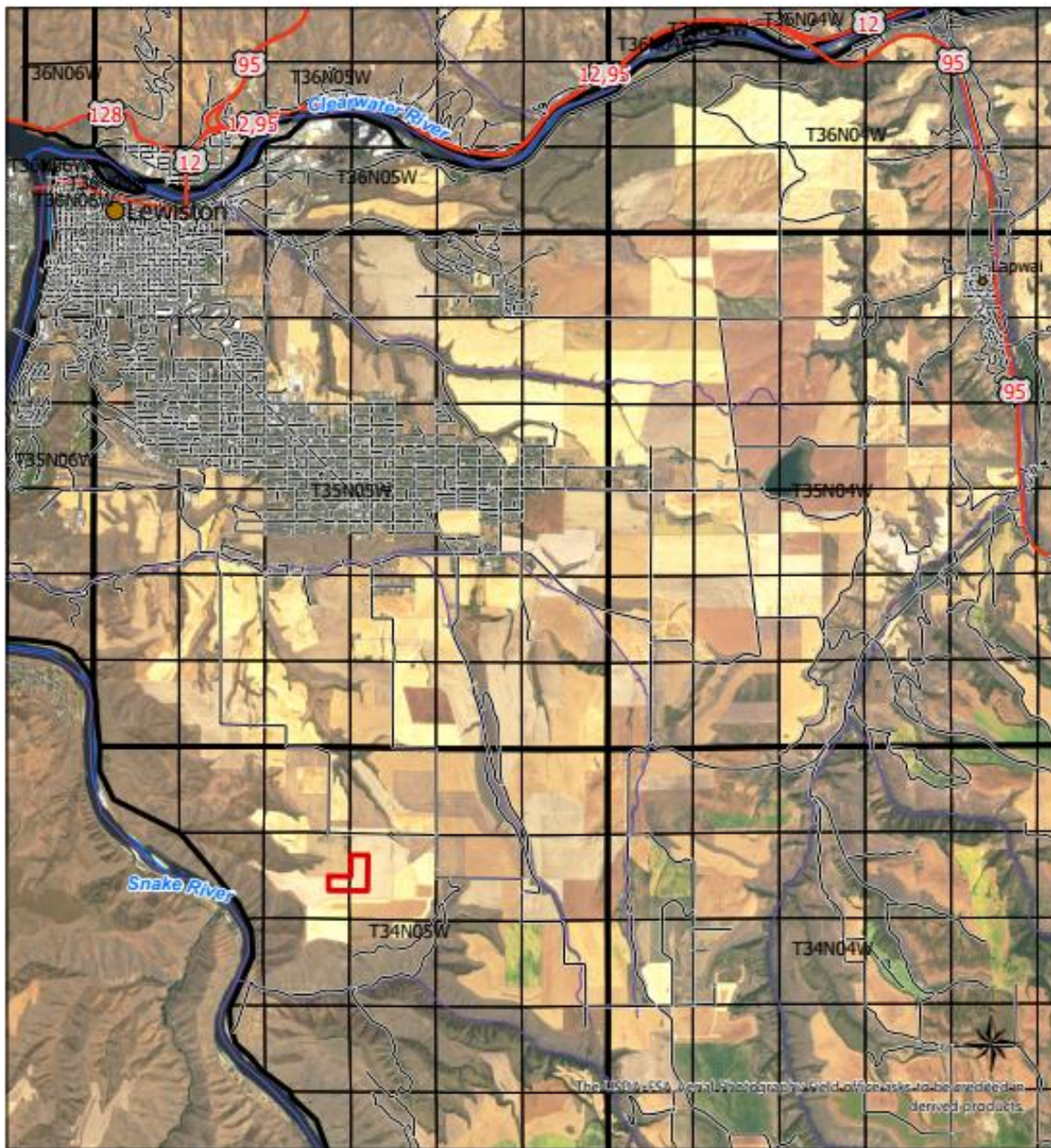
4.1 SPECIFICATIONS

- A permit from the State of Idaho Department of Water Resources (IDWR) has been obtained, see Exhibit A titled “*Permit Approval Notice*”. Permit number is as follows: IDWR 85-15861, which allows a maximum diversion rate of 0.20 cubic feet per second (CFS) for irrigation purposes. Design specifications proposed must be capable of supplying and distributing 0.20 CFS of flow at a maximum.
- Well Drilling: Compliance with Idaho Well Construction Standards Rules (IDAPA 37.03.09); requirements per the Ground Water Management Plan in the area have a sealing depth of 450+ feet or -500 feet as required steel, bentonite or concrete to that depth.
- Drill cutting collection requirements are every 10 feet
 - IDWR will provide bags and collect the samples
- Anticipated well depth is between 1,000-1,300 feet.
- Power/electricity source is available near the entrance of the project area (Volmer Rd.)
 - Under Avista Utilities jurisdiction
- Access entrance or junction must be:
 - Capable to withstand farming equipment to include large combine headers
 - Approximately ¼ mile of road to access the project area.
 - Have a minimum running surface width of 16 feet
 - Capable of supporting semi-trucks hauling 53-foot trailers
 - Have a turnaround area of approximately 150'x150' in size
- Project completion date, December 31, 2023. This date is final completion date to include design, materials acquisition, construction, and installation
- Supply drilling equipment at well site

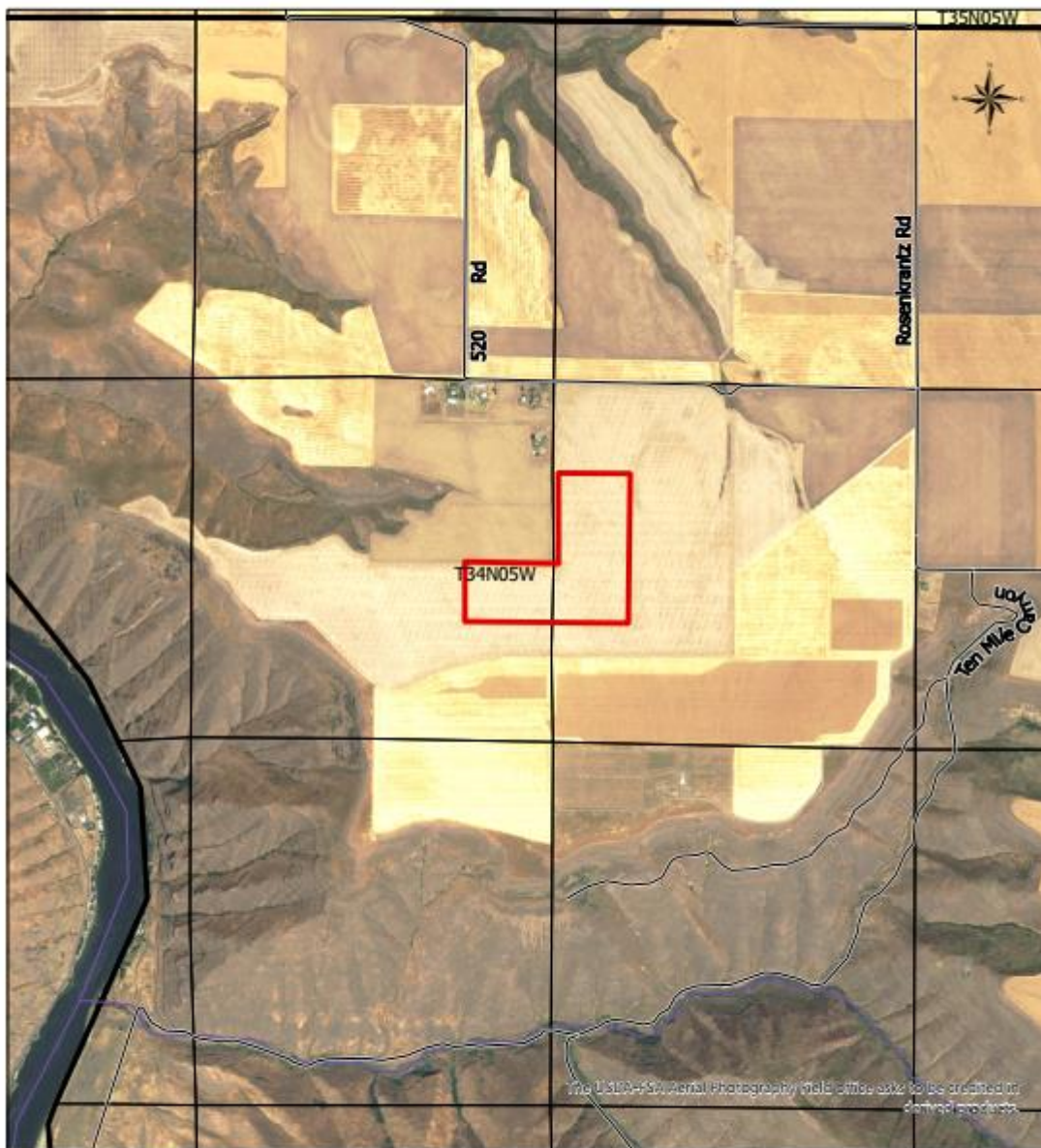
4.2 MAPS

Below are two (2) area maps for reference of the Blue Sky Orchard.

IDL Conifer Seed Orchard 00-0066-305-2019



IDL Conifer Seed Orchard 00-0066-305-2019



- Orchard**
- T/R Section**
- Roads**
- Controlled-access Highway
 - Secondary Highway or Major Connecting Road
 - Local Connecting Road
 - Local Road
 - 4WD

ATTACHMENT 1

BLUE SKY ORCHARD – 23-200-000066 PROPOSER QUESTIONS

PLEASE DO NOT IDENTIFY YOUR NAME OR YOUR COMPANY'S NAME OR PRODUCT NAMES OF INTELLECTUAL PROPERTY IN YOUR QUESTIONS.

ADD ROWS BY HITTING THE TAB KEY WHILE WITHIN THE TABLE AND WITHIN THE FINAL ROW.

The following instructions must be followed when submitting questions using the question format on the following page.

1. DO NOT CHANGE THE FORMAT OR FONT. Do not bold your questions or change the color of the font.
2. Enter the solicitation section number that the question is for in the "Solicitation Section" field (column 2). If the question is a general question not related to a specific section, enter "General" in column 2. If the question is in regards to an IDL Contract Term or Condition, state the clause number in column 2. If the question is in regard to an attachment, enter the attachment identifier in column 2, and the attachment page number in column 3.
3. Do not enter text in the "Response" field (column 5). This is for the IDL's responses only.
4. Once completed, this form is to be e-mailed per the instructions in the solicitation. The e-mail subject line is to state the solicitation number followed by "Questions."

	Solicitation Section	Page #	Question	Response *For IDL Use Only*
1				
2				
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The Cost Proposal **MUST** be submitted in a separate sealed envelope and labeled according to Section 1.3 SUBMISSION INSTRUCTIONS of the RFP.

ATTACHMENT 2			
COST PROPOSAL			
CONTRACT NO. 23-200-000066			
BLUE SKY ORCHARD			
ITEM	QTY	UNIT	TOTAL AMOUNT
Design Costs: Production Well and location, drilling site, construction specifications, Electrical, Access Road	1	LUMP SUM	\$ -
Pump	1	LUMP SUM	\$ -
Construction Costs: Mobilization and Demobilization, Installation	1	LUMP SUM	\$ -
Construction Costs: Steel casing 450'+ or -500' (Sealing: Bentonite or Concrete)	1	PER FOOT	\$ -
Construction Costs: Drilling	1	PER FOOT	\$ -
Construction Costs: Electrical	1	LUMP SUM	\$ -
Construction Costs: Access Road	1	LUMP SUM	\$ -
General Conditions Costs: Project Management, Administration, etc.	1	HRLY	\$ -
Contingency	1	LUMP SUM	\$ -

TOTAL			\$	-
NON-EVALUATED COST				
Engineering Rates (Not evaluated costs)	1	HRLY	\$	-
<p>Additional appraisals required under this contract but not scheduled will be added through mutually signed contract modifications. An approved and signed contract modification will be required prior to the starting of any additional work.</p>				
Company Name			Contractor's Email	
Mailing Address			Contractor's Phone	
Contractor's Signature			Signed by	
			Please Print Name	
Title				

EXHIBIT A

State of Idaho Department of Water Resources (IDWR) Permit #85-15816 dated October 29, 2020



State of Idaho

DEPARTMENT OF WATER RESOURCES

Northern Region • 7600 N MINERAL DR STE 100 • COEUR D ALENE, ID 83815-7763
Phone: (208)762-2800 • Fax: (208)769-2819 • Website: www.idwr.idaho.gov

Brad Little
Governor

Gary Spackman
Director

October 29, 2020

COPY

IDAHO DEPT OF LANDS
PO BOX 83720
BOISE ID 83720-0050

RE: Permit No. 85-15816

Permit Approval Notice

Dear Permit Holder(s):

The Department of Water Resources ("Department") has issued the enclosed permit authorizing you to establish a new water right. Please be sure to thoroughly review all the conditions of approval listed on your permit. The conditions include requirements that you must accomplish, such as timely submittal of proof of beneficial use or installation of a measuring device, as well as information about how your water use may be administered, such as regulation by a watermaster in a water district. Failure to comply with the conditions of approval may result in your permit lapsing or being canceled.

The permit is a PRELIMINARY ORDER issued pursuant to Rule 730 of the Department's Rules of Procedure (IDAPA 37.01.01.730). It can and will become a final order without further action by the Department unless a party petitions for reconsideration, files exceptions, or requests a hearing as described in the enclosed information sheet.

The final step in the water right process is issuance of a water right license. To receive a water right license, you must divert and use water to the full extent intended and submit a *Statement of Completion for Submitting Proof of Beneficial Use* by the date shown in condition no. 1 of your permit. The Department will send you a *Proof Due Notice* approximately 60 days prior to the date listed in condition no. 1 of your permit.

You may also require approvals from other Department programs, such as Ground Water Protection, Safety of Dams, or Stream Channel Protection, to accomplish your proposed development. Please call or visit any Department office or see the Department's website at idwr.idaho.gov for more information about these programs.

Please be advised that Idaho Code § 42-248, requires you or the owner of this water permit to maintain current ownership and address records on file with the Department. Forms to file an assignment of permit and/or a change in the address of the permit owner are available from any Department office or at the Department's website at www.idwr.idaho.gov.

If you have any questions concerning the enclosed information, please contact the Northern Region Office at (208) 762-2800.

Sincerely,



Adam Frederick
Water Rights Supervisor

Enclosure(s)

CERTIFICATE OF SERVICE

I hereby certify that on October 29, 2020, I served a true and correct copy of Permit to Appropriate Water No. 85-15816 by U.S. Mail, postage prepaid, to the following:

IDAHO DEPT OF LANDS (Current Owner)
PO BOX 83720
BOISE ID 83720-0050

JULIE DONOHOE (Representative)
3284 W INDUSTRIAL LOOP
COEUR D ALENE ID 83815-6021



Tammy Alleman
Administrative Assistant 1

State of Idaho
Department of Water Resources
Permit to Appropriate Water
No. 85-15816

Priority: September 04, 2020

Maximum Diversion Rate: 0.20 CFS

This is to certify that

IDAHO DEPT OF LANDS PO BOX 83720 BOISE ID 83720-0050

has applied for a permit to appropriate water from:

Source : GROUND WATER

and a permit is APPROVED for development of water as follows:

<u>Beneficial Use</u>	<u>Period of Use</u>	<u>Rate of Diversion</u>
DOMESTIC	01/01 to 12/31	0.04 CFS
IRRIGATION	02/15 to 11/30	0.20 CFS

Location of Point(s) of Diversion

GROUND WATER NW¼ SE¼, Sec. 9, Twp 34N, Rge 05W, B.M. NEZ PERCE County
 GROUND WATER SW¼ NW¼, Sec. 10, Twp 34N, Rge 05W, B.M. NEZ PERCE County
 GROUND WATER NW¼ SW¼, Sec. 10, Twp 34N, Rge 05W, B.M. NEZ PERCE County
 GROUND WATER NE¼ SE¼, Sec. 9, Twp 34N, Rge 05W, B.M. NEZ PERCE County

Place of Use: DOMESTIC

Twp	Rng	Sec	NE				NW				SW				SE				No QQ	Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE		
34N	05W	10							X			X								

Place of Use: IRRIGATION

Twp	Rng	Sec	NE				NW				SW				SE				No QQ	Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE		
34N	05W	9													40.0	40.0				80.0
34N	05W	10							40.0			40.0								80.0

Right Acre Limit: 160.0

Total Acres: 160.0

Conditions of Approval

1. Proof of application of water to beneficial use shall be submitted on or before **November 01, 2025**.
2. Subject to all prior water rights.
3. Right holder shall comply with the drilling permit requirements of Idaho Code § 42-235 and applicable Well Construction Rules of the Department.
4. This right authorizes a single point of diversion.
5. This right authorizes the diversion of ground water within the Lewiston Plateau Ground Water Management Area (LPGWMA). Use of water under this right shall be subject to the provisions of the LPGWMA management plan approved by the director, including its conservation and protection goals.

State of Idaho
Department of Water Resources
Permit to Appropriate Water
No. 85-15816

6. When notified by the Department, the right holder shall record the quantity of water diverted and annually report the monthly diversion volume of water and/or other pertinent hydrologic and system information as required by Idaho Code § 42-701, and/or the management plan for the Lewiston Plateau Ground Water Management Area.
7. The right holder shall install monitoring conduit to allow access to monitor ground water levels at the well, as required by the LPGWMA management plan. A written waiver can be submitted to the Department for review and consideration.
8. This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 4.0 afa per acre at the field headgate for irrigation of the place of use.
9. Domestic use is for 1 administration building.
10. This right does not grant any right-of-way or easement across the land of another.

This permit is issued pursuant to the provisions of Idaho Code § 42-204.

Signed this 28th day of October, 2020.

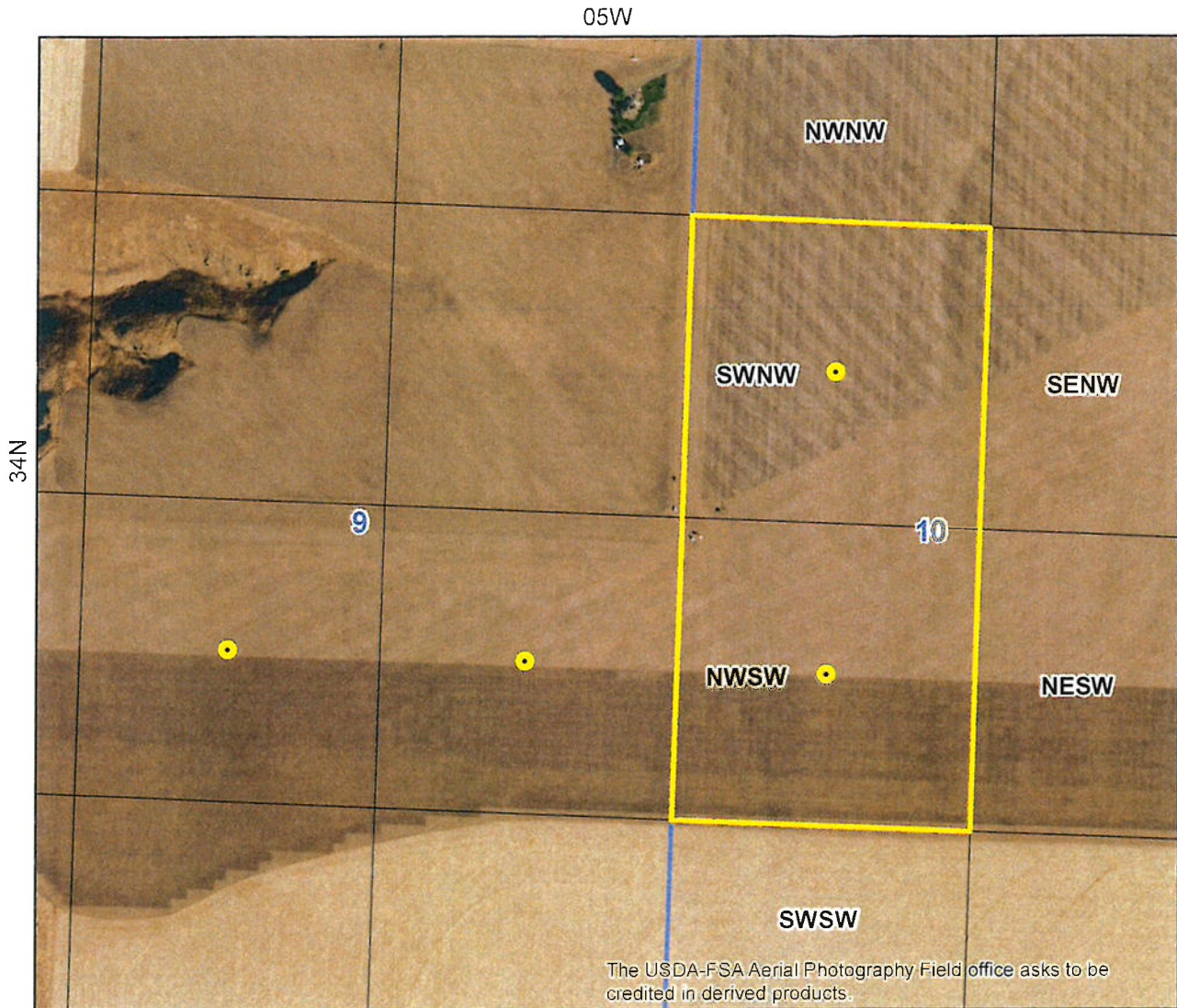







ADAM FREDERICK
Water Rights Supervisor

Attachment to Permit to Appropriate Water

85-15816

This map depicts the DOMESTIC place of use boundary for this water right at the time of this approval and is attached to the approval document solely for illustrative purposes.



-  Point of Diversion
-  Place Of Use Boundary
-  Townships
-  PLS Sections
-  Quarter Quarters

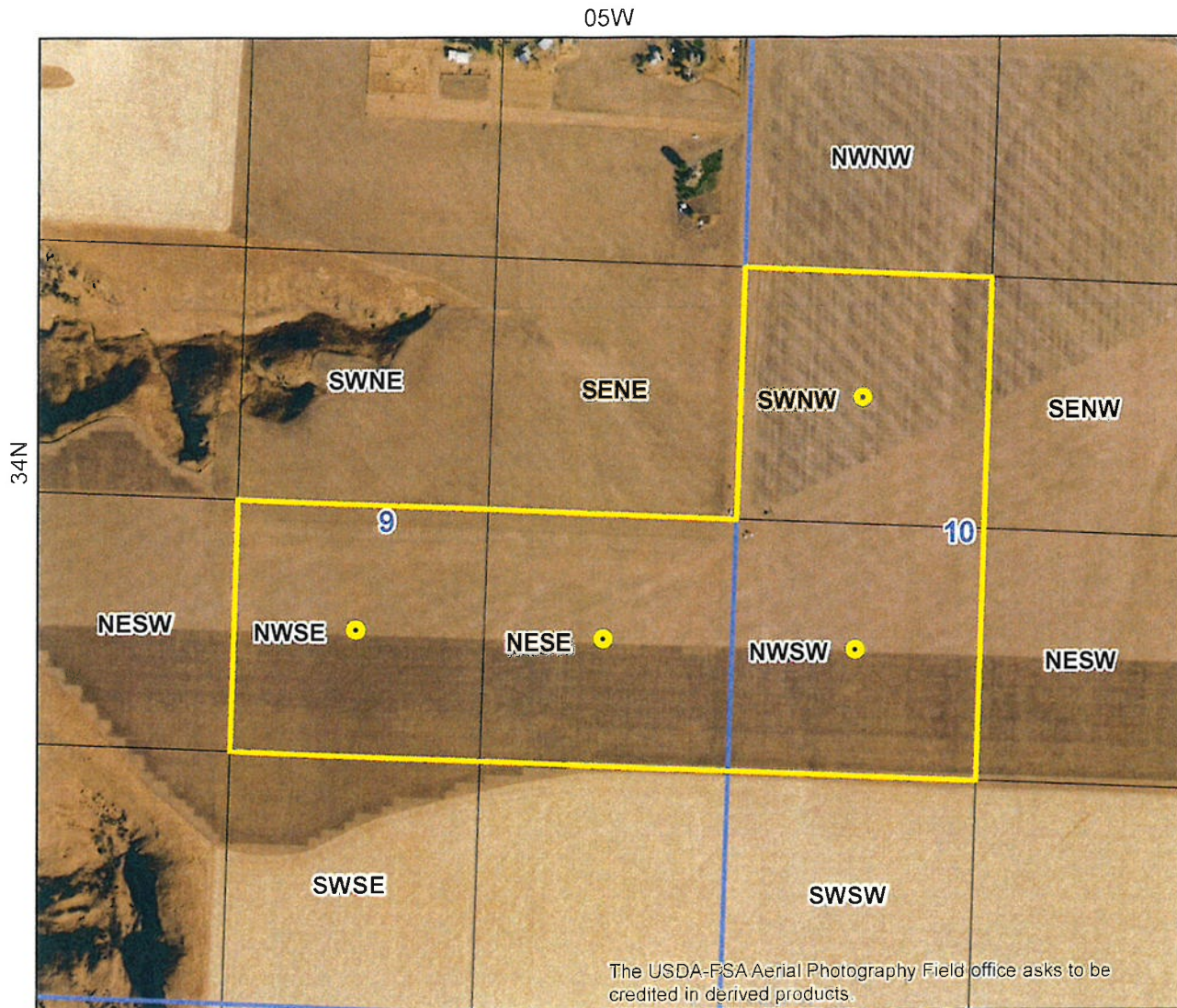
0 0.1 0.2 0.4 Miles



Attachment to Permit to Appropriate Water

85-15816

This map depicts the IRRIGATION place of use boundary for this water right at the time of this approval and is attached to the approval document solely for illustrative purposes.



- Point of Diversion
- Place Of Use Boundary
- Townships
- PLS Sections
- Quarter Quarters

0 0.1 0.2 0.4 Miles



EXPLANATORY INFORMATION TO ACCOMPANY A PRELIMINARY ORDER

(To be used in connection with actions when a hearing was **not** held)

(Required by Rule of Procedure 730.02)

The accompanying order or approved document is a "Preliminary Order" issued by the department pursuant to section 67-5243, Idaho Code. **It can and will become a final order without further action of the Department of Water Resources ("department") unless a party petitions for reconsideration, files an exception and brief, or requests a hearing as further described below:**

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a preliminary order with the department within fourteen (14) days of the service date of this order. **Note: the petition must be received by the department within this fourteen (14) day period.** The department will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See Section 67-5243(3) Idaho Code.

EXCEPTIONS AND BRIEFS

Within fourteen (14) days after: (a) the service date of a preliminary order, (b) the service date of a denial of a petition for reconsideration from this preliminary order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this preliminary order, any party may in writing support or take exceptions to any part of a preliminary order and may file briefs in support of the party's position on any issue in the proceeding with the Director. Otherwise, this preliminary order will become a final order of the agency.

REQUEST FOR HEARING

Unless a right to a hearing before the Department or the Water Resource Board is otherwise provided by statute, any person aggrieved by any final decision, determination, order or action of the Director of the Department and who has not previously been afforded an opportunity for a hearing on the matter may request a hearing pursuant to section 42-1701A(3), Idaho Code. A written petition contesting the action of the Director and requesting a hearing shall be filed within fifteen (15) days after receipt of the denial or conditional approval.

ORAL ARGUMENT

If the Director grants a petition to review the preliminary order, the Director shall allow all parties an opportunity to file briefs in support of or taking exceptions to the preliminary order and may schedule oral argument in the matter before issuing a final order. If oral arguments are to be heard, the Director will within a reasonable time period notify each party of the place, date and hour for the argument of the case. Unless the Director orders otherwise, all oral arguments will be heard in Boise, Idaho.

**STATE OF IDAHO
DEPARTMENT OF LANDS**



BLUE SKY ORCHARD WATER PRODUCTION WELL

AGREEMENT NO. 23-200-000066

CONTRACTOR

STATE OF IDAHO
DEPARTMENT OF LANDS
PROFESSIONAL SERVICES AGREEMENT NO. 23-200-000066

THIS 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 "STATE," and COMPANY NAME., hereafter referred to as the "CONTRACTOR."

1. DEFINITIONS

- a. Agreement: This duly executed written agreement between the State and the Contractor resulting from a solicitation, which shall include these Terms and Conditions, the Scope of Work, the Cost Proposal, and all attachments thereto.
- b. Contracting Officer: The State employee with the authority to enter into, administer, modify, and/or terminate this Agreement, 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 State 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 Agreement unilaterally or direct the Contractor to perform work not specified in the Agreement. Only the Contracting Officer and the Contractor may 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. Scope of Work: Detailed outline of the location, project description, timeline, and deliverables.
- h. Services: Includes services performed, workmanship, and materials furnished or utilized in the performance of services, including any deliverables.
- i. 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 State 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 State in its regulatory and assistance duties, and in managing Idaho's public trust lands.

2. CONTRACTOR RESPONSIBILITY

The Contractor hereby assumes responsibility for production and delivery of all material and services included in this Agreement, whether or not the Contractor is the manufacturer or producer of such material or services. Further, the Contractor will be the sole point of contact on contractual matters, including payment of charges resulting from the use or purchase of goods or services.

3. REGISTRATION WITH SECRETARY OF STATE AND SERVICE OF PROCESS

- a. Contractor must independently verify whether it is required by Idaho law to register its business entity or assumed business name with the Idaho Secretary of State and, if required to do so, must remain in good standing during the term of this Agreement.
- b. Regardless of its registration with the Idaho Secretary of State, and in addition to any methods of service allowed by Idaho law, Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested, at its last known address. Contractor must notify the State in writing of any change of address to which service of process can be made. Service shall be completed upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor shall have thirty calendar days after completion of service in which to respond.

4. SUBCONTRACTING

Unless otherwise allowed by the State in this Agreement, the Contractor shall not, without written approval from the State, enter into any subcontract relating to the performance of this Agreement or any part thereof. Approval by the State of Contractor's request to subcontract or acceptance of or payment for subcontracted work by the State shall not in any way relieve the Contractor of responsibility for the professional and technical accuracy and adequacy of the work. The Contractor shall be and remain liable for all damages to the State caused by negligent performance or non-performance of work under the Agreement by Contractor's subcontractor or its sub-subcontractor.

5. ASSIGNMENTS

The Contractor shall not assign a right or delegate a duty under this Agreement without the prior written consent of the State.

6. ANTIDISCRIMINATION/EQUAL EMPLOYMENT OPPORTUNITY CLAUSE

Acceptance of this Agreement binds the Contractor to the terms and conditions of Section 601, Title VI, Civil Rights Act of 1964 in that "No person in the United States shall, on the grounds of race, color, national origin, or sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance." In addition, "No otherwise qualified handicapped individual in the United States shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance" (Section 504 of the Rehabilitation Act of 1973). Furthermore, for Agreements involving federal funds, the applicable provisions and requirements of Executive Order 11246 as amended, Section 402 of the Vietnam Era Veterans Readjustment Assistance Act of 1974, Section 701 of Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967 (ADEA), 29 USC Sections 621, et seq., the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972, U.S. Department of Interior regulations at 43 CFR Part 17, and the Americans with Disabilities Action of 1990, are also incorporated into this Agreement. The Contractor must include this provision in every subcontract relating to purchases by the State to insure that subcontractors and vendors are bound by this provision.

7. RESTRICTIONS ON AND WARRANTIES – ILLEGAL ALIENS

Contractor warrants this Agreement is subject to Executive Order 2009-10 [http://gov.idaho.gov/mediacenter/execorders/eo09/eo_2009_10.html]; it does not knowingly hire or engage any illegal aliens or persons not authorized to work in the United States; it takes steps to verify that it does not hire or engage any illegal aliens or persons not authorized to work in the United States; and that any misrepresentation in this regard or any employment of persons not authorized to work in the United States constitutes a material breach and shall be cause for the

imposition of monetary penalties up to five percent (5%) of the Agreement price, per violation, and/or termination of its Agreement.

8. INSURANCE REQUIREMENTS

- a. Contractor shall obtain and maintain insurance at its own expense as required herein for the duration of this Agreement, and comply with all limits, terms and conditions stipulated. Policies shall provide, or be endorse to provide, all required coverage. Contractor shall provide certificates of insurance or certified endorsements as applicable for the insurance required. Contractor shall not commence work under this Agreement until satisfactory evidence of all required insurance is provided to the State.
- b. All insurance, except for Workers Compensation, and Professional Liability/Errors and Omissions shall be endorsed to name the State of Idaho, the State Board of Land Commissioners, and the Idaho Department of Lands as Additional Insured.
- c. All insurance shall be with insurers rated A-, VII, or better in the latest Bests Rating Guide, and be in good standing and authorized to transact business in Idaho. The coverage provided by such policies shall be primary. Policies may contain deductibles, but such deductibles shall not be deducted from any damages due the State.
- d. If any of the liability insurance required for this Agreement is arranged on a "claims-made" basis, then "tail coverage" will be required at the completion or termination of this Agreement for a duration of twenty-four (24) months thereafter. 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 Agreement, or twenty-four months "prior acts" coverage is provided. Contractor will be responsible for furnishing certification of "tail coverage" or continuous "claims-made" coverage.
- e. By requiring insurance herein, the State does not represent that coverage and limits will necessarily be adequate to protect Contractor, and such coverage and limits shall not be deemed as a limitation on Contractor's liability under the indemnities granted to the State.
- f. Contractor shall maintain insurance in amounts not less than the following;

(1) Commercial General and Umbrella Liability Insurance

Contractor shall maintain commercial general liability (CGL) and, if necessary, commercial umbrella insurance with a combined single limit of not less than \$1,000,000 each occurrence, \$2,000,000 annual aggregate. The CGL shall be written on standard ISO occurrence form (or a substitute form providing equivalent coverage) and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury, advertising injury, and liability assumed under an insured contract including the tort liability of another assumed in a business contract.

(2) Automobile Insurance

The Contractor shall maintain automobile liability insurance which shall provide a minimum \$1,000,000 combined single limit per occurrence and shall include coverage for owned, non-owned, and hired automobiles.

(3) Worker's Compensation Insurance

The Contractor shall maintain worker's compensation insurance in amounts as required by statute in all states in which the Contractor performs work, and employer's liability insurance with a limit of \$100,000 Bodily Injury by Accident each Accident; \$100,000 Bodily Injury by Disease – each employee; and \$500,000 Bodily Injury by Disease – Policy Limit.

(4) Professional Liability/Errors and Omissions Coverage

The Contractor shall maintain professional liability insurance covering any damages caused by an error, omission or any negligent acts. Combined single limit per occurrence shall not be less than \$1,000,000, or the equivalent. Annual aggregate limit shall not be less than \$2,000,000.

- g. The Contractor shall require all subcontractors utilized in performance of this Agreement to provide certificates of insurance to the State evidencing insurance coverage with the required additional insured endorsements as set forth in the preceding paragraphs.
- h. Contractor shall furnish the following;

(1) Performance and Payment Bonds

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.

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.

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.

9. TAXES

The State is generally exempt from payment of Idaho State Sales and Use Tax for property purchased for its use under the authority of Idaho Code, Section 63-3622 as a government instrumentality. In addition, the State is generally exempt from payment of Federal Excise Tax under a permanent authority from the district Director of the Internal Revenue Service. Exemption certificates will be furnished upon written request by the Contractor. If the Contractor is required to pay any taxes incurred as a result of doing business with the State, it shall be solely responsible for the payment of those taxes. If the Contractor is performing public works construction (installation of fixtures, etc.), it shall be responsible for payment of all sales and use taxes as required.

10. LICENSES, PERMITS & FEES

The Contractor shall, without additional expense to the State, obtain all required licenses and permits and pay all fees necessary for executing provisions of this Agreement unless specifically stated otherwise herein.

11. INDEMNIFICATION

- a. Contractor shall indemnify, defend, and save harmless the State, its officers, agents, employees, and volunteers from and against any and all liability, claims, damages, losses,

expenses, actions, settlements, attorneys' fees, and suits whatsoever caused by, arising out of, or in connection with Contractor's acts or omissions under this Agreement or Contractor's failure to comply with any state or federal statute, law, regulation, or rule.

- b. Upon receipt of the State's tender of indemnity and defense, Contractor shall immediately take all reasonable actions necessary, including, but not limited to, providing a legal defense for the State, to begin fulfilling its obligation to indemnify, defend, and save harmless the State. Contractor's indemnification and defense liabilities described herein shall apply regardless of any allegations that a claim or suit is attributable in whole or in part to any act or omission of the State under this Agreement. However, if it is determined by a final judgment that the State's negligent act or omission is the sole proximate cause of a suit or claim, the State shall not be entitled to indemnification from Contractor with respect to such suit or claim, and the State, in its discretion, may reimburse Contractor for reasonable defense costs attributable to the defense provided by any Special Deputy Attorney General appointed pursuant to section 12.c.
- c. Any legal defense provided by Contractor to the State under this section must be free of any conflicts of interest, even if retention of separate legal counsel for the State is necessary. Any attorney appointed to represent the State must first qualify as and be appointed by the Attorney General of the State of Idaho as a Special Deputy Attorney General pursuant to Idaho Code Sections 67-1401(13) and 67-1409(1).

12. OFFICIALS, AGENTS AND EMPLOYEES OF THE STATE NOT PERSONALLY LIABLE

In no event shall any official, officer, employee or agent of the State be in any way personally liable or responsible for any covenant or agreement herein contained whether expressed or implied, nor for any statement, representation or warranty made herein or in any connection with this Agreement. This section shall not apply to any remedies in law or at equity against any person or entity that exist by reason of fraud, misrepresentation or outside the terms of this Agreement.

13. RISK OF LOSS

Risk of loss and responsibility and liability for loss or damage will remain with Contractor until final inspection and acceptance when responsibility will pass to the State except as to latent defects, fraud and Contractor's warranty obligations. Such loss, injury or destruction shall not release the Contractor from any obligation under this Agreement.

14. PROHIBITED CONTRACTS

No member of the legislature or officer or employee of any branch of the state government shall directly himself, or by any other person execute, hold or enjoy, in whole or in part, any contract or agreement made or entered into by or on behalf of the State, if made by, through or on behalf of the department in which he is an officer or employee or if made by, through or on behalf of any other department unless the same are made after competitive bids. (Idaho Code Section 67-9230(2)).

15. SAFETY INFORMATION

- a. The Contractor assumes full responsibility for the safety of his employees, equipment and supplies.
- b. Contractor guarantees that all items provided by Contractor in performance of this Agreement meet or exceed those requirements and guidelines established by the Occupational Safety and Health Act, Consumer Product Safety Council, Environmental Protection Agency, or other regulatory agencies.

16. USE OF THE IDAHO DEPARTMENT OF LANDS NAME

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

17. CONTRACT TERMINATION

a. TERMINATION FOR CAUSE WITH NOTICE:

1. The occurrence of any of the following events shall be an Event of Default under this Agreement:
 - a. A material breach of any term or condition of this Agreement; or
 - b. Any representation or warranty by Contractor in response to the Solicitation or in this Agreement proves to be untrue or materially misleading; or
 - c. Institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Contractor, or the appointment of a receiver or similar officer for Contractor or any of its property, which is not vacated or fully stayed within thirty (30) calendar days after the institution or occurrence thereof; or
 - d. Any default specified in another section of this Agreement.
2. The State may terminate this Agreement (or any order issued pursuant to this Agreement) when the Contractor has been provided written notice of default or non-compliance and has failed to cure the default or non-compliance within a reasonable time, not to exceed thirty (30) calendar days. If the Agreement is terminated for default or non-compliance, the Contractor will be responsible for any costs resulting from the State's placement of a new Agreement and any damages incurred by the State, as a result of the default. The State, upon termination for default or non-compliance, reserves the right to take any legal action it may deem necessary including, without limitation, offset of damages against payment due.
3. Upon written notice of default, Contractor shall be in breach of its obligations under this Contract and the State shall have the right to exercise any or all of the following remedies:
 - a. Exercise any remedy provided by law or equity;
 - b. Terminate this Agreement and any related Agreements or portions thereof;
 - c. Impose liquidated damages as provided in this Agreement;
 - d. Suspend Contractor from receiving future bid solicitations;
 - e. Suspend Contractor's performance;
 - f. Withhold payment until the default is remedied.

b. TERMINATION FOR CAUSE WITHOUT NOTICE

The State shall not be required to provide advance written notice or a cure period and may immediately terminate this Agreement in whole or in part for an Event of Default if the State, in its sole discretion, determines that it is reasonably necessary to preserve public safety or prevent immediate public crisis. Time allowed for cure shall not diminish or eliminate

Contractor's liability for damages, including liquidated damages to the extent provided for under this Agreement.

c. TERMINATION FOR CONVENIENCE

1. The State may terminate this Contract for its convenience in whole or in part, if the State determines it is in the State's best interest to do so.
2. After receipt of a notice of termination for convenience, and except as directed by the State, the Contractor shall immediately proceed with the following obligations, as applicable, regardless of any delay in determining or adjusting any amounts due under this clause. The Contractor shall:
 - a. Stop work.
 - b. Place no further subcontracts for materials, services, or facilities, except as necessary to complete the continuing portion of the Agreement.
 - c. Terminate all subcontracts to the extent they relate to the work terminated.
 - d. Settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts.
3. Unless otherwise set forth in the Solicitation, if the Contractor and the State fail to agree on the amount to be paid because of the termination for convenience, the State will pay the Contractor the following amounts; provided that in no event will total payments exceed the amount payable to the Contractor if the Agreement had been fully performed:
 - a. The Agreement price for Deliverables or services accepted by the State and not previously paid for; and
 - b. The total of:
 - i. The reasonable costs incurred in the performance of the work terminated, including initial costs and preparatory expenses allocable thereto, but excluding any cost attributable to deliverables or services paid or to be paid;
 - ii. The reasonable cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the Agreement; and
 - iii. Reasonable storage, transportation, demobilization, unamortized overhead and capital costs, and other costs reasonably incurred by the Contractor in winding down and terminating its work.
4. The Contractor will use generally accepted accounting principles, or accounting principles otherwise agreed to in writing by the parties, and sound business practices in determining all costs claimed, agreed to, or determined under this clause.

d. TERMINATION FOR FISCAL NECESSITY

The State is a government entity and it is understood and agreed that the State'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 Agreement. This Agreement shall in no way or manner be construed so as to bind or obligate the State beyond the term of any particular appropriation of funds by the State's Legislature as may exist from time to time. the State reserves the right to terminate this Agreement in whole or in part (or any order placed under it) if, in its sole judgment, the Legislature of the State of Idaho fails, neglects, or refuses to appropriate sufficient funds as may be required for the State to continue such payments, or requires any return or "give-back" of funds required for the State to continue payments, or if the Executive Branch mandates any cuts or holdbacks in spending, or if funds are not budgeted or otherwise available, or if the State discontinues or makes a material alteration of the program under which funds were provided. The State shall not be required to transfer funds between accounts in the event that funds are reduced or unavailable. All affected future rights and liabilities of the parties shall thereupon cease within ten (10) calendar days after notice to the Contractor. Further, in the event of non-appropriation, the State shall not be liable for any penalty, expense, or liability, or for general, special, incidental, consequential or other damages resulting therefrom.

18. CONTRACT ADMINISTRATION

- a. The Contracting Officer Representative will administer the Agreement as required in all specifications.
- b. The Contracting Officer Representative has the following authority in addition to that delegated to him in other portions of this Agreement.
 - (1) Decide questions of fact arising in regard to the quality and acceptability of materials furnished and all work performed.
 - (2) Make recommendations for payment.

19. FORCE MAJEURE

Neither party shall be liable or deemed to be in default for any Force Majeure delay in shipment or performance occasioned by unforeseeable causes beyond the control and without the fault or negligence of the parties, including, but not restricted to, acts of God or the public enemy, fires, floods, epidemics, quarantine, restrictions, strikes, freight embargoes, unusually severe weather, provided that in all cases the Contractor shall notify the State promptly in writing of any cause for delay and the State concurs that the delay was beyond the control and without the fault or negligence of the Contractor. If reasonably possible, the Contractor shall make every reasonable effort to complete performance as soon as possible. Matters of contractor's or subcontractor's finances shall not be a Force Majeure.

20. GOVERNING LAW

This Agreement shall be construed in accordance with, and governed by the laws of the State of Idaho. Any action to enforce this Agreement shall be brought in Ada County, Boise, Idaho.

21. MODIFICATION

This Agreement may not be released, discharged, changed or modified except by an instrument in writing signed by a duly authorized representative of each of the parties.

22. ENTIRE AGREEMENT

This Agreement is the entire agreement between the parties with respect to the subject matter hereof. Where terms and conditions specified in the Contractor's response differ from those specifically stated in this Agreement, the terms and conditions of this Agreement shall apply. In the event of any conflict between these standard terms and conditions and any special terms and conditions applicable to this acquisition, the special terms and conditions will govern. This Agreement may not be released, discharged, changed or modified except by an instrument in writing signed by a duly authorized representative of each of the parties.

23. PUBLIC RECORDS

Pursuant to Idaho Code Section 74-101 through 74-126, 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. The State will not accept the marking of an entire document as exempt. In addition, the State 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 the State 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 the State shall constitute a complete waiver of any and all claims for damages caused by any such release. If the State receives a request for materials claimed exempt by the Contractor, the Contractor shall provide the legal defense for such claim.

24. CONFIDENTIAL INFORMATION:

Pursuant to this Agreement, Contractor may collect, or the State may disclose to Contractor, financial, personnel or other information that the State regards as proprietary, confidential or exempt from disclosure ("Confidential Information"). Confidential Information shall belong solely to the State. 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 the State'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 the State. The State 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 the State 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 the State, 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 the State;
- 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 the State, provided that such source is not known by Contractor to be subject to a confidentiality agreement with or other obligation of confidentiality to the State.

25. NON-WAIVER

The failure of any party, at any time, to enforce a provision of this Agreement shall in no way constitute a waiver of that provision, nor in any way affect the validity of this Agreement, any part hereof, or the right of such party thereafter to enforce each and every provision hereof.

26. NO WAIVER OF SOVEREIGN IMMUNITY

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

27. ATTORNEYS' FEES

In the event suit is brought or an attorney is retained by any party to this Agreement to enforce the terms of this Agreement or to collect any moneys due hereunder, the prevailing party shall be entitled to recover reimbursement for reasonable attorneys' fees, court costs, costs of investigation and other related expenses incurred in connection therewith in addition to any other available remedies.

28. EXAMINATION AND AUDIT

Contractor agrees that the State or its designated representative shall have the right to review and copy any records and supporting documentation pertaining to performance of this Agreement. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees or others who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement.

29. ADEQUATE ASSURANCE OF FUTURE PERFORMANCE

If the State has reasonable grounds to question Contractor's ability to perform the Agreement, the State may demand adequate assurance from Contractor. Contractor shall respond within 30 calendar days of such demand.

30. WAGE AND LABOR COMPLIANCE

For the duration of the agreement, the Contractor attests to the following:

- a. At least the minimum Idaho wage was paid to all employees and subcontractors utilized to complete the work in accordance with Idaho Code section 44-1502;
- b. Contractor was in compliance with all labor laws;
- c. All debts incurred by the Contractor to accomplish the work requirements outlined by this agreement were paid in full.
- d. Any further claims against the State of Idaho under this agreement are relinquished, pending payment for services rendered by the Contractor and accepted by the State.

31. CERTIFICATION CONCERNING BOYCOTT OF ISRAEL

Pursuant to Idaho Code section 67-2346, if payments under this agreement exceed one hundred thousand dollars (\$100,000) and Contractor employs ten (10) or more persons, Contractor certifies that it is not currently engaged in, and will not for the duration of the agreement engage in, a boycott

of goods or services from Israel or territories under its control. The terms in this clause defined in Idaho Code section 67-2346 shall have the meaning defined therein.

32. TIME IS OF THE ESSENCE

Time shall be of the essence in connection with Contractor's performance of its obligations under this Contract.

33. PAYMENT

Payment will be made in accordance with Idaho Code 67-2302 with the method described in the Scope of Work and after receipt of the Contractor's itemized invoice for satisfactorily completed work. Total payments under this Agreement shall not exceed \$XXXX.

It is understood that full payment for all services provided under the Agreement is fully burdened to include, but is not limited to, all Contractor's costs of labor, materials, equipment, deliverables and expenses including advertising, postage, copy costs, and all other costs normally associated with the cost of doing business unless otherwise provided elsewhere in this Agreement.

34. AGREEMENT TERM

This Agreement will become effective once signed by all parties. The Contractor and Contracting Officer Representative will discuss the Agreement terms, work performance requirements, and tentative work schedule. The Agreement will expire on December 31, 2023, or unless terminated earlier by the State under any of the provisions of paragraph 17 of this contract. The contract can be extended through modification to allow for completion of all project requirements.

This Agreement will become effective once signed by all parties. The Contractor and Contracting Officer Representative will discuss the Agreement terms, work performance requirements, and tentative work schedule. This Agreement shall terminate one year from its effective date with the option to renew for two (2) additional one (1) year periods, under the same terms and conditions, unless terminated earlier by the State under any of the provisions of paragraph 17 of this Agreement. All requirements of the Agreement must be satisfactorily completed by the Agreement expiration date.

SIGNATURES

Contract will be signed at a later date using electronic signatures.