COLLEGE OF WESTERN IDAHO
INVITATION TO BID (ITB)

ITB 01-2022 RTU Replacement & Controls Upgrade

PROPOSALS DUE: TUESDAY, JULY 19, 2022 at 5:00 PM MT

Overnight FED EX or Overnight UPS Delivery (Tracking Number Required):

College of Western Idaho – Business Office
Attn: ITB 01-2022 RTU Replacement & Controls Upgrade
c/o Sue Heathman, Manager II, Contracts & Procurement
6056 Birch Lane
Nampa, ID 83687

ITB Document (and DBS Approved Specifications) are available at:

http://cwi.edu/info/procurement-division-contracts-purchasing
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MECHANICAL:

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M0.0 MECHANICAL COMCHECK
M1.1 FIRST FLOOR CONTROL PLAN
M1.2 SECOND FLOOR CONTROL PLAN
M2.0 MECHANICAL DEMOLITION ROOF PLAN
M2.1 MECHANICAL NEW ROOF PLAN
M3.1 MECHANICAL DETAILS
M4.1 MECHANICAL SCHEDULES
M5.1 MECHANICAL CONTROL SCHEMATICS

ELECTRICAL:

E0.0 ELECTRICAL COVER SHEET
E1.0 ELECTRICAL ROOF PLAN
[Advertisement for Bids]

**Bid Delivery**: Sealed bids will be received by the College of Western Idaho (“CWI”) at the following address until 5:00 PM MT, on July 19, 2022 for its ITB for RTU Replacement & Controls Upgrade. Since CWI staff are working a hybrid schedule all bids are required to be sent by *Overnight FED EX or Overnight UPS Delivery (Tracking Number Required)* to the following address:

College of Western Idaho – Business Office (NADM)
Attn: ITB 01-2022 RTU Replacement & Controls Upgrade
c/o Sue Heathman, Manager II, Contracts & Procurement
6056 Birch Lane
Nampa, ID 83687

All bid procedures are subject to Title 67 Chapter 28 Idaho Code regarding purchasing by political subdivisions.

**Description**: Work for this project can be summarized to include replacement of 20 existing rooftop units and upgrade of RTU controls for the 20 new and the 30 existing RTU’s on the Nampa Micron Education Center (NMEC) located at 5725 E. Franklin Road in Nampa.

**Bid Opening**: Bids will be opened and publicly read on July 20, 2022 at 9:00 AM MT at CWI’s Nampa Administrative Building (NADM) the location noted above.

**Document Location**: Plans, specifications, bid proposal forms and other information are on file for examination at the following website:

[http://cwi.edu/info/procurement-division-contractspurchasing](http://cwi.edu/info/procurement-division-contractspurchasing)

**Bid Bond**: A bid bond in the amount of 5% of the total bid amount, including any add alternates, is required.

**Pre-Bid Conference**: A pre-bid conference will be held at CWI’s NMEC building located at 5725 E. Franklin Road in Nampa on July 7, 2022 starting at 10:00 AM MT. Bidders will meet in the NMEC lobby area and are encouraged to attend.

**Public Works License Requirement**: A Public Works Contractors License for the State of Idaho will be required of the successful bidder prior to performance of the contract.

**Estimated Cost**: $1,508,400.00

[END OF ADVERTISEMENT FOR BIDS]
INSTRUCTIONS TO BIDDERS

INTRODUCTION

The College of Western Idaho ("CWI" or "College" or "Owner") is a public, open-access and comprehensive community college, providing higher education programs to residents of Western Idaho, with facilities currently located in Nampa and Boise, Idaho. CWI is committed to providing affordable access to quality teaching and learning. The College offers a full range of academic and professional-technical courses leading to an Associate of Arts or Science degree, transfer degrees, professional-technical degrees, continuing education, and certificates. It also offers basic academic skills to help prepare for a GED, dual credit for high school students, and fast-track career training for working professionals.

PROJECT DESCRIPTION

This project involves the renovation of the current HVAC system at the CWI Micron Center in Nampa, Idaho for purposes associated directly with mitigation of coronavirus in the educational setting. This project consists of two parts: (1) RTU Replacement and (2) Controls Upgrade which, together, will permit CWI to mitigate virus transmission by increasing air filtration throughout the CWI Micron Center (collectively the “Work”). This building houses many CTE programs: Drafting Technology, Mechatronics, Machine Tool Technology, Transportation Technology, Welding and Metals Fabrication, which require students to work in close proximity to each other on a daily basis.

RTU Replacement. The first part of the project is replacement of twenty (20) existing roof top units (RTUs) on the CWI Micron Center. These replacement RTUs will have the ability to circulate outside air into all classrooms in the building through the feature of powered exhaust. Of the fifty (50) RTUs currently on the roof, these twenty (20) units lack the feature of powered exhaust. Updated RTUs will be able to improve filtration rates and lower circulating rates of airborne pathogens by providing increased air exchange rates with outside air through powered exhaust mechanisms.

Controls Upgrade. The second part of the renovation is a separate installation of automatic controls and sensors within the CWI Micron Center to all existing RTU units. The purpose of the installation of the sensors is to ensure that the RTUs can respond to increased occupancy rates with increased rates of air filtration with outside air, and corresponding decreases in air filtration for low occupancy or empty rooms. These systems are important as the CWI Micron Center houses student classrooms that include enclosed student training areas where students work in close proximity to each other and where increased air filtration would be important to reduce airborne pathogens in the classroom. The placement of these automatic controls chiefly involves the extension of electrical lines from the RTUs to the interior of the CWI Micron Center building.

Contract Period. It is CWI’s intent to contract with the successful bidder until June 15, 2023 or as accepted by the parties.
AUTHORITY

This ITB is issued under Idaho Code 67-2801 et seq., and Idaho Code Section 33-2107(4). All bids submitted in response to this solicitation shall be subject to the State of Idaho procurement law. Both state and federal law prohibits bribes, gratuities, and kick-backs. All responses to this ITB become the property of the College and will be available for public records requests upon completion of the contract negotiation process unless exempt under the law. See Public Records below.

Response to this ITB is voluntary and does not constitute a commitment, implied or otherwise, for CWI to take procurement action in this matter. The College will not be responsible for any costs incurred in furnishing this information. CWI requests that no copyrighted information, or personally identifiable information, be submitted in response to this ITB.

GENERAL PROVISIONS

DEFINITIONS: Capitalized terms used in these Instructions to Bidders (“Instructions”) shall have the meaning given to them in the College of Western Idaho’s (“CWI”) Fixed Price Construction Contract Between Owner and Contractor.

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

RECORDS MAINTENANCE: Contractor shall maintain or supervise the maintenance of all records necessary to properly account for all payments made to the contractor pursuant to the contract. These records shall be retained by the contractor for at least three (3) years after the contract terminates, or until all audits initiated within the three (3) years have been completed, whichever is later.

AUDIT RIGHTS: Contractor agrees to allow CWI personnel access to all the records relating to this contract, for audit, inspection, and monitoring of services or performance. Such access will be during normal business hours or by appointment.

TITLE: Successful contractor warrants that all equipment, materials, supplies, product and other items furnished by Contractor, shall be free and clear of any and all liens, restrictions, reservations, security interests or encumbrances and, further, contractor warrants it is transferring full, clear and unrestricted titles to the same.

ORAL INFORMATION: Questions concerning a bid must be directed in writing to the designated Design Professional (architect or engineer) no less than ten (10) calendar days before bids are due unless provided otherwise via an addendum. Oral information is not binding and any reliance by a bidder on any oral information or representation is at the bidder’s sole risk. Any information given a prospective bidder in response to a written question will be provided to all prospective bidders by an addendum, if such information is necessary for purposes of submitting a bid or if failure to give such information would be prejudicial to uninformed bidders.
PUBLIC RECORDS: The Idaho Public Records Law, Title 74, Chapter 1, Idaho Code, allows the open inspection and copying of public records. Public records include any writing containing information relating to the conduct or administration of the public's business prepared, owned, used or retained by CWI regardless of the physical form or character. Unless exempted by the Public Records Law, your bid will be a public record subject to disclosure under the Public Records Law. Any questions regarding the applicability of the Public Records Law should be addressed to your legal counsel prior to submission. If a bid contains any information that is considered exempt under Idaho Code 74-101 et seq., such information must be clearly marked with the following clause:

“This information is exempt under the Idaho Public Records Act”

Bidder must provide the applicable Idaho code supporting the exemptions. College assumes no liability for disclosure of proprietary material submitted by a bidder. If the exempt status of this information submitted by the bidder is challenged, the information will not be released until the bidder has been notified of the challenge and has been given the opportunity to respond. Bidders agree to defend and hold CWI harmless from and against any disputes arising from their designation of information as exempt and to indemnify CWI for any costs, attorney fees, and penalties incurred by CWI related to any such dispute. Variation of this term is not offered.

A bidder shall not label an entire document as “exempt” merely because a portion of that document is or may be a trade secret. If a bid is marked as “exempt” in its entirety, it will be considered public record in its entirety, and will be disclosed, if requested.

41 CFR 60.4.2 NOTIFICATIONS - Pursuant to 41 CFR 60-4.2 Solicitations for Federally Assisted Construction Projects Solicitations must include the following:

Notice to OFCCP By CWI. CWI will provide notice to OFCCP within 10 working days of awarding this construction contract as required by 41 CFR-4.2(c) utilizing OMB Form CC-314 (OMB Control Number 1250-0001) “Notification of Construction Contract Award in Excess of $10,000” at OFCCP-PA-ConstructionAward@dol.gov.

Notice of Contractor Requirement for Affirmative Action To Ensure Equal Employment Opportunity (Executive Order 11246)

1. Bidder's attention is called to the “Equal Opportunity Clause” and the “Standard Federal Equal Employment Specifications” set forth herein.
2. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor’s aggregate workforce in each trade on all construction work in the covered area, are as follows:

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<tr>
<th>Time-tables</th>
<th>Goals for minority participation for each trade</th>
<th>Goals for female participation in each trade</th>
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<tbody>
<tr>
<td>4.4%</td>
<td>6.9%</td>
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</tbody>
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INSTRUCTIONS TO BIDDERS

ITB - 3

June 2022
These goals are applicable to all the Contractor's construction work (whether or not it is Federal or federally assisted) performed in the covered area. If the contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the contractor also is subject to the goals for both its federally involved and nonfederally involved construction.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR part 60-4. Compliance with the goals will be measured against the total work hours performed.

3. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any construction subcontract in excess of $10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the subcontractor; employer identification number of the subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the subcontract is to be performed.

4. As used in this Notice, and in the contract resulting from this solicitation, the “covered area” is Canyon County, Idaho.

Notice that Bidder (Contractor) is Subject to the Following Equal Opportunity Clause

During the performance of this contract, the contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to 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 to be provided setting forth the provisions of this nondiscrimination clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246.
Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

**FORM OF AGREEMENT:** Unless otherwise specified in the bid documents, the agreement between the successful bidder and Owner shall be the College of Western Idaho Fixed Price Construction Contract Between Owner and Contractor.

**PERFORMANCE AND PAYMENT BONDS:** A performance bond and payment bond are required for this Project, each in an amount of not less than one hundred percent (100%) of the Contract Price. The performance and payment bonds shall be AIA Document A312, 1984 or the most recent Edition, or a standard surety form certified approved to be the same as the AIA A312 form and shall be executed by a surety or sureties reasonably acceptable to the Owner and authorized to do business in the State of Idaho. Bonds must be provided within ten (10) calendar days following receipt of a Notice of Intent to Award.

**SCHEDULE OF EVENTS**

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<th>Event</th>
<th>Date and Time*</th>
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<tr>
<td>Invitation to Bid Issued and Advertised</td>
<td>June 22, 2022 and June 29, 2022</td>
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<tr>
<td>Pre-Bid Conference</td>
<td>July 7, 2022, meet at NMEC Lobby at 10:00 AM MT</td>
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<td></td>
<td>Micron Education Center (NMEC)</td>
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<tr>
<td></td>
<td>5725 E. Franklin Rd, Nampa, ID 83687</td>
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<tr>
<td>Question Period Ends</td>
<td>July 12, 2022 at 5:00 PM MT</td>
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<tr>
<td>Question Responses Posted</td>
<td>July 13, 2022</td>
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<tr>
<td>Bids Due</td>
<td>July 19, 2022 at 5:00 AM MT</td>
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<tr>
<td>Bid Opening Date - Public Opening</td>
<td>July 20, 2022 at 9:00 AM MT</td>
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<td>Evaluation Period</td>
<td>July 20, 2022 – July 22, 2022</td>
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<td>Intent to Award</td>
<td>July 25, 2022</td>
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Tentative Commencement of Contract | August 1, 2022
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*The noted dates and times are tentative and subject to change.*

**BID SUBMISSION**

**LOCATION OF BID DOCUMENTS:** Plans, specifications, bid proposal forms and other information are on file for examination at the following website: [http://cwi.edu/info/procurement-division-contracts/purchasing](http://cwi.edu/info/procurement-division-contracts/purchasing) as provided in the Invitation to Bid.

**BIDDER’S RESPONSIBILITIES:** The responsibility is on the bidder to use a complete set of bid documents to prepare its bid and the Owner shall not incur any liability for the bidder’s failure to do so. Bidders obtain no ownership interest or any use rights, except to use in preparation of their bid, by issuance of the bid documents.

Bidders and Sub-bidders shall field verify all dimensions pertaining to the Work and shall be responsible for the determination of all quantities of materials required for the completion of the Work. The bidder shall not rely on the scale drawings of the Bidding Documents in his determination of required materials quantities. No allowance shall be made for bidder’s failure to field-verify dimensions.

**CONTACT WITH COLLEGE PERSONNEL:** *Questions Prior to Bid Submission.* All bidders submitting questions regarding this ITB prior to bid submission, must email questions to Sue Heathman, Manager II, Contracts & Procurement, at sueheathman@cwi.edu. Write in the subject line of all emails, “Q&A for ITB 01-2022 RTU Replacement & Controls Upgrades”. All questions must be submitted by July 12, 2022 at 5:00 PM MT.

**Question/Answer Document Availability.** Responses to all questions will be posted on CWI’s website noted above on July 13, 2022 or shortly thereafter. No other communication of questions and answers will be made.

**ITB and Subsequent Addenda.** The College reserves the right to modify the Scope and Specifications of this ITB, as circumstances require. The ITB and all subsequent addenda may be found on the CWI website. It will be the responsibility of the bidders to check for these documents.

**BID FORM REQUIREMENTS – CHECK LIST:** Bids must be submitted on the bid proposal forms, or copies of forms, furnished by the Owner. Bids submitted must contain all original signatures on the following forms:

1. Bid Proposal Form;
2. Bidder’s Acknowledgment Statement;
3. Bid Bond; and
4. Bidder must also include 3 references for similar projects completed (see below)
The person signing the Bid Proposal Form must initial any and all changes appearing on any of the bid forms. If the bidder is a corporation or other legal entity, the bid forms must be signed by an authorized designee. Oral, telephonic, telegraphic, facsimile, or other electronically transmitted bid forms and/or signatures will not be considered.

REFERENCES FOR SIMILAR PROJECTS COMPLETED: Bidder must provide references for three (3) projects of similar scope and cost along with its bid forms. Include company name, reference name, email and work/cell phone number.

BID PRICES: The bid form may require bidders to submit bid prices for one (1) or more items on various bases, including lump sum base bid, lump sum bid alternate prices, unit prices, or any combination thereof. Bid amounts shall be expressed in words and numbers. The amount in words shall prevail if there is a discrepancy.

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

TIME FOR SUBMISSION: Bids must be submitted on or before the time specified in the Advertisement for Bids. Any bid submitted late will be rejected.

SEALED ENVELOPE: Bids shall be submitted in a sealed envelope with the following clearly printed on the outside of the envelope: ITB 01-2022 RTU Replacement & Controls Upgrade, bidder’s name and address, and a statement, such as “BID ENCLOSED” to indicate that it is a bid.

BIDS REQUIRED TO BE DELIVERED BY OVERNIGHT FED EX OR OVERNIGHT UPS - BOTH WITH TRACKING: A number of CWI employees are working a hybrid schedule, and CWI does not currently have the ability to receive sealed bids electronically. Therefore, it is requesting that all bids be delivered by overnight FED EX or overnight UPS with a tracking number with the following notation on the outside label of the package “ITB 01-2022 RTU Replacement & Controls Upgrade”. The FED EX or UPS package is to be delivery to the following address:

College of Western Idaho - Business Office (NADM)
Attn: ITB 01-2022 RTU Replacement & Control Upgrade
c/o Sue Heathman, Manager II, Contracts & Procurement
6056 Birch Lane
Nampa, ID 83687

It is the bidder’s responsibility to ensure that its bid is delivered to the place designated for receipt on or before the specified closing time. Owner assumes no responsibility for delays in the delivery of mail by the U.S. Post Office or private couriers. Bidders should be advised the intra-state mail system may increase delivery time from arrival at Central Postal to the place designated for receipt and should plan
INSTRUCTIONS TO BIDDERS

It is hereby declared that all instructions contained herein are incumbent upon the bidder to enter into a contract with the Owner and shall be binding as such.

LATE SUBMISSIONS WILL BE REJECTED, WILL NOT BE OPENED AND WILL BE RETURNED TO THE BIDDER. NO DEVIATIONS WILL BE ALLOWED.

Bidders may email Sue Heathman at sueheathman@cwi.edu to verify CWI’s receipt of their responses. Once sealed bids are received, no other communication with CWI should occur. Any other communication will be considered unofficial and non-binding on CWI.

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

BID OPENING: All bids received by the time and due date will be publicly opened by representatives of the Evaluation Committee on July 20, 2022 at 9:00 AM MT at the CWI Administration Building (NADM) located at 6056 Birch Lane, Suite 200, Nampa, Idaho. At the time of opening, the bidder names and bids will be shared and a list of these names and bids will be made available on CWI’s website.

ILLEGAL ALIENS: Bidder shall warrant that the bidder does not knowingly hire or engage any illegal aliens or persons not authorized to work in the United States; bidder shall take 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 and/or termination of any Contract resulting from this bid.

LEGAL RESIDENCY REQUIREMENT: By submitting a bid, the bidder attests, under penalty of perjury, that he (the bidder) is a United States citizen or legal permanent resident or that it is otherwise lawfully present in the United States pursuant to federal law. Prior to being issued a contract, the bidder will be required to submit proof of lawful presence in the United States in accordance with §67-7903, Idaho Code.

BIDDER’S ACKNOWLEDGEMENT STATEMENT: The attached Bidder’s Acknowledgement Statement must be completed and included or the bid may be found non-responsive.

PUBLIC WORKS CONTRACTOR’S LICENSE: This Project is financed in whole or in part by federal funds. Bids will be accepted from those Contractors only (prime contractors, subcontractors and/or specialty contractors) who, prior to the bid opening, hold current licenses as public works contractors in the State of Idaho.

WAGE RATES: Bids shall be based on applicable wage determinations and labor standards established by the Secretary of Labor, United States Department of Labor. This applies to all subcontractors as well.

NAMING OF SUBCONTRACTORS: Section 67-2310, Idaho Code, requires general (prime) Contractors to include in their bid the name of the subcontractors who shall, in the event the Contractor secures
the Contract, subcontract the plumbing, HVAC, and electrical work under the general (prime) Contract. Failure to name subcontractors as required by this section shall render any bid submitted by a general (prime) Contractor nonresponsive and void. Subcontractors named in accordance with the provisions of this section must possess an appropriate license or certificate of competency issued by the State of Idaho covering the Contractor work classification in which the subcontractor is named.

CWI interprets Section 67-2310, Idaho Code, to mean three (3) separate areas of work: plumbing work, HVAC, and electrical work. The College also requires that the general (prime) Contractor name the entity that will perform the Work, including if the entity is a subcontractor, a sub-subcontractor or the general (prime) Contractor submitting the bid. Failure to complete the Bid Proposal in full shall render a bid nonresponsive and void.

With regard to possessing an appropriate license or certificate of competency, all subcontractors listed by the general (prime) Contractor must have at the time of the bid opening a current license in the appropriate category (class, type and specialty category) as issued by the Public Works Contractors State License Board. In addition, plumbing, HVAC, and electrical subcontractors shall have at the time of the bid opening a valid plumbing contractor’s license, HVAC contractor’s license, or electrical contractor’s license, respectively, as issued by the Idaho Division of Building Safety.

In determining if the above listed subcontractors are required on the Project, the CWI will refer to the plans and specifications. If doubt exists prior to bid closing, potential bidders should contact the College and the Design Professional who prepared the plans and specifications will be requested to make the determination. If plumbing, HVAC or electrical work are not shown on the plans and specifications but are discovered by the bidder prior to the date of bid opening, then the bidder must request clarification from the CWI contact. Absent such clarification, Work will be considered incidental and naming of a subcontractor will not be required.

**BID SECURITY - AMOUNT AND FORM OF SECURITY:** To be considered, bids must be accompanied by an acceptable bid security in an amount not less than five percent (5%) of the total amount of the bid, including additive alternates. The security may be in the form of a bond or a certified or cashier's check. A standard surety bid bond form meeting all the conditions of AIA Document A310 is acceptable and, if used, must include a certified and current copy of the power of attorney if the bond is executed by the attorney-in-fact on behalf of the surety.

**FORFEITURE:** A successful bidder who fails to sign the Contract for the Work or furnish the required bonds within ten (10) calendar days following the receipt of notice of intent to award a Contract is subject to forfeiture in accordance with Section 54-1904E, Idaho Code.

**RETENTION OF SECURITY:** Bid security shall be retained for no more than forty-five (45) calendar days after the opening of bids, so long as the bidder has not been notified of the acceptance of the bid.

**BID WITHDRAWAL - PRIOR TO BID CLOSING:** If a bid has been submitted, it may be withdrawn in person by a bidder’s authorized representative before the opening of the bids. A bidder’s
INSTRUCTIONS TO BIDDERS

BID MODIFICATION - PRIOR TO BID CLOSING: If a bid has been submitted, it may be modified by the submission of a written document contained in a separate sealed envelope marked "Bid Modification from [Name of Bidder] for CWI RTU Replacement & Controls Upgrade. THE DOCUMENT MODIFYING THE BID MUST BE SIGNED IN INK BY AN AUTHORIZED REPRESENTATIVE OF THE SUBMITTING BIDDER. CWI RESERVES THE RIGHT TO REQUIRE PRESENTATION OF EVIDENCE SATISFACTORY TO IT TO ESTABLISH THE AUTHORITY TO ACT ON BEHALF OF THE SUBMITTING BIDDER. NO OTHER FORM OF MODIFICATION (INCLUDING TELEPHONE, FACSIMILE OR ELECTRONIC MAIL) WILL BE ACCEPTED. AFTER BID CLOSING, NO BID MAY BE MODIFIED EXCEPT IN STRICT ACCORDANCE WITH THESE INSTRUCTIONS OR APPLICABLE LAW.

RELIEF FROM BIDS - CONDITIONS FOR RELIEF: Relief from bids is subject to Sections 54-1904B through 54-1904E, Idaho Code. In the event a bidder discovers a mistake in its bid following the bid opening and wishes to withdraw its bid, the bidder shall establish to the satisfaction of the Owner, pursuant to Section 54-1904C, Idaho Code, that a clerical or mathematical mistake was made; the bidder gave the public entity (Owner) written notice within five (5) calendar days after the opening of the bid of the mistake, specifying in the notice in detail how the mistake occurred; and the mistake was material.

Determination of Relief: If the Owner determines that the bidder has satisfied the requirements of Section 54-1904C, Idaho Code, to entitle it to relief from a bid because of a mistake, it shall prepare a report in writing to document the facts establishing the existence of each required element. The report shall be available for inspection as a public record and shall be filed with the public entity soliciting bids. A bidder claiming a mistake and satisfying all the required conditions of Section 54 -1904C, Idaho Code, shall be entitled to relief from the bid and have any bid security returned by the Owner. Bidders not satisfying the conditions of Section 54-1904C, Idaho Code shall be subject to forfeiture in accordance with Section 54-1904B, Idaho Code. A bidder who claims a mistake or who forfeits its bid security shall be prohibited from participating in any re-bidding of that project on which the mistake was claimed or security forfeited and the Owner may award the Contract to the next lowest responsive and responsible bidder.

BIDDER’S REPRESENTATIONS UPON SUBMITTING A BID: By submitting its bid, a bidder represents and warrants the following:

1. The person signing the bid is authorized to bind the bidder;
2. It has all required licenses, permits or other authorizations necessary to submit its bid;
3. It has taken steps necessary to ascertain the nature and location of the Work and has investigated and satisfied itself as to the general and local conditions which can affect the Work or its cost, including but not limited to: (i) conditions bearing upon transportation, disposal, handling and storage of materials; (ii) the availability of labor, water, natural gas, electric power and roads; (iii) uncertainties of weather, river stages or similar physical conditions.
conditions at the site; (iv) the conformation and conditions of the ground; and (v) the character of equipment and facilities needed preliminary to and during the Work;

4. It has satisfied itself as to character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including exploratory work done by the Owner as well as from the drawings and specifications provided as part of the bid package, and that any failure of the bidder to take such actions will not relieve the bidder from responsibility for estimating properly the difficulty and cost of successfully performing the Work;

5. It has received, read, and reviewed the Contract, has submitted any questions in writing regarding the same and has received an answer to such questions;

6. Its bid is based upon the requirements of the Contract without exception;

7. Its bid is in compliance with employment of persons authorized to work in the United States;

8. It will retain bid security and hold and honor all base bid prices for forty-five (45) calendar days from the date of bid opening, and cannot be withdrawn after the bid opening;

9. Its bid prices shown for each item on the bid proposal form include all labor, material, equipment, overhead, and compensation to complete all of the Work for that item; and

10. It has included in its bid amount Idaho sales and/or use taxes on all materials and equipment and all other taxes imposed by law.

BID AWARD METHOD: Public works construction contracts for CWI are awarded to the "lowest responsible and responsive bidder." The low bidder, for purposes of award, shall be the responsible and responsive bidder offering the low aggregate amount for the base bid item, plus any additive or deductive bid alternates selected by the Owner, and within funds available as determined by the Owner. Award is also subject to the requirements of Idaho Code, including without limitation: Title 67, Chapter 28, Title 67, Chapter 23; and Title 54, Chapter 19. It is the bidder’s responsibility to conform to ALL applicable federal, state, and local statutes or other applicable legal requirements. The information provided herein is intended to assist bidders in meeting applicable requirements but is not exhaustive and the Owner will not be responsible for any failure by any bidder to meet applicable requirements.

DETERMINATION OF RESPONSIBILITY: Owner reserves the right to make reasonable inquiry about or from the submitting bidder or from third parties to determine the responsibility of a submitting bidder. Such inquiry may include, but not be limited to, inquiry regarding experience and expertise related to the Project, manpower and other resources, financial stability, credit ratings, references, potential subcontractors, and past performance. The unreasonable failure of a submitting bidder to promptly supply any requested information may result in a finding of non-responsibility.

NOTICE OF EFFECTIVENESS: No Contract is effective until the authorized Owner’s official has signed the Contract and the Notice to Proceed has been issued. The bidder shall not provide any goods or render services until the Contract has been signed by CWI and the Contract has become effective. Furthermore, the Owner is in no way responsible for reimbursing the bidder for goods provided or services rendered prior to the signature of the authorized CWI signature authority and the arrival of the Notice to Proceed.
INSTRUCTIONS TO BIDDERS

INCURRING COSTS: The Owner is not liable for any cost incurred by bidders prior to the Notice to Proceed.

PRIOR ACCEPTANCE OF DEFECTIVE BIDS: The Owner generally will not completely review or analyze bids that appear to fail to comply with the requirements of the bid documents, nor will the Owner generally investigate the references or qualifications of those who submit such bids. Therefore, any acknowledgment that the selection is complete shall not operate as a representation by the Owner that an unsuccessful bid was responsive, complete, sufficient, or lawful in any respect.

POST-AWARD SUBMITTALS: Upon receipt of a Notice of Intent to Award, the apparent low responsive and responsible bidder shall provide documentation required in such Notice. Such Notice of Intent to Award shall generally require the bidder to return to the Owner, within ten (10) days of receipt, a signed Contract, all required bonds, proof of insurance, and documentation required by the Idaho State Tax Commission (report and affidavit).

OWNER’S RIGHT TO REJECT: Prior to execution of the Contract, the Owner or Design Professional shall provide written notice of any reasonable objection to any person or entity proposed by the bidder. Upon receipt of such notice, the bidder may withdraw its bid, without forfeiture, or propose a substitute and identify any change in any bid amount caused by such substitution. The Owner may accept or reject the substitution or the adjusted price. If the Owner rejects the substitution or the adjusted price, it will return the bidder’s bid guarantee.

[END OF INSTRUCTIONS TO BIDDERS]
TO: COLLEGE OF WESTERN IDAHO

To Whom it May Concern:

The bidder, in compliance with CWI’s Invitation for Bids for the construction of CWI RTU Replacement & Controls Upgrade, NMEC Building, having examined the bidding and Contract Documents and the site of the proposed Work, and being familiar with all of the conditions surrounding the construction of the proposed Project, including the availability of materials and labor, hereby proposes to furnish all labor, materials, and supplies and to provide the service and insurance in accordance with the Contract Documents, within the time set forth therein, and at the prices stated below. These prices are to cover all expenses incurred in performing the Work required under the Contract Documents.

Bidder hereby agrees to commence Work under this Contract on a date to be specified in the written "Notice to Proceed" of the Owner and to substantially complete the Project within __________ consecutive calendar days thereafter, as stipulated in the specifications. Bidder further agrees to pay as liquidated damages, the sum of $__________ for each consecutive calendar day after the established substantial completion date or adjusted date as established by change order.

Bidder acknowledges receipt of Addenda No. ______________________.

(List all Addenda)

BASE PROPOSAL: Bidder agrees to perform all of the base proposal Work described in the specifications and shown on the plans for the sum of:

___________________________________________________________ Dollars ($_______________)

(Amount shall be shown in both words and figures. In case of discrepancy, the amount shown in words will govern.)

Bidder understands that the Owner reserves the right to reject any or all bids and to waive any informality in the bidding.

The bidder agrees that this bid shall be good for a period of forty-five (45) calendar days after the scheduled opening time for receiving bids.

Upon receipt of written Notice of Intent to Award of this bid, Bidder will execute the formal Contract within ten (10) calendar days and deliver a Surety Bond or Bonds as required by paragraph “Performance and Payment Bonds” first page (ITB-1) of the Instructions to Bidders.
The bid security in the amount of five percent (5%) of the bid amount is to become the property of the Owner, in the event the Contract and bond are not executed within the time set forth, as liquidated damages for the delay and additional expense to the Owner caused thereby.

The names and addresses of the entities who will perform the Work identified below, subject to approval of Owner and Architect, if Undersigned is awarded the Contract, are as follows:

**Plumbing (PWCL Category 15400)**
(Name) ________________________________________________
(Address) ________________________________________________
Idaho Public Works Contractors License No. ______________________________
Idaho Plumbing Contractors License No. ______________________________

**Heating, Ventilating & Air Conditioning (PWCL Category 15700-HVAC)**
(Name) ________________________________________________
(Address) ________________________________________________
Idaho Public Works Contractors License No. ______________________________
Idaho HVAC Contractors License No. ______________________________

**Electrical (PWCL Category 16000)**
(Name) ________________________________________________
(Address) ________________________________________________
Idaho Public Works Contractors License No. ______________________________
Idaho Electrical Contractors License No. ______________________________

**FAILURE TO NAME A PROPERLY LICENSED SUBCONTRACTOR IN EACH OF THE ABOVE CATEGORIES WILL RENDER THE BID UNRESPONSIVE AND VOID.**

Should the listing of subcontractors change due to selection of alternates or other similar circumstances, attach explanation.

Bidder warrants that bid has been prepared and that any contract resulting from acceptance of this bid is subject to the Fixed Price Construction Contract.
The undersigned notifies that it is of this date duly licensed as an Idaho Public Works Contractor and further that it possesses Idaho Public Works Contractor's License No. __________________________, or that it and its subcontractors shall have secured a Public Works Contractor’s License at or prior to award and execution of the Contract for construction and is domiciled in the State of ________________________.

Dated this ________ day of_____________,_______.

(date) (month) (year)

Respectfully submitted by:

__________________________________________

(Contractor’s Name- Typed)

__________________________________________

(Street or PO Address)

__________________________________________

(City, State and zip code)

__________________________________________

(Authorized Signature)

__________________________________________

(Title)

__________________________________________

(Telephone Number)

__________________________________________

(FAX Number)

__________________________________________

(Email Address)

Have you remembered to include bid security (bid bond or a certified or cashier’s check), and a signed copy of the Bidder’s Acknowledgment Statement with your bid?

[END OF BID PROPOSAL]
BIDDER’S ACKNOWLEDGMENT STATEMENT

NOTE: THE INFORMATION CONTAINED HEREIN IS A SUMMARY OF VITAL CONTRACT PROVISIONS AND DOES NOT CHANGE THE CONTRACT DOCUMENTS THAT WILL GOVERN THIS PROJECT.

College of Western Idaho, RTU Replacement & Controls Upgrade – NMEC Building submitting a bid for this Project, the undersigned bidder agrees that, if awarded the Contract for construction, Contractor will conform to all conditions and requirements of the Contract, including but not limited to:

1. Contractor will substantially complete the Work within the time stated in the Contract Documents, or as modified by Change Order(s).

2. If the Contractor fails to substantially complete the Project within the time stated in the Contract Documents, or as modified by Change Order, the Contractor agrees that the Owner may deduct from the Contract amount liquidated damages in the amount per calendar day, indicated in the Contract Documents, times the number of calendar days until the Project is Substantially Complete, as defined in the Contract Documents and as determined by the Design Professional. Product availability will be taken into consideration.

3. The Contractor agrees that the amount allowed for overhead and profit on any Change Order is limited to the amounts indicated in subparagraph 16.3.11 of the Fixed Price Construction Contract Between Owner and Contractor.

4. Change Orders: For total changes 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

5. Contractor will determine the amount of overhead and profit to be apportioned between the Contractor and its subcontractor of allowable amounts of overhead, profit, bonds and insurance.

6. Contractor agrees that Change Orders are governed by the Fixed Price Construction Contract Between Owner and Contractor General Conditions of the Contract for Construction including as follows:

7. By the execution of a Change Order, 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, the Owner shall not be obligated to make any adjustments to either the Contract Sum or Contract Time by reason of any conditions affecting the change in Work addressed by the Change Order that could have reasonably been discovered or disclosed by the Contractor’s examination.

8. Any Change Order fully executed by the Owner, Contractor, and Design Professional, including but not limited to, a Change Order 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 but not limited to, all direct and consequential costs associated with such change and any and all adjustments to the Contract Price and Contract Time. In the event a Change Order increases the Contract Price, the Contractor shall include the Work covered by such Change Order in the Application for Payment as if such Work was originally part of the Project and Contract Documents.

9. Federal Regulation. Contractor agrees to comply with all applicable state and federal regulations.

FAILURE TO EXECUTE THIS ACKNOWLEDGMENT MAY MAKE YOUR BID NON-RESPONSIVE.

I, _________________________________________________, being duly authorized to bind the (type or print name of individual)

bidder, ___________________________________________, does hereby certify that I have fully read (type or print name of company)

and understand this document and that it highlights certain parts of the Contract that will be entered between the parties and that will govern this Project.

Authorized Signature: _________________________________

Title: _______________________________________________

Date: _______________________________________________

[END OF BIDDER’S ACKNOWLEDGMENT STATEMENT]
COLLEGE OF WESTERN IDAHO
FIXED PRICE CONSTRUCTION CONTRACT
BETWEEN OWNER AND CONTRACTOR

RTU REPLACEMENT & CONTROLS UPGRADE, NMEC BUILDING
Nampa, Idaho
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THIS FIXED PRICE CONSTRUCTION CONTRACT BETWEEN OWNER AND CONTRACTOR (the “Contract”) is by and between the College of Western Idaho (the "Owner") and _____________(the "Contractor") and is for the construction of the project (the “Project”) identified as CWI RTU Replacement & Controls Upgrade, NMEC Building, as more fully described in Exhibit A, and incorporated herein by reference. This Contract shall be effective on _______ (day) of ________ (month), 2022__ (year), when executed by both parties.

In consideration of the mutual promises, covenants, and agreements stated herein, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Owner and the Contractor agree:

ARTICLE 1
CONTRACT DOCUMENTS

1.1 The Contract Documents consist of this Contract, the drawings and specifications for the Project (the “Drawings and Specifications”) identified in Exhibit C and any Addenda thereto issued prior to execution of this Contract, written amendments signed by both the Owner and the Contractor, Change Orders signed by both the Owner and the Contractor, Construction Change Directives and any written orders by the Design Professional for minor changes in the Work (the “Contract Documents”). Documents not included or expressly contemplated in this Article 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 the Owner to execute this Contract and recognizing that the Owner is relying thereon, the Contractor, by executing this Contract, makes the following express representations to the Owner:

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 the Owner and Design Professional 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 Owner 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 the Owner, 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.

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

2.7 Anti-Kickback Compliance. Contractor agrees to comply with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). Contractor is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

2.8 Equal Opportunity Clause. During the performance of this contract, the Contractor agrees as follows:

.1 The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The
contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to 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 to be provided setting forth the provisions of this nondiscrimination clause.

.2 The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

.3 The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

.4 The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

.5 The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

.6 The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

.7 In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with
procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

.8 The Contractor will include Section 2.9 in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

2.9 **Contract Work Hours and Safety Standards Act (40 U.S.C. 3701–3708).** Contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

2.10 **Federal Contract Terms and Conditions.** Contractor is subject to terms and conditions as stated in Exhibit M and Exhibit N, which are incorporated by reference into this Agreement.

**ARTICLE 3**

**INTENT AND INTERPRETATION**

With respect to the intent and interpretation of this Contract, the Owner 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 privity or any other relationship whatsoever between the Owner and any person or entity except the Contractor; provided, however, that the Design Professional is entitled to performance and enforcement of obligations under the Contract intended or necessary to facilitate its duties. Any reference to the Owner, the Contractor or the Design Professional 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 the Owner and the Design Professional 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 the Owner or the Design Professional 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. The Owner has requested that the Design Professional prepare documents for the Project, including the Drawings and Specifications for the Project, which are accurate, adequate, consistent, coordinated and sufficient for construction. HOWEVER, THE OWNER 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 the Owner 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, the Design Professional shall interpret the documents, and the interpretation shall be binding on both the Owner and Contractor; provided, however, that this does not change the Owner's right to make decisions regarding Claims in accordance with Article 13 and Article 14. If no interpretation is provided by the Design Professional, the most stringent requirement in the Contract Documents will apply.
ARTICLE 4
OWNERSHIP OF DOCUMENTS

4.1 Unless otherwise agreed by the Design Professional and its consultants, 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.

The Drawings and Specifications and other documents, and any copies, are to be used solely for this Project, and not on any other project, or additions to this Project outside this Contract, without written consent of the Owner, the Design Professional and the Design Professional’s consultants; provided, however, that copies may be made of applicable portions as necessary for completion of the Work. Such copies shall include any copyright notice on the Drawings and Specifications and other documents.

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 to and approved by the Design Professional 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 in accordance with the "Notice to Proceed" (Exhibit F) issued by the Owner 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 the Owner 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 the Owner estimated at the time of this Contract. When the Owner reasonably believes that Substantial Completion will be inexcusably delayed, the Owner shall be entitled, but not required, to withhold from any amounts otherwise due the Contractor an amount then believed by the Owner 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 the Owner has withheld payment, the Owner shall promptly release to the Contractor those funds withheld, but no longer applicable, as liquidated damages. The Owner’s right to liquidated damages is not, and shall not be deemed to be, an exclusive remedy for delay and the Owner 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 in writing by the Design Professional, the entire Project is at a level of completion in strict compliance with the Contract Documents, such that the Owner or its designee can enjoy beneficial use or occupancy and can use or operate it in all respects for its intended purpose. If, in the reasonable determination of the Owner, receipt of operation and maintenance manuals or completion of training is necessary for such beneficial use or occupancy, then there shall be no Substantial Completion until such manuals are provided or such training is completed. 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.

6.4 Any request by the Contractor for an extension of the Contract Time must be made in accordance with, and is subject to, Article 13 and Article 14 related to Claims.

6.5 The Owner shall have no liability of any kind to the Contractor if a schedule or other document submitted by the Contractor shows an intention to complete the Work prior to the scheduled completion date and for any reason other than Owner caused delay, the Contractor is not able to achieve such early completion.
ARTICLE 7
FIXED PRICE AND CONTRACT PAYMENTS

7.1 The Owner 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. The Fixed Price Contract Amount shall not be modified except as provided in this Contract.

7.2 Prior to approval of the contract, the Contractor shall prepare and present to the Owner and the Design Professional 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 the Owner's web-based construction management software. The Contractor shall not imbalance it's 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 by the Design Professional.

7.3 The Owner 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 include whatever supporting information as may be required by the Design Professional, the Owner, or both. Contractor’s Request for Payment will be paid by Owner Net 30 once received. Payment will be made by the Owner 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 the Owner). The Contractor’s Request for Payment must exclude the total amount of previous payments received from the Owner. Any payment on account of stored materials or equipment will be subject to the Contractor providing written proof that the Owner 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 the Owner 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 the Owner, furnish to the Owner properly executed waivers or releases, in a form acceptable to the Owner, 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 the Owner.

Thereafter, the Design Professional 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. The Design Professional shall approve in writing the amount which, in the opinion of the Design Professional, is properly owing to the Contractor and such approval is required before the Owner shall have any payment obligation. The Design Professional may withhold such approval, in whole or in part, as necessary to protect the Owner 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 The Owner shall make payment to the Contractor no more than twenty-one (21) days following receipt by the Owner of the Design Professional’s written approval of each Contractor’s Request for Payment. The amount of each such payment shall be the amount approved for payment by the Design Professional less such amounts, if any, otherwise owing by the Contractor to the Owner or which the Owner shall have the right to withhold as authorized by this Contract. The Design Professional’s approval of the Contractor’s Request for Payment shall not preclude the Owner from the exercise of any of its rights it may have in this Contract, at law or in equity, 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 DPW Project number and as being the “Property of the State of Idaho;”

.3 The Design Professional and/or the Owner’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 to the Design Professional, 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 the Owner, 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 the Owner becomes informed that the Contractor has not paid a subcontractor, materialmen, laborer or supplier as provided herein, the Owner 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 the Owner, shall create no rights in favor of any person or entity beyond the right of the named payees to payment of the check and shall not be deemed to commit the Owner to repeat the procedure in the future.

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

7.8 The Owner 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 the Owner's opinion, Substantial Completion or final completion, or both, may be inexcusably delayed or that the Owner will incur additional costs or expense related to repeated Substantial Completion or final completion inspections through no fault of the Owner;

.4 The Owner reasonably believes that the Contractor has failed to use Contract funds, previously paid the Contractor by the Owner, 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 the Owner;

.6 The Contractor has caused a loss or damage to the Owner, the Design Professional or another contractor;
.7 The Owner reasonably believes that the Project cannot be completed for the unpaid balance of the Fixed Price Contract Amount or the Owner 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 the Owner; or

.9 The Contractor fails to pay taxes as required by Title 63, Chapter 15, Idaho Code.

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

7.9 If the Owner, without cause, fails to pay the Contractor any amounts due and payable thirty (30) 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 the Owner of the Contractor’s intent to cease the Work ten (10) days prior to stopping the Work under this Paragraph. If any amounts remain unpaid after fifty-one (51) days after the Design Professional approves the Contractor’s Request for Payment under Paragraph 7.4, interest at the rate of four percent (4%) per annum shall accrue on those unpaid amounts.

7.10 When Contractor considers Substantial Completion has been achieved, the Contractor shall notify the Owner and the Design Professional in writing and shall furnish to the Design Professional a listing of those matters yet to be finished. The Design Professional 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 Design Professional will so notify the Owner and Contractor in writing and will therein set forth the date of Substantial Completion. The Owner 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, the Owner 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 the Design Professional for completing all incomplete work, correcting and bringing into conformance all defective and nonconforming work, and handling any outstanding or potential claims. If the Design Professional determines that the Contractor has made or is making satisfactory progress on any uncompleted portions of the Work, the Owner 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 Owner and Design Professional.

7.11 When Contractor considers the Project is at final completion, it shall notify the Owner and the Design Professional thereof in writing. Thereupon, the Design Professional will perform a final inspection of the Project. If the Design Professional confirms that the Project is complete in full accordance with
the Contract Documents and that the Contractor has performed all of its obligations to the Owner, the Design Professional will furnish a final approval for payment to the Owner certifying to the Owner 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 the Design Professional from the date of Substantial Completion, the Contractor may be assessed and be responsible to the Owner 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 the Owner, estimated at or before the time of executing this Contract. When the Owner reasonably believes that final completion will be inexcusably delayed, the Owner may withhold from any amounts otherwise due the Contractor an amount then believed by the Owner 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 the Owner has withheld payment, the Owner shall promptly release to the Contractor those funds withheld, but no longer applicable, as liquidated damages. The Owner’s right to liquidated damages is not, and shall not be deemed to be, an exclusive remedy for delay and the Owner 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 the Owner, in the form and manner required by Owner, and with a copy to the Design Professional of 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 the Owner or the Owner’s property (DPW’s form, Exhibit H);

.3 Contractor’s Affidavit of Debts and Claims (AIA Document G706);

.4 Consent of Surety to final payment (AIA Document G707);

.5 Confirmation of all required training, product warranties, operating manuals, instruction manuals and other record documents, drawings and things customarily required of the Contractor; and


7.14 The Owner shall, subject to its rights set forth in this Contract, make final payment of all sums due the Contractor within thirty (30) days of the Design Professional’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 THE OWNER

8.1 The Executive VP of Operations or his designee shall be the sole representative of CWI. The Design Professional shall have authority to bind Owner only as specifically set forth in this Contract.

8.2 The Owner will assign a Project Manager and a Field Representative to represent the Owner, identified in Exhibit B. The Owner’s Field Representative’s duties, responsibilities and limitations of authority are in accordance with DPW’s policies and procedures.

8.3 The Owner 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 the Owner and for no other purpose. By furnishing such material, the Owner does not represent, warrant or guarantee its accuracy, either in whole in part, implicitly or explicitly.

8.4 The Owner 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 the Owner.

8.5 The Owner 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, from the Design Professional.

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, the Owner 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 the Owner and shall not proceed further until the cause for the Owner's instructions has been corrected, no longer exists or the Owner instructs that the Work may resume. In the event the Owner issues such instructions to stop, and in the further event that the Contractor fails and refuses within seven (7) days of receipt of same to provide adequate assurance to the Owner that the cause of such instructions will be eliminated or corrected, then the Owner shall have the right, but not the obligation, 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 the Owner. 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 the Owner 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 the Owner:

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 the Design Professional and Owner, 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 the Design Professional, the Owner and the Owner'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 the Design Professional and may constitute a claim pursuant to Article 13 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 the Design Professional and Owner, and neither shall be changed except with the consent of the Design Professional and Owner, 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 the Design Professional and Owner. 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 the Owner 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 the Owner and the Design Professional 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 the Owner and to the Design Professional. The schedule must be submitted to and accepted by the Design Professional 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 the Design Professional and/or the Owner 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 the Owner and the Design Professional. 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** 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 the Owner, 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 the Owner and Design Professional 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.

10.13 Once a month, or at intervals as required by the Design Professional, the Contractor shall advise the Owner and the Design Professional 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 the Owner and Design Professional 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.

10.14 If the Work is not progressing through no fault of the Owner or the Design Professional, as shown on the milestone schedule, as determined by the Design Professional, and the Owner and the Design Professional do 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, the Owner, at its discretion, may require the Contractor to work such additional time over regular hours, including Saturdays, Sundays and holidays, without additional cost to the Owner to bring the Work on schedule.

10.15 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 the Owner and the Design Professional 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 Design Professional and shall become the property of the Owner.

10.16 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 Design Professional 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 the Owner 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 the Design Professional 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 the Design Professional shall not be evidence that Work installed pursuant thereto conforms with the requirements of this Contract. The Design Professional 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.

10.17 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.

10.18 At all times relevant to this Contract, the Owner and the Design Professional shall have a right to enter the Project site and the Contractor shall allow the Owner and/or the Design Professional to review or inspect the work without formality or other procedure.

10.19 The presence or duties of the Design Professional’s or the Owner'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, Design Professional's and Owner'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 Design Professional's or Owner's personnel at a construction site is for the purpose of providing to Owner 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.

**ARTICLE 11**

**INDEMNITY**

11.1 The Contractor shall defend, indemnify and hold harmless the Owner, Design Professional, the CWI Board of Trustees, the College of Western Idaho and its 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 the Owner.
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
THE DESIGN PROFESSIONAL

The Design Professional for this Project is identified in Exhibit B, incorporated herein by reference, along with any authorized representatives and any limitations of responsibility. For the purpose of this Contract, the “Design Professional” means the properly licensed architect, properly registered professional engineer or other professional licensed in the State of Idaho who prepared the Drawings and Specifications for this Project. If the employment of the Design Professional is terminated, the Owner may retain a replacement professional and the role of the replacement professional shall be the same as the role of the Design Professional. Unless otherwise directed by the Owner in writing, the Design Professional will perform those duties and discharge those responsibilities allocated to the Design Professional in this Contract. The duties, obligations and responsibilities of the Design Professional shall be for contract administration and include the following:

12.1 Unless otherwise directed by the Owner in writing, the Design Professional shall not act as the Owner’s agent.

12.2 Unless otherwise directed by the Owner in writing, the Owner and the Contractor shall communicate with each other through the Design Professional.

12.3 When requested by the Owner or Contractor in writing, the Design Professional shall within seven (7) days render written interpretations necessary for the proper execution or progress of the Work or shall provide a written explanation as to why more time is needed and provide a date by which it will be provided.

12.4 The Design Professional shall draft proposed change authorization(s).

12.5 The Design Professional shall review and verify compliance or respond otherwise as necessary concerning shop drawings or other submittals received from the Contractor.

12.6 The Design Professional shall be authorized to refuse to accept Work that is defective or otherwise fails to comply with the requirements of this Contract. If the Design Professional deems it appropriate, the Design Professional may, with the Owner’s consent, require extra inspections or testing of the Work for compliance with the requirements of this Contract.
12.7 The Design Professional shall review the Contractor's Request for Payment and shall verify in writing those amounts which, in the opinion of the Design Professional, are properly owing to the Contractor as provided in this Contract.

12.8 The Design Professional shall, upon written request from the Contractor, perform Substantial Completion and final completion inspections contemplated by Article 6.

12.9 The Design Professional may require the Contractor to make changes which do not involve a change in the Fixed Price Contract Amount or in the Contract Time consistent with the intent of this Contract. Such changes shall be given to the Contractor in writing under signature of the Design Professional, with a copy to the Owner, and may be in the form of a supplemental instruction.

12.10 The Design Professional shall review and evaluate Claims and take other actions related to Claims in accordance with Articles 13 and 14.

12.11 The duties, obligations and responsibilities of the Contractor under this Contract shall in no manner whatsoever be changed, altered, discharged, released or satisfied by any duty, obligation or responsibility of the Design Professional. The Contractor is not a third-party beneficiary of any Contract by and between the Owner and the Design Professional. It is expressly acknowledged and agreed that the duties of the Contractor to the Owner are independent of, and are not diminished by, any duties of the Design Professional to the Owner.

ARTICLE 13
CLAIMS

13.1 For purposes of this Contract, a “Claim” means a demand by the Contractor to the Owner, or by the Owner 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 Owner asserts is required or allowed under the Contract Documents and which the Contractor and the Owner have previously discussed and failed to agree upon.

13.2 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 the Owner must be signed by an authorized representative of the Owner;

.3 The Claim by the Contractor must be provided to the Owner and to the Design Professional and the Claim by the Owner must be provided to the Contractor and to the Design Professional;
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;

The Claim must describe in detail all known facts and circumstances that the Contractor or Owner asserts support the Claim;

The Claim must refer to the provision(s) of the Contract Documents that the Contractor or Owner asserts support the Claim;

The Contractor or Owner must provide all documentation or other information to substantiate the Claim; and

The Contractor or Owner 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.

The failure by the Contractor to meet any of the requirements of Paragraph 13.2 shall constitute a complete waiver by the Contractor of any rights arising from or related to the Claim. Similarly, the failure by the Owner to meet any of the requirements of Paragraph 13.2 shall constitute a complete waiver by the Owner of any rights arising from or related to the Claim.

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:

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

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

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:

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 the Owner or the Contract Documents, any costs associated with the failure to complete the Work early or in advance of the date required by the Contract Documents, it being specifically agreed to by the parties that there is no intention to have the Eichleay or other similar formula applicable to this Contract nor shall this Contract be deemed to be subject to any such formula; and
The Owner 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 the Owner shall be limited in the same manner as described in subparagraph 13.5.1.

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

13.7 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 the Owner 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 the Owner with the Contractor’s performance which active interference continues after written notice to the Owner. The Owner’s exercise of any of its rights or remedies under this Contract, including ordering changes in the Work, directing suspension, rescheduling or correction of the Work, do not constitute active interference.

13.8 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 14
RESOLUTION OF CLAIMS

14.1 All Claims made in accordance with Article 13 shall be reviewed and evaluated by the Design Professional. If the Claim is not made in strict accordance with Article 13, it shall be rejected as waived. Any failure by the Design Professional to reject the Claim for failure to meet the requirements of Article 13 is not binding on the Owner and the Owner may reject the Claim for such failure.

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

.1 Make a written request to the Contractor or Owner 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 the Owner, with a copy to the Contractor, that the Owner reject or approve all or part of the Claim and state the reasons for the Design Professional’s recommendation. If the Claim is by the Owner, make a written recommendation to the Contractor, with a copy to the Owner, that the Contractor reject or approve all or part of the Claim and state the reasons for the Design Professional’s recommendation.

14.3 If the Design Professional requests more data from the Contractor or the Owner under subparagraph 14.2.1, the Contractor or Owner shall respond no later than seven (7) days from receipt of such request, and provide additional data, provide a date certain by which additional data will be provided, or state that it will not provide additional data. Upon receipt of data, if any, in accordance with this section, the Design Professional will complete the evaluation of the Claim. Failure to respond at all or failure to provide data by the date specified in the response to the request shall result in the Claim being evaluated based on the information in the Design Professional’s possession.

14.4 In evaluating the Claim, the Design Professional may consult with the Contractor, the Owner or other persons with knowledge or expertise that may assist the Design Professional in its evaluation.

14.5 No later than fourteen (14) days after receipt by the Owner of the Design Professional’s recommendation regarding the Contractor’s Claim, the Owner shall, in writing, notify the Contractor and the Design Professional of its decision regarding the Claim. No later than fourteen (14) days after receipt by the Contractor of the Design Professional’s recommendation regarding the Owner’s Claim, the Contractor shall, in writing, notify the Owner and the Design Professional of its decision regarding the Claim.

14.6 The Owner’s decision regarding the Contractor’s Claim is binding on the Owner and the Contractor but is subject to mediation in accordance with this Contract, and the Contractor’s decision regarding the Owner’s Claim is binding on the Owner and the Contractor but is subject to mediation in accordance with this Contract.

ARTICLE 15
SUBCONTRACTORS

15.1 A document in the form of Exhibit E 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 the Owner. Also upon execution of this Contract by the Contractor, the Contractor shall identify to the Owner and the Design Professional, in writing, those parties intended as subcontractors on the Project not otherwise named in Exhibit E. The Owner shall, in writing, state any objections the Owner 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 the Owner objects. All subcontracts shall afford the Contractor rights against the subcontractor which correspond to those rights afforded to the Owner 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.

15.2 The Contractor conditionally assigns each of its subcontracts related to the Project to the Owner. All subcontracts between the Contractor and the subcontractors shall obligate the subcontractor to such conditional assignment. Upon a Termination by the Owner for cause under Paragraph 20.1, the Owner 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 16
CHANGES IN THE WORK

16.1 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.

16.2 Change Orders

.1 A “Change Order” is a written instrument prepared by the Design Professional and signed by the Owner, Contractor and Design Professional, 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 16.3.4;

.3 The amount allowed for overhead and profit on any Change Order is limited to the amounts indicated in subparagraph 16.3.11;

.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
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, the Owner 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.

16.3 Construction Change Directive (CCD)

1. A “Construction Change Directive” is a written order prepared by the Design Professional and signed by the Owner and Design Professional directing a change in the Work prior to agreement on adjustment, if any, in the Fixed Price Contract Amount or Contract Time or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract, consisting of additions, deletions or other revisions, the 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 the Design Professional's representative, the Owner'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 Design Professional, Owner 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 16.3.7;

5. Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Design Professional 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 the Design Professional 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 16.3.11. In such case of an increase in Fixed Price Contract Amount, and also under subparagraph 16.3.4, the Contractor shall keep and present, in such form as the Design Professional 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 the Owner 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 Design Professional. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change;

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

.10 When the Owner and Contractor agree with the determination by the Design Professional 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 16.2.3 and 16.3.7, the allowance for combined overhead, profit, bonds and insurance shall be limited as follows, unless otherwise provided in the Contract Documents:

.1 For changes, 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

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

16.4 The Design Professional 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 the Owner and Contractor. The Contractor shall carry out such written orders promptly.

ARTICLE 17

DISCOVERING AND CORRECTING DEFECTIVE OR INCOMPLETE WORK

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

17.2 If any of the Work is covered, concealed or obscured in a manner not addressed by Paragraph 17.1, it shall, if directed by the Owner or the Design Professional, be uncovered and displayed for the Owner's or Design Professional'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 the Owner. Otherwise, such costs shall be borne by the Contractor.

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

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

17.5 The Owner 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 the Owner for the acceptance of defective or nonconforming Work, the Contractor shall, upon written demand from the Owner, pay the Owner such remaining compensation for accepting defective or nonconforming work.

ARTICLE 18
TERMINATION BY THE CONTRACTOR

18.1 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.

18.2 In such event, the Contractor shall be entitled to recover from the Owner as though the Owner had terminated the Contractor's performance under this Contract pursuant to Paragraph 20.3.

ARTICLE 19
OWNER'S RIGHT TO SUSPEND CONTRACTOR'S PERFORMANCE

19.1 The Owner 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 the Owner may determine. If the Owner directs any such suspension, the Contractor must immediately comply with same.

19.2 In the event the Owner 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.
19.3 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 the Owner. No adjustment shall be made to the extent:

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

ARTICLE 20
TERMINATION BY THE OWNER

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

20.1 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 the Owner, 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, the Owner 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 15.2; and finish the Work by whatever reasonable method the Owner may deem expedient.

20.2 When the Owner terminates the Contract for cause as provided in Paragraph 20.1, 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, including compensation for the Design Professional’s services and expenses made necessary thereby, exceed the unpaid balance, the Contractor shall pay the difference to the Owner. 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 the Owner for cause pursuant to Paragraph 20.1 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 20.3 and the provisions of Paragraph 20.3 shall apply.

20.3 The Owner may, at any time and for any reason, terminate this Contract. The Owner shall give no less than seven (7) days’ written notice of such Termination to the 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. The Owner may direct the Contractor to assign the Contractor's right, title and interest under termination orders or subcontracts to the Owner or its designee. The Contractor shall transfer title and deliver to the Owner 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 the Owner and the Design Professional specifying the amounts claimed due because of the Termination, together with costs, pricing or other supporting data required by the Owner or the Design Professional. 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, the Owner 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 the Owner do not agree on an amount due to the Contractor, the Owner 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 the Owner;

.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 20.3.

20.4 Costs described in subparagraphs 20.3.3.2 or 20.3.3.3 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 20.3.3 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.
ARTICLE 21
CONTRACTOR’S LIABILITY INSURANCE

21.1 The Contractor shall maintain Builder's All Risk Insurance insuring the construction against loss or damage from insurable perils, including flood and earthquake in an amount equal to the Fixed Price Construction amount. Such insurance shall be in the amount of the full replacement cost of the construction. All such insurance shall include Owner as additional insured and contain a loss payable clause providing for payment of proceeds to Owner. Prior to commencing construction, Contractor shall provide to Owner a certificate of insurance evidencing such insurance.

In addition to the above insurance, 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 ownership, 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 11.

21.2 The insurance required by Paragraph 21.1 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 21.1 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 Comprehensive 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 $2,000,000 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;

Owner 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 the Owner 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 Owner 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 the Owner;

(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 the Owner 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 $4,000,000; 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.

21.3 The Owner shall be named as additional insured or loss payee, as applicable, on the insurance required in subparagraphs 21.2.1.2, 21.2.1.3 and 21.2.1.5 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.' "

21.4 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, College of Western Idaho, with the required endorsements or certificates of insurance from each subcontractor which names the subcontractor, its officials, employees and volunteers as insureds.

21.5 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 the Owner and shall be filed with the Owner prior to commencement of the Work. The Owner 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 22
OWNER'S LIABILITY INSURANCE

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

ARTICLE 23
PROPERTY INSURANCE

23.1 The Owner shall maintain commercial general liability insurance during the term of this Agreement.

23.2 Loss of Use Insurance. The Owner, at the Owner’s option, may purchase and maintain such insurance as will insure the Owner against loss of the Owner’s property due to fire or other hazards, however caused.

23.3 Nothing contained in this Article 23 shall preclude the Contractor from obtaining, solely at its own expense, additional insurance not otherwise required.

ARTICLE 24
PERFORMANCE AND PAYMENT BONDS

24.1 The Contractor shall furnish separate performance and payment bonds to the Owner. Each bond shall set forth a penal sum in an amount not less than the 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 the Owner and authorized to do business in the State of Idaho.

24.2 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.
24.3 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 25
PROJECT RECORDS

25.1 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 the Owner or the Design Professional for inspection and copying upon written request. Furthermore, said documents shall be made available, upon request by the Owner, to any state, federal or other regulatory authority and any such authority may review, inspect and copy such records. Said records include all drawings, plans, specifications, submittals, correspondence, minutes, memoranda, tape recordings, videos or other writings or things which document the Project, its design and its construction. Said records expressly include those documents reflecting the cost of construction to the 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 26
MISCELLANEOUS PROVISIONS

26.1 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, unless otherwise mutually agreed by the parties.

26.2 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 the Owner, 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.

26.3 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.

26.4 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 D).

26.5 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)

26.7 As between the Owner 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.

26.8 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.

26.9 The Contractor shall not knowingly hire or engage any illegal aliens or persons not authorized to work in the United States and take 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 27
EQUAL OPPORTUNITY

The Contractor shall maintain policies of employment as follows:

27.1 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 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.

27.2 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 28
SUCCESSORS AND ASSIGNS

28.1 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 the Owner. If Contractor attempts to make assignment without consent of Owner, Contractor shall remain legally responsible for all obligations under this Contract.

ARTICLE 29
SEVERABILITY

29.1 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 30
MEDIATION

30.1 Contractor Claims for additional cost or time are subject to Article 13, 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.
30.2 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.

30.3 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 the Owner related to the Contract, including a dispute over the Owner’s decision regarding a Claim, shall be subject to mediation as follows:

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

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

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

30.4 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 31
WAIVER OF CONSEQUENTIAL DAMAGES

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

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

.2 Damages incurred by the 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.

31.2 This mutual waiver is applicable, without limitation, to all consequential damages due to either party’s termination in accordance with Articles 18 and 20. 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.
SIGNATURES

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

OWNER: College of Western Idaho

__________________________________________
Date Executed
By: ________________________________
Name:
Title:

__________________________________________
Date Executed
By: ________________________________
Name:
Title:

CONTRACTOR:

__________________________________________
(Contractor’s Name- Typed)

__________________________________________
Date Executed
By: ________________________________
Name:
Title:
EXHIBIT A

OWNER’S PROJECT IDENTIFICATION INFORMATION:

CWI RTU Replacement & Controls Upgrade
NMEC Building
Nampa, Idaho

General Project Description: This project includes replacement of 20 existing rooftop units and upgrade of RTU controls for the 20 new and the 30 existing RTU’s on the Nampa Micron Education Center (NMEC) located at 5725 E. Franklin Road in Nampa.

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

Addendum No. _____ Dated ___________
Addendum No. _____ Dated ___________
Addendum No. _____ Dated ___________

FIXED PRICE CONTRACT AMOUNT AND ACCEPTED ALTERNATES:

Base Bid Amount: $0.00
Alternate No. __ (________________________) add $0.00
Alternate No. __ (________________________) add $0.00
Alternate No. __ (________________________) add $0.00
Total Fixed Price Contract Amount (________________________) Dollars $0.00

Contractor’s Requests for Payment are to be submitted for Work accomplished through the ___ day of each month as described in Paragraph 7.3.

TIME FOR PERFORMANCE AND LIQUIDATED DAMAGES:

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

B. The Contractor shall accomplish Substantial Completion as defined in Article 6 of the Contract within _________ (____) consecutive calendar days from the date authorized to proceed in the Notice to Proceed.

C. The amount of liquidated damages per day for each and every day of unexcused delay as outlined in Article 6 on the Contract is: _______________________________ Dollars ($____ _____)
DRAWINGS AND SPECIFICATIONS

The Owner shall furnish the Contractor 4 sets of Drawings and Project Manuals.

SPECIAL CONDITIONS

A. In Article 23 and all Paragraphs only, all references to “Owner” shall College of Western Idaho.
EXHIBIT B

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

OWNER: College of Western Idaho
Willow Building A
Nampa, ID, 83653
Aaron Whitman

Project Manager: Brian Dunaway
Telephone: (208) 562-3138
E-mail: briandunaway@cwi.edu
May sign for Owner: Yes [ X ] No [    ]

CONTRACTOR: ___________________________ (company name)
______________________________ (address)
______________________________ (city, state, zip)
______________________________ (telephone and FAX)
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
DESIGN PROFESSIONAL:
Musgrove Engineering
234 S. Whisperwood Way
Boise, Idaho 83709
(208) 384-0585

Professional’s Project Manager: Todd Nelson, P.E.
toddn@musgrovepa.com
**EXHIBIT C**

**LIST OF DRAWINGS AND SPECIFICATIONS:**
- 220420 CWI Rooftop Upgrade MEP Plans_DBS Approved (SEPARATE DOCUMENT)
- 220420 CWI Rooftop Upgrade MEPSpecs_DBS Approved (SEPARATE DOCUMENT)

**DIVISION 1 - GENERAL REQUIREMENTS**

<table>
<thead>
<tr>
<th>SECTION</th>
<th>SUMMARY</th>
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<tbody>
<tr>
<td>011000</td>
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<tr>
<td>012500</td>
<td>SUBSTITUTION PROCEDURES</td>
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<td>012600</td>
<td>CONTRACT MODIFICATION PROCEDURES</td>
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<td>012900</td>
<td>PAYMENT PROCEDURES</td>
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<td>013100</td>
<td>PROJECT MANAGEMENT AND COORDINATION</td>
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<td>SUBMITTAL PROCEDURES</td>
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<td>CLOSEOUT SUBMITTALS</td>
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<td>017839</td>
<td>PROJECT RECORD DOCUMENTS</td>
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**DIVISION 22 – PLUMBING**

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**DIVISION 23 – HEATING, VENTILATING, AND AIR CONDITIONING**

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<th>SECTION</th>
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<td>MECHANICAL START-UP</td>
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<td>230593</td>
<td>TESTING, ADJUSTING, AND BALANCING FOR HVAC</td>
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<tr>
<td>230800</td>
<td>COMMISSIONING OF HVAC</td>
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<tr>
<td>230900</td>
<td>DIRECT DIGITAL CONTROL SYSTEM</td>
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**DIVISION 26 – ELECTRICAL**

<table>
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<tr>
<th>SECTION</th>
<th>ELECTRICAL GENERAL PROVISIONS</th>
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<tr>
<td>260519</td>
<td>CONDUCTORS AND CABLES</td>
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SECTION 260526 GROUNDING
SECTION 260533 RACEWAYS AND BOXES
SECTION 262813 FUSES
SECTION 262815 DISCONNECT SWITCHES

LIST OF DRAWINGS: 220420 CWI Rooftop Upgrade MEP Plans_DBŞ Approved (SEE ABOVE)

MECHANICAL:

M0.0 MECHANICAL COVER SHEET
M0.0 MECHANICAL COMCHECK
M1.1 FIRST FLOOR CONTROL PLAN
M1.2 SECOND FLOOR CONTROL PLAN
M2.0 MECHANICAL DEMOLITION ROOF PLAN
M2.1 MECHANICAL NEW ROOF PLAN
M3.1 MECHANICAL DETAILS
M4.1 MECHANICAL SCHEDULES
M5.1 MECHANICAL CONTROL SCHEMATICS

ELECTRICAL:

E0.0 ELECTRICAL COVER SHEET
E1.0 ELECTRICAL ROOF PLAN
EXHIBIT D

CONTRACTOR’S AFFIDAVIT CONCERNING TAXES

STATE OF ___________________)  
COUNTY OF _________________)

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

________________________________________
Name of Contractor

________________________________________
Address

________________________________________
City and State

By:

________________________________________
(Signature)

Subscribed and sworn to before me this _________________ day of _________________, ______.

________________________________________
NOTARY PUBLIC  
Residing at: ____________________________  
Commission expires: ___________________
EXHIBIT E

NAMED SUBCONTRACTORS:

Pursuant to Section 67-2310, Idaho Code, commonly known as the naming law, the names and addresses of the entities who will perform the plumbing, heating and air conditioning and electrical work were named in the bid and are as follows:

Plumbing (PWCL Category 15400)
(Name) __________________________________________________________
(Address) ______________________________________________________

Idaho Public Works Contractors License No. __________________________
Idaho Plumbing Contractors License No. ____________________________

Heating Ventilating & Air Conditioning (PWCL Category 15700-HVAC)
(Name) __________________________________________________________
(Address) ______________________________________________________

Idaho Public Works Contractors License No. __________________________
Idaho HVAC Contractors License No. ________________________________

Electrical (PWCL Category 1600)
(Name) __________________________________________________________
(Address) ______________________________________________________

Idaho Public Works Contractors License No. __________________________
Idaho Electrical Contractors License No. ____________________________
NOTICE TO PROCEED

TO CONTRACTOR:

CONTRACT DATE: ARCHITECT:

CONTRACT AMOUNT: $ DATE OF ISSUANCE: OWNER: College of Western Idaho

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

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

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

Your payment estimates must be submitted on College of Western Idaho forms included herein. We will be most happy to assist you in preparing the payment estimate forms.

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

Sincerely,

PAT DONALDSON
ADMINISTRATOR

PD:pb

DISTRIBUTION: Tax Commission
Division of Building Safety
Risk Management (w/ Builder’s Risk Application, if applicable)
(Project Manager)
Fiscal Office TAX ID xx-xxxxxxx
Date: ________________________________

**PART I -- AWARDING AGENCY INFORMATION:**

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<thead>
<tr>
<th>Name of agency</th>
<th>Mailing address</th>
<th>City, state, and ZIP Code</th>
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<tbody>
<tr>
<td>Contact name</td>
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**PART II -- CONTRACTOR INFORMATION:**

<table>
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<th>Name of contractor</th>
<th>Mailing address</th>
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**PART III -- CONSTRUCTION/CONTRACT MANAGER INFORMATION (if applicable):**

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<td>Phone number</td>
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<tr>
<td></td>
<td></td>
<td>Email address</td>
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Send a copy of the approved Tax Release to: Awarding Agency [ ] Contractor [ ] Construction Manager [ ]

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

**PART IV -- PROJECT INFORMATION:**

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<tr>
<th>Name of project</th>
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<tr>
<td>Description of project</td>
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<table>
<thead>
<tr>
<th>Project number assigned by awarding agency</th>
<th>Project start date</th>
<th>Project completion date</th>
<th>Final/closing contract amount (includes all change orders)</th>
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</thead>
</table>

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

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

<table>
<thead>
<tr>
<th>List Materials</th>
<th>List Dollar Values of Materials</th>
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</thead>
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Send to: Contract Desk/Sales Tax Audit
Idaho State Tax Commission PO Box 36
Boise ID 83722-0410
Phone: (208) 334-7618 • Fax: (208) 332-6619 • Email: contractdesk@tax.idaho.gov

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

RELEASE OF CLAIMS

(TO BE COMPLETED FOR FINAL PAYMENT)

I, ____________________________, do hereby release the College of Western Idaho from any and all claims of any character whatsoever arising under and by virtue of contract number ___ _______________ Dated _________________ as amended, except as herein stated.

Dated _____________________ Contractor ________________________________
EXHIBIT J

CONDITIONS PRECEDENT TO FINAL PAYMENT

Date: ____________________________
CWI RTU Replacement & Controls Upgrade, NMEC Building. ___________________________
Project Title:_______________________________
Location:__________________________________

Send to: Copy to: Design Professional
College of Western Idaho ____________________________

Contractor’s Responsibilities:

Per Paragraph 7:13 of the Fixed Price Contract: As a condition precedent to final payment, the Contractor must furnish the owner, in the form and manner required by Owner, to be submitted to the Design Professional for approval, the following:

☐ Contractor’s Final Request for Payment Form submitted to the CWI Project Manager;
☐ Release of Claims form has submitted to the CWI Project Manager (DPW’s form, Exhibit H);
☐ Contractor’s Affidavit of Payment of Debts and Claims Form has been submitted to the CWI Project Manager (AIA 706);
☐ Consent of Surety to Final Payment has been submitted to the CWI Project Manager (AIA G707);
☐ Confirmation of all required training, product warranties, operating manuals, instruction manuals and other record documents, drawings and items customarily required of the Contractor has been submitted to the CWI Project Manager.
☐ Public Works Contract Tax Release from the Idaho Tax Commission has been submitted to the CWI Project Manager;
☐ Division of Building Safety Letter of Completion/Final Inspection has been submitted to the CWI Project Manager (as required);
☐ Project Finalization and Start Up has been submitted to the CWI Project Manager (as required, Exhibit L);

__________________________________________
Contractor’s Signature       Date

Design Professional’s Approval for Payment:

__________________________________________
Design Professional’s Name
☐ All Documents Required per Paragraph 7.13 of the Fixed Price Contract have been submitted to the CWI Project Manager.

☐ All Warranties, Guarantees, etc. have been received, approved and has been submitted to the CWI Project Manager.

☐ Contractor’s As-Built Drawings, have been received, reviewed, approved and submitted to the CWI Project Manager.

☐ Final punch list with AE’s verification that all items have been completed, has been submitted to the CWI Project Manager.

☐ Record Drawings have been completed by AE. All required copies of the Record Documents and electronic media have been submitted to the CWI Project Manager. DWG files should be bound in zip folder, or “e-transmit” folder, containing all drawing files with relevant dependencies (i.e. x-refs, images, title blocks, and pen settings). **Record Drawings are a requirement for the AE’s final payment; not the Contractor’s.**

To the best of my knowledge, information, and belief, and on the basis of my observations and inspections, I certify the Work has been completed in accordance with the terms and conditions of the Contract Documents and that the required documentation required by Paragraph 7.13 of the fixed priced contract has been received. The entire balance, as shown on the attached Final Request for Payment, is due and payable.

__________________________________________
Design Professional’s Signature                      Date
Upon completion of the equipment and systems installation and connections, Contractor shall assemble all equipment factory representative and subcontractors together for system start-up.

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

“I, the Contractor, associated factory representative and subcontractors, have started each system and the total system; and have proven their normal operation to CWI’s representative(s) and maintenance/operation personnel and have instructed him/them in the operation and maintenance thereof.”

_________________________________________  __________________________________________
CWI’s Representative                                      Contractor

_________________________________________  __________________________________________
Signature                                                  Signature

____________________  ______________________
Date                                                        Date
Contractor is subject to the following term and conditions as are applicable:

(A) Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

(B) All contracts in excess of $10,000 must address termination for cause and for convenience by CWI including the manner by which it will be effected and the basis for settlement. All contracts in excess of $10,000 may be terminated if an award no longer effectuates the program goals or agency priorities.


(D) Davis-Bacon Act, as amended (40 U.S.C. 3141–3148). When required by Federal program legislation, all prime construction contracts in excess of $2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141–3144, and 3146–3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti- Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the
compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701–3708). Where applicable, all contracts awarded by the non-Federal entity in excess of $100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

(G) Clean Air Act (42 U.S.C. 7401–7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251–1387), as amended—Contracts and subgrants of amounts in excess of $150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401–7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251–1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(H) Debarment and Suspension (Executive Orders 12549 and 12689) - A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

(I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award of $100,000 or more must file the required certification. Each tier certifies to the tier above that

(J) See § 200.323.

A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired during the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

(K) See § 200.216.

§ 200.216 Prohibition on certain telecommunications and video surveillance services or equipment.
(a) Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:
(1) Procure or obtain;
(2) Extend or renew a contract to procure or obtain; or
(3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
(i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
(ii) Telecommunications or video surveillance services provided by such entities or using such equipment.
(iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence
or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

(b) In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

(c) See Public Law 115-232, section 889 for additional information.

(d) See also § 200.471.

(L) See § 200.322.

§ 200.322 Domestic preferences for procurements.

(a) As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.

(b) For purposes of this section:

(1) “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(2) “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.
EXHIBIT N

STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY
CONSTRUCTION CONTRACT SPECIFICATIONS (EXECUTIVE ORDER 11246)

(Executive Order 11246)

1. As used in these specifications:

   a. “Covered area” means the geographical area described in the solicitation from which this
      contract resulted;

   b. “Director” means Director, Office of Federal Contract Compliance Programs, United States
      Department of Labor, or any person to whom the Director delegates authority;

   c. “Employer identification number” means the Federal Social Security number used on the
      Employer’s Quarterly Federal Tax Return, U.S. Treasury Department Form 941.

   d. “Minority” includes:

      (i) Black (all persons having origins in any of the Black African racial groups not of Hispanic
          origin);

      (ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other
           Spanish Culture or origin, regardless of race);

      (iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the
            Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and

      (iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples
           of North America and maintaining identifiable tribal affiliations through membership and
           participation or community identification).

2. Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the
   work involving any construction trade, it shall physically include in each subcontract in excess
   of $10,000 the provisions of these specifications and the Notice which contains the applicable
   goals for minority and female participation and which is set forth in the solicitations from
   which this contract resulted.

3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved
   by the U.S. Department of Labor in the covered area either individually or through an
   association, its affirmative action obligations on all work in the Plan area (including goals and
   timetables) shall be in accordance with that Plan for those trades which have unions
participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor’s or Subcontractor’s failure to take good faith efforts to achieve the Plan goals and timetables.

4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7 a through p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered Construction contractors performing construction work in geographical areas where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.

6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

   a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site
supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.

d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7b above.

f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.

i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's work force.

k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR part 60-3.

l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.

n. Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which
the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these Specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).

10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, sexual orientation, gender identity, or national origin.

11. The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.

14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction
trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).
EXHIBIT O

DAVIS BACON WAGE DETERMINATIONS

[SEE FOLLOWING DOCUMENTATION]
State: Idaho

Construction Type: Building

County: Canyon County in Idaho.

Note: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658. Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60).

<table>
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<th>If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022:</th>
<th>Executive Order 14026 generally applies to the contract. The contractor must pay all covered workers at least $15.00 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2022.</th>
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<th>If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022:</th>
<th>Executive Order 13658 generally applies to the contract. The contractor must pay all covered workers at least $11.25 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on that contract in 2022.</th>
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The applicable Executive Order minimum wage rate will be adjusted annually. If this contract is covered by one of the Executive Orders and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must still submit a conformance request.

Additional information on contractor requirements and worker protections under the Executive Orders is available at https://www.dol.gov/agencies/whd/government-contracts.

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<td>IRONWORKER, STRUCTURAL</td>
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<tr>
<td>LABORER: Mason Tender (Cement/Concrete &amp; Brick)</td>
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<td>PLUMBER (Excludes HVAC Unit Installation)</td>
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<tr>
<td>SPRINKLER FITTER (Fire Sprinklers)</td>
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<tr>
<td>SHEET METAL WORKER (Excludes HVAC Duct Installation)</td>
<td>$ 29.69</td>
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<tr>
<td>CARPENTER (Form Work Only)</td>
<td>$ 27.27</td>
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<tr>
<td>CARPENTER, Includes Acoustical Ceiling Installation, and Drywall Hanging (Excludes Form Work)</td>
<td>$ 17.12</td>
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CEMENT MASON/CONCRETE FINISHER...$ 21.01  5.02
DRYWALL FINISHER/TAPER............$ 16.34  2.07
GLAZIER.................................$ 18.31  2.02
INSULATOR - MECHANICAL
(Duct, Pipe & Mechanical System Insulation)..............$ 17.10  1.80
IRONWORKER, REINFORCING............$ 24.74  14.82
LABORER: Asbestos Abatement (Removal from Floors, Walls, & Ceilings)....................$ 15.94  0.71
LABORER: Carpenter Tender.......$ 9.00 **  0.00
LABORER: Common or General.....$ 16.50  0.00
LABORER: Demolition...............$ 13.60 **  0.00
OPERATOR: Backhoe/Excavator.....$ 18.60  2.26
OPERATOR: Bobcat/Skid Steer/Skid Loader.............$ 17.36  0.00
OPERATOR: Bulldozer...............$ 24.52  7.87
OPERATOR: Forklift.................$ 18.27  1.10
OPERATOR: Loader (Front End)...$ 21.27  5.54
PAINTER: Brush, Roller and Spray........................$ 13.68 **  0.00
PLUMBER (HVAC Unit Installation)................$ 22.07  0.00
ROOFER.................................$ 23.00  8.96
SHEET METAL WORKER (HVAC Duct Installation Only)........$ 18.00  1.79
TRUCK DRIVER: Dump Truck.......$ 14.08 **  0.00

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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** Workers in this classification may be entitled to a higher minimum wage under Executive Order 14026 ($15.00) or 13658 ($11.25). Please see the Note at the top of the wage determination for more information.

Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their
own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at https://www.dol.gov/agencies/whd/government-contracts.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CRF 5.5 (a) (1) (ii)).

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of "identifiers" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than "SU" or "UAVG" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

Survey Rate Identifiers

Classifications listed under the "SU" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.
Survey wage rates are not updated and remain in effect until a new survey is conducted.

Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

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WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

* an existing published wage determination
* a survey underlying a wage determination
* a Wage and Hour Division letter setting forth a position on a wage determination matter
* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour National Office because National Office has responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

    Branch of Construction Wage Determinations
    Wage and Hour Division
    U.S. Department of Labor
    200 Constitution Avenue, N.W.
    Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

    Wage and Hour Administrator
    U.S. Department of Labor
    200 Constitution Avenue, N.W.
    Washington, DC 20210

The request should be accompanied by a full statement of the interested party’s position and by any information (wage
payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

    Administrative Review Board
    U.S. Department of Labor
    200 Constitution Avenue, N.W.
    Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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    END OF GENERAL DECISION