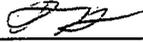


AGENDA ITEM SUMMARY

DATE: 10/18/10 DEPARTMENT: PW - Parks DEPT. HEAD SIGNATURE: 

**SUBJECT:** Motion to approve the award of the Phase 1 contracts for the Rodeo Grounds construction for Bleachers, Excavation, Concrete Foundations, Structural Steel and CMU Masonry, issue Notices of Award, Notices to Proceed and authorize the Mayor to sign the contracts.

**AUTHORITY:**  ID Code \_\_\_\_\_  IAR \_\_\_\_\_  City Ordinance/Code \_\_\_\_\_  
(IF APPLICABLE)

**BACKGROUND/SUMMARY OF ALTERNATIVES CONSIDERED:**

The attached spreadsheet shows the apparent low bidders for this work. Kreizenbeck will be verifying the bids as responsive and will present at the council meeting their recommendations. A copy of the standard contract is attached for your information. The city attorney has reviewed the contract and some changes will be made that were addressed in the addenda for these bids. Either I or Dave Maloney of Kreizenbeck will be able to address any questions at the meeting.

**FISCAL IMPACT / PROJECT FINANCIAL ANALYSIS:** Caselle # \_\_\_\_\_  
Budget Line Item # \_\_\_\_\_ YTD Line Item Balance \$ \_\_\_\_\_  
Estimated Hours Spent to Date: \_\_\_\_\_ Estimated Completion Date: \_\_\_\_\_  
Staff Contact: Tom Hellen Phone # 788-9830 Ext 14  
Comments:

**ACKNOWLEDGEMENT BY OTHER AFFECTED CITY DEPARTMENTS:** (IF APPLICABLE)  
\_\_\_\_ City Attorney      \_\_\_\_ Clerk / Finance Director      \_\_\_\_ Engineer      \_\_\_\_ Building  
\_\_\_\_ Library      \_\_\_\_ Planning      \_\_\_\_ Fire Dept.      \_\_\_\_\_  
\_\_\_\_ Safety Committee      \_\_\_\_ P & Z Commission      \_\_\_\_ Police      \_\_\_\_\_  
\_\_\_\_ Streets      \_\_\_\_ Public Works, Parks      \_\_\_\_ Mayor      \_\_\_\_\_

**RECOMMENDATION FROM APPLICABLE DEPARTMENT HEAD:**

**ADMINISTRATIVE COMMENTS/APPROVAL:**

City Administrator \_\_\_\_\_ Dept. Head Attend Meeting (circle one) Yes No

**ACTION OF THE CITY COUNCIL:**

Date \_\_\_\_\_

City Clerk \_\_\_\_\_

<b>Contract</b>	<b>Apparent Low Bidder</b>	<b>Bid Amount</b>
Bleachers	CBS Constructors	\$498,000
Excavation	Extreme Excavation	\$25,000
Concrete Foundations	Petra, Inc.	\$110,000
Structural Steel	Outland Steel	\$42,070
CMU Masonry	Gallegoes Corp	\$102,500

## **AGREEMENT FORM**

AIA Document A101/CMa, 1992 Edition, Standard Form of Agreement between Owner and Contractor will be used as the agreement for this project. Copies of AIA Document A101/CMa are available for review at the offices of the Construction Manager and Architect. Copies of the document may be purchased from the American Institute of Architects or its local distributors.

This document supplements, modifies, changes, and adds to the STANDARD FORM OF AGREEMENT BETWEEN OWNER AND CONTRACTOR where the basis of payment is a STIPULATED SUM, AIA Document A101/CMa (1992 Edition) for the Project entitled RODEO ARENA MULTI-USE FACILITY. The Articles and Paragraphs set forth in these Supplementary Conditions correspond to the Articles and Paragraphs in the Standard form of Agreement between Owner and Contractor. Where any Article, Paragraph, Subparagraph or Clause of the General Conditions is modified or deleted by these Supplementary Conditions, the unaltered provisions of the Article, Paragraph, Subparagraph or Clause remain in effect.

**ARTICLE 1** Modify the second sentence to read: "The Contract, together with the performance bond and payment bond, if any, represent the entire and integrated agreement between the parties hereto and supersede prior negotiations, representations or agreements, either written or oral."

### **ARTICLE 3: DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION**

- 3.1 Date of Commencement will be fixed by issuance of a "Notice to Proceed".
- 3.2 Following the only sentence, insert: "In the event the Contractor, without excuse, fails to achieve Substantial Completion within the Contract Time, the Contractor shall pay to the Owner as liquidated damages, and not as a penalty, the sum of One Thousand Dollars (\$1,000.00) or ¼% of the Contract Value (whichever is greater) for each and every calendar day following the end of the Contract Time until Substantial Completion is achieved; provided that the Contractor shall not be liable for liquidated damages for a day, or days of the excusable delay occurring during such period following the end of the Contract Time."

### **ARTICLE 5: PROGRESS PAYMENTS**

- 5.1 Insert "properly" preceding "submitted by the Contractor to the Construction Manager".
- 5.3 Thirty (30) days will be allowed for payments by the Owner. Applications must be submitted by the 25<sup>th</sup> of the month to be considered for payment in the normal monthly cycle. Late applications will be processed in the next monthly billing cycle. Insert "properly" preceding "submitted to the Construction Manager".

5.4 In the first sentence, insert "and approved in writing by the Construction Manager and Architect" following "submitted by the Contractor".

In the second sentence, delete "as the Construction Manager or Architect may require" and insert in lieu thereof "as the Construction Manager and Architect may require".

In the third sentence, delete "unless objected to" and insert in lieu thereof "when, and only when, approved in writing by the Construction Manager and Architect".

5.5 Delete "indicate" and insert in lieu thereof "set forth".

5.6 Retainage will be five percent (5%) for Work completed and material suitably stored.

5.6.1 In the first sentence, insert "approved" immediately preceding "schedule of values". In the last sentence, delete the semicolon at the end and insert in lieu thereof ", as modified;"

5.6.2 Insert "in writing" immediately following "if approved".

5.6.3 Delete "and".

5.6.4 Delete the period at the end thereof and insert in lieu thereof ", as modified; and".

5.6.5 Insert a new Clause 5.6.5 which shall read "Subtract amounts, if any, being withheld by the Owner or Construction Manager as provided in the Contract Documents."

5.7.1 Delete "incomplete Work" and insert "incomplete or defective Work, or both".

5.7.2 Delete the period at the end thereof and insert in lieu thereof ", as modified."

5.8 No reduction in retainage will be allowed prior to final completion without written approval of the Owner.

5.9 A condition will be included forbidding more retainage from a contractor or supplier than retained from their portion of the Work.

**ARTICLE 6** Insert "as modified," following "General Conditions,".

Insert "(1) the Contractor has fully performed the Contract and (2)" immediately following "30 days after".

#### **7.4 RESOLUTION OF CLAIMS AND DISPUTES -- MEDIATION.**

Disputes arising between the Owner, Architect, Construction Manager, Contractor, Subcontractor or Supplier, under the Contract Documents, this Agreement or relating to or arising from the Project shall be mediated as follows:

#### **7.4.1 APPOINTMENT.**

At the time of execution of the Contract Documents, Owner, Construction Manager, Architect and Contractor shall mutually select a mediator ("Mediator").

#### **7.4.2 REFERRAL OF DISPUTE.**

If the Owner, Construction Manager, Architect or Contractor, with or without the informal assistance of the Mediator, are unable to resolve any dispute, either party may refer the dispute to the Mediator, in writing, for resolution pursuant to the methods and procedures then in effect. The Architect consents to joinder to any mediation involving the Owner, the Contractor consents to joinder to any mediation involving the Owner, and the Construction Manager consents to joinder to any mediation involving the Owner.

#### **7.4.3 ADMINISTRATIVE SESSION.**

Upon the reference of a dispute by any party, the Mediator shall conduct an initial administrative conference with the parties to establish a plan of action for the review and analysis of the dispute and the agenda and schedule for undertaking the process.

#### **7.4.4 DISPUTE RESOLUTION SERVICES.**

The services to be performed by the Mediator, depending upon the nature of the dispute, shall generally include (i) identification, receipt and organization of relevant documentation; (ii) preliminary issue identification, review and evaluation; (iii) interviews with Project personnel and other necessary individuals who are knowledgeable about the problem and issues in dispute; (iv) joint meetings with the Owner, Construction Manager, Architect and/or Contractor to present key issues; (v) additional document acquisition, interviews, preliminary issue evaluation; (vi) meeting with the Owner, Architect, Construction Manager, and/or Contractor to present a draft report of the Mediator's assessment of the dispute including a range of recoverable damages; (vii) review of submissions of clarifications and rebuttal from the parties in preparation of final report; and (viii) meeting with the parties for presentation of the Mediator's final report and for one or more settlement conferences. During any period of dispute, mediation or arbitration, the Contractor shall not engage in work slow down, work stoppage, site abandonment nor shall Contractor refuse to continue construction.

#### **7.4.5 INFORMAL RESOLUTION.**

During the time any dispute is pending, the Mediator may meet informally with any party in an effort to achieve agreement on any aspect of the dispute.

#### **7.4.6 FINAL REPORT.**

As part of the evaluation performed by the Mediator in connection with any dispute, the Mediator will issue a final written report within 5 business days after referral of the dispute to the Mediator by any party, including guidance to the parties on measures that could be successful in eliminating similar disputes from occurring in the future.

**7.4.7 COMPENSATION.**

The Owner, Architect, Construction Manager, and Contractor shall jointly compensate the Mediator.

**7.5 RESOLUTION OF CLAIMS AND DISPUTES - LITIGATION OR ARBITRATION.**

If the dispute cannot be resolved pursuant to Paragraph 7.4, then the dispute shall be decided as follows: (a) unless elected by Owner, by a court of competent jurisdiction located in Blaine County; (b) if elected by the Owner, at the Owner's sole discretion, by arbitration (to be conducted in Blaine County) pursuant to the rules of the American Arbitration Association. The Architect consents to joinder to any arbitration involving the Owner, the Contractor consents to joinder to any arbitration involving the Owner, and the Construction Manager consents to joinder to any arbitration involving the Owner.

**7.6 ATTORNEY FEES.**

In the event a party to this Agreement brings any action or suit against another party to this Agreement by reason of any breach of any of the covenants, agreements, or provisions on the part of the other party arising out of this Agreement, then in that event the prevailing party shall be entitled to have and recover from the other party all costs and expenses of the action or suit, including actual attorney fees, at trial and on appeal. A party shall be deemed a prevailing party only if it prevails on the main issue in the action or suit and only if it prevails substantially to the extent of its original contention.

**7.7 THIRD PARTIES.**

Except as noted in Section 1.1.2 of the General Conditions, as modified, nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Contractor.

**7.8 OWNER'S DETERMINATION OF WORK.**

The Owner is not obligated, required or responsible for determining whether the Work is constructed in accordance with the Plans and Specifications in a good and workmanlike manner and in conformity with good construction and engineering practice.

**7.9 NOTICE.**

Any notice under this Agreement shall be in writing and shall be delivered in person or by public or private courier service (including U.S. Postal Service Express Mail) or certified mail with return receipt requested or by facsimile. All notices shall be addressed to the parties at the following addresses or at such other addresses as the parties may from time to time direct in writing:

**OWNER:**

City of Hailey  
115 Main Street South  
Hailey, Idaho 83333

Phone: (208) 788-2924  
Fax: (208) 788-4221

**CONTRACTOR:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Phone: ( ) \_\_\_\_\_  
Fax: ( ) \_\_\_\_\_

**ARCHITECT:**

Ruscitto/Latham/Blanton Architectura, P.A.  
PO Box 419  
Sun Valley, Idaho 83353

Phone: (208) 726-5608  
Fax: (208) 726-1033

Attention: Nick Latham

**CONSTRUCTION MANAGER:**

Kreizenbeck Constructors  
251 East Front Street, Suite 110  
Boise, Idaho 83702

Phone: (208) 336-9500  
Fax: (208) 336-7444

Attention: Dave Maloney

Any notice shall be deemed to have been given on the earlier of (a) actual delivery or refusal to accept delivery, (b) the date of mailing of certified mail, or (c) the day facsimile delivery is verified. Actual notice, however, and from whomever received, shall always be effective.

**7.10 DUPLICATE ORIGINALS.**

This Agreement shall be signed with two originals. The Owner and the Contractor shall each retain an original.

**7.11 CONTRACT CONSTRUCTION.**

If any term or provision of this Agreement shall, to any extent, be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law. If any provision of this Agreement is capable of two constructions, one of which would render the provision void and the other of which would render the provision valid, the provision shall have the meaning which renders it valid.

**7.12 PERFORMANCE EXCUSED.**

Any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, inability to obtain labor or materials or reasonable substitutes therefore, governmental restrictions, governmental regulations, governmental controls, enemy or hostile governmental action, civil commotion, fire or other casualty, and other causes beyond the reasonable control of the party obligated to perform (except for financial ability) shall excuse the performance, except for the payment of money by such party for a period equal to any such prevention, delay or stoppage.

**7.13 RELATIONSHIP OF PARTIES.**

Nothing contained in this Agreement shall be construed as creating a joint venture, partnership, employment or agency relationship between the parties. The Contractor is acting at all times as an independent contractor.

**7.14 DISCRIMINATION.**

The Contractor agrees not to discriminate against any employee or applicant for employment in the performance of this Agreement with respect to tenure, terms, conditions or privilege of employment, or any matter directly or indirectly relating to employment because of race, sex, color, religion, national origin, disability, ancestry or status as a Vietnam veteran. Breach of this Paragraph may be regarded as a material breach of this Agreement.

**7.15 CONFIDENTIALITY.**

The parties agree that the terms and conditions of this Agreement shall be held in confidence except as required by or for applicable disclosure and other laws and regulations, financing sources, enforcement of the Agreement, mergers and acquisitions, or as otherwise mutually agreed by the parties and such agreement shall not be withheld unreasonably.

**7.16 APPROVAL.**

This Agreement may be subject to approval by the Owner. If the Agreement is subject to such approval and such approval is not granted, this Agreement shall

be void and neither party shall have any further obligations or liabilities hereunder.

**7.17 USE OF NAME.**

No party to this Agreement shall, without express written consent in each case, use any name, trade name, trademark, or other designation of any other party (including contraction, abbreviation or simulation) in advertising, publicity, promotional, or any other activities or context.

**7.18 INDEMNITY.**

The Contractor and the Contractor's Consultant shall indemnify, defend and hold the Owner, its agents, employees, and its assigns harmless from and against any and all claims, damages, and liabilities (including reasonable attorneys' fees) that may be suffered or incurred and that arise as a direct result of and which are caused by the Contractor.

**7.19 FINANCIAL INFORMATION.**

The Contractor represents and warrants to the Owner the following: (a) that Contractor is financially solvent, able to pay its debts as they mature, and possessed of sufficient working capital to complete the services required and perform its obligations; (b) that Contractor is able to furnish any of the plant, tools, materials, supplies, equipment, and labor required to complete the required services and obligations and has sufficient experience and competence to do so; (c) that Contractor is authorized to do business in Idaho and properly licensed by all necessary governmental and public and quasi-public authorities having jurisdiction over it and the required services and the Project itself; (d) that Contractor's execution of this Agreement and its performance thereof is within its duly authorized powers; and (e) that Contractor has visited the Project, familiarized itself with the local conditions under which the required services are to be performed. Contractor agrees said representations and warranties in this Paragraph shall survive the execution and delivery of this Agreement.

**7.20 LAW GOVERNING.**

This Agreement is governed by the laws of the State of Idaho.

- 8.1 Delete the period at the end and insert in lieu thereof ", as modified."
- 8.2 Delete the period at the end and insert in lieu thereof ", as modified."
- 9.1.1 Delete the period at the end and insert in lieu thereof ", as modified."
- 9.1.2 Delete the period at the end and insert in lieu thereof ", as modified."

END OF DOCUMENT

## GENERAL CONDITIONS

AIA Document A201/CMA, General Conditions, 1992 Edition, is hereby included by reference and shall be a part of the Contract Documents. Copies of AIA Document A201/CMA are available for review at the office of the Construction Manager. Copies of the document may be purchased from the American Institute of Architects or its local distributors.

END OF DOCUMENT

## SUPPLEMENTARY CONDITIONS

This document supplements, modifies, changes, and adds to the GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION where Construction Manager is NOT a Constructor, AIA Document A201/CMa (1992 Edition) for the Project entitled HAILEY RODEO ARENA MULTI-USE FACILITY. Deletions from the General Conditions are indicated directly on the General Conditions by a line drawn through the deleted language. The Articles and Paragraphs set forth in these Supplementary Conditions correspond to the Articles and Paragraphs in the General Conditions. In the event that any provision of these Supplementary Conditions is inconsistent with a provision of the General Conditions, as modified, these Supplementary Conditions control. Where any Article, Paragraph, Subparagraph or Clause of the General Conditions is modified or deleted by these Supplementary Conditions, the unaltered provisions of the Article, Paragraph, Subparagraph or Clause remain in effect.

### ARTICLE 1; GENERAL PROVISIONS

1.1.1 In the first sentence, insert ", as modified" after "Contractor" and after "General".

Insert the following paragraph as a second paragraph in section 1.1.1:

"The Contract Documents also include the Standard Form of Agreement between Owner and Architect, AIA Document B101 - 2007, as modified, and the Standard Form of Agreement Between Owner and Construction Manager where the Construction Manager is not a Constructor, AIA Document B801/CMa (1992 Edition), as modified. The Contractor ("Contractor") acknowledges that the Contract Documents are adequate and sufficient to provide for the completion of the Work, and include all work, whether or not shown or described, which reasonably may be inferred to be required or useful for the completion of the Work in accordance with all applicable laws, codes and professional standards."

1.1.2 In the second sentence: (a) following "The Contract", insert ", together with the performance bond and payment bond, if any,";  
(b) change "represents" to "represent"  
(b) change "supersedes" to "supersede".

1.1.4.1 The entire project shall be considered as one "portion" unless separate areas or phases are designated for separate completion times or separate areas of completion and occupancy. This definition is for use in determining release of retainage.

1.2 Add the following Subparagraphs:

1.2.6 The "Section Includes" listing at the beginning of the specification section presents a brief indication of the principal Work included in that Section, but does not limit Work to subject.

1.2.7 Anything mentioned in the specifications and not shown on the Drawings, or shown on the Drawings and not mentioned in the Specifications, shall be of like effect as if shown or mentioned in both. In case of discrepancy in the figures, in the Drawings, or in the Specifications, the matter shall be promptly submitted to the Architect.

1.2.8 Failure to report a conflict in the Contract Documents prior to bidding shall be deemed evidence that the Contractor has elected to proceed in the more expensive manner without additional compensation to the contractor.

1.2.9 The Specifications have been partially "streamlined" and some words and phrases have been intentionally omitted. Missing portions shall be supplied by inference as with notes on drawings.

1.2.10 The words "approved", "directed", "selected" and similar words and phrases shall be presumed to be followed by "by Architect". The words "satisfactory", "submitted", "reported" and similar words and phrases shall be presumed to be followed by "to Architect". Words like "install", "provide", "furnish" and "supply" shall be construed to include complete furnishing and installing or construction.

- 1.2.11 Instructions, directions and requirements as specified shall be considered to be followed the phrase "unless otherwise specified or indicated".
- 1.2.12 A colon (:) following a material or item shall be used in place of the words, "shall be".
- 1.3 Add the following:
  - 1.3.2 Each Contractor will be furnished, free of charge, a minimum of two (2) sets of Drawings and Project Manuals for use in construction of this Project. Additional sets will be furnished at the request of the Contractor.
- 1.6 The Owner, Construction Manager, Contractor and Architect shall endeavor to promote harmony and cooperation among each other and other persons or entities employed for the Project. Owner, Architect, Contractor, Construction Manager, and Subcontractors and others are a team dedicated to providing a quality Project. Each member of the team is committed to (a) preservation and enhancement of the educational mission of the Owner, (b) employee and public safety, (c) protection of the environment, and (d) minimizing inconvenience to the students, faculty, staff and public. To further the team goals, each team member intends to deal with each other in a fair, reasonable, trusting and professional manner, including but not limited to the following:
  - 1.6.1 Each party shall:
    - 1.6.1.1 Communicate and resolve problems within the terms of the Contract Documents.
    - 1.6.1.2 Make decisions at the lowest possible level.
    - 1.6.1.3 Communicate openly and honestly.
    - 1.6.1.4 Treat each other with mutual respect, resolve personal conflicts immediately, avoid personal attacks, and focus on the merits of the Project.
    - 1.6.1.5 Timely notify each party of meetings.
    - 1.6.1.6 Attend and support weekly, morning and other meetings.
    - 1.6.1.7 Prevent grudges from interfering with professionalism and the merits of the Project.
    - 1.6.1.8 Admit errors, mistakes and false starts.
  - 1.6.2 Each party shall:
    - 1.6.2.1 In the event of any claim arising from or relating to the Contract Documents or the breach thereof, the parties shall use their best efforts to settle the claim. To this effect, they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to all parties.
    - 1.6.2.2 Notice of any claim by the Contractor, Subcontractor and/or Supplier arising from or relating to the Contract Documents or the breach thereof must be given to the Owner and Construction Manager through a detailed written statement within twenty-one (21) days of the date on which the Contractor, Subcontractor or Supplier knew or reasonably should have known of the facts constituting the claim. The Contractor, Subcontractor or Supplier shall follow the notice provisions in Paragraph 13.14 of these Supplementary Conditions. If notice of claims is not given to the Owner and Construction Manager by the Contractor, Subcontractor and/or Supplier, or any other person required to follow the Contract Documents within this time period and in this manner the claims are forever barred.
    - 1.6.2.3 The Owner, Contractor, Subcontractor and/or Supplier agree to jointly engage the service of a mediator to independently analyze and evaluate the merits of any disputes that may arise between them under the Contract Documents and to assist them in resolving such disputes in an amicable manner, in order to

avoid litigation, arbitration or any other proceeding involving a third-party decision maker.

1.6.3 To promote the team, the performance objectives of each party are:

- 1.6.3.1 Preserve and enhance the educational mission of the Owner.
- 1.6.3.2 Complete the Project according to the highest standards of quality.
- 1.6.3.3 Complete the Project on time.
- 1.6.3.4 Complete the Project within or under budget or estimates.
- 1.6.3.5 Continually endeavor to reduce the cost of the Project.
- 1.6.3.6 Avoid and minimize delays on the Project and the critical path.
- 1.6.3.7 Maintain public use of the existing Owner facilities.
- 1.6.3.8 Promote positive public relations.
- 1.6.3.9 Make the work on the Project enjoyable.
- 1.6.3.10 Construct the Project and administer the Contract Documents so that all parties are treated fairly.
- 1.6.3.11 Avoid lost time injuries.
- 1.6.3.12 Complete the Project without litigation or arbitration.

## **ARTICLE 2; OWNER**

- 2.2.2 The Owner has furnished some information regarding the characteristics of the Project site. The Contractor shall confirm the location of each utility, shall excavate and dispose of each on-site utility and cap each off-site utility as required by the Work and as may be included in the Contract Documents. Owner does not assume any responsibility regarding any surveys, test borings, or other investigations regarding the site, and makes no warranty or guaranty regarding the site conditions. The Contractor shall make such site investigations as the Contractor deems necessary, and make available to the Owner, Construction Manager and Architect all reports of such site investigations. At the time which the Contractor enters into the Contract Documents, the Contractor will have conducted such investigations and interpretations as the Contractor deems necessary, and warrants that the Contract Sum is a just and reasonable compensation for the Work, including all Work impacted by the site.
- 2.3.2 If, after consultation with the Architect and Construction Manager, suspension of the Work is warranted because of unforeseen conditions which may adversely affect the quality of the Work if the Work were continued, the Owner may suspend the Work by written notice to the Contractor. In such event, the Contract Time shall be adjusted accordingly, and the Contract Sum amount shall be adjusted to the extent, if any, that additional costs are incurred by reason of the suspension. If the Contractor, in its reasonable judgment, believes that a suspension is warranted because of unforeseen circumstances which may adversely affect the quality of the Work if the Work were continued, the Contractor shall immediately notify the Owner, Construction Manager and Architect of such belief.
- 2.5 The Owner is not obligated, required or responsible for determining whether the Work is constructed in accordance with the Plans and Specifications in a good and workmanlike manner and in conformity with good construction and engineering practice; that responsibility is allocated to the Construction Manager.

## **ARTICLE 3; CONTRACTOR**

3.1 DEFINITION.

- 3.2.4 At the time the Contractor enters into the Contract Documents, the Contractor declares that the Contract Documents are full and complete, are sufficient to enable the Contractor to determine the cost of the Work, and the Drawings, Specifications and all addenda are

sufficient to enable the Contractor to construct the Work in compliance with all applicable laws, statutes, ordinances, building codes and the Contract Documents.

- 3.3.5 The Contractor is responsible for timely obtaining inspections by public authorities. The Owner reserves the right to inspect with its own forces.
- 3.3.6 The Contractor is responsible for all coordination and scheduling of the Work, including coordination and scheduling with the Construction Manager, and Architect for development of plans and specifications and with the Construction Manager for construction. If, after the coordination and scheduling is performed by the Contractor, the Owner, Construction Manager, or Architect delays or disrupts the Contractor's Work, then the Contract Sum or Contract Time shall change, including the possibility that the Contract Sum shall increase.
- 3.4 Add the following Subparagraphs 3.4.3 and 3.4.4 and 3.4.5;
- 3.4.3 The Contractor will follow and comply with all rules and regulations of the Owner and the reasonable instructions of Owner's personnel in the conduct of the Work. The Owner reserves the right to require removal of any worker it deems unsatisfactory for any reason. After the Contract has been executed, the Owner and the Architect, after consultation with the Construction Manager, will consider a formal request for the substitution of products in place of those specified only under the following conditions:
1. Required product cannot be supplied in time for compliance with Contract time requirements.
  2. Required product is not acceptable to governing authority, or determined to be non-compatible, or cannot be properly coordinated, warranted or insured, or has other recognized disability as certified by Contractor.
  3. Substantial advantage is offered to the Owner after deducting offsetting disadvantages including delays, additional compensation to Architect/Engineer for redesign, investigation, evaluation and other necessary services and similar considerations.
- 3.4.4 By making requests for substitutions based on Clause 3.4.3 above, the Contractor:
1. Represents that he has personally investigated the proposed substitute product and determined that it is equal or superior in all respects to that specified;
  2. Represents that he will provide the same warranty for the substitution that he would for that specified;
  3. Certifies that the cost data presented is complete and includes all related costs under separate contracts, but excludes the Architect's redesign costs and waives all claims for additional costs related to the substitution which subsequently became apparent; and
  4. Will coordinate the installation of the accepted substitute, making such changes as may be required for the Work to be complete in all respects.
- 3.4.5 Substitution request shall be submitted on CSI Substitution Request Form (Attachment SR1).
- 3.5.2 All of the Work shall be done by the Contractor, Subcontractors and Suppliers in accordance with the Plans and Specifications in a good and workmanlike manner and in conformity with good construction and engineering practice and free from defects in materials and workmanship. If the Contractor receives any warranties from Subcontractors or Suppliers, then the Contractor shall assign and deliver such warranties to the Owner.
- 3.6 Add the following:
- 3.6.2 The Contractor, in consideration of securing the business of erecting or constructing public works in this state, recognizing that the business in which he is engaged is of a transitory character and that in the pursuit thereof, his property used therein may be without the state when taxes, excises, or license fees to which he 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, its subdivisions 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 his property, to secure the same to the satisfaction of the respective officers charged with the collection thereof; and
  3. That, in the event of his default in the payment of 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 him 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.
- 3.6.3 Before entering into a Contract, the Contractor shall be authorized to do business in the state and shall submit a properly executed CA-1, Contractor's Affidavit Concerning Taxes and WH-5, Public Works Contract Report. Copies have been included in this package.
- 3.6.4 Within ten (10) days of receipt of forms from Owner, Contractor shall complete and return to Owner, forms as required by tax collector, showing dates, names, addresses, contracting parties, including all subcontractors and all other relevant information which may be required.
- 3.7.1 Delete Subparagraph 3.7.1 and substitute the following:
- 3.7.1. The Owner shall obtain and pay for plan check as required by Idaho Department of Labor and Industrial Services and building permit fees required. The Contractor shall pay for plumbing and electrical permits required by the Idaho Department of Labor and Industrial Services or local authority.
- 3.7.1.1 The Owner shall obtain and pay for all other permits, fees and connection fees required for construction and completion of the work and required by authorities having jurisdiction. The Contractor shall pay all fees and charges for use of public or private property for storage of materials, etc.
- 3.7.2 Add the following:
- 3.7.2.1 All contractors shall comply with the EPA-1990 NESHAP Asbestos Regulation (40 CFR, Part 61), which requires that the following be completed before demolition and renovation projects occur:
1. The Owner shall be responsible to verify that a complete asbestos survey has been performed on the facility in question, before renovation or demolition operations begin.
  2. The Contractor shall verify that all regulated asbestos containing materials have been removed from the affected areas before renovation or demolition operations begin.
  3. The Abatement and/or Demolition Contractor shall be responsible to submit appropriate completed Notification of Demolition and Renovation Form to USEPA **ten** (10) working days before demolition projects begin, or verify that a form was submitted prior to asbestos removal beginning. **This includes the demolition of structures that contain no asbestos.**
  4. As of November 20, 1991, a NESHAP Certified Person must be on any job site where asbestos **could** be disturbed.
- 3.7.5 The Contractor shall procure all certificates of inspection, use and occupancy, permits, and licenses, pay all charges and fees, and give all notices necessary and incidental to the due and lawful prosecution of the Work. Certificates of inspection, use and occupancy shall be delivered to the Owner upon completion of the Work in sufficient time for occupation of the Project. The costs of such procurement, payment and delivery shall be included within the Contract Sum.
- 3.12 Add the following:
- 3.12.7 In the first line, replace the word "approving" with the word "reviewing".
- 3.12.8 In the third and twelfth lines, replace the word "approval" with the word "review".
- 3.12 Add the following Subparagraphs:
- 3.12.12 A complete schedule of Required Submittals shall be provided to the Construction Manager within ten (10) days after Notice of Award of the Contract.

- 3.12.13 Any submittal Shop Drawing, Product Data or Sample that does not bear the Contractor's approval stamp shall be returned without review.
- 3.12.14 Shop Drawings, product Data, etc. shall be submitted in sufficient time to allow not less than twenty-eight (28) working days for the Construction Manager and Architect to examine shop drawings, etc. Liquidated Damages may apply
- 3.13.3 The site shall be in continual use by the Owner during the construction. The Contractor shall coordinate with the Owner the construction so as to minimize the disruption to the Owner.
- 3.15.1 Add the following sentence. "Contractor shall employ all reasonable means to prevent construction debris from littering the site or migrating off-site."
- 3.15.3 In absence of specific cleaning instruction, follow accepted cleaning practices or the recommendation of the manufacturer of the material to be cleaned. The Contractor shall coordinate with the Construction Manager for the maintenance of streets and sidewalks around the Project site in a clean condition. The Contractor shall coordinate with the Construction Manager for removal of all spillage and tracking arising from the performance of the Work from such areas, and shall establish a regular maintenance program of sweeping and hosing to minimize accumulation of dirt and dust at the site.
- 3.15.4 The Contractor shall be responsible for broken glass, and at the completion of the Work shall replace damaged or broken glass. After damaged or broken glass has been replaced, the Contractor shall remove all labels, wash and polish both side of all glass.
- 3.18 INDEMNIFICATION.
- 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify, defend and hold harmless the Owner, Construction Manager, Architect, Architect's consultants, and agents and employees of any of them, from and against claims, damages, losses and expenses, including, but not limited to, attorneys' fees arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including loss of use resulting there from, but only to the extent caused, in whole or in part, by negligent acts or omissions of the Contractor, or Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in Paragraph 3.18.
- 3.19 OPERATION AND MAINTENANCE.
- 3.19.1 "The Contractor shall coordinate as required to provide the information necessary for the Construction Manager to furnish one (1) copy of reproducible "as built" plans relating to the Work and improvements in a form and detail reasonably satisfactory to the Owner.
- 3.19.2 The Contractor shall coordinate as required to provide the information necessary for the Construction Manager to provide the Owner with two (2) complete copies in loose-leaf binders of all operating and maintenance data, all manuals, instructions and directions for all products, materials, machinery and equipment for the Project, and shall instruct the Owner regarding the operation of all systems, machinery and equipment.

#### ARTICLE 4; ADMINISTRATION OF THE CONTRACT

- 4.1.1.2 The Architect, with the concurrence of the Construction Manager, shall supervise and instruct the Contractor regarding matters set forth in the Drawings and Specifications.
- 4.3.1 Delete "contractor" from the fifth line.
- 4.5 Delete "arbitration" and add "mediation".

- 4.7.2 Claims, including those alleging an error or omission by the Architect or Construction Manager, shall be referred initially to the Mediator for action as provided in Paragraph 4.8. A decision of the Mediator as provided in Paragraph 4.8. shall be required as a condition precedent to arbitration or litigation of a Claim between the Contractor, Architect and/or, Construction Manager and the Owner as to all such matters arising prior to the date final payment is due, regardless of (1) whether such matters relate to execution and progress of the Work, or (2) the extent to which the Work has been completed. The decision by the Mediator in response to Claim shall not be a condition precedent to arbitration or litigation in the event (1) the Mediator has not received evidence or has failed to render a decision within agreed time limits, (2) the Mediator has failed to take action required under paragraph 4.8. within thirty days after the Claim is made, or (3) forty-five days has passed after the Claim has been referred to the Mediator.
- 4.8 Disputes arising between the Owner, Contractor, Subcontractor and/or Supplier, under the Contract Documents or relating to or arising from the Project shall be mediated as follows:
- 4.8.1 At the time of execution of the Contract Documents, Owner and Contractor shall mutually select a mediator ("Mediator").
- 4.8.2 If the Owner, Contractor, Subcontractor and/or Supplier with or without the informal assistance of the Mediator, are unable to resolve any dispute, the Owner, Contractor, Subcontractor and/or Supplier may refer the dispute to the Mediator, in writing, for resolution pursuant to the methods and procedures then in effect. The Architect and Construction Manager may be joined in the mediation of any dispute between the Owner, Contractor, Subcontractor, and/or supplier.
- 4.8.3 Upon the reference of a dispute by any party, the Mediator shall conduct an initial administrative conference with the parties to establish a plan of action for the review and analysis of the dispute and the agenda and schedule for undertaking the process.
- 4.8.4 The services to be performed by the Mediator, depending upon the nature of the dispute, shall generally include (i) identification, receipt and organization of relevant documentation; (ii) preliminary issue identification, review and evaluation; (iii) interviews with Project personnel and other necessary individuals who are knowledgeable about the problem and issues in dispute; (iv) joint meetings with the Owner, Construction Manager, Architect and/or Contractor to present key issues; (v) additional document acquisition, interviews, preliminary issue evaluation; (vi) meeting with the Owner, Construction Manager, Architect and/or Contractor to present a draft report of the Mediator's assessment of the dispute including a range of recoverable damages; (vii) review of submissions of clarifications and rebuttal from the parties in preparation of a final report; and (viii) meeting with the parties for presentation of the Mediator's final report and for one or more settlement conferences.
- 4.8.5 During the time any dispute is pending, the Mediator may meet informally with any party in an effort to achieve agreement on any aspect of the dispute.
- 4.8.6 As part of the evaluation performed by the Mediator in connection with any dispute, the Mediator will issue a final written report within five business days after referral of the dispute to the Mediator by any party, including guidance to the parties on measures that could be successful in eliminating similar disputes from occurring in the future.
- 4.8.7 As applicable, the Owner, Contractor, Subcontractor and Supplier shall jointly compensate the Mediator.
- 4.9 If the dispute between the Owner, Contractor, Subcontractor and/or Supplier cannot be resolved pursuant to Paragraph 4.8, then the dispute shall be decided as follows: (a) unless elected by Owner, by a court of competent jurisdiction located in Blaine County; (b) if elected by the Owner, at the Owner's sole discretion, by arbitration (to be conducted in Blaine County) pursuant to the rules of the American Arbitration Association. The Architect and Construction Manager may be joined in the arbitration of any dispute between the Owner, Contractor, Subcontractor and/or Supplier.

- 4.10 In the event a party to the Contract Documents brings any action or suit against another party to the Contract Documents by reason of any breach of any of the covenants, agreements, or provisions on the part of the other party arising out of the Contract Documents, then in that event the prevailing party shall be entitled to have and recover from the other party all costs and expenses of the action or suit, including actual attorney fees, at trial and on appeal. A party shall be deemed a prevailing party only if it prevails on the main issue in the action or suit and only if it prevails substantially to the extent of its original contention.

## ARTICLE 5; SUBCONTRACTORS

- 5.3.2 The Contractor shall require that each major subcontractor and major supplier become a member of the team working on the Project and ascribe to the Partnering Objectives and agreements set forth in Paragraph 1.6. The Owner encourages the early involvement of Subcontractors and suppliers in the Project.
- 5.3.3 Notwithstanding any provision of Subparagraph 5.3.1, any part of the Work performed for the Contractor by a Subcontractor or its Sub-subcontractor shall be pursuant to a written Subcontract between the Contractor and such Subcontractor (or the Subcontractor and its Sub-subcontractor at any tier), which shall be prepared on a form of subcontract satisfactory to the Owner. Each subcontract shall, where the context so requires, contain provisions that:
- 5.3.3.1 Require each Subcontractor to ascribe to the Partnering Objectives set forth in Paragraph 1.6.
- 5.3.3.2 Require that the Work be performed according to the requirements of the Contract Documents.
- 5.3.3.3 Waive all rights the contracting parties may have against one another or that the subcontractor may have against the Owner for damages caused by fire or other perils covered by the insurance described in the Contract Documents.
- 5.3.3.4 Require the Subcontractor to carry and maintain insurance coverage according to the Contract Documents, and to file certificates of the coverage with the Contractor.
- 5.3.3.6 Require submission to Contractor or Subcontractor, as the case may be, of applications for payment in a form approved by the Owner, together with clearly defined invoices and billings supporting all the applications under each subcontract to which the Contractor is a party.
- 5.3.3.7 Report, so far as practicable, unit prices and any other feasible formula for use in the determination of costs of changes in the Work.
- 5.3.3.8 Require each Subcontractor to furnish to the Contractor in a timely fashion all information necessary for the preparation and submission of reports.
- 5.3.3.9 Require that each Subcontractor continue to perform under its subcontract in the event the Contract is terminated and the Owner shall take an assignment of the subcontract and request Subcontractor to continue performance.
- 5.3.3.10 Require each Subcontractor to remove all debris created by its activities.
- 5.3.4 The Contractor shall not enter into any subcontract, contract, agreement, purchase order or other arrangement ("Arrangement") for the furnishing of any portion of the materials, services, equipment or Work with any party or entity if the party or entity is an Affiliated Entity (as defined in this Paragraph), unless the Arrangement was approved by the Owner and Construction Manager, after full disclosure in writing by the Contractor to the Owner and Construction Manager of the affiliation or relationship and all details relating to the proposed Arrangement. The term "Affiliated Entity" means (a) any entity related to or affiliated with the Contractor or with respect to which the Contractor has direct or indirect ownership or control, including, without limitation, any entity owned in whole or part by the Contractor; (b) any holder of more than 10% of the issued and outstanding shares of, or the holder of any interest in, the Contractor; and (c) any entity in which any officer, director, employee, partner or shareholder (or member of the family of any of the foregoing persons) of the Contractor or any entity owned by the Contractor as a direct or indirect interest, which interest includes, but is not limited to, that of a partner, employee, agent or shareholder.

## ARTICLE 7; CHANGES IN THE WORK

- 7.3.6 In the seventh line, delete the words "a reasonable allowance for overhead and profit" and substitute "an allowance for overhead and profit in accordance with clause 7.3.10.1 through 7.3.10.6".
- 7.3 Add the following Subparagraph:
- 7.3.10 In Subparagraph 7.3.6, the allowance for the combined overhead, insurance, bonds, office and field coordination, supervision, safety, and profit included in the total cost to the Owner shall be based on the following schedule:
1. For the Contractor, for Work performed by the Contractor's own forces, thirteen percent (13%) of the cost. (5% profit; 5% O/H; 2% bond; 1% insurance).
  2. For the Contractor, for Work performed by the Contractor's Subcontractor, eight percent (8%) of the amount due the Subcontractor.
  3. For each Subcontractor or Sub-subcontractor involved, for work performed by that Subcontractor's or Sub-subcontractor's own forces, 10 percent (10%) of the cost.
  4. For each Subcontractor, for Work performed by the Subcontractor's Sub-subcontractor 5 percent (5%) of the amount due the Sub-subcontractor.
  5. Cost to which overhead and profit is to be applied shall be determined in accordance with Subparagraph 7.3.6.
  6. In order to facilitate checking of quotations for extras or credits, all proposals, except those so minor that their propriety can be seen by inspection, shall be accompanied by a complete itemization of costs including labor, materials, equipment and subcontracts. Labor, materials and equipment shall be itemized in the manner prescribed above. Where major cost items are Subcontracts, they shall be itemized also. In no case will a change involving over \$500.00 be approved without such itemization.

## ARTICLE 8; TIME

- 8.1.1 Add the following Subparagraph:
- 8.1.1.1 Refer to attached Project Schedule PS1 – PS3. The Contractor will organize and fully staff multiple shifts or weekend work if necessary to complete the work as scheduled. All costs incurred to expedite the work (i.e., air freight, overtime, subsistence, travel, etc.) will be included in the bid price. The minimum workweek shall include Monday through Friday. Each Contractor will be required to submit weekly schedules, attend weekly safety meetings on the site and submit daily reports of is activity on the jobsite.
- 8.3.1 In Paragraph 8.3.1, in the eighth line, delete the word "arbitration" and substitute "mediation".
- 8.3.3 Delete Paragraph 8.3.3 and substitute the following:
- 8.3.3 "The Contractor agrees to make no claim for damages for delay on the performance of this Contract occasioned by any act or omission to act of Owner, its Architect, its Construction Manager, its agents or employees or any other Contractor and agrees that any such claim shall be fully compensated for by an extension of time to complete performance of the Work".

## ARTICLE 9; PAYMENTS AND COMPLETION

- 9.2 Add the following Subparagraph:
- 9.2.2 Submit typed schedule on AIA Document G703 - Application and Certificate for Payment Continuation Sheet. Submit Schedule of Values within ten (10) days after date of Notice of Award. Utilize the Table of Contents of the Project Manual. Identify each line item with number and title of each specification section. Revise schedule to list approved Change Orders; submit with each Application for Payment.
- 9.3.1 Delete "At least fifteen days" in the first sentence and substitute the following: "On or before the 25th of the month". Add the following sentence: The form of Application for Payment shall be AIA Document G702/CMA. Submit two originals.

- 9.3.1.3 The Contractor shall submit applications for progress payments that indicate discounts for prompt payment. Applications for progress payments shall be timely submitted so as to permit the Owner to take advantage of discounts for prompt payment. The Contractor shall, to the extent necessary to permit Owner to benefit from prompt payment discounts, notify the Owner and Construction Manager in advance of the applications for progress payments of the necessity for prompt payment or advance payment of funds. Until Substantial Completion, the Owner shall pay ninety-five percent (95%) of the amount due the Contractor on account of progress payments.
- 9.3.1.4 The Contractor shall not withhold from a Subcontractor or Supplier more than the percentage withheld from a payment certificate for their portion of the Work.
- 9.3.2 Add the following sentence:  
Off site storage will not be approved at locations outside the State of Idaho.
- 9.5.1 Add the following Subparagraph:
- 9.5.1.1 Progress Payments shall fall due on or about the 25th of each month pending approval per the Owner.
- 9.5.1.2 Progress Lien Waivers and Conditional Lien Waivers must be signed prior to release of progress payments.
- 9.6.7 Payment or partial payment by the Owner shall not (a) constitute approval or acceptance of any item of cost in the Application of Payment, (b) be construed to be final acceptance or approval of that portion of the Work to which such partial payment relates, or (c) relieve the Contractor of any obligations.
- 9.8.1 Substantial Completion shall not be earlier than the date of a permanent occupancy permit by the governmental authorities.
- 9.8.3 Add the following sentence:  
The payment shall be sufficient to increase the total payment to ninety-five percent (95%) of the Contract sum, less such amounts as the Architect shall determine for incomplete work and unsettled claims. The amount of retainage held for incomplete work and unsettled claims shall be double the value of the items remaining to facilitate completion of work and settlement of claims.
- 9.10.5 A reasonable sum may be withheld by the Owner until the Contractor delivers to the Owner (a) Record Drawings, Specifications, Addenda, Change Orders and other Modifications maintained at the site pursuant to Paragraph 3.11.1, (b) the warranties, instructions and maintenance manuals, and (c) a final statement of the Cost of the Work allocated according to the budget and in a form approved by Owner.
- 9.11 Add the following Paragraphs 9.11 and 9.11.1 to Article 9:
- 9.11 LIQUIDATED DAMAGES
- 9.11.1 The Owner will suffer loss if the Project is not Substantially Complete on the date set forth in the Contract Documents. The Contractor (and his Surety) shall be liable for and shall pay to the Owner the sums hereinafter stipulated as fixed, agreed and liquidated damages for each calendar day of delay until the Work is substantially completed. **One Thousand Dollars and no/100 (\$1,000) or ¼% of Contract Value per Calendar Day (whichever is greater).**
- 9.11.2 The Owner may risk unnecessary delays if completed submittals are not received within 30 calendar days of receiving Notice to Proceed or as specifically required by individual Bid Items. The Contractor (and his surety) shall be liable until all required submittals are transmitted to the Construction Manager. **¼% of the Contract Value per Calendar Day.**
- Liquidated Damages may be assessed if the Contractor falls five (5) days behind the Project Schedule provided by the Construction Manager.

## ARTICLE 10; PROTECTION OF PERSONS AND PROPERTY

- 10.2.4 Delete Paragraph and add the following:  
10.2.4 No explosives will be allowed on site.  
10.2.8 The Contractor shall protect adjoining Owner property and shall provide barricades, temporary fences, and covered walkways required to protect the safety of passers-by, employees of Owner, students and others, as required by prudent construction practices, local building codes, ordinances, state or federal statutes, rules or regulations, other laws, or the Contract Documents.
- 10.2.9 The Contractor shall maintain Work, materials and apparatus free from injury or damage from rain, wind, storms, frost, snow, ice, heat or sun. If adverse weather makes it unsafe, impossible or infeasible to continue operations because of weather precautions, the Contractor shall cease Work and notify the Owner, Construction Manager, and Architect of such cessation. The Contractor shall not permit open fires on the Project site.
- 10.2.10 The Contractor shall, and not as part of the Cost of the Work, promptly repair any unplanned damage or disturbance to glass, walls, utilities, sidewalks, curbs, streets and the property of third persons resulting from the performance of the Work, whether by it or its Subcontractors at any tier. The Contractor shall maintain streets and sidewalks in good repair and traversable condition.

## ARTICLE 11; INSURANCE AND BONDS

- 11.1 Contractor shall purchase and maintain insurance as set forth in Section 11.1 of the Agreement, as supplemented by these Supplementary Conditions of the Contract for construction. This insurance requirement does not limit or qualify the liabilities and obligations assumed by the Owner or Contractor under the contracts. The insurance shall be written for not less than the following limits, or greater if required by law.
- 11.1.1.1 Delete the semicolon at the end of Clause 11.1.1.1 and add: including private entities performing Work at the site and exempt from the coverage on account of number of employees or occupations, which entities shall maintain voluntary compensation coverage at the same limits specified for mandatory coverage for the duration of the Project.
- 11.1.1.2 Delete the semicolon at the end of Clause 11.1.1.2 and add: or persons or entities excluded by statute from the requirements of Clause 11.1.1.1 but required by the Contract Documents to provide the insurance required by that Clause.
- 11.1.1.7 Add the following sentence to Subparagraph:  
If this insurance is written on the Comprehensive General Liability policy form, the Certificates shall be AIA Document G715 – 1991, Certificate of Insurance or ACORD Form 25. If this insurance is written on a Commercial General Liability policy, ACORD Form 25S will be acceptable.
- 11.1.4 **Workers' Compensation:** Contractor shall maintain Workers' Compensation insurance in the amount of the statutory limits and comply in all respects and regulations concerning the employment of labor required by any duly constituted authority having legal jurisdiction over the area in which the work is performed, and shall be written for not less than the following limits:
- |                         |                                  |
|-------------------------|----------------------------------|
| a) State:               | Statutory                        |
| b) Employer's Liability | \$100,00 per Accident            |
|                         | \$500,000 Disease, Policy Limit  |
|                         | \$100,000 Disease, Each Employee |
- 11.1.5 **Commercial General Liability:** Contractor's policy shall be primary to the Owner's insurance, and shall include: premises operations, Owners and Contractors protective liability, independent contractors, products and completed operations liability, contractual liability in support of this Contractor's indemnity requirements, broad form property damage liability and blanket contractual liability, personal injury with employee and contractual

exclusions removed, and explosion, collapse and underground damage coverage:

- (a) For any claim for bodily injury, property damage or due to contractual liability, limits of not less than \$1,000,000 per occurrence.
- (b) For products and completed operation coverage, coverage is to be maintained for a period of two (2) years following final payment.
- (c) For the hazards of explosion, collapse and underground, commonly referred to as XCU, coverage shall be required if the exposures exist. This coverage may be provided by the subcontractor if the State and prime contractor are named as additional insured.
- (d) For personal injury liability, limits of not less than \$100,000 per occurrence.
- (e) General Aggregate shall not be less than \$2,000,000
- (f) Fire legal liability shall be provided in an amount not less than \$100,000 per occurrence.

11.1.6 **Comprehensive Automobile Liability:** Business auto liability (including all owned, non-owned, and hired vehicles) in an amount of not less than \$1,000,000 combined single limit.

11.1.7 **Not Used**

11.1.8 Contractor shall have an Equipment Policy with limits adequate to protect the Owner.

11.1.9 **Additional Insureds:** The **Owner** and **Construction Manager** shall be named as an additional insured on the insurance required in 11.1.2.1.2 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'". The Owner and Construction Manager shall be additional insureds including completed operations for a period of two (2) years following final payment as evidence by an endorsement of the insurance policy by the combination of either the ISO Form CG2010 and CG2037 or the combination of CG2033 and CG2037 or equivalent forms. In addition, Contractor's policy shall provide that the Contractor's insurance is primary to the Owner's insurance.

11.1.10 The Contractor shall require all subcontractors of any tier to provide Comprehensive General Liability Insurance with combined single limits for bodily injury and property damage of at least \$1,000,000 per occurrence and Comprehensive Automobile Liability Insurance for all owned, non-owned and hired vehicles with combined single limits for bodily injury and property damage of at least \$1,000,000 per occurrence.

11.3 Delete Paragraphs 11.3.1 and 11.3.2 and substitute the following:

11.3.1 Owner shall purchase and maintain throughout the duration of the Project, at Owner's expense, property insurance in amounts and with the coverages as Owner shall, in Owner's discretion, determine. This insurance may include the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work. If the Contractor, Subcontractors or Sub-subcontractors desire additional or different property insurance coverages, then the Contractor, Subcontractors or Sub-subcontractors shall first contact the Owner to determine if the Owner desires to add the additional or different property insurance coverages at the Owner's expense, and then, if the Owner declines to add the additional or different property insurance coverages, purchase and maintain their own property insurance coverages at their own expense, and the cost of the additional or different insurance coverages shall not be included in the Cost of the Work. To the extent that the property insurance obtained by the Owner covers the Contractor, Subcontractors or Sub-subcontractors, then the Contractor, Subcontractor or Sub-subcontractor shall pay from their own funds any cost not covered because of any deductibles. The cost not covered because of any deductibles shall be included in the Cost of the Work and paid by the Owner only if the Contractor, Subcontractor or Sub-subcontractor was not responsible or at fault in causing the loss that resulted in the cost.

11.3.1.1 The Owner's insurance program is intended to cover the interests of the Owner and does not cover the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work or material suppliers or others associated with the Project.

- 11.3.1.2 The Contractor shall maintain insurance as deemed necessary by Contractor to protect the interests of himself, his Subcontractors and Sub-subcontractors in the Work, including property, materials, equipment and tools. Materials incorporated into the Work and materials suitably stored at the site will be considered covered by the Owner's insurance program at 12:00 noon, on the date an application for payment for such materials is certified by the Architect.
- 11.3.1.3 The Contractor shall provide insurance coverage for portions of the Work stored off the site after written approval of the Owner at the value established in the approval and also for portions of the Work in transit and all materials stored at the site and incorporated into the Work until covered by the Owner's insurance program as described in Subparagraph 11.3.1.2 above.
- 11.3.4 Delete Paragraph and add the following: The Owner will make available all policies for the Contractors' review.
- 11.3.5 Delete Paragraph.
- 11.3.6 Delete Paragraph.
- 11.3.7 In Paragraph 11.3.7 in the sixth line, after the word "damages", add the words "to the Work".
  
- 11.4 Add the following Subparagraphs:
- 11.4.1 The Contractor is required to furnish bonds covering faithful performance of the Contract and payment of the obligations arising thereafter as stipulated in bidding requirements, negotiated by the parties, or specifically required in the Contract Documents on the date of execution of the Contract.
- 11.4.3 The Contractor shall furnish a Surety Company Bond in the amount of one-hundred percent (100%) of the Contract Price covering one-hundred percent (100%) performance and maintenance and one-hundred percent (100%) payment with such sureties and/or agency as selected or approved by the Owner.
- 11.4.4 The Bond shall include maintenance provisions covering workmanship and materials for a period of one (1) year or for longer periods where so specified, from and after the Date of Substantial Completion. The Contractor shall include the cost of the Bond as part of the Contract Price.
  
- 11.5 Add the following new Paragraph:
- 11.5 Indemnity
- 11.5.1 The Contractor shall indemnify, defend and save harmless the Owner, the Construction Manager, the Architect and the Architect's Consultants from and against all claims, damages, costs, legal fees, expenses, actions and suits whatsoever including injury or death of others or any employee of the Contractor, Subcontractors, agents or employees, caused by failure to comply fully with any term or condition of the Contract, or caused by damage to or loss of use of property, directly or indirectly, by the employees and occasioned by the negligence of the Contractor, his agents, subcontractors or employees.

**ARTICLE 12; UNCOVERING AND CORRECTION OF WORK**

- 12.1.3 No work shall be covered prior to (a) notice to and opportunity for the Owner to inspect, and (b) inspection by appropriate government authorities.
  
- 12.2 Add the following Subparagraph:
- 12.2.1 The Contractor's obligation to correct Work set forth in Paragraph 12.2.1 also applies to Work rejected by the Owner or government authorities.
- 12.2.6.1 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.

**ARTICLE 13; MISCELLANEOUS PROVISIONS**

- 13.4 Add the following Subparagraphs:
- 13.4.3 Contractors supplying materials only will be subject to retainage and will be required to supply lien releases with each payment request and with final pay request.

- 13.6 Delete Paragraph 13.6.1 and substitute the following:
- 13.6.1 Payments due and unpaid under the Contract Documents, thirty (30) days from date received by the Architect, shall bear no interest until thirty (30) days past due, thereafter, they shall bear interest at the rate of eight percent (8%) per annum calculated from thirty (30) days past due, sixty (60) days from date received by the Architect, until the date of the check as posted by the Owner.
- 13.8 If any term or provision of the Contract Documents shall, to any extent, be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the Contract Documents shall not be affected thereby, and each term and provision of the Contract Documents shall be valid and be enforceable to the fullest extent permitted by law; and it is the intention of the parties hereto that if any provision of the Contract Documents is capable of two constructions, one of which would render the provision void and the other of which would render the provision valid, the provision shall have the meaning which renders it valid.
- 13.8 Add the following:
- 13.8.1 Each Contractor and his subcontractors and sub-tier contractors shall comply with all Idaho Statutes with specific reference to Public Works Contractor's State License Law, Title 54, Chapter 19 and Chapter 52, Idaho Code, as amended.
- 13.9 Nothing contained in the Contract Documents shall be construed as creating a joint venture, partnership or agency relationship between the parties.
- 13.10 The Architect, Construction Manager, Contractor, and any other person required to follow the Contract Documents agree not to discriminate against any employee or applicant for employment in the performance of the Contract Documents with respect to tenure, terms, conditions or privilege of employment, or any matter directly or indirectly relating to employment because of race, sex, color, religion, national origin, disability, ancestry or status as a Vietnam veteran. Breach of this Paragraph may be regarded as a material breach of the Contract Documents.
- 13.11 The parties agree that the terms and conditions of the Contract Documents shall be held in confidence except as required by or for applicable disclosure and other laws and regulations, financing sources, enforcement of the Contract Documents, mergers and acquisitions, or as otherwise mutually agreed by the parties and such agreement shall not be withheld unreasonably.
- 13.12 The Contract Documents may be subject to approval by the Owner. If the Agreement is subject to such approval and such approval is not granted, the Contract Documents shall be void and neither party shall have any further obligations or liabilities hereunder.
- 13.13 No party to the Contract Documents shall, without express written consent in each case, use any name, trade name, trademark, or other designation of any other party hereto (including contraction, abbreviation or simulation) in advertising, publicity, promotional, or any other activities or context.
- 13.14 Any notice under the Contract Documents shall be in writing and shall be delivered in person or by public or private courier service (including U.S. Postal Service Express Mail) or certified mail with return receipt requested or by facsimile. All notices shall be addressed to the parties at the following addresses or at such other addresses as the parties may from time to time direct in writing:

OWNER:

City of Hailey  
115 Main Street South  
Hailey, Idaho 83333  
Phone: (208) 788-4221  
Fax: (208) 788-2924

CONTRACTOR:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Phone: ( ) \_\_\_\_\_  
Fax: ( ) \_\_\_\_\_

Attention: \_\_\_\_\_

ARCHITECT:

Ruscitto/Latham/Blanton Architectura, P.A.  
PO Box 419  
Sun Valley, Idaho 83353  
Phone: (208) 726-5608  
Fax: (208) 726-1033

Attention: Nick Latham

CONSTRUCTION MANAGER:

Kreizenbeck Constructors  
251 East Front Street, Suite 110  
Boise, Idaho 83702  
Phone: (208) 336-9500  
Fax: (208) 336-7444

Attention: Dave Maloney

13.15 LAW GOVERNING.

This Agreement is governed by the laws of the State of Idaho.

**ARTICLE 14, TERMINATION OR SUSPENSION OF THE CONTRACT**

14.2 Add the following:

14.2.1.5 Falls ten (10) days behind the Project Schedule provided by the Construction Manager.

END OF DOCUMENT

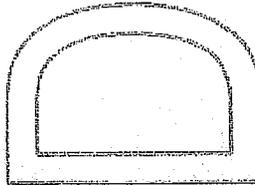
# DRAFT AIA® Document A101/CMA™ - 1992

Standard Form of Agreement Between Owner and Contractor  
where the basis of payment is a STIPULATED SUM

**ADDITIONS AND DELETIONS:**  
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An Additions and Deletions Report that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

The 1992 Edition of AIA Document A201/CMA, General Conditions of the Contract for Construction, Construction Manager-Adviser Edition, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.



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User Notes: (1281783353)

1



**ARTICLE 1 THE CONTRACT DOCUMENTS**

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement; these form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Contract Documents, other than Modifications, appears in Article 9.

**ARTICLE 2 THE WORK OF THIS CONTRACT**

The Contractor shall execute the entire Work described in the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others, or as follows:

**ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION**

§ 3.1 The date of commencement is the date from which the Contract Time of Section 3.2 is measured, and shall be the date of this Agreement, as first written above, unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner.

*(Insert the date of commencement, if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)*

Unless the date of commencement is established by a notice to proceed issued by the Owner, the Contractor shall notify the Owner, through the Construction Manager, in writing not less than five days before commencing the Work to permit the timely filing of mortgages, mechanic's liens and other security interests.

§ 3.2 The Contractor shall achieve Substantial Completion of the entire Work not later than ~~90~~ *(Insert the calendar date or number of calendar days after the date of commencement. Also insert any requirements for earlier Substantial Completion of certain portions of the Work, if not stated elsewhere in the Contract Documents.)*

**Portion of Work**

**Substantial Completion date**

, subject to adjustments of this Contract Time as provided in the Contract Documents. *(Insert provisions, if any, for liquidated damages relating to failure to complete on time.)*

**ARTICLE 4 CONTRACT SUM**

§ 4.1 The Owner shall pay the Contractor in current funds for the Contractor's performance of the Contract the Contract Sum of ~~Fifty Thousand Dollars and Zero Cents~~ (~~\$ 50,000.00~~), subject to additions and deductions as provided in the Contract Documents.

§ 4.2 The Contract Sum is based upon the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner: *(State the numbers or other identification of accepted alternates. If decisions on other alternates are to be made by the Owner subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date until which that amount is valid.)*

§ 4.3 Unit prices, if any, are as follows:

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Description	Units	Price (\$ 0.00)
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**ARTICLE 5 PROGRESS PAYMENTS**

§ 5.1 Based upon Applications for Payment submitted by the Contractor to the Construction Manager, and upon Project Applications and Certificates for Payment issued by the Construction Manager and Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

§ 5.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

§ 5.3 Provided an Application for Payment is submitted to the Construction Manager not later than the ~~( )~~ day of a month, the Owner shall make payment to the Contractor not later than the ~~( )~~ day of the ~~( )~~ month. If an Application for Payment is received by the Construction Manager after the application date fixed above, payment shall be made by the Owner not later than ~~( )~~ (~~( )~~) days after the Construction Manager receives the Application for Payment.

§ 5.4 Each Application for Payment shall be based upon the Schedule of Values submitted by the Contractor in accordance with the Contract Documents. The Schedule of Values shall allocate the entire Contract Sum among the various portions of the Work and be prepared in such form and supported by such data to substantiate its accuracy as the Construction Manager or Architect may require. This schedule, unless objected to by the Construction Manager or Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 5.5 Applications for Payment shall indicate the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

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

§ 5.6.1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the total Contract Sum allocated to that portion of the Work in the Schedule of Values, less retainage of ~~( )~~ (~~( )~~). Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute may be included as provided in Section 7.3.7 of the General Conditions;

§ 5.6.2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of ~~( )~~ (~~( )~~);

§ 5.6.3 Subtract the aggregate of previous payments made by the Owner; and

§ 5.6.4 Subtract amounts, if any, for which the Construction Manager or Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of the General Conditions.

§ 5.7 The progress payment amount determined in accordance with Section 5.6 shall be further modified under the following circumstances:

§ 5.7.1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to ~~( )~~ (~~( )~~) of the Contract Sum, less such amounts as the Construction Manager recommends and the Architect determines for incomplete Work and unsettled claims; and

§ 5.7.2 Add, if final completion of the Work is thereafter materially delayed through no fault of the Contractor, any additional amounts payable in accordance with Section 9.10.3 of the General Conditions.

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§ 5.8 Reduction or limitation of retainage, if any, shall be as follows:  
(If it is intended, prior to Substantial Completion of the entire Work, to reduce or limit the retainage resulting from the percentages inserted in Sections 5.6.1 and 5.6.2 above, and this is not explained elsewhere in the Contract Documents, insert here provisions for such reduction or limitation.)

\_\_\_\_\_

**ARTICLE 6 FINAL PAYMENT**

Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when (1) the Contract has been fully performed by the Contractor except for the Contractor's responsibility to correct nonconforming Work as provided in Section 12.2.2 of the General Conditions and to satisfy other requirements, if any, which necessarily survive final payment; and (2) a final Project Certificate for Payment has been issued by the Construction Manager and Architect; such final payment shall be made by the Owner not more than 30 days after the issuance of the final Project Certificate for Payment, or as follows:

\_\_\_\_\_

**ARTICLE 7 MISCELLANEOUS PROVISIONS**

§ 7.1 Where reference is made in this Agreement to a provision of the General Conditions or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 7.2 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

*(Insert rate of interest agreed upon, if any.)*

\_\_\_\_\_

*(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Contractor's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Legal advice should be obtained with respect to deletions or modifications, and also regarding requirements such as written disclosures or waivers.)*

§ 7.3 Temporary facilities and services:

*(Here insert temporary facilities and services which are different from or in addition to those included elsewhere in the Contract Documents.)*

\_\_\_\_\_

§ 7.4 Other Provisions:

*(Here list any special provisions affecting the Contract.)*

\_\_\_\_\_

**ARTICLE 8 TERMINATION OR SUSPENSION**

§ 8.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of the General Conditions.

§ 8.2 The Work may be suspended by the Owner as provided in Article 14 of the General Conditions.

**ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS**

§ 9.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated as follows:

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§ 9.1.1 The Agreement is this executed Standard Form of Agreement Between Owner and Contractor, AIA Document A101/CMA, 1992 Construction Manager-Adviser Edition.

§ 9.1.2 The General Conditions are the General Conditions of the Contract for Construction, AIA Document A201/CMA, 1992 Construction Manager-Adviser Edition.

§ 9.1.3 The Supplementary and other Conditions of the Contract are those contained in the Project Manual dated , and are as follows:

Document	Title	Pages
<input type="text"/>	<input type="text"/>	<input type="text"/>

§ 9.1.4 The Specifications are those contained in the Project Manual dated as in Section 9.1.3, and are as follows: (Either list the Specifications here or refer to an exhibit attached to this Agreement.)

Section	Title	Pages
<input type="text"/>	<input type="text"/>	<input type="text"/>

§ 9.1.5 The Drawings are as follows, and are dated  unless a different date is shown below: (Either list the Drawings here or refer to an exhibit attached to this Agreement.)

Number	Title	Date
<input type="text"/>	<input type="text"/>	<input type="text"/>

§ 9.1.6 The Addenda, if any, are as follows:

Number	Date	Pages
<input type="text"/>	<input type="text"/>	<input type="text"/>

Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 9.

§ 9.1.7 Other documents, if any, forming part of the Contract Documents are as follows: (List here any additional documents which are intended to form part of the Contract Documents. The General Conditions provide that bidding requirements such as advertisement or invitation to bid, Instructions to Bidders, sample forms and the Contractor's bid are not part of the Contract Documents unless enumerated in this Agreement. They should be listed here only if intended to be part of the Contract Documents.)

This Agreement entered into as of the day and year first written above.

OWNER

CONTRACTOR

(Signature)

(Printed name and title)

(Signature)

(Printed name and title)

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