



**Lewiston City Council
SPECIAL MEETING AGENDA
June 12, 2024 - 3:15 PM
Community Center – Steelhead Room – 1424 Main Street
Lewiston, Idaho 83501**

Seating will be available on a first-come, first-served basis.

I. CALL TO ORDER

II. PLEDGE OF ALLEGIANCE

III. ACTIVE AGENDA

A. IFB-23-020 LEWISTON COMMUNITY CENTER TRANSIT STOP (TR060):

Reconsidering accepting the bid from Kenaston Corporation for the Lewiston Community Center Transit Stop in the amount of \$930,851.00, considering visiting the proposed Transit Stop site, and authorizing the Mayor to execute the contract - Action Item (Transit Manager Seigneur)

IV. UNFINISHED AND NEW BUSINESS

A. CITY COUNCILOR COMMENTS: Comments shall not be related to an item currently before the City Council or an item that may come before the City Council in the foreseeable future, and shall be limited to comments, not discussion.

B. MAYOR COMMENTS

V. ADJOURNMENT - Action Item

The City of Lewiston is committed to providing access and reasonable accommodation in its services, programs, and activities and encourages qualified persons with disabilities to participate. If you anticipate needing any type of accommodation or have questions about the physical access provided at this meeting, please contact the City Clerk's Office at least forty-eight (48) hours in advance of the meeting at 208-746-3671, ext. 6202.



CITY COUNCIL MEETING AGENDA ITEM SUMMARY

ITEM TITLE IFB-23-020 LEWISTON COMMUNITY CENTER TRANSIT STOP (TR060)	AGENDA NO. III. A. AGENDA DATE: June 12, 2024
ITEM SUMMARY (Background, Discussion, Key Points, Recommendations, etc.) The Transit Department is seeking approval from the City Council for a construction contract with Kenaston Corporation for the amount of \$930,851. This contract is for the construction of a new transit stop. The Community Center Transit Stop was initially awarded \$127,981 in federal funding with a local match of \$31,996 for FY 2020–2022. This grant was for constructing a new transit stop on the east side of Lincoln St. between F and G Street, which the Council approved in November 2020. The project was put on hold for two years due to uncertainties regarding urban funding for Transit, which have now been resolved. When the contract expired in 2022, Transit amended the agreement to extend it into 2023. With the help of the MPO, additional federal funding of \$156,934 was secured, bringing the total to \$284,915. The Transit Department went out to bid for the Lewiston Community Center Transit Stop on December 26, 2023. Three bids were received, and one bid was deemed non-responsive. The lowest bidder was Kenaston Corporation in the amount of \$930,851, which was \$674,801 over the Engineer's estimate due to rising construction costs. To address this shortfall, Transit applied for additional Federal Transit Administration (FTA) funding and was granted \$798,669 through the Idaho Transit Department (ITD). The additional funding exceeds the needs of this project and may be used for other needs, which staff is currently evaluating. Notice of the project was advertised in the Lewiston Tribune, as legally required, and emailed to persons signed up through the City's website to receive notification of bid opportunities. Distribution of bid documents was administered through an online bid notification and distribution provider, QuestCDN.	
BUDGET IMPACT (Identify any or all impacts this proposed action would have on the City budget and/or personnel resources) The local match of \$71,229 is already programmed in the FY24 budget. The remaining \$114,942 of the total local match of \$186,171 will be provided by funds received from the Asotin County Public Transit. The remaining \$744,680 will be covered through the utilization of 5339 Grant Funding.	
ACTION PROPOSED	

Staff recommends that the City Council accept the bid from Kenaston Corporation, Lewiston, ID, for The Lewiston Community Center Transit Stop in the amount of \$930,851.00, and authorize the Mayor to execute a contract between Kenaston Corporation and the City.

Memo



To: Mayor Johnson
From: Suzanne Seigneur, Transit Manager
Cc: Purchasing Department,
Shannon Grow, Director, Community Development
Date: May 29, 2024
Re: Approval Request for the Community Center Transit Stop
Construction Contract with Kenaston Corporation

The Transit Department is seeking approval from the City Council for a construction contract with Kenaston Corporation in the amount of \$930,851. This contract is for the construction of a transit stop on the west side of the Lewiston Community Center parking lot

Background: The funding for the Community Center Transit Stop construction has undergone several amendments to the agreement with the Idaho Transportation Department (ITD). The agreement was amended twice due to the steep increase in construction prices, and once for a grant timeframe extension. The most recent amendment to the grant agreement, which was just approved, provides sufficient Federal Transit Administration (FTA) grant funding of \$744,680 for the construction contract with Kenaston Corporation.

With the local match of \$71,229 already programmed in the FY24 budget, the remaining \$114,942 of the total local match of \$186,171 will be provided by funds received from the Asotin County Public Transit as reimbursement for the purchase of Intelligent Transportation System (ITS) software.

ITD Funding Agreement Amendments

Amendment 1 (2022) - increased federal amount from \$127,981 to \$284,915

Amendment 2 (2023) - extended grant agreement time to Sept 30, 2025

Amendment 3 (2024) - increased federal award amount from \$284,915 to \$1,083,584.

The federal funds secured for the project are sourced from the 5339 FTA Bus and Bus Facility grants, with an 80% federal and 20% local/City match.

Memo



Budgetary Considerations: In addition to the already approved \$71,229 in local match for FY24, Transit is requesting an additional local match of \$114,942 in FY24 from the funds procured from the Asotin County Public Transit.

	Grant Funding (5339)	City Match in Budget	City Match Requested	Total Project Cost
CC Transit Stop (FY24)	744,680	71,229	114,942	\$930,851

Request for Approval: The Transit Department respectfully requests the City Council approve the Community Center Transit Stop construction contract with Kenaston Corporation of Lewiston, in the amount \$930,851.

Bid Tabulation - Unit Price Bid Schedule

Lewiston Community Center Transit Stop (IFB-23-020)									
				Engineer's Estimate		Kenaston Construction		Mangum Construction	
Item No.	Description	Estimate d Quantity	Unit	Unit Price (include sales tax)	Item Total	Unit Price (include sales tax)	Item Total	Unit Price (include sales tax)	Item Total
201.4.1.B.1	Clearing and Grubbing	1	LS	\$ 5,000.00	\$ 5,000.00	\$ 4,560.00	\$ 4,560.00	\$ 4,430.00	\$ 4,430.00
201.4.1.C.1	Removal of Obstructions	1	LS	\$ 9,000.00	\$ 9,000.00	\$ 3,000.00	\$ 3,000.00	\$ 2,913.00	\$ 2,913.00
	Removal of Asphalt Pavement	146	SY	\$ 20.00	\$ 2,920.00	\$ 30.00	\$ 4,380.00	\$ 29.14	\$ 4,254.44
	Removal of Concrete Curb & Gutter	452	LF	\$ 8.59	\$ 3,882.68	\$ 5.00	\$ 2,260.00	\$ 4.66	\$ 2,106.32
	Removal of Catch Basin	2	EA	\$ 690.00	\$ 1,380.00	\$ 1,440.00	\$ 2,880.00	\$ 1,398.00	\$ 2,796.00
	Removal of Concrete Sidewalk	122	SY	\$ 11.50	\$ 1,403.00	\$ 12.00	\$ 1,464.00	\$ 11.36	\$ 1,385.92
	Sawcut Pavement	673	LF	\$ 3.31	\$ 2,227.63	\$ 22.00	\$ 14,806.00	\$ 21.00	\$ 14,133.00
	Tree Removal	7	EA	\$ 690.00	\$ 4,830.00	\$ 1,812.00	\$ 12,684.00	\$ 1,758.00	\$ 12,306.00
202.4.1.C.1	Excavation	1	LS	\$ 12,000.00	\$ 12,000.00	\$ 13,800.00	\$ 13,800.00	\$ 13,380.00	\$ 13,380.00
206.4.1.A.1	Seedbed Preparation	126	SY	\$ 0.51	\$ 64.26	\$ 10.00	\$ 1,260.00	\$ 9.50	\$ 1,197.00
206.4.1.B.1	Seeding	126	SY	\$ 0.87	\$ 109.62	\$ 8.00	\$ 1,008.00	\$ 6.50	\$ 819.00
206.4.1.C.1	Mulching	101	SY	\$ 2.75	\$ 277.75	\$ 48.00	\$ 4,848.00	\$ 44.00	\$ 4,444.00
307.4.1.G.1	Type "P" Surface Restoration (Asphalt Roadway)	99	SY	\$ 240.00	\$ 23,760.00	\$ 168.00	\$ 16,632.00	\$ 137.50	\$ 13,612.50
404.4.1.A.1	Water Service Connection, Size 1"	1	EA	\$ 1,500.00	\$ 1,500.00	\$ 6,480.00	\$ 6,480.00	\$ 6,210.00	\$ 6,210.00
504.4.1.A.1	Sewer Service Line - Size 6"	45	LF	\$ 93.00	\$ 4,185.00	\$ 77.40	\$ 3,483.00	\$ 75.00	\$ 3,375.00
504.4.1.D.2	Sewer Service Connection to Main - Size 6"	1	EA	\$ -	\$ -	\$ 4,740.00	\$ 4,740.00	\$ 4,600.00	\$ 4,600.00
601.4.1.A.5	Storm Drain Pipe, 12" SDR-35 PVC	36	LF	\$ 75.00	\$ 2,700.00	\$ 126.00	\$ 4,536.00	\$ 121.60	\$ 4,377.60
602.4.1.F.1	Catch Basin - Type I	3	EA	\$ 2,190.00	\$ 6,570.00	\$ 1,236.00	\$ 3,708.00	\$ 1,200.00	\$ 3,600.00
602.4.1.J.1	Catch Basin Frame - Curb Inlet	2	EA	\$ 730.00	\$ 1,460.00	\$ 1,080.00	\$ 2,160.00	\$ 1,338.00	\$ 2,676.00
602.4.1.P.1	Catch Basin Frame - Rectangular	1	EA	\$ 650.00	\$ 650.00	\$ 730.00	\$ 730.00	\$ 707.00	\$ 707.00
705.4.1.A.1	Portland Cement Concrete Pavement - Class 8"	193	SY	\$ 77.00	\$ 14,861.00	\$ 172.00	\$ 33,196.00	\$ 136.00	\$ 26,248.00
	Portland Cement Concrete Pavement - Class 4"	338	SY	\$ 19.00	\$ 6,422.00	\$ 136.00	\$ 45,968.00	\$ 113.00	\$ 38,194.00
706.4.1.A.5	Standard 6-inch Vertical Curb & Gutter	203	LF	\$ 54.00	\$ 10,962.00	\$ 88.00	\$ 17,864.00	\$ 54.68	\$ 11,100.04
705.4.1.A.7	Curb, Type A	222	LF	\$ 45.00	\$ 9,990.00	\$ 70.00	\$ 15,540.00	\$ 54.45	\$ 12,087.90
706.4.1.B.1	Concrete Valley Gutters	190	LF	\$ 78.00	\$ 14,820.00	\$ 108.00	\$ 20,520.00	\$ 104.72	\$ 19,896.80
706.4.1.H.1	Pedestrian Ramp w/Detectable Warning Domes	2	EA	\$ 1,975.00	\$ 3,950.00	\$ 3,600.00	\$ 7,200.00	\$ 4,072.00	\$ 8,144.00
	Pedestrian Ramp w/out Detectable Warning	7	EA	\$ 900.00	\$ 6,300.00	\$ 3,000.00	\$ 21,000.00	\$ 4,072.00	\$ 28,504.00
1103.4.1.A.1	Construction Traffic Control	1	LS	\$ 6,000.00	\$ 6,000.00	\$ 7,800.00	\$ 7,800.00	\$ 7,500.00	\$ 7,500.00
2010.4.1.A.1	Mobilization	1	LS	\$ 12,000.00	\$ 12,000.00	\$ 40,800.00	\$ 40,800.00	\$ 34,750.00	\$ 34,750.00
2010.4.1.B.1	Sanitary Facilities	1	LS	\$ 900.00	\$ 900.00	\$ 1,440.00	\$ 1,440.00	\$ 1,165.00	\$ 1,165.00
	Power Pole Relocation (Contractor to supply	1	LS	\$ -	\$ -	\$ 8,904.00	\$ 8,904.00	\$ 3,490.00	\$ 3,490.00
	Bus Stop Canopy								
	Concrete Foundation	1	LS	\$ 4,465.00	\$ 4,465.00	\$ 66,000.00	\$ 66,000.00	\$ 40,000.00	\$ 40,000.00
	CMU Block Walls	1	LS	\$ 5,600.00	\$ 5,600.00	\$ 43,200.00	\$ 43,200.00	\$ 12,800.00	\$ 12,800.00
	Steel Framing	1	LS	\$ 10,200.00	\$ 10,200.00	\$ 108,000.00	\$ 108,000.00	\$ 110,500.00	\$ 110,500.00
	Metal Roofing	1	LS	\$ 1,200.00	\$ 1,200.00	\$ 56,400.00	\$ 56,400.00	\$ 55,900.00	\$ 55,900.00
	Electrical	1	LS	\$ 5,700.00	\$ 5,700.00	\$ 15,600.00	\$ 15,600.00	\$ 11,775.00	\$ 11,775.00
	Fixtures, Benches, Trash Receptacles, Signage,	1	LS	\$ 10,500.00	\$ 10,500.00	\$ 48,000.00	\$ 48,000.00	\$ 20,950.00	\$ 20,950.00
	Tranist Stop Site and Canopy Total				\$ 207,789.94		\$ 666,851.00		\$ 546,327.52
	Bus Stop Restrooms								
	[Concrete Foundation, CMU Blocks, Metal	1	LS	\$ 29,000.00	\$ 29,000.00	\$ 180,000.00	\$ 180,000.00	\$ 376,000.00	\$ 376,000.00
	Electrical	1	LS	\$ 5,000.00	\$ 5,000.00	\$ 36,000.00	\$ 36,000.00	\$ 27,000.00	\$ 27,000.00
	Plumbing	1	LS	\$ 7,500.00	\$ 7,500.00				
	Plumbing & Restroom Fixtures	1	LS	\$ 14,260.00	\$ 14,260.00	\$ 48,000.00	\$ 48,000.00	\$ 48,500.00	\$ 48,500.00
	Tranist Stop Restroom Total				\$ 48,260.00		\$ 264,000.00		\$ 451,500.00
	Subtotal				\$ 256,049.94		\$ 930,851.00		\$ 997,827.52
	Total Project Cost				\$ 256,049.94		\$ 930,851.00		\$ 997,827.52

AGREEMENT BETWEEN OWNER AND CONTRACTOR FOR CONSTRUCTION CONTRACT

This Agreement is by and between City of Lewiston, an Idaho municipal corporation ("Owner") and Kenaston Corporation an Idaho Corporation ("Contractor").

Terms used in this Agreement have the meanings stated in the General Conditions and the Supplementary Conditions.

Owner and Contractor hereby agree as follows:

ARTICLE 1—WORK

- 1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows: Lewiston Community Center Transit Stop, (TR060) (IFB-23-020)

ARTICLE 2—THE PROJECT

- 2.01 The Project, of which the Work under the Contract Documents is a part, is generally described as follows: The project is to re-purpose the west side of the Lewiston Community Center (LCC) parking lot along Lincoln Street to construct a new transit/bus transfer stop. The site work portion of the project includes a 190 linear foot bus pullout along Lincoln Street, a pedestrian walkway through the parking lot to the LCC building and the redesign of the west end of the LCC parking lot. The project also includes a 93-foot by 17-foot covered shelter for waiting passengers, a separate restroom facility that includes two ADA compliant restrooms and a restroom for transit system drivers and personnel. This project is partially funded from Federal Transit Administration (FTA); Davis-Bacon Wages are applicable.

ARTICLE 3—ENGINEER

- 3.01 The Owner has retained TD&H Engineering ("Engineer") to act as Owner's representative, assume all duties and responsibilities of Engineer, and have the rights and authority assigned to Engineer in the Contract.
- 3.02 The part of the Project that pertains to the Work has been designed by TD&H Engineering.

ARTICLE 4—CONTRACT TIMES

- 4.01 *Time is of the Essence*
- A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.
- 4.02 *Contract Times: Days*
- A. The Work will be substantially complete within **270** days after the date when the Contract Times commence to run as provided in Paragraph 4.01 of the General Conditions, and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions within **290** days after the date when the Contract Times commence to run.

4.03 *Liquidated Damages*

- A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial and other losses if the Work is not completed and Milestones not achieved within the Contract Times, as duly modified. The parties also recognize the delays, expense, and difficulties involved in proving, in a legal or arbitration proceeding, the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty):
1. *Substantial Completion:* Contractor shall pay Owner \$2,400.00 for each day that expires after the time (as duly adjusted pursuant to the Contract) specified above for Substantial Completion, until the Work is substantially complete.
 2. *Completion of Remaining Work:* After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, Contractor shall pay Owner \$2,400.00 for each day that expires after such time until the Work is completed and ready for final payment.
 3. Liquidated damages for failing to timely attain Milestones, Substantial Completion, and final completion are not additive, and will not be imposed concurrently.

4.04 *Special Damages*

- A. Contractor shall reimburse Owner (1) for any fines or penalties imposed on Owner as a direct result of the Contractor's failure to attain Substantial Completion according to the Contract Times, and (2) for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.02 for Substantial Completion (as duly adjusted pursuant to the Contract), until the Work is substantially complete.
- B. After Contractor achieves Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times, Contractor shall reimburse Owner for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.02 for Work to be completed and ready for final payment (as duly adjusted pursuant to the Contract), until the Work is completed and ready for final payment.
- C. The special damages imposed in this paragraph are supplemental to any liquidated damages for delayed completion established in this Agreement.

ARTICLE 5—CONTRACT PRICE

- 5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents, the amounts that follow, subject to adjustment under the Contract:
- A. For all Unit Price Work, an amount equal to the sum of the extended prices (established for each separately identified item of Unit Price Work by multiplying the unit price times the actual quantity of that item).

2020 ISPWC 00410-ARTICLE 3, 3.01 - Unit Price Bids

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2020 ISPWC 00520-ARTICLE 5, 5.01 - Unit Price Work

Unit Price Bids

A. Bidder will perform the following Work at the indicated unit prices:

Bid Item No.	ISPWC Item No.	Description	Unit	Estimated Quantity	Bid Unit Price	Bid Amount
		Site Work				
1	201.4.1.B.1	Clearing and Grubbing	LS	1	\$4,560.00	\$4,560.00
2	201.4.1.C.1	Removal of Obstructions	LS	1	\$3,000.00	\$3,000.00
3		Removal of Asphalt Pavement	SY	146	\$30.00	\$4,380.00
4		Removal of Concrete Curb & Gutter	LF	452	\$5.00	\$2,260.00
5		Removal of Catch Basin	EA	2	\$1,440.00	\$2,880.00
6		Removal of Concrete Sidewalk	SY	122	\$12.00	\$1,464.00
7		Sawcut Pavement	LF	673	\$22.00	\$14,806.00
8		Tree Removal	EA	7	\$1,812.00	\$12,684.00
9	202.4.1.C.1	Excavation	LS	1	\$13,800.00	\$13,800.00
10	206.4.1.A.1	Seedbed Preparation	SY	126	\$10.00	\$1,260.00
11	206.4.1.B.1	Seeding	SY	126	\$8.00	\$1,068.00
12	206.4.1.C.1	Mulching	SY	101	\$48.00	\$4,848.00
13	307.4.1.G.1	Type "P" Surface Restoration (Asphalt Roadway)	SY	99	\$168.00	\$16,632.00
14	404.4.1.A.1	Water Service Connection, Size 1"	EA	1	\$6,480.00	\$6,480.00
15	504.4.1.A.1	Sewer Service Line - Size 6"	LF	45	\$77.40	\$3,483.00
16	504.4.1.D.2	Sewer Service Connection to Main - Size 6"	EA	1	\$4,740.00	\$4,740.00
17	601.4.1.A.5	Storm Drain Pipe, 12" SDR-35 PVC	LF	36	\$126.00	\$4,536.00
18	602.4.1.F.1	Catch Basin - Type I	EA	3	\$1,236.00	\$3,708.00
19	602.4.1.J.1	Catch Basin Frame - Curb Inlet	EA	2	\$1,080.00	\$2,160.00
20	602.4.1.P.1	Catch Basin Frame - Rectangular	EA	1	\$730.00	\$730.00
21	705.4.1.A.1	Portland Cement Concrete Pavement - Class 8" Thickness (Pullout)	SY	193	\$172.00	\$33,196.00
22		Portland Cement Concrete Pavement - Class 4" Thickness (Sidewalk)	SY	338	\$136.00	\$45,968.00
23	706.4.1.A.5	Standard 6-inch Vertical Curb & Gutter	LF	203	\$88.00	\$17,864.00
24	705.4.1.A.7	Standing Curb, Type A	LF	222	\$70.00	\$15,540.00
25	706.4.1.B.1	Concrete Valley Gutters	LF	190	\$108.00	\$20,520.00
26	706.4.1.H.1	Pedestrian Ramp w/Detectable Warning Domes, Type	EA	2	\$3,600.00	\$7,200.00
27		Pedestrian Ramp w/out Detectable Warning Domes, Type	EA	7	\$3,000.00	\$21,000.00
28	1103.4.1.A.1	Construction Traffic Control	LS	1	\$7,800.00	\$7,800.00
29	2010.4.1.A.1	Mobilization	LS	1	\$40,800.00	\$40,800.00
30	2010.4.1.B.2	Sanitary Facilities	LS	1	\$1,440.00	\$1,440.00
31	201.4.1.B.1	Power Pole Relocation (Contractor to supply conduit and trench)	LS	1	\$8,904.00	\$8,904.00

2020 ISPWC 00410-ARTICLE 3, 3.01 - Unit Price Bids

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2020 ISPWC 00520-ARTICLE 5, 5.01 - Unit Price Work

		Bus Stop Canopy				
32		Concrete Foundation	LS	1	\$66,000.00	\$66,000.00
33		CMU Block Walls	LS	1	\$43,200.00	\$43,200.00
34		Steel Framing	LS	1	\$108,000.00	\$108,000.00
35		Metal Roofing	LS	1	\$56,400.00	\$56,400.00
36		Electrical	LS	1	\$15,600.00	\$15,600.00
37		Fixtures, Benches, Trash Receptacles, Signage, Bulletin Boards	LS	1	\$48,000.00	\$48,000.00
		Bus Stop Restrooms				
38		Concrete Foundation, CMU Blocks, Metal Roofing, Doors/Skylights	LS	1	\$180,000.00	\$180,000.00
39		Electrical	LS	1	\$36,000.00	\$36,000.00
40		Plumbing & Restroom Fixtures	LS	1	\$48,000.00	\$48,000.00
Total of All Unit Price Bid Items						\$930,851.00

B. Bidder acknowledges that:

1. Each Bid Unit Price includes an amount considered by Bidder to be adequate to cover Contractor's overhead and profit for each separately identified item, and
2. Estimated quantities are not guaranteed, and are solely for the purpose of comparison of Bids, and final payment for all Unit Price Work will be based on actual quantities, determined as provided in the Contract Documents.

C. ~~Total Bid Price~~ **Total Bid Price (Lump Sum and Unit Prices)**

Total Bid Price (Total Unit Price Bids)	\$930,851.00
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D. For all Work, at the prices stated in Contractor's Bid, attached hereto as an Exhibit A.

ARTICLE 6—PAYMENT PROCEDURES

6.01 Submittal and Processing of Payments

A. Contractor shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

6.02 Progress Payments; Retainage

A. Owner shall make progress payments on the basis of Contractor's Applications for Payment up to twice each month during performance of the Work as provided in Paragraph 6.02.A.1 below, provided that such Applications for Payment have been submitted in a timely manner and otherwise meet the requirements of the Contract. All such payments will be measured by the Schedule of Values established as provided in the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no Schedule of Values, as provided elsewhere in the Contract.

1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Owner may withhold, including but not limited to liquidated damages, in accordance with the Contract.
 - a. Ninety Five (95) percent of the value of the Work completed (with the balance being retainage).
 - b. Ninety Five (95) percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).
 - B. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to 100 percent of the Work completed, less such amounts set off by Owner pursuant to Paragraph 15.01.E of the General Conditions, and less 200 percent of Engineer's estimate of the value of Work to be completed or corrected as shown on the punch list of items to be completed or corrected prior to final payment.
- 6.03 *Final Payment*
- A. Upon final completion and acceptance of the Work, Owner shall pay the remainder of the Contract Price in accordance with Paragraph 15.06 of the General Conditions.
- 6.04 *Consent of Surety*
- A. Owner will not make final payment, or return or release retainage at Substantial Completion or any other time, unless Contractor submits written consent of the surety to such payment, return, or release.
- 6.05 *Interest*
- A. This article is reserved.

ARTICLE 7—CONTRACT DOCUMENTS

7.01 *Contents*

- A. The Contract Documents consist of the following and shall govern in the following order in case of conflict among them:
 1. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
 - a. Change Orders.
 - b. Work Change Directives.
 - c. Field Orders.
 - d. Notice to Proceed.
 2. This Agreement (2020 ISPWC Section 520) including any exhibits to this Agreement (enumerated as follows):
 - a. N/A
 3. Addenda 1 to 4.

4. Drawings consisting of **40** sheets with each sheet bearing the following general title:
Lewiston Community Center Transit Stop
5. Special Provisions and Supplementary Technical Specifications (2020 ISPWC Section 820).
6. Supplementary Conditions (2020 ISPWC Section 800).
7. Instructions to Bidders (2020 ISPWC Section 200).
8. General Conditions (2020 ISPWC Division 100).
9. Standard Specifications and Drawings – 2020 Idaho Standards for Public Works Construction (ISPWC).
10. Contractor's Bid (2020 ISPWC Section 410 and all attachments thereto).
11. Documentation submitted by Contractor prior to Notice of Award.
12. CONTRACTOR'S Affidavits, including Non-Collusion Affidavit (ISPWC Section 450), Contractor's Affidavit Concerning Taxes (ISPWC Section 951), and Contractor's Affidavit Concerning Alcohol and Drug-Free Workplace (ISPWC Section 460), Buy America, Lobbying cert, Federal Debarment cert.
13. Bonds:
 - a. Performance bond (2020 ISPWC Section 610 together with power of attorney).
 - b. Payment bond (2020 ISPWC Section 615 together with power of attorney).
 - c. Other Bonds Secured by Contractor
 1. N/A
- B. The Contract Documents listed in Paragraph 7.01.A are incorporated by reference to this Agreement.
- C. There are no Contract Documents other than those listed above in this Article 7.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in the Contract.

ARTICLE 8—REPRESENTATIONS, CERTIFICATIONS, AND STIPULATIONS

8.01 Contractor's Representations

- A. In order to induce Owner to enter into this Contract, Contractor makes the following representations:
 1. Contractor has examined and carefully studied the Contract Documents, including Addenda.
 2. Contractor has visited the Site, conducted a thorough visual examination of the Site and adjacent areas, and become familiar with the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
 3. Contractor is familiar with all Laws and Regulations that may affect cost, progress, and performance of the Work.
 4. Contractor has carefully studied the reports of explorations and tests of subsurface

conditions at or adjacent to the Site and the drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, with respect to the Technical Data in such reports and drawings.

5. Contractor has carefully studied the reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, with respect to Technical Data in such reports and drawings.
6. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Technical Data identified in the Supplementary Conditions or by definition, with respect to the effect of such information, observations, and Technical Data on (a) the cost, progress, and performance of the Work; (b) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (c) Contractor's safety precautions and programs.
7. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.
8. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
9. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and of discrepancies between Site conditions and the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
10. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
11. Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.
12. The Contractor is an appropriately licensed public works contractor per Idaho Code Section 54-1902.
13. Contractor shall comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither Owner nor Engineer shall be responsible for monitoring the Contractor's compliance with any Laws or Regulations.

8.02 *Contractor's Certifications*

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 8.02:
1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process or in the Contract execution;
 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
 3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
 4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.
- B. Anti-Boycott Against Israel Act: If this Agreement: (1) Is to acquire or dispose of services, supplies, information technology, or construction; (2) has a potential value of One Hundred Thousand Dollars (\$100,000) or more; and (3) Contractor is a company with ten (10) or more employees, then, pursuant to Idaho Code § 67-2346, Contractor certifies that Contractor is not currently engaged in, and will not for the duration of this Agreement engage in, a boycott of goods or services from Israel or territories under Israel's control. The terms "company" and "boycott Israel" shall have the meanings ascribed to them in Idaho Code § 67-2346.
- C. No Public Funds for Abortion Act: Pursuant to Idaho Code § 18-8703, Contractor certifies that it is not, and will not for the duration of the Agreement, become an abortion provider or an affiliate of an abortion provider, as those terms are defined in the "No Public Funds for Abortion Act," Idaho Code §§ 18-8701 et seq.
- D. Contract with Company Owned or operated by the Government of China Prohibited: Pursuant to Idaho Code § 67-2359, Contractor certifies that Contractor is not a company currently owned or operated by the government of China and will not for the duration of this Agreement be owned or operated by the government of China. The terms "company" and "government of China" shall have the meanings ascribed to them in Idaho Code § 67-2359.

8.03 *Standard General Conditions*

- A. Owner stipulates that if the General Conditions that are made a part of this Contract are ISPWC Division 100, Standard General Conditions for the Construction Contract (2018), published by the Engineers Joint Contract Documents Committee, and if Owner is the party that has furnished said General Conditions, then Owner has plainly shown all modifications to the standard wording of such published document to the Contractor, through a process such as highlighting or "track changes" (redline/strikeout), or in the Supplementary Conditions.

ARTICLE 9—OTHER (CITY) PROVISIONS

9.01 Other (City) Provisions

- A. **Independent Contractor.** The Parties agree that CONTRACTOR is an independent contractor, with no employment relationship with the City of Lewiston.
- B. **Contracting Authority.** CONTRACTOR warrants that the signatory to this Agreement has the authority to fully bind CONTRACTOR to enter into and be obligated to perform the duties set forth herein.
- C. **Indemnification.** CONTRACTOR shall defend, indemnify, and hold OWNER, its officers, agents, and employees harmless for all claims, losses, actions, damages, judgments, costs, expenses, and/or injuries to persons or property arising out of or in connection with any activities, acts, or omissions of CONTRACTOR, its officers, agents or employees. In the event OWNER is alleged to be liable on account of any activities, acts, or omissions of CONTRACTOR, its officers, agents or employees, then CONTRACTOR shall defend such allegations through counsel chosen by OWNER; and CONTRACTOR shall bear all costs, fees, and expenses of such defense, including, but not limited to, all attorney fees and expenses, court costs, and expert witness fees and expenses. This duty shall survive the termination or expiration of this Agreement.
- D. **Notices.** All notices required to be given pursuant to this Agreement shall be in writing and shall be deemed delivered immediately if hand-delivered or forty-eight (48) hours after depositing the same in the U.S. mail, certified or registered, postage prepaid, addressed to the respective addresses set forth on the signature page.
- E. **Choice of Law.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of Idaho, with venue for any action brought pursuant to this Agreement to be in the Second Judicial District, State of Idaho.
- F. **Performance/Waiver.** The failure of a Party hereto to insist upon strict performance or observance of the terms of this Agreement shall not be a waiver of any breach of any terms or conditions of this Agreement by the other Party.
- G. **Third Party Beneficiaries.** Nothing contained herein shall create any relationship, contractual or otherwise, with, or any rights in favor of, any third party. Nothing contained herein shall extend the liability of either Party beyond that provided by governing law.
- H. **Attorney Fees.** In the event a controversy, claim, or action arises between the Parties to this Agreement regarding the enforcement of its terms and conditions, or the breach of any of its provisions, the prevailing Party shall be entitled to recover from the other Party all costs and

expenses incurred by the prevailing Party, including reasonable attorney fees, regardless of whether such controversy, claim, or action is prosecuted to judgment or appealed.

- I. **Public Records.** The Parties herein understand and acknowledge that this Agreement and its attachments are subject to the Idaho Public Records Act, I.C. §§ 74-101, et seq., the Idaho Open Meetings Act, I.C. §§ 74-201, et seq., and other applicable federal and state laws, and might be public records.
- J. **Use of City Name.** CONTRACTOR shall not include the name, logo, or any identifying marks of the City of Lewiston in any advertising, sales promotion, or other publicity matter.
- K. **Non-Discrimination.** CONTRACTOR shall not refuse to hire any person, including any subcontractor, because of such person's race, creed, sex, color, national origin, ancestry, religion, physical or mental disability, marital or familial status, sexual orientation, or gender identity/expression, unless based on a bona fide occupational qualification.
- L. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.
- M. **Force Majeure.** Neither Party shall be liable for any failure to perform as required by this Agreement to the extent that such failure to perform is caused by any reason beyond the Party's control, or by reason of any of the following: labor disturbances or disputes, accidents, failure of any required governmental approval, civil disorders, acts of aggression, acts of God, failure of utilities, mechanical shutdowns, material shortages, disease, or similar occurrences.
- N. **Merger and Integration.** This writing embodies the whole agreement of the Parties. There are no promises, terms, conditions, or obligations other than those contained in this Agreement. All previous and contemporaneous communications, representations, or agreements, either verbal or written, between the Parties are superseded by this Agreement.
- O. **Non Appropriation.** Contractor understands that City is strictly bound by Article VIII, § 3 of the Idaho Constitution, which prohibits City from incurring any indebtedness or liability, in any manner, beyond its current fiscal year, which is October 1 through September 30. All automatic renewals of this Agreement are wholly contingent upon the annual appropriation of funds for this Agreement. Said appropriations may be made solely at the option and discretion of City. In the event that City does not appropriate funds for this Agreement for an ensuing fiscal year, for any reason, City may terminate this Agreement without penalty

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement.

This Agreement will be effective on [Indicate Date on which Contract becomes Effective] (which is the Effective Date of the Contract).

Owner:

City of Lewiston

(typed or printed name of organization)

By:

(individual's signature)

Date:

(date signed)

Name:

(typed or printed)

Title:

(typed or printed)

(If Owner is a corporation, attach evidence of authority to sign. If Owner is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of this Agreement.)

Attest:

(individual's signature)

Title:

(typed or printed)

Address for giving notices:

Designated Representative:

Name:

(typed or printed)

Title:

(typed or printed)

Address:

Phone:

Email:

Contractor:

Kenaston Corporation]

(typed or printed name of organization)

By:

(individual's signature)

Date:

(date signed)

Name:

Reece A. Hewett

(typed or printed)

Title:

Vice President

(typed or printed)

(If Contractor is a corporation, a partnership, limited liability company, or a joint venture, attach evidence of authority to sign.)

Attest:

(individual's signature)

Title:

Secretary

(typed or printed)

Address for giving notices:

P. O. Box 245

Lewiston, Idaho 83501

Designated Representative:

Name:

Reece A. Hewett

(typed or printed)

Title:

Vice President

(typed or printed)

Address:

2517 Main Street - P. O. Box 245

Lewiston, Idaho 83501

Phone:

208-746-1351

Email:

rhewett@kenaston.com

Idaho License Public Works: 11465-Unlimited-3-5

No.: Idaho: RCE 2025

(where applicable)