



**Lewiston City Council
SPECIAL MEETING AGENDA
May 3, 2023 - 4:00 PM
Lewiston City Hall – Back Conference Room – 1134 F Street
Lewiston, Idaho 83501**

Seating will be available on a first-come, first-served basis. All others who wish to observe this meeting may watch and listen to the livestream on their own device(s) by visiting the City of Lewiston's Facebook page or the City's website at cityoflewiston.org.

I. CALL TO ORDER

II. ACTIVE AGENDA

- A. RESOLUTION 2023-23:** Considering amending Resolution 2023-19 to authorize the City of Lewiston to expend up to three million dollars (\$3,000,000) for the design and construction of a solution for water storage in the High Zone of the City of Lewiston's water system without compliance with formal bidding procedures - Action Item (Dustin Johnson)
- B. HIGH RESERVOIR REPAIR (WR701) - DESIGN BUILD AGREEMENT WITH IMCO GENERAL CONSTRUCTION, INC CHANGE ORDER NO. 1:** Considering approval of Change Order No. 1 for the High Reservoir Repair (WR701) agreement between IMCO General Construction, Inc. and the City of Lewiston for Phase 2 High Reservoir Repair and Improvements in the amount of \$2,442,000 and authorizing the Mayor to sign the agreement - Action Item (Dustin Johnson)

III. 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 City Clerk Kari Ravencroft at least forty-eight (48) hours in advance of the meeting at 208-746-3671, ext. 6203.

RESOLUTION 2023-23

A RESOLUTION AMENDING RESOLUTION 2023-19 TO AUTHORIZE THE CITY OF LEWISTON TO EXPEND UP TO THREE MILLION DOLLARS (\$3,000,000) FOR THE DESIGN AND CONSTRUCTION OF A SOLUTION FOR WATER STORAGE IN THE HIGH ZONE OF THE CITY OF LEWISTON'S WATER SYSTEM WITHOUT COMPLIANCE WITH FORMAL BIDDING PROCEDURES

WHEREAS, on March 27, 2023, the Lewiston City Council approved Resolution 2023-19, a copy of which is attached hereto and incorporated herein as Exhibit A, declaring that an emergency exists and that the public interest and necessity demand the immediate expenditure of public money for the design and construction of an interim solution for water storage in the high zone of the City of Lewiston's water system;

WHEREAS, Resolution 2023-19 further authorizes the City of Lewiston to expend up to Two Million Dollars (\$2,000,000) for the design and construction of an interim solution for water storage in the high zone of the City of Lewiston's water system without compliance with formal bidding procedures and authorizes the Mayor to execute contracts that are equal to or in excess of One Hundred Thousand Dollars (\$100,000), but not more than Four Hundred Thousand Dollars (\$400,000), without prior approval from the Lewiston City Council, and related to the design and construction of an interim solution for water storage in the high zone of the City of Lewiston's water system;

WHEREAS, City of Lewiston staff and consultants have been analyzing solutions for water storage in the high zone of the City of Lewiston's water system;

WHEREAS, the solution currently proposed generally includes removing the existing roof on the water holding reservoir located near 16th Avenue in the City of Lewiston (hereafter "High Reservoir"), placing a liner in the High Reservoir, and placing a floating cover on top of the High Reservoir; and

WHEREAS, this Resolution 2023-23 amends Resolution 2023-19 to authorize the City of Lewiston to expend up to Three Million Dollars (\$3,000,000) for the design and construction of a solution for water storage in the high zone of the City of Lewiston's water system without compliance with formal bidding procedures.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF LEWISTON, IDAHO:

SECTION 1: The foregoing recitals are hereby incorporated into and made part of this Resolution 2023-23.

SECTION 2: The Lewiston City Council hereby amends Resolution 2023-19 to authorize the City of Lewiston to expend up to Three Million Dollars (\$3,000,000) for the design and construction of a solution for water storage in the high zone of the City of Lewiston's water system without compliance with formal bidding procedures. The Mayor and City of Lewiston staff are hereby authorized to take any and all steps necessary to make such purchase(s) without compliance with formal bidding procedures, pursuant to Idaho Code § 67-2808(1)(b).

SECTION 3: All other provisions of Resolution 2023-19 shall remain in full force and effect as if set forth fully herein.

SECTION 4: This resolution shall become effective upon its passage.

PASSED this _____ day of _____, 2023.

CITY OF LEWISTON

By: _____
Daniel G. Johnson, Mayor

ATTEST:

Kari J. Ravencroft, City Clerk

EXHIBIT A
TO RESOLUTION 2023-23

RESOLUTION 2023-19

A RESOLUTION DECLARING THAT AN EMERGENCY EXISTS AND THAT THE PUBLIC INTEREST AND NECESSITY DEMAND THE IMMEDIATE EXPENDITURE OF PUBLIC MONEY FOR THE DESIGN AND CONSTRUCTION OF AN INTERIM SOLUTION FOR WATER STORAGE IN THE HIGH ZONE OF THE CITY OF LEWISTON'S WATER SYSTEM

WHEREAS, pursuant to Idaho Code §§ 67-2808(1)(a)(i) and 67-2808(1)(a)(iii), the Lewiston City Council may declare that an emergency exists and that the public interest and necessity demand the immediate expenditure of public money if there is a great public calamity, such as an extraordinary fire, flood, storm, epidemic, or other disaster; or it is necessary to do emergency work to safeguard life, health, or property;

WHEREAS, pursuant to Idaho Code § 67-2808(1)(b), upon the Lewiston City Council's declaration of an emergency, any sum required in the emergency may be expended without compliance with formal bidding procedures;

WHEREAS, on January 18, 2023, a rupture of a water holding reservoir located near 16th Avenue in the City of Lewiston (hereafter "High Reservoir") resulted in the flooding of multiple homes and businesses and compromised potable water for over Twenty-Four Thousand (24,000) City of Lewiston residents, which resulted in an emergency Boil Water Alert Order to be issued by the City of Lewiston and a Declaration of Local Disaster Emergency to be issued by the Mayor of the City of Lewiston;

WHEREAS, on January 19, 2023, the Lewiston City Council approved Resolution 2023-6, declaring that an emergency exists and that the public interest and necessity demand the immediate expenditure of public money for the purchase of materials and services to repair or replace the water system infrastructure to mitigate the rupture of the High Reservoir, which work has since been completed;

WHEREAS, also on January 19, 2023, said Boil Water Alert Order was lifted for some areas within the City of Lewiston, but the remaining areas within the City of Lewiston remained subject to said Boil Water Alert Order;

WHEREAS, on January 23, 2023, the Lewiston City Council passed Resolution 2023-8, consenting to the continuance of the Declaration of Local Disaster Emergency beyond seven (7) days of its inception, if necessary;

WHEREAS, on January 26, 2023, said Boil Water Alert Order was lifted for the remaining areas within the City of Lewiston and, thus, fully lifted;

WHEREAS, on February 7, 2023, the Mayor of the City of Lewiston issued an Order Terminating Local Disaster Emergency;

WHEREAS, since the rupture of the High Reservoir occurred, City of Lewiston staff and consultants have been analyzing interim solutions for water storage in the high zone of the City of Lewiston's water system;

WHEREAS, if an interim solution for water storage in the high zone of the City of Lewiston's water system is not completed before peak irrigation season water usage, which begins increasing in April and peaks in the late spring and summer months, then the City of Lewiston's water system capacity is likely to be exceeded, which may result in: (1) negative pressures within the water system; (2) collapsed pipes; (3) complete loss of water service for over Twenty-Four Thousand (24,000) City of Lewiston residents served by the water system; (4) another emergency Boil Water Alert Order; and/or (5) the City of Lewiston being required to implement strict irrigation elimination regulations;

WHEREAS, if the water system capacity is exceeded, then the City of Lewiston's fire protection measures would also be hindered or incapacitated, limiting the fire suppression capabilities of the City of Lewiston's Fire Department;

WHEREAS, if irrigation is restricted or eliminated, then the fire danger within the City of

Lewiston limits will increase;

WHEREAS, a clean, reliable, consistent source of water is critical for the health and wellbeing of the citizens, occupants, and travelers within the City of Lewiston, and its use is essential to basic life functions;

WHEREAS, there is insufficient time for formal bidding procedures to be followed for the design and construction of an interim solution for water storage in the high zone of the City of Lewiston's water system prior to peak irrigation season water usage; and

WHEREAS, the City of Lewiston needs to immediately expend money for the design and construction of an interim solution for water storage in the high zone of the City of Lewiston's water system prior to peak irrigation season water usage in order to safeguard life, health, or property.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF LEWISTON, IDAHO:

SECTION 1: The foregoing recitals are hereby incorporated into and made part of this Resolution 2023-19.

SECTION 2: The Lewiston City Council hereby declares, pursuant to Idaho Code §§ 67-2808(1)(a)(i) and 67-2808(1)(a)(iii), that an emergency exists and that the public interest and necessity demand the immediate expenditure of public money for the design and construction of an interim solution for water storage in the high zone of the City of Lewiston's water system in order to meet peak irrigation season water usage, and it is necessary to do such emergency work to safeguard life, health, or property.

SECTION 3: The City of Lewiston is hereby authorized to expend up to Two Million Dollars (\$2,000,000) for the design and construction of an interim solution for water storage in the high zone of the City of Lewiston's water system without compliance with formal bidding procedures. The Mayor

and City of Lewiston staff are hereby authorized to take any and all steps necessary to make such purchase(s) without compliance with formal bidding procedures, pursuant to Idaho Code § 67-2808(1)(b).

SECTION 4: The Mayor and City Clerk are hereby authorized to execute and attest, respectively, contracts that are equal to or in excess of One Hundred Thousand Dollars (\$100,000), but not more than Four Hundred Thousand Dollars (\$400,000) without prior approval from the Lewiston City Council, and related to the design and construction of an interim solution for water storage in the high zone of the City of Lewiston's water system.

SECTION 5: This resolution shall become effective upon its passage.

PASSED this 27th day of March, 2023.



CITY OF LEWISTON

By: _____

Daniel G. Johnson, Mayor

ATTEST:

Kari J. Ravencroft
Kari J. Ravencroft, City Clerk



CITY COUNCIL MEETING AGENDA ITEM HISTORY/COMMENTARY

ITEM TITLE HIGH RESERVOIR REPAIR (WR701) - DESIGN BUILD AGREEMENT WITH IMCO GENERAL CONSTRUCTION, INC CHANGE ORDER NO. 1	AGENDA NO. II. B. AGENDA DATE: May 3, 2023
ITEM HISTORY (PREVIOUS COUNCIL REVIEWS, ACTION RELATED TO THIS ITEM, OTHER PERTINENT HISTORY) On March 27, 2023, City Council approved Resolution 2023-19, declaring an emergency and authorizing expenditure for design and construction of an interim solution for water storage in the high zone and authorizing the mayor to execute contracts of not more than \$400,000 without prior approval from the City Council. On March 31, 2023, a design-build agreement with IMCO General Construction Inc., for Phase 1 work was executed by the Mayor for the amount of \$340,000. The Phase 1 agreement was for select demolition of the failed area of high reservoir and limited assessment of the conditions of the connection for in-kind reservoir repair. On April 21, 2023, the draft High Reservoir report determined that in-kind repair was not feasible, therefore alternatives were revisited.	
ITEM COMMENTARY (BACKGROUND, DISCUSSION, KEY POINTS, RECOMMENDATIONS, ETC.) Please identify any or all impacts this proposed action would have on the City budget and/or personnel resources. City personnel began working with consultants in January to determine options for reservoir repair or replacement. Expediency has been paramount, however evaluation of efficiency and cost-benefits were also considered. Change Order No. 1 is for High Reservoir repair and improvements to include full demolition of the existing roof structure, embankment and concrete liner repair, new overflow, and installation of a polypropylene liner and floating cover. The amount of Change Order No. 1 is \$2,442,000 which increases the total agreement to \$2,782,000.	
BUDGET IMPACT The reservoir failure was an emergency that was not budgeted. An amendment will be required to spend \$2,442,000 on repairs. The source of funding will be reserves unless other funding becomes available. DEQ emergency and grant funding has been requested, but a	

determination is not available at this time.

ACTION PROPOSED

Approval of Change Order No. 1 for High Reservoir Repair (WR701) Agreement between IMCO General Construction, Inc. and the City of Lewiston for Phase 2 High Reservoir Repair and Improvements, in the amount of \$2,442,000 and authorized the Mayor to sign the agreement.

CHANGE ORDER NO.: 1

Owner: City of Lewiston
Contractor: IMCO General Construction Inc.
Project: High Reservoir Repair (WR701)
Date Issued: May 3, 2023 Effective Date of Change Order: May 3, 2023

The Contract is modified as follows upon execution of this Change Order:

Description:

This change order is for Phase 2 work. Phase 2 work involves design-build repair and improvements of High Reservoir and is generally described as roof demolition, embankment and concrete liner repair, new overflow, and installation of polypropylene liner and floating cover. The Contractor shall provide Performance and Payment Bonds to the City upon execution of the change order. The Phase 2 change order price is a lump sum of \$2,442,000. This change order includes revised Supplementary Conditions and the following changes to the original Agreement executed on March 31, 2023:

Article 9-OTHER (CITY) PROVISIONS

Strike Out 9.01.C Indemnification in its entirety and replace with the following:

C. Indemnification.

Notwithstanding the indemnification provisions in the General Conditions or any other provisions in the Contract Documents, due to the limited assessment and repair contracted for herein, OWNER agrees to release CONTRACTOR from liability for, and CONTRACTOR shall have no obligation to indemnify or hold harmless OWNER and Engineer, and officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, from losses, damages, costs, liabilities, and judgments arising from release of water due to failure of all or part of the surface or subsurface structures at the Site, except for losses, damages, costs, liabilities, and judgments associated with repairs made by CONTRACTOR as part of the Work. To the extent CONTRACTOR is obligated to indemnify OWNER for losses, damages, costs, liabilities, and judgments associated with the Work, such indemnification shall be as provided in Section 7.18 of the General Conditions and shall include a duty of defense with counsel acceptable to OWNER, which acceptance will not be unreasonably withheld.

Attachments:

Contractors Scope of Work and Fee, Phase 2 Proposal

Supplementary Conditions of the Construction Contract (Revision 1)

Performance Bond

Payment Bond

Change in Contract Price	Change in Contract Times
Original Contract Price: \$ <u>340,000</u>	Original Contract Times: Substantial Completion: <u>04/14/2023</u> Ready for final payment: <u>04/28/2023</u>
Increase from previously approved Change Orders No. 0 to No. 0: \$ <u>N/A</u>	Increase from previously approved Change Orders No.0 to No. 0: Substantial Completion: <u>N/A</u> Ready for final payment: <u>N/A</u>
Contract Price prior to this Change Order: \$ <u>340,000</u>	Contract Times prior to this Change Order: Substantial Completion: <u>04/14/2023</u> Ready for final payment: <u>04/28/2023</u>
Increase this Change Order: \$ <u>2,442,000</u>	Increase this Change Order: Substantial Completion: <u>07/31/2023</u> Ready for final payment: <u>08/14/2023</u>
Contract Price incorporating this Change Order: \$ <u>2,782,000</u>	Contract Times with all approved Change Orders: Substantial Completion: <u>07/31/2023</u> Ready for final payment: <u>08/14/2023</u>

Authorized by Owner

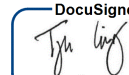
By:

Daniel G. Johnson, Mayor

Date:

Accepted by Contractor

DocuSigned by:



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Tyler Kimberley, President/CEO

5/2/2023



April 28, 2023

Lewiston, ID High Reservoir Phase 2 Proposal

Scope of Work and Fee

As requested by the City of Lewiston (City), IMCO General Construction Inc. (IMCO) has prepared the following scope of work and fee to perform select repair and improvements to the High Reservoir that failed January 18, 2023. This Phase 2 is assumed to be delivered under a Design-Build contract method with IMCO serving as the Design- Builder and Stantec operating as the design lead and subconsultant to IMCO.

Scope of Work - Phase 2 – High Reservoir Repair and Improvements

The scope of work will generally include demolition of the remaining reservoir roof, reconstruction of the failed embankment section, sloped concrete liner reconstruction, installation of a 45-mil Reinforced Polypropylene Liner over the existing reservoir concrete liner, installation of a 45-mil Reinforced Polypropylene floating cover, installation of a new overflow system, reconnection of the existing potable water feed line, and installation of electrical and basic sump controls for the new system. Stantec will be performing the Preliminary Engineering Report (PER), final design and design coordination and engineering support services during construction (see attached Stantec Fee Proposal – Design and Support During Construction (SDC) Service document).

Lump Sump Fee Proposal and Breakdown

- Mobilization / General Conditions – \$462,000.00
- Design / Engineering - \$270,000.00
- Demo Reservoir Roof Phase 2 - \$138,000.00
- Earthwork - \$168,000.00
- Overflow / Yard Piping - \$230,000.00
- Concrete - \$72,000.00
- Reservoir Liner & Floating Cover - \$932,000.00
- Electrical / Comm. Allowance - \$55,000.00
- Project Contingency - \$115,000.00

Lump Sum Total - \$2,442,000.00



Contingency Establishment:

Due to the somewhat unconventional nature of this design-build project/process, IMCO is requiring a contingency line item be established within the lump sum agreement to handle project scope gap outside of those items specifically excluded within this proposal. Recommended wording for this contingency item is provided and is similar to other contingency wording utilized between IMCO and the City in a separate contract.

Design-Builder's Contingency. The Lump Sum Fee includes a Design-Builder's Contingency. The Design-Builder's Contingency is available for Design-Builder's exclusive use for unanticipated costs it incurs that are not the basis for a Change Order under the Contract Documents. By way of example, and not as a limitation, such costs may include: (a) trade buy-out differentials; (b) overtime or acceleration; (c) escalation of materials; (d) correction of defective, damaged or nonconforming Work, design errors or omissions, however caused; (e) estimating and/or production errors or (f) Subcontractor defaults. Contingency shall not cover exclusions identified within the Design-Builder's Lump Sum Fee proposal. The Contingency is not available to Owner for any reason, including changes in scope or any other item which would enable Design-Builder to increase the contract price under the Contract Documents. Design-Builder shall provide Owner notice of all anticipated charges against the Contingency. Design-Builder agrees that with respect to any expenditure from the Contingency relating to a Subcontractor default or an event for which insurance or bond may provide reimbursement, Design-Builder will in good faith exercise reasonable steps to obtain performance from the Subcontractor and/or recovery from any surety or insurance company. Design-Builder agrees that if Design-Builder is subsequently reimbursed for said costs, then said recovery will be credited back to the Contingency.

Savings. If the Contingency line item within the Lump Sum Fee Proposal and Breakdown should under-run, the difference ("Savings") shall be shared as follows: Forty percent (40%) to Design-Builder and Sixty percent (60%) to Owner. Savings shall be calculated and paid as part of Final Payment.

Allowance Establishment:

Due to the somewhat unconventional nature of this design-build project/process, IMCO is requiring an allowance line item be established within the lump sum agreement to handle the Electrical and Controls scope of this project. Recommended wording for this allowance item has been provided.

Allowance. The parties agree to the following Allowance Items, as well as their corresponding Allowance Values.

Electrical and Controls - \$55,000.00

The Allowance Values are all-inclusive values that include the direct cost of labor, materials, equipment, transportation, taxes, insurance, and Design-build fee associated with the applicable Allowance Item. Owner will pay a fee of twelve percent (12%) on acquisition of Allowance Items. All other costs and fees, however characterized, are deemed to be included in the original Contract Price.

Whenever the actual cost for an Allowance Item is more than or less than the stated value, the Design-Builder shall report such difference to Owner so that Owner can maintain a running tally of Allowance Item costs against Allowance Values. Prior to final payment a change order shall be



processed to reflect the difference between actual costs incurred by Design-Builder for all Allowance Items and the total Allowance Value.

Schedule Milestones:

Design / Engineering -

- Anticipated Notice to Proceed (NTP) for design / engineering – May 1st, 2023
- DEQ Meeting #1 – First week of May
- PER Submittal – 14 days after NTP
- DEQ Meeting #2 – Within 5 days of PER submittal
- 60% Design Submittal – 21 days after NTP
- Final Design Submittal – 14 days after 60% submittal
- Project Closeout Documentation – August 4th, 2023

Construction -

- Anticipated Notice to Proceed (NTP) for construction – May 3rd, 2023
- Change Order Execution – May 3rd, 2023
- Begin Project Mobilization – May 4th, 2023
- Begin on-site operations – May 8th, 2023
- RPP Liner and Geotextile Delivery to Site – June 12th, 2023
- RPP Liner and Geotextile Completion – June 23rd, 2023
- RPP Floating Cover Delivery to Site – July 5th, 2023
- RPP Floating Cover Completion – July 18th, 2023
- Reservoir Fill, Startup, Commissioning – July 31st, 2023
- Anticipated Substantial Completion – July 31st, 2023
- Anticipated Final Completion – August 16th, 2023

Exclusions:

- Sales tax (Use tax included on all permanent materials)
- Geotechnical Report, design and/or recommendations to include but not limited to the reconstructed reservoir embankment sections
- Lead and/or asbestos abatement and disposal
- Operation and Maintenance obligations
- DEQ Approval and/or Review Period
- Cost or procurement of City Building Permit
- Avista Power Drop
- RPP Liner System Leak Detection/Monitoring System
- Extended and/or non-standard warranties
- Instrumentation and Controls (I&C) Integration
- Any scope items related to Existing Transmission Main – (i.e. Flushing, Testing, Surge Protection)



Clarifications & Assumptions:

- This scope is completely independent of the Lewiston WTP PDB Project
- IMCO and its subconsultant Stantec take no responsibility for the remainder of the aged reservoir that was not repaired or inspected as part of this project. The repairs and improvements designed herein are limited to the areas improved and are not intended to nor will it protect against additional failures from unknown deficiencies of the given advanced age of the existing reservoir.
- Idaho Dam Safety - It is assumed that the facility does not need a review by Idaho Dam Safety per Idaho code Article 42, Chapter 17.11.B, Exclusion No. 3 and is not a jurisdictional dam. However, during the design, Stantec will confirm this with the State of Idaho and any significant level of effort changes will be subject to a request for additional compensation.
- Reservoir fill to be performed with City Water Department assistance
- Design-Builder and its subconsultants shall be entitled to reasonably rely upon the information and data provided by the City or obtained from generally acceptable sources within the industry without independent verification except to the extent such verification is expressly included herein.

Thank you,

A handwritten signature in black ink, appearing to read 'Fred Simmons', with a stylized flourish at the end.

Fred Simmons
Operations Manager



Fee Proposal – Design and SDC Services

City of Lewiston - High Reservoir Upgrade Support Services

The City of Lewiston (City) continues to respond to and recover from the impacts of the January 18, 2023 High Reservoir (Reservoir) failure. As part of this process, the City has decided to continue to use the Reservoir for its potable water needs. In order to do this, certain repair and improvements need to be made and the City has requested that IMCO General Construction (IMCO) and Stantec Consulting Services Inc. (Stantec) perform these improvements to extend the life of the Reservoir under a design-build contract. This work will be contracted as part of the March 27, 2023 agreement between IMCO and the City and under the design-build contract with Stantec as the design subcontractor to IMCO. Stantec's design work will generally include preliminary and final design of the demolition of the roof, floor repairs, installation of a new liner, installation of a floating cover, installation of a new overflow system, reconnection of the existing potable water feed line, and installation of electrical and controls for the new system. In addition, Stantec will perform engineering support services during the construction work of the project. Stantec and IMCO take no responsibility for the remainder of the aged Reservoir that was not repaired or inspected as part of this project.

Scope of Services

The scope for the Reservoir upgrade work is as shown below:

Task 1 – Project Management and Coordination Meetings

The project management, coordination and meetings services will include the following:

- **Tracking and Invoicing** – Stantec will track costs and schedule on a weekly basis and prepare monthly invoices to cover the services performed for the assumed duration of this contract.
- **Coordination Meetings** – Stantec will attend weekly one-hour meetings with the City as led by IMCO with an average of two Stantec staff in attendance for the assumed duration of the project. Stantec will also hold internal design team meetings for the project. It is assumed these meetings will last for approximately five weeks with construction meetings thereafter as identified in the services during construction. These meetings do not include design review meetings or other special meetings/workshops as noted herein.
- **Internal Coordination** – This effort includes Stantec internal team coordination and communications including weekly check-ins with the design team leads and IMCO staff.

Task 2 – Preliminary Engineering Report

Stantec will develop a preliminary engineering report (PER) including site drawings and the needed details to meet Idaho Department of Environmental Quality (DEQ) and City standards for potable water storage. As part of this effort, Stantec will review the IDAPA and other State and local requirements for potable water systems and for associated compliance standards. Stantec will meet with DEQ personnel twice during the PER stage. The first DEQ meeting will be up front to confirm the general approach to the design with the second meeting to review the PER submittal.



Fee Proposal – Design and SDC Services

Task 2 Assumptions:

- The City will lead DEQ and City permitting meetings. Stantec will take notes and deliver draft notes to the City for their documentation. These meetings will be virtual.
- Final design can progress upon the general agreement on design strategy based upon discussions with DEQ in the first meeting.
- The PER will include a general write-up on the Reservoir overview, design intent, meeting requirements, design criteria, general layout drawings and process flow diagram. The write-up will also include steps taken to reduce the risk of a similar event as the January failure occurring again.

Task 3 – Reservoir Upgrade Design and Design Coordination

Upon general agreement from DEQ, the City, and IMCO, Stantec will begin design of the Reservoir upgrade. The PER submittal will be used as a baseline to progress the design to an approximate 60% stage to provide enough information to allow IMCO to prepare and negotiate a guaranteed maximum price for the construction of the upgrades. In addition, this information will be used to further inform the City and DEQ as to the details of the design as requested after DEQ meetings. Upon review and authorization by the City and IMCO, the design will be further progressed and finalized. Stantec, IMCO and the City will be in weekly design progress meetings along with informal impromptu discussions with a high level of transparency as to the design status and direction. The discussions will focus upon constructability, cost effective design, permitting status, schedule impacts and any long lead item procurement. In addition, the geotechnical information from Geo Professional Innovation (GeoPro), as subcontracted by the City, will be coordinated with Stantec's yard piping, structural floor repair and any other design work reliant upon geotechnical considerations.

- **Reservoir Slab Repair** – Stantec will design the repair and connection to existing slab for the failed Reservoir floor area only. Stantec is not evaluating or designing a comprehensive floor repair.
- **Berm and Subsurface Foundation Coordination** – The geotechnical work will be performed by GeoPro under contract with the City of Lewiston. The City and its subconsultant will share design information for the berm and subsurface with Stantec and IMCO in order for Stantec to coordinate the design. Stantec will coordinate with the geotechnical design work. Stantec will rely upon, and not independently verify, services rendered by the City's geotechnical designer.
- **Yard Piping Upgrades** – Stantec will design the improvements needed to the existing yard piping including overflow, potable water feed, drain and associated alarms and sensors to restore functionality and reduce future overflow risks. The improvements expected to be designed include reconnection of the capped reservoir inlet/outlet pipe, overflow piping, upgraded overflow outfall, level monitoring, controls, and communication.
- **New Reservoir Liner** – The liner design is expected to be limited to a general plan, criteria, and performance specification for the liner (assumed as Northwest Linings) with associated structural connection points as designed by Stantec. Stantec will be available to review any submittals and details from the cover vendor for compliance with the design criteria, industry standards, and any specific details needed for this Reservoir.



Fee Proposal – Design and SDC Services

- **New Reservoir Floating Cover** – Stantec will design the demolition of the existing Reservoir cover and the replacement of the old cover with a new floating cover. It is expected that the cover demolition design is limited to a general demolition plan with potential column and other miscellaneous demolition details. IMCO will manage the method and sequencing of the actual demolition work with Stantec available to provide input to any demolition plan. The floating cover installation design is expected to be limited to a general plan, criteria, and performance specification for the floating cover vendor (assumed as Northwest Linings) with associated structural connection points designed by Stantec. Stantec will be available to review any submittals and details from the cover vendor for compliance with the design criteria, industry standards and any specific details needed for this Reservoir.
- **Ongoing Permitting Coordination** – Stantec will provide information to the City for ongoing permitting needs. This information will include any criteria, plans, details, and specifics as they become available through the design. Stantec staff will be available to attend two additional virtual meetings with DEQ as coordinated by the City.
 - City - It is assumed the City Building or Planning departments will not hold up any design or construction activities and that a City's building official will be able to attend design meetings as requested.
 - Idaho Dam Safety - It is assumed that the facility does not need a review by Idaho Dam Safety and is not a jurisdictional dam. However, during the design, Stantec will confirm this with the State of Idaho and any significant level of effort changes will be subject to a request for additional compensation.
- **GMP Support**
 - Stantec will provide support to IMCO during guaranteed maximum price (GMP) negotiations. This support is expected to include design questions and additional minor detail revisions as is requested by the City or IMCO. Stantec has assumed this effort will not exceed 10 hours in overall effort.

Task 4 – Engineering Services During Construction

Stantec will perform engineering services during the installation and construction of the design. These services are expected to include review of submittals, on-site observations and inspections, requests for information, construction meetings, and closeout activities.

- Submittals – Stantec will review various submittals for conformance to the intent, specifications, and criteria established through the design. Submittals are expected to include but not be limited to floating cover, liner, sump pumps and associated controls, level sensors, alarms, valves, demolition plan, concrete, overflow piping, and overflow outlet/erosion protection.
- Requests for Information (RFI) – Stantec will coordinate with IMCO on up to 8 RFIs that may occur during the course of the installation and construction.
- Stantec will attend weekly construction meetings with IMCO and City staff through startup. It is expected that these meetings will generally last one hour and with up to three Stantec staff in attendance.
- Stantec will perform up to five onsite inspections and observations during the installation and inspections including electrical/I&C, civil and structural engineers. Field notes will be taken and archived during the site visits.
- Closeout activities:



Fee Proposal – Design and SDC Services

- Stantec will assist IMCO with the startup and commissioning plan including general questions or issues that may arise with this effort.
- Stantec will prepare stamped record drawings for the project design drawing within 20 days of the receipt of red-line drawings from IMCO. These drawings will also include the field notes and engineering markups during site visits along with any RFI information developed as part of the construction activities.

General Assumptions

- Stantec shall be entitled to reasonably rely upon the information and data provided by the City or obtained from generally acceptable sources within the industry without independent verification except to the extent such verification is expressly included herein.
- Stantec will communicate recommended additional investigations to IMCO should Stantec deem any such recommendations necessary.
- This work is completely independent of the Water Treatment Plant Design-Build project.
- Site survey information is provided by others and may be supplemented by others as project needs arise.
- Geotechnical investigation and foundation recommendations provided by others. Stantec has the right to rely on the geotechnical investigation provided by others without verification.
- IMCO will be the design-build contractor with Stantec operating as a subconsultant to IMCO.
- IMCO will provide cost estimating for the City. Stantec will provide information as readily available for IMCO's cost estimating efforts.
- IMCO will negotiate the GMP with the City.
- Stantec assumes no responsibility for the City's operation and maintenance obligations and does not warrant the safety of the reservoir to third parties.
- The intent of this floor design is to provide repairs to the damaged washout areas only.
- The repairs and improvements designed herein are limited to the areas improved and are not intended to nor will it protect against additional failures from unknown deficiencies of the given advanced age of the existing Reservoir.
- IMCO will provide plans and incorporate safety measures for the execution of the demolition work.
- Stantec is not performing any surge protection design work on the 24" main waterline as part of this scope of work.

Schedule Milestones

- Notice to Proceed (NTP) – May 1, 2023
- DEQ Meeting #1 – First week of May
- PER Submittal – 14 days after NTP
- DEQ Meeting #2 – Within 5 days of PER submittal
- 60% Design Submittal – 21 days after NTP
- Final Design Submittal – 14 days after 60% submittal
- Project Closeout – August 4, 2023



Fee Proposal – Design and SDC Services

Fee Schedule:

The work indicated herein will be completed and compensated for the fixed fee indicated below.

WBS Code	Task Name	Task Type	
1	Project Management	Fixed Fee	
2	Preliminary Engineering Report (PER)	Fixed Fee	
3	Final Design and Design Coordination	Fixed Fee	
4	Services During Construction (SDC)	Fixed Fee	

Stantec Approver:

Nick Smith

Digitally signed by Nick Smith
Date: 2023.04.26 11:10:37 -06'00'

Date: 4/26/2023

IMCO Approver:_____

Date: _____

**SUPPLEMENTARY CONDITIONS OF THE CONSTRUCTION CONTRACT
(REVISION 1)**

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SUPPLEMENTARY CONDITIONS OF THE CONSTRUCTION CONTRACT (REVISION 1)

These Supplementary Conditions (Revision 1) amend or supplement ISPWC Division 100, Standard General Conditions of the Construction Contract. The General Conditions remain in full force and effect except as amended.

The terms used in these Supplementary Conditions (Revision 1) have the meanings stated in the General Conditions. Additional terms used in these Supplementary Conditions (Revision 1) have the meanings stated below, which are applicable to both the singular and plural thereof.

The address system used in these Supplementary Conditions (Revision 1) is the same as the address system used in the General Conditions, with the prefix "SC" added—for example, "Paragraph SC-4.05."

ARTICLE 1—DEFINITIONS AND TERMINOLOGY

ARTICLE 2—PRELIMINARY MATTERS

SC-2.03 Add Paragraph 2.03.B:

- A. Within ten (10) days after the effective date of the Agreement (unless otherwise specified in the General Requirements), Contractor shall submit to the Owner (or Engineer) the following:
 - 1. WH-5 Public Works Contract Report in conformance with Idaho Code Sections 54-1904A and 63-3624(g).

ARTICLE 3—CONTRACT DOCUMENTS: INTENT, REQUIREMENTS, REUSE

ARTICLE 4—COMMENCEMENT AND PROGRESS OF THE WORK

ARTICLE 5—SITE, SUBSURFACE AND PHYSICAL CONDITIONS, HAZARDOUS ENVIRONMENTAL CONDITIONS

ARTICLE 6—BONDS AND INSURANCE

6.01 *Performance, Payment, and Other Bonds*

SC-6.01 Add the following paragraphs immediately after Paragraph 6.01.B:

- 1. The correction period specified as one year after the date of Substantial Completion in Paragraph 15.08.A of the General Conditions is hereby revised to be two (2) years after Substantial Completion.

6.03 *Contractor's Insurance*

SC-6.03 Supplement Paragraph 6.03 with the following provisions after Paragraph 6.03.C:

- D. **Workers' Compensation and Employer's Liability:** Contractor shall purchase and maintain workers' compensation and employer's liability insurance that is valid in Idaho, including, as applicable, United States Longshoreman and Harbor Workers' Compensation Act, Jones Act, stop-gap employer's liability coverage for monopolistic states, and foreign voluntary workers' compensation (from available sources, notwithstanding the jurisdictional requirement of Paragraph 6.02.B of the General Conditions).

Workers' Compensation and Related Policies	Policy limits of not less than:
Workers' Compensation	
State	Statutory
Applicable Federal (e.g., Longshoreman's)	Statutory
Foreign voluntary workers' compensation (employer's responsibility coverage), if applicable	Statutory
Jones Act (if applicable)	
Bodily injury by accident—each accident	Statutory
Bodily injury by disease—aggregate	Statutory
Employer's Liability	
Each accident	\$500,000
Each employee	\$500,000
Policy limit	\$1,000,000
Stop-gap Liability Coverage	
For work performed in monopolistic states, stop-gap liability coverage must be endorsed to either the worker's compensation or commercial general liability policy with a minimum limit of:	\$N/A

- E. **Commercial General Liability—Claims Covered:** Contractor shall purchase and maintain commercial general liability insurance, covering all operations by or on behalf of Contractor, on an occurrence basis, against claims for:
1. damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees,
 2. damages insured by reasonably available personal injury liability coverage, and
 3. damages because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom.
- F. **Commercial General Liability—Form and Content:** Contractor's commercial liability policy must be written on a 1996 (or later) Insurance Services Organization, Inc. (ISO) commercial general liability form (occurrence form) and include the following coverages and endorsements:
1. Products and completed operations coverage.
 - a. Such insurance must be maintained for three years after final payment.
 - b. Contractor shall furnish Owner and each other additional insured (as identified in the Supplementary Conditions or elsewhere in the Contract) evidence of continuation of such insurance at final payment and three years thereafter.

2. Contractual liability coverage, including but not limited to coverage of Contractor's contractual indemnity obligations in Paragraph 7.18.
 3. Severability of interests and no insured-versus-insured or cross-liability exclusions.
 4. Underground, explosion, and collapse coverage.
 5. Personal injury coverage.
 6. Additional insured endorsements naming the Owner as an additional insured that include both ongoing operations and products and completed operations coverage through ISO Endorsements CG 20 10 10 01 and CG 20 37 10 01 (together). If Contractor demonstrates to Owner that the specified ISO endorsements are not commercially available, then Contractor may satisfy this requirement by providing equivalent endorsements.
 7. For design professional additional insureds, ISO Endorsement CG 20 32 07 04 "Additional Insured—Engineers, Architects or Surveyors Not Engaged by the Named Insured" or its equivalent.
 8. Applies as primary insurance with respect to, and will not seek contribution from, any other insurance (primary, umbrella, contingent, or excess) or self-insurance program available to the additional insureds, and provides the additional insureds with coverage at least as broad as that afforded to the first named insured.
- G. *Commercial General Liability—Excluded Content:* The commercial general liability insurance policy, including its coverages, endorsements, and incorporated provisions, must not include any of the following:
1. Any modification of the standard definition of "insured contract" (except to delete the railroad protective liability exclusion if Contractor is required to indemnify a railroad or others with respect to Work within 50 feet of railroad property).
 2. Any exclusion for water intrusion or water damage.
 3. Any provisions resulting in the erosion of insurance limits by defense costs other than those already incorporated in ISO form CG 00 01.
 4. Any exclusion of coverage relating to earth subsidence or movement.
 5. Any exclusion for the insured's vicarious liability, strict liability, or statutory liability (other than worker's compensation).
 6. Any limitation or exclusion based on the nature of Contractor's work.
 7. Any professional liability exclusion broader in effect than the most recent edition of ISO form CG 22 79.
- H. *Commercial General Liability—Minimum Policy Limits*

Commercial General Liability	Policy limits of not less than:
General Aggregate	\$2,000,000
Products—Completed Operations Aggregate	\$2,000,000
Personal and Advertising Injury	\$1,000,000
Bodily Injury and Property Damage—Each Occurrence	\$1,000,000

2020 ISPWC 00800

Exhibit C—Geotechnical Baseline Report Supplement to the Supplementary Conditions
Modified from EJCDC® C-800 Supplementary Conditions of the Construction Contract

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Commercial General Liability	Policy limits of not less than:
Fire Damage—Any one Fire	\$N/A
Medical Expenses—Any one Person	\$N/A

- I. *Automobile Liability:* Contractor shall purchase and maintain automobile liability insurance for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance, or use of any motor vehicle. Contractor shall cause the Additional Insureds to be included as additional insureds under this policy on ISO form CA 20 48 10 13, on a primary and non-contributory basis using ISO form CA 04 49. The policy must include a separation of insureds clause (i.e., a provision establishing that the insurance applies separately to each insured) and must not include any limitation or exclusion with respect to cross-liability for claims or suits by one insured against another. The automobile liability policy must be written on an occurrence basis.

Automobile Liability	Policy limits of not less than:
Combined Single Limit	
Combined Single Limit (Bodily Injury and Property Damage)	\$1,000,000

- J. *Umbrella or Excess Liability:* Contractor shall purchase and maintain umbrella or excess liability insurance written over the underlying employer's liability, commercial general liability, and automobile liability insurance described in the Paragraphs above. The coverage afforded must be at least as broad as that of each and every one of the underlying policies.

Excess or Umbrella Liability	Policy limits of not less than:
Each Occurrence	\$10,000,000
General Aggregate	\$10,000,000

Umbrella or Excess Liability must:

1. be excess over and be no less broad than (and must "follow form" with respect to) Contractor's CGL, business auto liability, and employers liability insurance required herein.
2. be maintained until the end of the Repose Period, and include the Additional Insureds as additional insureds with respect to Contractor's CGL and business auto insurance on a primary and non-contributory basis until the end of this period.
3. be primary to and not seek contribution from any other insurance (primary, umbrella, contingent or excess) or self-insurance maintained by the Owner.
4. provide for "vertical exhaustion" not subject to any "other insurance" provision under Contractor's policies (so this coverage applies as soon as Contractor's underlying primary and subsequent excess policies have been exhausted, and regardless of whether any other primary policies that may provide coverage have been exhausted).
5. include a waiver of subrogation in favor of the Additional Insureds.

6. not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers, and instead must “drop down” over reduced or exhausted limits with respect to underlying policies.

- K. *Contractor’s Professional Liability Insurance:* If Contractor will provide or furnish professional services under this *Contract*, through a delegation of professional design services or otherwise, then Contractor shall be responsible for purchasing and maintaining applicable professional liability insurance. This insurance must cover negligent acts, errors, or omissions in the performance of professional design or related services by the insured or others for whom the insured is legally liable. The insurance must be maintained throughout the duration of the Contract and for a minimum of two years after Substantial Completion. The retroactive date on the policy must pre-date the commencement of furnishing services on the Project.

Contractor’s Professional Liability	Policy limits of not less than:
Each Claim	\$3,000,000
Annual Aggregate	\$3,000,000

- L. *Subrogation Waiver:* Contractor shall require the issuers of insurance policies required by this Section to waive subrogation rights with respect to the Owner, and Contractor hereby waives all rights against the Owner for damage occurring on or after the date on which the Contract is executed to the extent that damage (a) is covered by any required insurance or any other insurance maintained by Contractor (other than professional liability insurance), (b) is attributable to any deductible or self-insured retention relating to insurance maintained by Contractor, or (c) arises out of the sole negligence of Contractor, its Subcontractors, or anyone employed by any of them.
- M. *Evidence of Insurance:* Contractor shall provide certificates of insurance on ACORD Form 25 acceptable to Owner (and, if requested, additional insured, waiver of subrogation, notice of cancellation, and primary and non-contributory endorsements and related documentation, such as a copy of the forms and endorsements pages) evidencing compliance with the requirements in this Exhibit at the following times: (a) prior to commencement of the Work, (b) at least 10 days before the renewal or replacement of each required insurance policy, and (c) upon Owner’s request from time to time. Contractor shall ensure that certificates of insurance disclose any deductibles or self-insured retentions. With respect to the products-completed operations coverage required under this Section and continuing coverage required under this Section, Contractor shall provide a certificate and pertinent endorsements (including, as applicable, additional insured, waiver of subrogation, notice of cancellation, and primary and non-contributory endorsements) evidencing the continuation of this coverage with its final Application for Payment and thereafter upon renewal or replacement of this coverage until the expiration of the Repose Period.

SC-6.04 Supplement Paragraph 6.04 of the General Conditions with the following provisions:

- F. *Builder’s Risk Requirements:* The builder’s risk insurance must:
1. be written on a builder’s risk “all risk” policy form that at a minimum includes insurance for physical loss or damage to the Work, temporary buildings, falsework, and materials

and equipment stored and in transit, and must not exclude the coverage of the following risks: fire; windstorm; hail; flood; earthquake, volcanic activity, and other earth movement; lightning; riot; civil commotion; terrorism; vehicle impact; aircraft; smoke; theft; vandalism and malicious mischief; mechanical breakdown, boiler explosion, and artificially generated electric current; collapse; explosion; debris removal; demolition occasioned by enforcement of Laws and Regulations; and water damage (other than that caused by flood).

- a. Such policy will include an exception that results in coverage for ensuing losses from physical damage or loss with respect to any defective workmanship, methods, design, or materials exclusions.
 - b. If insurance against mechanical breakdown, boiler explosion, and artificially generated electric current; earthquake, volcanic activity, and other earth movement; or flood, are not commercially available under builder's risk policies, by endorsement or otherwise, such insurance will be provided through other insurance policies acceptable to Owner and Contractor.
2. cover, as insured property, at least the following: (a) the Work and all materials, supplies, machinery, apparatus, equipment, fixtures, and other property of a similar nature that are to be incorporated into or used in the preparation, fabrication, construction, erection, or completion of the Work, including Owner-furnished or assigned property; (b) spare parts inventory required within the scope of the Contract; and (c) temporary works which are not intended to form part of the permanent constructed Work but which are intended to provide working access to the Site, or to the Work under construction, or which are intended to provide temporary support for the Work under construction, including scaffolding, form work, fences, shoring, falsework, and temporary structures.
 3. cover expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of contractors, engineers, and architects).
 4. extend to cover damage or loss to insured property while in temporary storage at the Site or in a storage location outside the Site (but not including property stored at the premises of a manufacturer or Supplier).
 5. extend to cover damage or loss to insured property while in transit.
 6. allow for the waiver of the insurer's subrogation rights, as set forth in this Contract.
 7. allow for partial occupancy or use by Owner by endorsement, and without cancellation or lapse of coverage.
 8. include performance/hot testing and start-up, if applicable.
 9. be maintained in effect until the Work is complete, as set forth in Paragraph 15.06.D of the General Conditions, or until written confirmation of Owner's procurement of property insurance following Substantial Completion, whichever occurs first.
 10. include as named insureds the Owner, Contractor, Subcontractors (of every tier), and any other individuals or entities required by this Contract to be insured under such builder's risk policy. For purposes of Paragraphs 6.04, 6.05, and 6.06 of the General Conditions, and this and all other corresponding Supplementary Conditions, the parties

required to be insured will be referred to collectively as “insureds.” In addition to Owner, Contractor, and Subcontractors of every tier, include as insureds the following:

- G. *Builder’s Risk and Other Property Insurance for Phase Project:* The Contractor is not required to purchase and maintain builders’ risk or property insurance for Phase 1 Work. Contractor is required to purchase and maintain builders’ risk and property insurance for Phase 2 Work.
- H. *Builder’s Risk and Other Property Insurance Deductibles:* The purchaser of any required builder’s risk, installation floater, or other property insurance will be responsible for costs not covered because of the application of a policy deductible.

ARTICLE 7—CONTRACTOR’S RESPONSIBILITIES

7.18 Indemnification

SC-7.18 Supplement 7.18A as follows:

Insert “liabilities,” after “... and any of them, from losses, damages, cost,”.

Insert “liability,” after “... provided that any such claim, action, loss, cost,”.

ARTICLE 8—OTHER WORK AT THE SITE

ARTICLE 9—OWNER’S RESPONSIBILITIES

ARTICLE 10—ENGINEER’S STATUS DURING CONSTRUCTION

ARTICLE 11—CHANGES TO THE CONTRACT

ARTICLE 12—CLAIMS

ARTICLE 13—COST OF WORK; ALLOWANCES, UNIT PRICE WORK

ARTICLE 14—TESTS AND INSPECTIONS; CORRECTION, REMOVAL, OR ACCEPTANCE OF DEFECTIVE WORK

ARTICLE 15—PAYMENTS TO CONTRACTOR, SET OFFS; COMPLETIONS; CORRECTION PERIOD

15.01 Progress Payments

SC-15.01 Delete paragraph 15.01.D.1 in its entirety and insert the following in its place:

1. Thirty (30) days after presentation of the Application for Payment to Owner with Engineer’s recommendation, the amount recommended (subject to the provisions of paragraph 15.01.E) will become due, and when due will be paid by Owner to Contractor.

SC-15.01 Add the following new paragraph immediately after Paragraph 15.01.E:

- F. For contracts in which the Contract Price is based on the Cost of Work, if Owner determines that progress payments made to date substantially exceed the actual progress of the Work (as measured by reference to the Schedule of Values), or present a potential conflict with the

Guaranteed Maximum Price, then Owner may require that Contractor prepare and submit a plan for the remaining anticipated Applications for Payment that will bring payments and progress into closer alignment and take into account the Guaranteed Maximum Price (if any), through reductions in billings, increases in retainage, or other equitable measures. Owner will review the plan, discuss any necessary modifications, and implement the plan as modified for all remaining Applications for Payment.

15.08 *Correction Period*

SC-15.08 Add the following new Paragraph 15.08.G:

- G. The correction period specified as one year after the date of Substantial Completion in Paragraph 15.08.A of the General Conditions is hereby revised to be the number of years set forth in SC-6.01.B.1; or if no such revision has been made in SC-6.01.B, then the correction period is hereby specified to be two (2) years after Substantial Completion.

ARTICLE 16—SUSPENSION OF WORK AND TERMINATION

16.01 *Owner May Suspend Work*

SC-16.01 Delete Paragraphs 16.01.A in its entirety and insert the following in its place:

- A. If the performance of all or any portion of the work is suspended or delayed by the Owner/Engineer for a period of not more than 90 consecutive days by notice in writing (not originally anticipated, customary, or inherent to the construction industry) and the Contractor believes that additional compensation and/or contract time is due as a result of such suspension or delay, the Contractor shall submit to the Engineer in writing a request for adjustment within seven calendar days of receipt of the notice to resume work. The request shall set forth the reasons and support for such adjustment.
- B. Upon receipt, the Engineer will evaluate the Contractor's request. If the Engineer agrees that the cost and/or time required for the performance of the contract has increased as a result of such suspension and the suspension was caused by conditions beyond the control of and not the fault of the Contractor, its suppliers, or subcontractors at any approved tier, and not caused by weather, the Engineer will make adjustment as provided (excluding profit) and modify the contract in writing accordingly. The Engineer will notify the Contractor of the determination whether or not an adjustment of the contract is warranted.
- C. No contract adjustment will be allowed unless the Contractor has submitted the request for adjustment within the time prescribed.
- D. No contract adjustment will be allowed under this clause to the extent that performance would have been suspended or delayed by any other cause, or for which an adjustment is provided for or excluded under any other term or condition of this contract.

16.04 *Contractor May Stop Work or Terminate*

SC-16.04 Amend the first sentence in Paragraph 16.04.A. to read as follows:

- A. "...within 30 days after it is submitted, or (3) Owner fails for Forty-Five (45) days to pay Contractor any sum finally determined to be due,...".

SC-16.04. Amend the first sentence in Paragraph 16.04.B. to read as follows:

B. "...within 30 days after it is submitted, or (3) Owner fails for Forty-Five (45) days to pay Contractor any sum finally determined to be due,...".

ARTICLE 17—FINAL RESOLUTIONS OF DISPUTES

17.02 Mediation

SC-17.02 Add the following new paragraphs immediately after Paragraph 17.01.

17.02 Mediation

- A. All appealed or unsettled claims, disputes or other matters between Owner and Contractor arising out of or relating to the Contract Documents or the breach thereof, (except for claims which have been waived by the making or acceptance of final payment as provided by paragraph 14.09) shall first be submitted to mediation under the Construction Industry Mediation Rules of the American Arbitration Association then obtaining prior to either of them exercising any rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any dispute.
- B. Should the mediation be unsuccessful, (except for claims which have been waived by the making or acceptance of final payment as provided by paragraph 14.09) and is terminated by written notice to all involved by Mediator or Owner or Contractor, the dispute resolution process shall revert to paragraph 10.05.B.2.c in the Supplementary Conditions, as if the mediation had been a second phase of the unsuccessful executive negotiation.
- C. Notice of demand for mediation shall be filed in writing with the other party to the Agreement and with the American Arbitration Association with a copy to the Engineer for information. Any demand for mediation of any appealed or unsettled claim, dispute or other matter that is required to be referred to Engineer initially for decision in accordance with paragraph 9.09 shall be filed by the appealing party within 10 days after the executive negotiation has been declared unsuccessful by the Owner or Contractor, and in all other cases within a reasonable time after the unsettled claim, dispute or other matter has arisen, and in no event shall any such demand be made after the date when institution of legal or equitable proceedings based on such unsettled claim, dispute or other matter would be barred by the applicable statute of limitations. Failure to demand mediation within said 10-day period will result in Engineer's decision being final.

17.03 Attorneys' Fees

- A. For any matter subject to final resolution under this Article, the prevailing party shall be entitled to an award of its attorneys' fees incurred in the final resolution proceedings, in an equitable amount to be determined in the discretion of the court, arbitrator, arbitration panel, or other arbiter of the matter subject to final resolution, taking into account the parties' initial demand or defense positions in comparison with the final result.

ARTICLE 18—MISCELLANEOUS

PERFORMANCE BOND

Contractor Name: _____ Address (principal place of business): _____	Surety Name: _____ Address (principal place of business): _____
Owner Name: City of Lewiston Mailing address (principal place of business): PO Box 617 Lewiston, Idaho 83501	Contract Description (name and location): [Project Name] [Location of the Project] Contract Price: [Amount] Effective Date of Contract: [Date]
Bond Bond Amount: _____ Date of Bond: _____ <i>(Date of Bond cannot be earlier than Effective Date of Contract)</i> Modifications to this Bond form: ☐ None ☐ See Paragraph 16	
Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth in this Performance Bond, do each cause this Performance Bond to be duly executed by an authorized officer, agent, or representative.	
Contractor as Principal	Surety
_____ <i>(Full formal name of Contractor)</i>	_____ <i>(Full formal name of Surety) (corporate seal)</i>
By: _____ <i>(Signature)</i>	By: _____ <i>(Signature)(Attach Power of Attorney)</i>
Name: _____ <i>(Printed or typed)</i>	Name: _____ <i>(Printed or typed)</i>
Title: _____	Title: _____
Attest: _____ <i>(Signature)</i>	Attest: _____ <i>(Signature)</i>
Name: _____ <i>(Printed or typed)</i>	Name: _____ <i>(Printed or typed)</i>
Title: _____	Title: _____
<i>Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Contractor, Surety, Owner, or other party is considered plural where applicable.</i>	

1. The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.
2. If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Paragraph 3.
3. If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond will arise after:
 - 3.1. The Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice may indicate whether the Owner is requesting a conference among the Owner, Contractor, and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Paragraph 3.1 will be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor, and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement does not waive the Owner's right, if any, subsequently to declare a Contractor Default;
 - 3.2. The Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and
 - 3.3. The Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.
4. Failure on the part of the Owner to comply with the notice requirement in Paragraph 3.1 does not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.
5. When the Owner has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:
 - 5.1. Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;
 - 5.2. Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;
 - 5.3. Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owners concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Paragraph 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or
 - 5.4. Waive its right to perform and complete, arrange for completion, or obtain a new contractor, and with reasonable promptness under the circumstances:

- 5.4.1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or
 - 5.4.2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.
- 6. If the Surety does not proceed as provided in Paragraph 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Paragraph 5.4, and the Owner refuses the payment, or the Surety has denied liability, in whole or in part, without further notice, the Owner shall be entitled to enforce any remedy available to the Owner.
- 7. If the Surety elects to act under Paragraph 5.1, 5.2, or 5.3, then the responsibilities of the Surety to the Owner will not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety will not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication for:
 - 7.1. the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;
 - 7.2. additional legal, design professional, and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Paragraph 5; and
 - 7.3. liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.
- 8. If the Surety elects to act under Paragraph 5.1, 5.3, or 5.4, the Surety's liability is limited to the amount of this Bond.
- 9. The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price will not be reduced or set off on account of any such unrelated obligations. No right of action will accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors, and assigns.
- 10. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders, and other obligations.
- 11. Any proceeding, legal or equitable, under this Bond must be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and must be instituted within two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this paragraph are void or prohibited by law, the minimum periods of limitations available to sureties as a defense in the jurisdiction of the suit will be applicable.
- 12. Notice to the Surety, the Owner, or the Contractor must be mailed or delivered to the address shown on the page on which their signature appears.
- 13. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement will be deemed deleted therefrom and provisions conforming to such

statutory or other legal requirement will be deemed incorporated herein. When so furnished, the intent is that this Bond will be construed as a statutory bond and not as a common law bond.

14. Definitions

- 14.1. *Balance of the Contract Price*—The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made including allowance for the Contractor for any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.
 - 14.2. *Construction Contract*—The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.
 - 14.3. *Contractor Default*—Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.
 - 14.4. *Owner Default*—Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.
 - 14.5. *Contract Documents*—All the documents that comprise the agreement between the Owner and Contractor.
15. If this Bond is issued for an agreement between a contractor and subcontractor, the term Contractor in this Bond will be deemed to be Subcontractor and the term Owner will be deemed to be Contractor.
16. Modifications to this Bond are as follows: [Describe modification or enter "None"]

PAYMENT BOND

Contractor Name: Address <i>(principal place of business)</i> :	Surety Name: Address <i>(principal place of business)</i> :
Owner Name: City of Lewiston Mailing address <i>(principal place of business)</i> : PO Box 617 Lewiston, Idaho 83501	Contract Description <i>(name and location)</i> : [Project Name] [Location of the Project] Contract Price: [Amount] Effective Date of Contract: [Date]
Bond Bond Amount: Date of Bond: <i>(Date of Bond cannot be earlier than Effective Date of Contract)</i> Modifications to this Bond form: ☐ None ☐ See Paragraph 18	
Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth in this Payment Bond, do each cause this Payment Bond to be duly executed by an authorized officer, agent, or representative.	
Contractor as Principal	Surety
<i>(Full formal name of Contractor)</i>	<i>(Full formal name of Surety) (corporate seal)</i>
By: _____ <i>(Signature)</i>	By: _____ <i>(Signature)(Attach Power of Attorney)</i>
Name: _____ <i>(Printed or typed)</i>	Name: _____ <i>(Printed or typed)</i>
Title: _____	Title: _____
Attest: _____ <i>(Signature)</i>	Attest: _____ <i>(Signature)</i>
Name: _____ <i>(Printed or typed)</i>	Name: _____ <i>(Printed or typed)</i>
Title: _____	Title: _____
<i>Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Contractor, Surety, Owner, or other party is considered plural where applicable.</i>	

1. The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner to pay for labor, materials, and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.
2. If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies, and holds harmless the Owner from claims, demands, liens, or suits by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.
3. If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond will arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Paragraph 13) of claims, demands, liens, or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Construction Contract, and tendered defense of such claims, demands, liens, or suits to the Contractor and the Surety.
4. When the Owner has satisfied the conditions in Paragraph 3, the Surety shall promptly and at the Surety's expense defend, indemnify, and hold harmless the Owner against a duly tendered claim, demand, lien, or suit.
5. The Surety's obligations to a Claimant under this Bond will arise after the following:
 - 5.1. Claimants who do not have a direct contract with the Contractor
 - 5.1.1. have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
 - 5.1.2. have sent a Claim to the Surety (at the address described in Paragraph 13).
 - 5.2. Claimants who are employed by or have a direct contract with the Contractor have sent a Claim to the Surety (at the address described in Paragraph 13).
6. If a notice of non-payment required by Paragraph 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Paragraph 5.1.1.
7. When a Claimant has satisfied the conditions of Paragraph 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:
 - 7.1. Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and
 - 7.2. Pay or arrange for payment of any undisputed amounts.
 - 7.3. The Surety's failure to discharge its obligations under Paragraph 7.1 or 7.2 will not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Paragraph 7.1 or 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.

8. The Surety's total obligation will not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Paragraph 7.3, and the amount of this Bond will be credited for any payments made in good faith by the Surety.
9. Amounts owed by the Owner to the Contractor under the Construction Contract will be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfying obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.
10. The Surety shall not be liable to the Owner, Claimants, or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to or give notice on behalf of Claimants, or otherwise have any obligations to Claimants under this Bond.
11. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders, and other obligations.
12. No suit or action will be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Paragraph 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit will be applicable.
13. Notice and Claims to the Surety, the Owner, or the Contractor must be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, will be sufficient compliance as of the date received.
14. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement will be deemed deleted here from and provisions conforming to such statutory or other legal requirement will be deemed incorporated herein. When so furnished, the intent is that this Bond will be construed as a statutory bond and not as a common law bond.
15. Upon requests by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.
16. Definitions
 - 16.1. *Claim*—A written statement by the Claimant including at a minimum:
 - 16.1.1. The name of the Claimant;
 - 16.1.2. The name of the person for whom the labor was done, or materials or equipment furnished;
 - 16.1.3. A copy of the agreement or purchase order pursuant to which labor, materials, or equipment was furnished for use in the performance of the Construction Contract;
 - 16.1.4. A brief description of the labor, materials, or equipment furnished;

- 16.1.5. The date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
 - 16.1.6. The total amount earned by the Claimant for labor, materials, or equipment furnished as of the date of the Claim;
 - 16.1.7. The total amount of previous payments received by the Claimant; and
 - 16.1.8. The total amount due and unpaid to the Claimant for labor, materials, or equipment furnished as of the date of the Claim.
- 16.2. *Claimant*—An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials, or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond is to include without limitation in the terms of "labor, materials, or equipment" that part of the water, gas, power, light, heat, oil, gasoline, telephone service, or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials, or equipment were furnished.
- 16.3. *Construction Contract*—The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.
- 16.4. *Owner Default*—Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.
- 16.5. *Contract Documents*—All the documents that comprise the agreement between the Owner and Contractor.
17. If this Bond is issued for an agreement between a contractor and subcontractor, the term Contractor in this Bond will be deemed to be Subcontractor and the term Owner will be deemed to be Contractor.
18. Modifications to this Bond are as follows: [Describe modification or enter "None"]