



COLLEGE OF WESTERN IDAHO INVITATION TO BID (ITB)

MODULAR BUILDINGS-NAMPA CAMPUS 5500 EAST OPPORTUNITY DR. NAMPA, IDAHO

ITB 01-2018

RESPONSE DUE: OCTOBER 4TH, 2018 AT 4:00 P.M. MT

**Mail sealed proposals to:
College of Western Idaho
Attn: ITB Modular Buildings
MS 1000, P.O. Box 3010
Nampa, ID 83653**

**FED Ex, UPS or Hand Deliver to Physical Address:
College of Western Idaho
Attn: ITB Modular Buildings
6056 Birch Lane, Suite 200
Nampa, ID 83687**

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INVITATION TO BID

Modular Buildings

1. INTRODUCTION AND PURPOSE

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

The purpose of this Invitation to Bid (ITB) is to request proposals with bids from qualified licensed public works contractors for the purchase of three (3) Modular Buildings in accordance with the specifications provided below. CWI is in need of additional office space at our Nampa Campus to facilitate this growth. Three modular buildings will be placed northeast of the Nampa Academic Building Located at 5500 East Opportunity Dr. These three modular buildings will be 60ft x 60ft and will require foundations. A separate but associated infrastructure project will proceed this work. The College intends to have design work, manufacturing, delivery and installation completed so that the buildings can be occupied by January 14, 2019.

2. INSTRUCTIONS TO CONTRACTORS

2.1 SUBMITTAL DIRECTIONS

Proposals will be forwarded by e-mail subject line **ITB Modular Buildings** and should be directed to Jennifer Pope, at jenniferpope@cwidaho.cc Contractor's will receive a response e-mail that proposal was received. If this response is not received by Contractor, call **(208) 562-3243**. **Five (5) sets in hard copy format** of the proposal are also required. Both electronic version and hard copies must be submitted on or before **October 4, 2018 at 4PM MT** either of the addresses shown below:

Mail to:

College of Western Idaho

Attn: ITB Modular Buildings

MS 1000, P.O. Box 3010

Nampa, ID 83653

Fed Ex, UPS or Hand deliver to Physical Address:

College of Western Idaho

Attn: ITB Modular Buildings

6056 Birch Lane, Suite 200

Nampa, ID 83687



Contractors are responsible for ensuring that proposals are received at CWI by the due date and time as stated above, whether electronic, mailed, parcel or hand delivered. Proposals must be in a sealed package.

Proposals received after the designated time and date indicated will not be considered for evaluation.

2.2 SCHEDULE OF EVENTS

Event	Date and Time ¹
Invitation to Bid Issued and Advertised	September 6, 2018 and September 13, 2018
Walk-Through	September 20, 2018 – 10:00AM MT
Question Period Ends	September 27, 2018-5:00 PM MT
Proposals Due	October 4, 2018-4:00 PM MT
Proposal Opening Date	October 4, 2018-4:30PM MT
Evaluation Period	October 5, 2018- October 12, 2018
Intent to Award	October 16, 2018
Tentative Commencement of Contract	October 23, 2018
	¹ The noted dates and times are tentative and subject to change.

2.3 CONTACT WITH COLLEGE PERSONNEL-QUESTIONS

All communications and questions by Contractor shall be made via the below named contact.

Contact Name: Jennifer Pope, Quality & Contract Compliance Analyst

Address: MS 1000, P.O. Box 3010, Nampa, ID 83653

E-mail Address: jenniferpope@cwidaho.cc

Please enter as the subject line of your email “**Q&A ITB Modular Buildings**”. If the question is in regards to the Construction Contract (Attachment 4), state the clause number and note what revisions if any are being requested. No revisions will be permitted once bids are submitted. All questions must be submitted by **September 27, 2018 at 5:00PM MT**. If you do not intend to submit a question but would like to receive the question/answer document, please send an email and use the subject line “**Q&A ITB Modular Buildings.**” Answers to questions will be posted on CWI web site under Purchasing Notices. No other communication of questions and answers will be made.

The College reserves the right to modify the Scope and Specifications of this ITB, as circumstances require. The ITB and all subsequent addenda may be found at the CWI website. Please check for updates/amendments at:

<http://cwidaho.cc/info/procurement-division-contractspurchasing>

2.4 PROPOSAL OPENING

All proposals received by the time and due date will be publicly opened by representatives of the Evaluation Committee on **October 4, 2018 at 4:30 PM MT** at the CWI Administration Building, 6056 Birch Lane, Suite 200, Nampa, Idaho. At the time of opening, only the names of the Contractors will be shared.

Upon receipt of proposals, an evaluation committee will select a qualified contractor based on the lowest responsive bid that meets the specifications. The ITB Evaluation Committee reserves the option to request a presentation from the Contractor(s).

2.5 ERRORS IN PROPOSALS

The College will not be liable for any errors in proposals. Modifications to proposals will not be accepted after the deadline.

2.6 WITHDRAWING PROPOSALS

Contractors may withdraw a proposal at any time prior to the deadline by submitting an email to jenniferpope@cwidaho.cc sent by an authorized representative of the Contractor. After withdrawing a proposal, the Contractor may submit another proposal at any time prior to the proposal due date.

2.7 LIMITATIONS

The College will not be obligated in any way by any Contractor's response to this ITB. The selection of a proposal and the accompanying award of a contract are to be based on evaluation criteria established in this ITB and described in the Evaluation and Award Section. The selection is at the sole discretion of the College.

The issuance of this ITB does not constitute an assurance that any contract will actually be entered into by any parties and the College expressly reserves the right to:

- Request additional information and data from any or all Contractors.
- Supplement, amend, or otherwise modify the ITB or cancel this request with or without the substitution of another ITB.
- Disqualify any Contractor who fails to provide information or data requested herein or who provides inaccurate or misleading information or data.
- Disqualify any Contractor on the basis of any real or apparent conflict of interest.
- Disqualify any Contractor on the basis of past performance on other projects.

- The College shall have the sole discretion to select one or none of the Contractors to provide the services, or portions thereof, as described in this ITB.

2.8 PUBLIC RECORDS

Pursuant to Idaho Code section 74-101 et seq., information or documents received by CWI in proposals or from the Contractor may be open to public inspection and copying unless exempt from disclosure. Contractors shall clearly designate individual documents as “exempt” on each page of such documents and shall indicate the basis for such exemption. CWI assumes no liability for disclosure of proprietary material submitted by Contractors. Contractor shall not label an entire document as a “trade secret,” merely because a portion of that document is or may be a trade secret. If any exempt information becomes the subject of a public records or other such request for production, CWI will notify the Contractor and, upon the execution of an agreement to defend and indemnify CWI, will allow the Contractor to address the public records or other request on behalf of CWI in the appropriate forum.

2.9 PROPOSAL FORMAT

Each official paper response should be bound separately in a simple, effective manner, and printed on standard 8½ x 11 inch paper clearly indicating the name, phone number and e-mail address of the Contractor contact(s) responsible for the proposal, along with the company name, address, phone number, fax number, and web address.

All Contractors to this ITB are responsible for all costs associated with the preparing of their proposal, answering all questions, and providing the College with requested information. CWI is under no obligation to incur or reimburse any Contractor for any proposal costs.

2.10 ELIGIBILITY FOR AWARD

In order for a Contractor to be eligible for an awarded contract, the proposal must be responsive to this ITB and the evaluators must be able to determine that the Contractor is responsible and has the resources and capacity to perform the resulting contract satisfactorily.

Eligible Contractors, at a minimum, must meet the following requirements:

- Have adequate financial resources, or the ability to obtain such resources as required during the performance of any resulting contract.
- Be able to comply with the required performance schedule, taking into consideration all existing business commitments.
- Have a satisfactory record of past performance.
- Have necessary personnel and management capable of performing requirements on a resulting contract.
- Be qualified as an established Contractor regularly engaged in the type of business necessary to fulfill the contract requirements.
- Be otherwise qualified and eligible to receive an award under applicable laws and regulations.

3. PROPOSAL EVALUATION AND AWARD

3.1 EVALUATION OF PROPOSALS

An Evaluation Committee will carefully review all proposals submitted to determine which proposal provides all requirements and meets specifications. Checklist of Requirements found in **Attachment 3 Checklist of Requirements**.

3.2 UNRESPONSIVE PROPOSALS

Proposals not meeting the following requirements may be deemed unresponsive and may not be afforded consideration:

- A submitted proposal may be deemed unresponsive if the Contractor does not specifically offer all services as specified in the ITB.
- The proposal must acknowledge that all services, terms and conditions specified in this proposal are included in the quoted price.
- The proposal must state that this ITB and the proposal submitted by the Contractor in response to this ITB will be made a material part of any contract executed.

3.3 CONTRACT AWARD

Award will be made to the responsive Contractor with the lowest total cost and meets the ITB specifications.

This ITB does not commit to awarding a contract, pay any costs incurred in the preparation of a proposal, or contract for the services described herein.

4. SPECIFICATIONS AND OTHER REQUIREMENTS

4.1 SPECIFICATIONS

Specifications for the project are found in Attachment 2.

4.2 OTHER REQUIREMENTS

Other ITB requirements are as follows:

4.2.1 COST

Provide your fully burdened Unit Cost and Total Cost on **Attachment 1 Bid Schedule** (including FOB destination delivery and installation) meeting all the specifications listed in **Attachment 2 Specifications**. Alternative pricing is requested based on the Conceptual Floor Plans (1, 2, and 3) indicated by green lines (walls) found in **Attachment 2 Specifications**.

4.2.2 PRODUCT SUBSTITUTIONS

During the term of any contract resulting from this solicitation, the Contractor is not authorized to substitute any item for that product identified in the solicitation without prior written consent of the college representative whose name appears on the front of this solicitation, or their designee.

4.2.3 INSTALLATION, SETUP, AND ACCEPTANCE

The Contractor will provide CWI with foundation, electrical/data and HVAC plans designed by an Idaho licensed engineer and approved by the Manufacturer within two weeks after award of contract. Plans will be submitted to CWI and shall include all details necessary for the Contractor to submit plans to the Division of Building Safety

for review. Foundations are to be installed by Contractor. Foundation details to include: vents, utility locations, and all details necessary to depict a permanent concrete foundations for the Modular Buildings.

All work shall comply with the Idaho Division of Building Safety's standards for Modular Buildings; including obtaining permit, obtaining approvals of plans, inspections, and insignia as required for Modular Buildings.

<https://dbs.idaho.gov/programs/modular/index.html>

Installation and setup includes transportation, placing on the foundation, leveling the building, hooking up water and sewer, all remaining drywall, finish work, painting, installation of flooring (carpet, vinyl, etc. . .), and cleaning the building prior to walk-through.

Contractor to arrange and pay for inspections pertaining to sewer and water hook-up. All work to meet state plumbing and electrical codes.

Acceptance will occur after proof of all required testing, inspections, and final inspection by CWI personnel to ensure the above has been accomplished and Modular Buildings are ready to move in.

4.3 WARRANTY, SERVICE AND SUPPORT, MAINTENANCE, ETC.

The Contractor will provide full warranty for defects in materials and workmanship on all aspects of the Modular Buildings for the first twelve (12) months from date of acceptance. All appliances, HVAC systems, etc. will come with manufacturers' standard warranties.

4.4 DELIVERY

Modular Buildings shall be delivered to the College of Western Idaho, 5500 East Opportunity Dr., Nampa, Idaho 83687. Delivery will include foundation construction and on-site assembly.

The Modular Buildings must be ready for occupation by January 14, 2019. Delivery schedule may be modified by CWI with thirty (30) days' notice.

4.5 SUBCONTRACTORS

Unless otherwise allowed by CWI in the Contract, the Contractor shall not, without written approval from the CWI, enter into any subcontract relating to the performance of the Contract or any part thereof. Approval by CWI of a Contractor's request to subcontract, acceptance of subcontracted work, or payment for subcontracted work by CWI, shall not in any way relieve the Contractor of any responsibility under the Contract. The Contractor shall be liable for all damages to CWI caused by negligent performance or non-performance of work under the Contract by the Contractor's subcontractor. Subcontractor(s) must maintain the same types and levels of insurance as that required of the Contractor under the Contract; unless the Contractor provides proof to the CWI's satisfaction that the subcontractor(s) are fully covered under the Contractor's insurance, or, except as otherwise authorized by CWI.

4.6 RECORDS MAINTENANCE

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

4.7 AUDIT RIGHTS

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

4.8 TITLE

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

4.9 INSURANCE AND BONDING

The Contractor and any sub-contractors shall maintain in full force and effect insurance as required by Article 21 of the Construction Contract found in Attachment 4 of this document. Bond documentation will also be required as found in Article 24 of the Construction Contract.

4.10 REFERENCES

For references, include at least three (3) clients with whom the Contractor has work experience that is similar in nature to the services being requested by this ITB, and are within the last three (3) years from the date of this ITB. Include contact name, title, address, telephone number, and e-mail address for each reference. Indicate the areas in which the reference is related to higher education or government relations, and the length of service to date.



ATTACHMENT 1 BID SCHEDULE

MODULAR BUILDINGS FOR THE COLLEGE OF WESTERN IDAHO, NAMPA CAMPUS

BUILDING	NO.	UNIT COST	ALTERNATE COST <i>Please provide an alternate/separate cost for the walls and doors highlighted in green found in the Conceptual Floor Plans</i>
Conceptual Floor Plan #1 (FMP) – 3,600 s.f.	1		
Conceptual Floor Plan #2 (FAC)– 3,600 s.f	1		
Conceptual Floor Plan #3 (ESS) – 3,600 s.f	1		
Total Cost	3		

Your Total Cost must be fully burdened to include delivery FOB destination, as outlined in **Section 4** of this ITB, all materials, transportation, installation requirements, labor, warranties, and any other costs associated with meeting the specifications of this bid.

This completed Bid Schedule must be submitted with your response.

If awarded the contract, will you meet an occupancy date of January 14, 2019?

YES _____ *NO _____

*If 'NO' what is the earliest date that the modular buildings could be occupied? _____

Delivery within _____ days After Receipt of Order (ARO)

Company Name of Bidder: _____

Contact Name/Phone: _____

Contact E-mail: _____

ATTACHMENT 2 SPECIFICATIONS

GENERAL:

The buildings shall be Modular Buildings constructed in a plant or factory that is normally engaged in the manufacture of modular structures. The plant shall have a full-time quality control program during the construction operation.

All work shall comply with the Idaho Division of Building Safety's standards for Modular Buildings; including obtaining permit, obtaining approvals of plans, inspections, and insignia as required for Modular Buildings. <https://dbs.idaho.gov/programs/modular/index.html>

The Contractor will provide the completed buildings placed on CWI property on Contractor designed and permitted foundations. The Contractor will provide the water, sewer and electrical hookups. CWI shall provide water, sewer and electrical stubs at the locations, as identified by the Contractor. Data, and telephone hookups will be provided by CWI. Contractor to provide accessible concrete ramps to all entrances that meet code requirements required by the Idaho Division of Building Safety.

Bid price shall include the completed units including all items identified in this specification including additional appurtenances to provide a complete and "ready to move in to" units. Bid price shall also include transportation, placing on foundations, installing per manufacturer's requirements, leveling the buildings, utility hookups, all drywall finish work, completing any unfinished work such as flooring (carpet, vinyl), and cleaning the buildings prior to final walk through.

The Modular Buildings must meet or exceed all applicable State of Idaho Building Codes. The contractor will submit plans to the Idaho Department of Building and Safety for approval and pay the applicable fees. The Contractor shall be properly licensed by the State of Idaho.

TECHNICAL:

Modular Building # 1 – 3,600sqft – Refer to Conceptual Floor Plan#1 (FPM)

The Building shall be one of the manufacturer's standard designs with minimum modifications as follows:

- (2) Accessible restrooms (to comply with current plumbing code)
- (1) Utility room / Janitorial closet with floor sink and eye wash
- (1) Break room
- (1) 18ft x 12ft conference room
- (7) Hard wall offices
- Open office space shown with cubicles (cubicles to be purchased by CWI)

Modular Building # 2 – 3,600sqft – Refer to Conceptual Floor Plan #2 (FAC)

The Building shall be one of the manufacturer's standard designs with minimum modifications as follows:

- (2) Accessible restrooms (to comply with current plumbing code)
- (1) Utility room / Janitorial closet with floor sink and eye wash
- (1) Break room
- (1) 14ft 5in x 11ft conference room
- (9) Hard wall offices
- Open office space shown with cubicles (cubicles to be purchased by CWI)

- (1) 3ft x 6ft 6in Data Closet

Modular Building # 3 – 3,600sqft – Refer to Conceptual Floor Plan #3 (ESS)

The Building shall be one of the manufacturer's standard designs with minimum modifications as follows:

- (2) Accessible restrooms (to comply with current plumbing code)
- (1) Utility room / Janitorial closet with floor sink and eye wash
- (1) Break room
- (1) 20ft x 13ft conference room
- (10) Offices and (3) break out room
- Central Open office space

The floor plans shall substantially conform to the attached conceptual plans, attached as a pdf document entitled "Conceptual Floor Plans #1, 2 & 3." Some alterations may be allowed to fit a specific manufacturer's standards. Sample Elevations are attached to convey desired exterior look.

Design parameters are as follows:

- Live load (snow) – applicable to unit locations
- Wind – applicable to unit locations
- Seismic – applicable to unit locations

Alternate floor plans or elevations which substantially conform to, or are "equivalent to," the attached conceptual plan may be approved, at the CWI's discretion. Any exceptions to or deviations from the requirements listed below must be documented by the vendor, and must include a detailed explanation as to how the deviation meets the requirements of the specification. Manufacturer's data on specific models proposed shall accompany bid.

FLOOR SYSTEM:

Manufacturer's standard design for unit proposed. Floor joists and decking designed to live load of 40 lbs. per sq. ft. Decking joints to be sanded in all areas so as to not have any ridges. The bottom of the floor system is to receive a heavy-duty one-piece bottom board to create a sealed floor system. The longitudinal floor system to enclose the drain, water lines, and heating and cooling duct. All floor insulation to be rated R-30. The floor system is to be designed to hang off the concrete footing wall allowing the finish floor level of the modular to be near grade level.

EXTERIOR WALLS:

Exterior walls to be constructed of 2"x 6" No. 2 or better with 2"x 6" top and bottom plates. Walls to be screwed, nailed, or stapled and secured by using steel wall straps. Provide a minimum of a double header above wall openings. Walls to be insulated with R-21. Walls to have OSB exterior sheathing with a building wrap under "Hardi Panel" and "Hardi Plank" siding, or approved equal. Paint the exterior siding (Flat, Matte, or Satin Finish). Exterior walls Contractor must provide samples of paint upon award. Color to be selected by CWI.

ROOF SYSTEM:

Engineered trusses designed for roof live loads applicable to the unit location. Roof to be 20 year TPO membrane with a 1/4" per foot slope. Provide an underlayment over wood sheathing under per Manufacturer roof installation requirements, roof system and details to be preapproved by CWI. All openings through roof to be sealed, flashed, and water/weather tight. Vapor barrier to be used. Primary roof drains to be gutter and down spouted with overflow duct bills scuppered above.

See Modular Building Elevations in **Attachment 2 Specifications**.

INTERIOR WALLS:

All interior walls will be 2" x 4" construction and will extend from floor to roof deck. All walls to have full 5/8" sheetrock throughout filled with sound batt insulation throughout. Sheetrock to be taped, textured, primed and then painted with a minimum of two (2) coats of paint. Interior shall have multiple colors selected by CWI. All corners throughout the building to have squared corners. Exposed corners to have 2"x2"x6' stainless steel corner guards. At restrooms additional insulation will be placed overhead to minimize noise transmission.

WINDOWS AND DOORS:

Windows to be a Low E vinyl sliders (horizontal or vertical), dual glazed, and energy efficient. Window numbers, size, and location similar to enclosed plan view. The number of windows and their locations to meet or exceed what is shown on the attached Floor Plan. Provide 2" blinds on each of the windows.

Exterior doors to be 1-3/4" hollow metal doors and frames thermally broken. Each exterior doors to have half glass. Interior door frames to be "knock down" or "timely" frames. Interior doors 1-3/4" solid core, stain grade 36" X 6'-8" wide doors with a half lite with Marks levers grade 1 626 with (3) 4.5" hinges /bb 626. Exterior door access control to be provide via card reader and door controller. Exterior double doors to be out-swinging with a keyed removable mullion, lcn closer, Von Dupren 99QEL Panic Hardware prepared for card access with Marks levers grade 1 626.

INTERIOR FINISHES:

Interior and Exterior paint to be Sherwin Williams or equal with a satin finish. Colors to be selected by CWI after award. Interior wall texture to be a light orange peel finish. Suspended acoustical ceiling system to be 2' X 4' grid similar or equal to Armstrong Calla. <https://www.armstrongceilings.com/commercial/en-us/commercial-ceilings-walls/calla-ceiling-tiles.html> Carpet to be Mohawk Mass Appeal Collection – Metal 859 One the line. LVT in break rooms and restrooms to be Mohawk/Bigelow Carpet Tile Mixology Collection – Bold Strokes 968 – Smoky Martini. Counter tops to be plastic laminate, style and color to be selected by CWI. Cabinets to contain adjustable shelving: Plastic laminate uppers and lowers with edge banding and matching back splash. Breakroom to have an "under the counter" dishwasher. Kitchen sink is to be a single basin stainless steel model. Sink to have a single lever faucet with spray attachment and garbage disposal. Plumbing under sink to have shut-off valves.

Light & Plumbing Fixtures:

Interior lighting to be similar or equal to Lithonia _RTLED with exterior Lithonia Security Flood Light (2) per side. Lavatories and Toilets to be American Standard or equal. Toilets to be pressure assisted. Plumbing fixtures at lavatories to be proximity activated. Toilet partitions where required to be floor mounted, ceiling supported and similar or equal to Bobrick CL phenolic.

THERMAL AND HEAT SYSTEM:

Insulation shall be:

- Ceiling - R-40
- Walls – R-21
- Floor – R-30

Heating / A/C to be heat pump

Dishwasher: to be provided by CWI.

Electric Water Heater: 20 gallon minimum.

PLUMBING AND ELECTRICAL:

Provide high-grade water pipe in flooring system. Pipeline system to be rated at a 100-psi minimum. Contractor to provide recommendations on size and minimum pressure of water supply line going to buildings. For the Modular buildings recommendations shall be based on adequate water flow for simultaneous water for all fixtures in building. Provide shut-off valves at all fixtures. Provide main shut-off valve (ball valve) where it enters the building. Water line to be tested prior to acceptance.

Building to be plumbed and wired for air-source-heat pump, hot water heater, freezer/ refrigerator (Ice & Water), dishwasher, and microwave.

Provide and install two (2) frost proof exterior faucets for each building (one in front and one in rear).

The water heater to be electric provide manufacturer's specifications including warranty.

The primary heat source to be air-source heat pumps. Provide manufacturer's specifications including warranty.

All piping to be tested prior to acceptance.

Provide two (2) exterior weatherproof G.F.I. receptacles (one at entry door and one at rear door).

Provide exhaust fans in both bathrooms, CFM rating should be sufficient for size of bathroom (i.e. 1 CFM per square foot of room).

Provide electrical service as required by code for new modular buildings.

Provide smoke and carbon monoxide detectors at appropriate locations.

Use electrical wire protectors throughout the building. Electrical system to be tested and approved prior to acceptance.

All drain lines to be ABS pipe with appropriate clean-outs located for easy access. Drain lines to be tested for leakage prior to acceptance.

FOUNDATION PLANS:

The Contractor will provide and install CWI with foundation plans, designed by an Idaho licensed engineer and approved by the Manufacturer, within two weeks after award of contract. Foundation plan submittal shall be reviewed by CWI to verify details including dimensions, steel reinforcement, vents, utility locations, and all details necessary to depict a permanent concrete foundation for these new buildings. The contractor will permit and install foundations as approved by the Division of Building Safety and CWI.

CWI SELECTED ITEMS:

All samples provided by the Contractor that will be selected by CWI are not optional upgrades. The items selected by CWI will have no effect on the awarded amount. Contractors must consider this when offering samples to CWI.

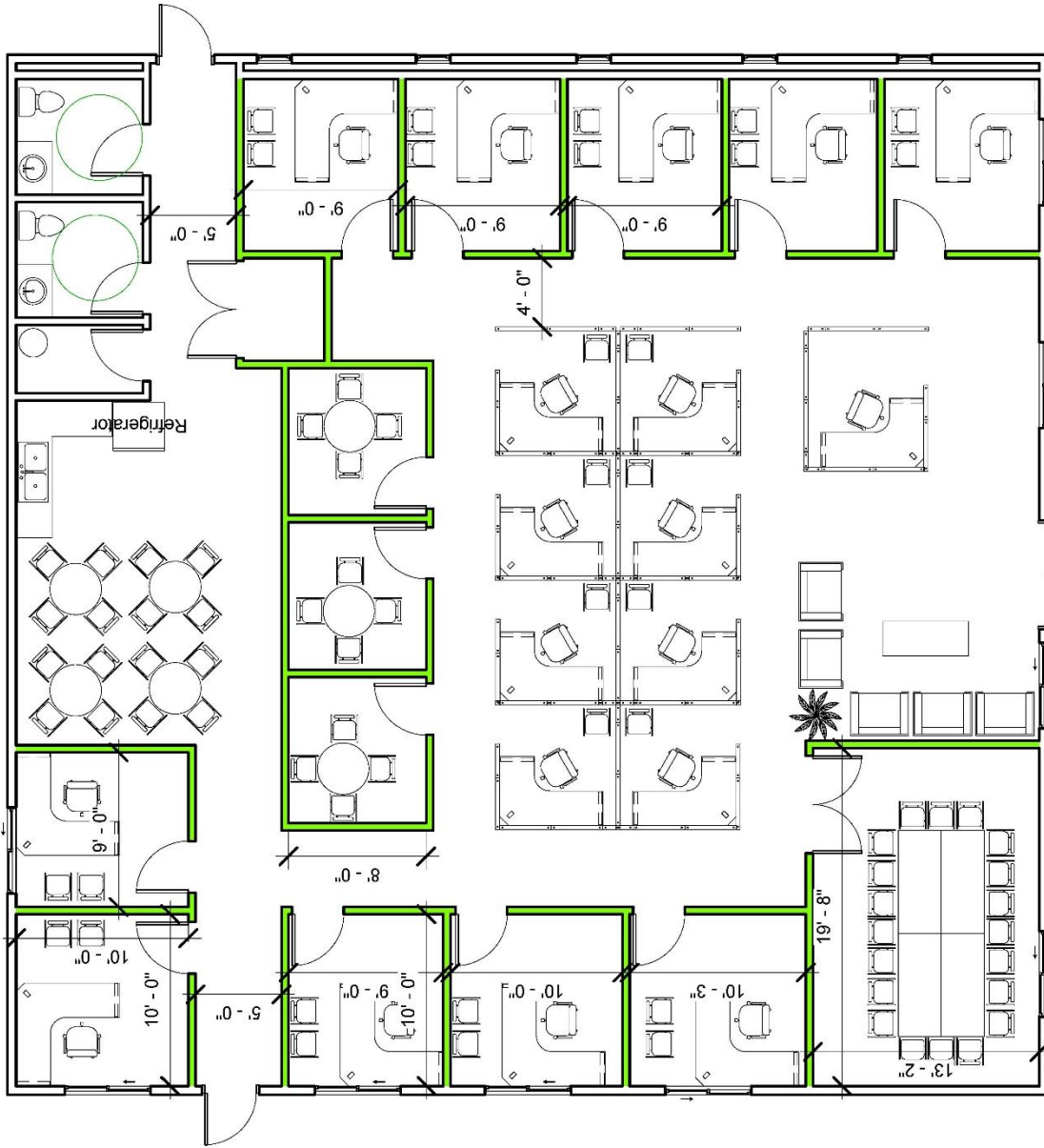


BIDDER MUST SUBMIT SHOP DRAWINGS FOR THE MAKE AND MODEL OF MODULAR HOMES PROPOSED IN THIS ITB. SHOP DRAWING TO INCLUDE BUT NOT LIMITED TO: FLOOR PLAN, ELEVATIONS, AND UTILITY LOCATIONS.

DOCUMENTS PROVIDING INFORMATION PROVING THE OFFERED MODULAR HOME IS AN EQUAL (IF VENDOR IS PROPOSING AN EQUAL).



Conceptual Floor Plan #2 (FAC)



Conceptual Floor Plan #3 (ESS)



Proposed Elevations - Faculty Modular Building

ATTACHMENT 3 CHECKLIST OF REQUIREMENTS

GENERAL:

Please use this checklist to determine if all requirements are met and include with your proposal.

REQUIREMENTS	YES/NO
Five (5) Copies of the Proposal	
Attachment 1 Bid Schedule (attach)	
Contractor can meet Specifications	
Shop Drawings (attach)	
Meet Delivery Date	
Public Works Contractor License (attach)	
Warranty for Workmanship and Appliances	
Bond Documentation	
Proof of Insurance (attach)	
Three (3) References	
Alternate pricing for each modular – Additional Interior walls/doors (as highlighted in green)	

**CONSTRUCTION CONTRACT
BETWEEN OWNER AND CONTRACTOR**

**MODULAR BUILDINGS FOR THE
COLLEGE OF WESTERN IDAHO**

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CONSTRUCTION CONTRACT BETWEEN OWNER AND CONTRACTOR

THIS CONSTRUCTION CONTRACT BETWEEN OWNER AND CONTRACTOR (the "Contract") is by and between the **COLLEGE OF WESTERN IDAHO** ("CWI" or the "Owner") and _____ **CONSTRUCTION** ("Contractor") and is for the Project (the "Project") identified as **Project No. CNCAB19MODBLDGS** as further described in **Summary of Work** (attached) and incorporated herein by reference. This Contract shall be effective on _____ when executed by both parties.

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

ARTICLE 1 CONTRACT DOCUMENTS

1.1 The Contract Documents consist of this Contract, the Contractor's Proposal, the Conditions of the Contract (General, Supplementary and other conditions) and any Addenda thereto issued prior to and all modifications issued after execution of this Contract, written amendments signed by both the Owner and the Contractor, Change Directives, Modifications, and any written orders by the Owner (the "Contract Documents"). Documents not included or expressly contemplated in this Article 1 do not, and shall not, form any part of the Contract Documents.

1.2 The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations.

ARTICLE 2 REPRESENTATIONS AND WARRANTIES OF THE CONTRACTOR

In order to induce the Owner to execute this Contract and recognizing that the Owner is relying thereon, the Contractor, by executing this Contract, makes the following express representations to the Owner:

2.1 The Contractor is fully qualified to act as the Contractor for the Project and has, and shall maintain, any and all licenses, permits or other authorizations necessary to act as the Contractor for, and the Contractor shall perform the work required by the Contract Documents for **Project No. CNCAB19MODBLDGS**.

2.2 The Contractor has become familiar with the Project site and the local conditions under which the Project is to be constructed and operated particularly in correlation to the requirements of the Contract.

2.3 The Contractor has received, reviewed, compared, studied and carefully examined all of the documents which make up the Contract Documents, including the Specifications, Scope Description of Work, and any Addenda, and has found them in all respects to be complete, accurate, adequate, consistent, coordinated and sufficient for construction. Such review, comparison, study and examination shall be a warranty that the

contractor believes that the documents are complete and the Project is buildable as described except as reported.

2.4 The Contractor warrants to the Owner that all labor furnished on this Project shall be competent to perform the tasks undertaken; materials and equipment furnished under the Contract will be new and of high quality unless otherwise required or permitted by the Contract Documents; that the Work will be complete, of high quality and free from defects not inherent in the quality required or permitted; and that the Work will strictly conform to the requirements of the Contract Documents. Any Work not strictly conforming to these requirements, including substitutions not properly approved and authorized, shall be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse by Owner or its representatives, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear.

ARTICLE 3 INTENT AND INTERPRETATION

With respect to the intent and interpretation of this Contract, the Owner and the Contractor agree as follows:

3.1 This Contract constitutes the entire and exclusive agreement between the parties with reference to the Project, and supersedes any and all prior discussions, communications, representations, understandings, negotiations or agreements. This Contract also supersedes any bid documents.

3.2 The intent of the Contract is to include all items necessary for the proper execution and completion of the Project and anything that may be required, implied or inferred by the documents which make up this Contract, or any one or more of them, shall be provided by the Contractor for the Contract Amount(s). The Contract Documents are complementary, and what is required by one shall be as binding as if required by all.

3.3 Nothing contained in this Contract shall create, nor be interpreted to create, privity or any other relationship whatsoever between the Owner and any person or entity except the Contractor; provided, however, that the Owner is entitled to performance and enforcement of obligations under the Contract intended or necessary to facilitate its duties. Any reference to the Owner or the Contractor shall be deemed to include authorized representatives.

3.4 When a word, term or phrase is used in this Contract, it shall be interpreted or construed first as defined herein; second, if not defined, according to its generally accepted meaning in the construction industry; and third, if there is no generally accepted meaning in the construction industry, according to its common and customary usage.

3.5 The words "include," "includes," or "including," as used in this Contract, shall be deemed to be followed by the phrase "without limitation."

3.6 The specification herein of any act, failure, refusal, omission, event, occurrence or condition as constituting a material breach of this Contract shall not imply that any other, non-specified act, failure, refusal, omission, event, occurrence or condition shall be deemed not to constitute a material breach of this Contract.

3.7 The Contractor shall have a continuing duty to read, examine, review, compare and contrast each of the documents which make up this Contract, shop drawings and other submittals, and shall give timely written notice to the Owner of any conflict, ambiguity, error or omission which the Contractor may find with respect to these documents before proceeding with the affected Work.

3.8 The express or implied approval by the Owner of any shop drawings or other submittals shall not relieve the Contractor of the continuing duties imposed hereby, nor shall any such approval be evidence of the Contractor's compliance with this Contract. The Owner will prepare documents for the Project, including but

not limited to Drawings and Specifications for the Project, which are accurate, adequate, consistent, coordinated and sufficient for construction. HOWEVER, THE OWNER MAKES NO REPRESENTATION OR WARRANTY OF ANY NATURE WHATSOEVER TO THE CONTRACTOR CONCERNING SUCH DOCUMENTS. The Contractor again hereby acknowledges and represents that it has received, reviewed and carefully examined such documents; has found them to be complete, accurate, adequate, consistent, coordinated and sufficient for construction; and that the Contractor has not, does not and will not rely upon any representations or warranties by the Owner concerning such documents, as no such representations or warranties have been or are hereby made.

3.9 In the event of any conflict among any of the documents which make up this Contract, the Owner shall interpret the documents, and the interpretation shall be binding on both the Owner and Contractor; provided, however, that this does not change the Owner's right to make decisions regarding Claims in accordance with Article 13 and Article 14. If no interpretation is provided by the Owner, the most stringent requirement in the Contract Documents will apply.

ARTICLE 4 OWNERSHIP OF DOCUMENTS

4.1 Unless otherwise agreed by the Owner and its consultants, the party that prepared the drawings, specifications and other documents is the author of such with all copyright, common law, statutory and other reserved rights. The Owner may retain one (1) record set of the Drawings and Specifications and other documents but shall not own or claim any copyright in them.

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

Submission to or use by a regulatory body related to this Project is an acceptable use.

ARTICLE 5 CONTRACTOR'S PERFORMANCE

The Contractor shall perform all of the Work required, implied or reasonably inferred from this Contract, including the following:

5.1 Construction of the Project.

5.2 The furnishing of any required surety bonds and insurance.

5.3 The provision or furnishing, and prompt payment therefore, of labor, supervision, services, materials, supplies, equipment, fixtures, appliances, facilities, tools, transportation, storage, power, fuel, heat, light, cooling or other utilities required for construction and all necessary permits, required for the construction of the Project.

5.4 The creation and submission of a detailed and comprehensive set of marked up blue or black-lined record drawings. Said record drawings shall be submitted to and approved by the Owner as a condition precedent to payment to the Contractor.

ARTICLE 6 TIME FOR CONTRACTOR'S PERFORMANCE

6.1 The Contractor shall commence the performance of this Contract in accordance with the "Notice to Proceed" (Exhibit F) issued by the Owner and shall diligently continue its performance to and until final completion of the Project. The Contractor shall accomplish Substantial Completion of the Project on or before the time indicated in Exhibit F. The period of time, including any adjustments made under this Contract, for the Contractor to reach Substantial Completion is the "Contract Time."

6.2 The Contractor may be assessed by and be responsible to the Owner for the amount indicated in Exhibit A per day for each and every calendar day of unexcused delay in achieving Substantial Completion beyond the date set forth for Substantial Completion. Any sums owed hereunder by the Contractor shall be payable not as a penalty but as liquidated damages, representing an estimate of delay damages likely to be sustained by the Owner estimated at the time of this Contract. When the Owner reasonably believes that Substantial Completion will be inexcusably delayed, the Owner shall be entitled, but not required, to withhold from any amounts otherwise due the Contractor an amount then believed by the Owner to be adequate to recover liquidated damages applicable to such delays. If and when the Contractor overcomes the delay in achieving Substantial Completion, or any part thereof, for which the Owner has withheld payment, the Owner shall promptly release to the Contractor those funds withheld, but no longer applicable, as liquidated damages. The Owner's right to liquidated damages is not, and shall not be deemed to be, an exclusive remedy for delay and the Owner shall retain all remedies at law or in equity for delay or other breach.

6.3 The term "Substantial Completion," as used herein, shall mean that point at which, as certified in writing by the Design Professional, or if there is no Design Professional, as certified by the Owner or the Owner's representative as identified in Exhibit B, the entire Project is at a level of completion in strict compliance with the Contract Documents, such that the Owner or its designee can enjoy beneficial use or occupancy and can use or operate it in all respects for its intended purpose. If, in the reasonable determination of the Owner, receipt of operation and maintenance manuals or completion of training is necessary for such beneficial use or occupancy, then there shall be no Substantial Completion until such manuals are provided or such training is completed. Partial use or occupancy of the Project shall not result in the Project being deemed substantially complete, or accepted as substantially complete, and such partial use or occupancy shall not be evidence of Substantial Completion. The Project shall not be deemed accepted until it is finally complete.

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

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

ARTICLE 7 CONTRACT PAYMENTS

7.1 The Owner shall pay, and the Contractor shall accept, as full and complete payment for the Contractor's timely performance of its obligations hereunder, the Contract Amount as provided in the Contract documents as indicated under Exhibit A.

7.2 Prior to submitting its first pay application, the Contractor shall prepare and present to the Owner the Contractor's Schedule of Values apportioning the Contract Amount among the different elements of the Project for purposes of periodic and final payment. The Contractor's Schedule of Values shall be presented in whatever format, with such detail, and backed up with whatever supporting information the Owner reasonably requests. The Contractor shall not imbalance its Schedule of Values nor artificially inflate any element thereof. The violation of this provision by the Contractor shall constitute a material breach of this Contract. The

Contractor's Schedule of Values will be utilized for the Contractor's requests for payment but shall only be so utilized after it has been approved in writing by the Owner.

7.3 The Owner shall pay the Contract Amount(s) to the Contractor in accordance with the procedures set forth in this Article. The Contractor shall submit a Contractor's Request for Payment, on or before the day of each month indicated in Exhibit A or otherwise agreed to, after commencement of performance, but no more frequently than once monthly. Said payment request shall be on Owner's standard form, or an alternate form approved by the Owner, and shall include whatever supporting information as may be required by the Owner. Therein, the Contractor may request payment for one hundred percent (100%) of the Work satisfactorily completed to the date of the Contractor's Request for Payment, based on the Contract Amount allocated on the Schedule of Values. The Contractor's Request for Payment may include only: properly provided labor, materials or equipment properly incorporated into the Project, and time and materials or equipment necessary for the Project or that will be incorporated into the Project and are properly stored at the Project site (or elsewhere if off-site storage is approved in writing by the Owner). The Contractor's Request for Payment must exclude the total amount of previous payments received from the Owner. Any payment on account of stored materials or equipment will be subject to the Contractor providing written proof that the Owner has title to such materials or equipment and that they are fully insured against loss or damage. Each such Contractor's Request for Payment shall be signed by the Contractor and its submission shall constitute the Contractor's affirmative representation that the quantity of Work has reached the level for which payment is requested; that the Work has been properly installed or performed in strict compliance with the Contract; that all Work for which the Owner has previously paid is free and clear of any lien, claim or other encumbrance of any person whatsoever; and that the Contractor knows of no reason why payment should not be made as requested. As a condition precedent to payment, the Contractor shall, if required by the Owner, furnish to the Owner properly executed waivers or releases, in a form acceptable to the Owner, from all subcontractors, materialmen, suppliers or others having any claims or alleged claims, wherein said subcontractors, materialmen, suppliers or others shall acknowledge receipt of all sums due pursuant to all prior Contractor's Requests for Payment, and waive and relinquish any rights or other claims relating to the Project or Project site. The submission by the Contractor of the Contractor's Request for Payment also constitutes the Contractor's affirmative representation that, upon payment of the Contractor's Request for Payment submitted, title to all Work included in such payment shall be vested in the Owner.

Thereafter, the Owner shall review the Contractor's Request for Payment and may also review the Work at the Project site or elsewhere to determine whether the quantity and quality of the Work are as represented in the Contractor's Request for Payment and as required by this Contract. The Owner shall approve in writing the amount which, in the opinion of the Owner, is properly owing to the Contractor and such approval is required before the Owner shall have any payment obligation. The Owner may withhold such approval, in whole or in part, as necessary to protect the Owner if it reasonably believes that the quantity or quality of the Work is not as represented in the Contractor's Request for Payment or is not in strict conformance to the Contract Documents.

7.4 The Owner shall make payment to the Contractor no more than thirty (30) days following receipt by the Owner of the written approval of each Contractor's Request for Payment. The amount of each such payment shall be the amount approved for payment by the Owner less such amounts, if any, otherwise owing by the Contractor to the Owner or which the Owner shall have the right to withhold as authorized by this Contract. The Owner's approval of the Contractor's Request for Payment shall not preclude the Owner from the exercise of any of its rights it may have in this Contract, at law or in equity, as set forth in Paragraph 7.8 hereinafter.

7.5 Off-site storage will not be approved at locations more than thirty (30) miles from the Project site or outside the State of Idaho and any payment for any off-site storage is subject to the following:

- .1 The Contractor must provide at least thirty (30) days' advance written notice of its request to store off-site. Such notice must include a description of the type, quantities, locations and values of materials involved for the next billing cycle. All invoices must indicate the type, quantities and value of materials or equipment for which payment is requested;
 - .2 All materials stored off-site must be segregated and clearly marked with the CWI Project number and as being the "Property of CWI";
 - .3 The Owner and/or the Owner's Representative must have unrestricted access to the stored materials during all business hours and may physically inventory all invoiced materials and equipment and may physically inspect the storage conditions;
 - .4 The Contractor must provide written Consent of Surety to off-site storage of materials and equipment and to payment for such materials and equipment prior to incorporation in the Work. Consent must be from the Surety. Consent of local broker or agent is not acceptable;
 - .5 The Contractor must maintain and must provide to the Owner, upon request, a current log of stored materials and equipment, which reflects when materials and equipment are used or added; and
- 7.6 When payment is received from the Owner, the Contractor shall immediately pay all subcontractors, materialmen, laborer and suppliers the amounts they are due for the Work covered by such payment. The Contractor shall not withhold from a subcontractor or supplier more than the percentage withheld from a payment certificate for the subcontractor's or supplier's portion of the Work. In the event the Owner becomes informed that the Contractor has not paid a subcontractor, materialmen, laborer or supplier as provided herein, the Owner shall have the right, but not the duty, to issue future checks and payment to the Contractor of amounts otherwise due hereunder naming the Contractor and any such subcontractor, materialmen, laborer or supplier as joint payees. Such joint check procedure, if employed by the Owner, shall create no rights in favor of any person or entity beyond the right of the named payees to payment of the check and shall not be deemed to commit the Owner to repeat the procedure in the future.
- 7.7 Payment to the Contractor, utilization of the Project for any purpose by the Owner, or any other act or omission by the Owner shall not be interpreted or construed as an acceptance of any Work of the Contractor not strictly in compliance with this Contract.
- 7.8 The Owner shall have and be entitled to the right to refuse to make any payment, including by reducing payment under any Contractor's Request for Payment, and, if necessary, may demand the return of a portion or all of an amount previously paid to the Contractor for reasons that include the following:
- .1 The quality of the Contractor's work, in whole or part, is not in strict accordance with the requirements of this Contract or identified defective work, including punch list work, is not remedied as required by the Contract Documents;
 - .2 The quantity of the Contractor's work, in whole or in part, is not as represented in the Contractor's Request for Payment or otherwise;
 - .3 The Contractor's rate of progress is such that, in the Owner's opinion, Substantial Completion or final completion, or both, may be inexcusably delayed or that the Owner will incur additional costs or expense related to repeated Substantial Completion or final completion inspections through no fault of the Owner;
 - .4 The Owner reasonably believes that the Contractor has failed to use Contract funds, previously paid the Contractor by the Owner, to pay Contractor's project-related obligations, including subcontractors, laborers and material and equipment suppliers;

.5 There are Claims made or it seems reasonably likely that Claims will be made, against the Owner;

.6 The Contractor has caused a loss or damage to the Owner, or another contractor;

.7 The Owner reasonably believes that the Project cannot be completed for the unpaid balance of the Contract Amount or the Owner reasonably believes that the Project cannot be completed within the Contract Time and that the unpaid balance of the Contract Amount would be inadequate to cover the cost of actual or liquidated damages for the anticipated delay;

.8 The Contractor fails or refuses to perform any of its obligations to the Owner; or In the event that the Owner makes written demand upon the Contractor for amounts previously paid by the Owner as contemplated in Paragraph 7.8, the Contractor shall promptly comply with such demand.

7.9 If the Owner, without cause, fails to pay the Contractor any amounts due and payable thirty (30) days after those amounts are due pursuant to Paragraph 7.4, the Contractor shall have the right to cease the Work until receipt of proper payment. Contractor must first provide written notice to the Owner of the Contractor's intent to cease the Work ten (10) days prior to stopping the Work under this Paragraph. If any amounts remain unpaid after fifty-one (51) days after the Owner approves the Contractor's Request for Payment under Paragraph 7.4, interest at the rate of four percent (4%) per annum shall accrue on those unpaid amounts.

7.10 When Contractor considers Substantial Completion has been achieved, the Contractor shall notify the Design Professional, or if there is no Design Professional, Owner or Owner's representative in writing and shall furnish to the Owner a listing of those matters yet to be finished. The Owner will thereupon conduct an inspection to confirm that the Work is, in fact, substantially complete. Upon its confirmation that the Contractor's work is substantially complete, the Owner will so notify the Contractor in writing and will therein set forth the date of Substantial Completion. The Owner and the Contractor must accept the date of Substantial Completion in writing. Guarantees and warranties required by this Contract shall commence on the date of Substantial Completion. At the Contractor's Request for Payment following Substantial Completion, the Owner shall pay the Contractor an amount sufficient to increase total payments to the Contractor to ninety-five percent (95%) of the Contract Amount, less any liquidated damages, less the reasonable costs as determined by the Owner for completing all incomplete work, correcting and bringing into conformance all defective and nonconforming work, and handling any outstanding or potential Claims. If the Owner determines that the Contractor has made or is making satisfactory progress on any uncompleted portions of the Work, the Owner may, at its discretion, release a portion of the retainage to the Contractor prior to the actual final completion of the conditions set forth in Paragraph 7.12. It is the intent of the parties that the Project will be accepted only in total (at Substantial Completion and Final Completion) and not in phases unless provided for. Any acceptance other than in total shall require written agreement by the Owner.

7.11 When Contractor considers the Project is at final completion, it shall notify the Owner or Owner's representative thereof in writing. Thereupon, the Owner will perform a final inspection of the Project. If the Owner confirms that the Project is complete in full accordance with the Contract Documents and that the Contractor has performed all of its obligations to the Owner, final approval for payment certifying to the Owner that the Project is complete and the Contractor is entitled to the remainder of the unpaid Contract Amount, less any amount withheld pursuant to this Contract.

7.12 Liquidated Damages Clause- If the Contractor fails to achieve final completion within a reasonable number of days as established by the Design Professional from the date of Substantial Completion, the Contractor may be assessed and be responsible to the Owner for fifty percent (50%) of the daily amount of liquidated damages as established pursuant to Paragraph 6.2 and, Exhibit F per day for each and every calendar day of unexcused delay in achieving final completion beyond the date established for final completion of the Work. Any sums due and payable hereunder by the Contractor shall be payable not as a penalty but as

liquidated damages representing an estimate of delay damages likely to be sustained by the Owner, estimated at or before the time of executing this Contract. When the Owner reasonably believes that final completion will be inexcusably delayed, the Owner may withhold from any amounts otherwise due the Contractor an amount then believed by the Owner to be adequate to recover liquidated damages applicable to such delays. If and when the Contractor overcomes the delay in achieving final completion, or any part thereof, for which the Owner has withheld payment, the Owner shall promptly release to the Contractor those funds withheld, but no longer applicable, as liquidated damages. The Owner's right to liquidated damages is not, and shall not be deemed to be, an exclusive remedy for delay and the Owner shall retain all remedies at law or in equity for delay or other breach.

7.13 As a condition precedent to final payment, the Contractor must furnish the Owner, in the form and manner required by Owner the following:

- .1 An affidavit that all of the Contractor's obligations to subcontractors, laborers, equipment or material suppliers or other third parties in connection with the Project have been paid or otherwise satisfied;
- .2 A release by the Contractor of all Claims it has or might have against the Owner or the Owner's property (EXHIBIT H);
- .3 Contractor's Affidavit of Debts and Claims (AIA Document G706);
- .4 Consent of Surety to final payment (AIA Document G707);
- .5 Tax Release from the Idaho State Tax Commission (EXHIBIT G); and
- .6 Confirmation of all required training, product warranties, operating manuals, instruction manuals and other record documents, drawings, shop drawings, as-builts, and things customarily required of the Contractor.

7.14 The Owner shall, subject to its rights set forth in this Contract, make final payment of all sums due the Contractor within thirty (30) days of the Owner's execution of a final approval for payment and receipt of documentation required by Paragraph 7.12, whichever is received later.

ARTICLE 8 INFORMATION AND MATERIAL SUPPLIED BY THE OWNER

8.1 The Owner may assign a Program Manager or Field Representative to represent Owner, identified in Exhibit B.

8.2 The Program Manager or his designee shall be the sole representative of the Owner, College of Western Idaho, and shall have authority to bind Owner only as specifically set forth in this Contract.

8.3 The Owner shall furnish to the Contractor, prior to the execution of this Contract, any and all written and tangible material in its possession concerning conditions below ground at the site of the Project. Such written and tangible material is furnished to the Contractor only in order to make complete disclosure of such material as being in the possession of the Owner and for no other purpose. By furnishing such material, the Owner does not represent, warrant or guarantee its accuracy, either in whole in part, implicitly or explicitly.

8.4 The Owner will secure and pay for all required easements, the plan check fee required by the Division of Building Safety or any other local agency, conditional use permits and any other permits and fees specifically indicated in the Contract Documents to be secured and paid for by the Owner.

8.5 The Owner will provide the Contractor one (1) copy of this complete Contract and/or Drawings, and/or Project Manuals (including Specifications).

ARTICLE 9 STOP WORK ORDER

9.1 In the event the Contractor fails or refuses to perform the Work as required or fails or refuses to correct nonconforming Work, the Owner may instruct the Contractor to stop Work in whole or in part. Upon receipt of such instruction, the Contractor shall immediately stop as instructed by the Owner and shall not proceed further until the cause for the Owner's instructions has been corrected, no longer exists or the Owner instructs that the Work may resume. In the event the Owner issues such instructions to stop, and in the further event that the Contractor fails and refuses within seven (7) days of receipt of same to provide adequate assurance to the Owner that the cause of such instructions will be eliminated or corrected, then the Owner shall have the right, but not the obligation, to carry out the Work with its own forces or with the forces of another contractor, and the Contractor shall be fully responsible and liable for the costs of performing such Work by the Owner. Without limiting what else might constitute nonconforming Work, the existence of a gross safety violation or other situation or condition that creates, or could imminently create, a threat of serious harm to persons or property, shall constitute nonconforming Work and any order to stop the Work issued for such reason shall not be considered an interference with the Contractor's performance of the Work or its means and methods. The rights set forth herein are in addition to, and without prejudice to, any other rights or remedies the Owner may have against the Contractor.

9.2 Any order to stop the Work issued pursuant to Paragraph 9.1 shall not be used to justify any Claim by the Contractor for additional time or money.

ARTICLE 10 DUTIES, OBLIGATIONS AND RESPONSIBILITIES OF THE CONTRACTOR

In addition to any and all other duties, obligations and responsibilities of the Contractor set forth in this Contract, the Contractor shall have and perform the following duties, obligations and responsibilities to the Owner:

10.1 The Contractor's continuing duties set forth in Paragraph 3.7 are by reference hereby incorporated in this Paragraph 10.1. The Contractor shall not perform Work without adequate plans and specifications or, as appropriate, approved shop drawings or other submittals. If the Contractor performs Work knowing or believing it involves an error, inconsistency or omission in the Contract without first providing written notice to the Owner, the Contractor shall be responsible for such Work and shall pay the cost of correcting same.

10.2 The Contractor shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the Contractor with the Contract Documents before commencing Work. Errors, inconsistencies or omissions discovered shall be reported to the Owner and the Owner immediately. Such examination, review and comparison shall be a warranty that the Contract Documents are complete and the Project is buildable as described except as reported. Reported errors, inconsistencies or omissions will constitute a request for an interpretation by the Owner and may constitute a Claim pursuant to Article 13 hereof where appropriate.

10.3 The Contractor shall ensure that all Work shall strictly conform to the requirements of this Contract.

10.4 The Work shall be strictly supervised, the Contractor bearing full responsibility for any and all acts or omissions of those engaged in the Work on behalf of the Contractor.

10.5 All labor furnished on this Project shall be competent to perform the tasks undertaken; materials and equipment furnished under the Contract will be new and of high quality unless otherwise required or permitted by the Contract Documents; the Work will be complete, of high quality and free from defects not

inherent in the quality required or permitted; and the Work will strictly conform to the requirements of the Contract Documents. Any Work not strictly conforming to these requirements, including substitutions not properly approved and authorized, shall be considered defective.

10.6 Except as provided in Paragraph 8.4 the Contractor shall secure or provide and pay for all licenses, permits required by the Idaho Division of Building Safety, local government building permits, approvals and inspections, connections for outside services for the use of municipal or private property for storage of materials, parking, utility services, temporary obstructions, enclosures or opening and patching of streets, and for all other facilities and services necessary for proper execution and completion of the Project.

10.7 The Contractor shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities bearing on performance of the Work.

10.8 The Contractor shall employ and maintain at the Project site only competent supervisory personnel. Key supervisory personnel assigned by the Contractor to this Project are as listed in Exhibit B.

10.9 The Contractor shall employ a competent superintendent and necessary assistants, as needed, to oversee execution of the Work. The superintendent shall be in attendance at the Project site during the progress of the Work. The superintendent and any project manager, if the Contractor utilizes a project manager, shall be reviewed and must be approved by the Owner, and neither shall be changed except with the consent of the Owner, unless the superintendent and/or project manager cease to be employed by the Contractor. Under this circumstance, any new superintendent or new project manager must be satisfactory to the Owner. Such approval shall not be unreasonably withheld. The superintendent and any project manager shall represent the Contractor and all communications given to the superintendent or project manager are deemed given to the Contractor.

10.10 So long as the individuals named above remain actively employed or retained by the Contractor, they shall perform the functions indicated next to their names unless the Owner agrees to the contrary in writing. In the event one or more individuals not listed in Paragraph 10.9 subsequently assumes one or more of those functions listed in Paragraph 10.9, the Contractor shall be bound by the provisions of this paragraph as though such individuals had been listed in Paragraph 10.9.

10.11 The Contractor shall provide to the Owner a schedule for completing the Work within a reasonable time, as agreed to by the Contractor and the Owner. The schedule must be submitted to and accepted by the Owner prior to the first request for payment unless required earlier by the Specifications. The Contractor's schedule must be updated as required by the Owner to reflect conditions encountered and shall apply to the total Project. The Contractor's revisions to the schedule shall not constitute a waiver of the requirement to complete the Project in a timely manner or a manner allowed by the Contract, unless additional time for performance has been allowed pursuant to a Change Order. Any changes in milestone begin or end dates must be furnished to the Owner. Strict compliance with the requirements of this Paragraph shall be a condition precedent to the payment to the Contractor and failure by the Contractor to strictly comply with said requirements shall constitute a material breach of this Contract.

10.12 Critical Path Method (CPM) -Unless otherwise provided in the Construction Documents, on all projects where the Contract Amount is over \$1,000,000, the Contractor shall schedule and perform the Work in accordance with a Critical Path Method ("CPM") to indicate the rate of progress and practical order of the Project. The purpose of this scheduling requirement is to assure adequate planning, coordination and execution of the Work. The schedule shall indicate the dates for starting and completing major work activities, project events, major equipment, material and equipment submittals and delivery of major items. Project activities having critical time restraints on action, required by the Owner, shall be shown as scheduled milestones. The Contractor's schedule shall demonstrate the order, interdependence and sequence of activities. Critical paths shall be highlighted or distinguished. The schedule shall include all the dates specified

in the Contract for Substantial Completion and final completion of the Work. The time limit set forth in the Contract for Substantial Completion and final completion must govern; the schedule must be adjusted to meet these dates. Schedule float shall belong to the Project. The Contractor shall submit to the Owner and Design Professional a CPM schedule within three (3) weeks after award of the Contract and maintain such schedule on a current basis in accordance with the Contract Documents.

10.13 Once a month, or at intervals as required by the Owner, the Contractor shall advise the Owner of the status of the Work (in duplicate) on the current schedule. If any project dates are not met on schedule, the Contractor shall immediately advise the Owner in writing of the proposed action to bring the Work on schedule. The Contractor shall also submit a detailed short term schedule, as required by the Specifications. This short term schedule shall include a description of current and anticipated problem areas, delaying factors and their impact, and explanation of corrective action taken or proposed. If the Work is behind schedule, the Contractor shall indicate what measures it will take to put the Work back on schedule.

10.14 If the Work is not progressing through no fault of the Owner, as shown on the schedule, as determined by the Owner, and the Owner does not believe the Contractor's proposed action to bring the Work on schedule is adequate, then the Contractor shall be deemed in default under this Contract and the progress of the Work shall be deemed unsatisfactory. In such event, the Owner, at its discretion, may require the Contractor to work such additional time over regular hours, including Saturdays, Sundays and holidays, without additional cost to the Owner to bring the Work on schedule.

10.15 The Contractor shall keep an updated copy of the Drawings and Project Manual (including Specifications) and Addenda at the site. Additionally, the Contractor shall keep a current submittal schedule and a copy of approved shop drawings and other submittals. All of these items shall be available to the Owner at all regular business hours. Upon final completion of the Work, all of these items must be updated by the Contractor and provided to the Owner and shall become the property of the Owner.

10.16 The Contractor shall carefully review and inspect for compliance with the Contract Documents, the shop drawings and other submittals (including product data and samples) required by the Contract Documents and shall submit to the Owner only submittals approved in accordance with this section. Such review and submittal shall be done promptly and in a sequence that will not delay its Work under this Contract or the activities of the Owner or of separate contractors. Shop drawings and other submittals from the Contractor do not constitute a part of the Contract. The Contractor shall not do any work requiring shop drawings or other submittals unless the Owner has verified compliance in writing. All Work requiring verified shop drawings or other submittals shall be done in strict compliance with such approved documents. However, verification of compliance by the Owner shall not be evidence that Work installed pursuant thereto conforms with the requirements of this Contract. The Owner shall have no duty to review submittals that are not Contractor approved, partial submittals or incomplete submittals. The Contractor shall maintain a submittal log which shall include, at a minimum, the date of each submittal, the date of any re-submittal, the date of any approval or rejection and the reason for any rejection.

10.17 The Contractor shall maintain the Project site in a reasonably clean condition during performance of the Work. Upon final completion, the Contractor shall thoroughly clean the Project site of all debris, trash and excess materials or equipment.

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

10.19 The presence or duties of the Design Professional's or the Owner's representatives at the construction site, does not make any of them responsible for those duties that belong to the Contractor or other entities and does not relieve the Contractor or any other entities of their obligations, duties and

responsibilities, including any obligation or requirement to have or to implement any health or safety plans or precautions. Except as provided in Paragraph 10.9, Design Professional's and Owner's representatives have no authority to exercise any control over any Contractor or other entities or their employees in connection with their work or any health or safety precautions and have no duty for inspecting, noting, observing, correcting or reporting on health or safety deficiencies of the Contractor or other entities or any other persons at the site except their own personnel. The presence of Design Professional's or Owner's representative at a construction site is for the purpose of providing to Owner a greater degree of confidence that the completed Work will conform to the Contract Documents and that the integrity of the design concept as reflected in the Contract Documents has been implemented and preserved by the Contractor. For this Contract only, construction sites include places of manufacture for materials incorporated into the construction Work and Contractor includes manufacturers of materials incorporated into the construction Work.

ARTICLE 11 DUTIES, OBLIGATIONS AND RESPONSIBILITIES OF THE OWNER

The Owner for this Project is identified in Exhibit B, incorporated herein by reference, along with any authorized representatives and any limitation of responsibility. The duties, obligation and responsibilities of the Owner shall be for contract administration and include the following:

11.1 The Owner shall draft proposed change authorization(s).

11.2 The Owner shall review and verify compliance or respond otherwise as necessary concerning shop drawing or other submittals received from the Contractor.

11.3 The Owner shall be authorized to refuse to accept Work that is defective or otherwise fails to comply with the requirements of the Contract. If the Owner deems it appropriate, the Owner may, require extra inspections or testing of the Work for compliance with the requirements of this Contract.

11.4 The Owner shall review the Contractor's Request for Payment and shall verify in writing those amounts which are properly owing to the Contractor as provided in the Contract.

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

11.6 The Owner shall review and evaluate Claims and take other actions related to Claims in accordance with Articles 13 and 14.

ARTICLE 12 THE DESIGN PROFESSIONAL

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

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

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

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

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

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

12.6 The Design Professional shall be authorized to refuse to accept Work that is defective or otherwise fails to comply with the requirements of this Contract. If the Design Professional deems it appropriate, the Design Professional may, with the Owner's consent, require extra inspections or testing of the Work for compliance with the requirements of this Contract.

12.7 The Design Professional shall review the Contractor's Request for Payment and shall verify in writing those amounts which, in the opinion of the Design Professional, are properly owing to the Contractor as provided in this Contract.

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

ARTICLE 13 INDEMNITY

13.1 The Contractor shall defend, indemnify and hold harmless the Owner and their representatives, employees, officers and agents, and the Design Professional and their employees harmless from any and all claims, liabilities, damages, losses, costs and expenses of every type whatsoever, including attorney fees and expenses, arising out of or resulting from the Contractor's work, acts or omissions under or related to the Contract Documents, to the extent caused by the Contractor, or anyone for whose acts the Contractor may be liable, regardless of whether such liability, claim, damage, loss, cost or expense is caused in part by the Owner.

13.2 The limits of any insurance of the Contractor shall not be, and shall not be deemed to be, a limitation of the Contractor's defense and indemnity obligations contained in this Article.

13.3 In claims against any person or entity indemnified under this Article by an employee of the Contractor, a subcontractor, anyone directly or indirectly employed by them, or, anyone for whose acts they may be liable, the indemnification obligation under this Article shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a subcontractor under workers' or workmen's compensation acts, disability benefit acts, or other employee benefit acts.

ARTICLE 14 CLAIMS AND RESOLUTION

14.1 For purposes of this Contract, a "Claim" means a demand by the Contractor to the Owner, or by the Owner to the Contractor, for a change in the Contract Amount, an extension of the Contract Time, an adjustment to or interpretation of the Contract terms, or other relief with respect to the terms of the Contract, which demand the Contractor or Owner asserts is required or allowed under the Contract Documents and which the Contractor and the Owner have previously discussed and failed to agree upon.

14.2 For the Claim to be considered, it must meet the following requirements:

- .1 The Claim must be in writing;

- .2 The Claim by the Contractor must be signed by an authorized representative of the Contractor, and the Claim by the Owner must be signed by an authorized representative of the Owner;
- .3 The Claim by the Contractor must be provided to the Owner and the Claim by the Owner must be provided to the Contractor;
- .4 The Claim must be made no later than ten (10) days after the event or first appearance of the circumstance giving rise to the Claim;
- .5 The Claim must describe in detail all known facts and circumstances that the Contractor or Owner asserts support the Claim;
- .6 The Claim must refer to the provision(s) of the Contract Documents that the Contractor or Owner asserts support the Claim;
- .7 The Contractor or Owner must provide all documentation or other information to substantiate the Claim; and
- .8 The Contractor or Owner must continue its performance under this Contract pending the resolution of any Claim; provided, however, that the Contractor shall not perform any additional or changed work not otherwise authorized in accordance with the Contract Documents.

14.3 The failure by the Contractor to meet any of the requirements of Paragraph 14.2 shall constitute a complete waiver by the Contractor of any rights arising from or related to the Claim. Similarly, the failure by the Owner to meet any of the requirements of Paragraph 14.2 shall constitute a complete waiver by the Owner of any rights arising from or related to the Claim.

14.4 If the Claim is made based on concealed or unknown site conditions, the following shall apply in addition to all other provisions applicable to the Claim:

- .1 The condition must have been previously concealed and unknown or of a type not ordinarily encountered in the general geographic location of the Project and must not have been reasonably susceptible to discovery; and
- .2 The Contractor shall notify the Owner and the Design Professional of the condition and shall not disturb the condition until the Owner and the Design Professional have observed it or have waived in writing the right to observe it.

14.5 If the Claim by the Contractor is for an increase in the Contract Amount, the following shall apply in addition to all other provisions applicable to the Claim:

- .1 Any increase in the Contract Amount shall be strictly limited to the direct costs incurred by the Contractor and shall not include any other costs, indirect or other, including any costs for or related to lost productivity, profit, home office overhead and any other overhead, legal fees, claim preparation, any matter previously resolved by a change order, equipment costs, costs related to the services of a project manager unless the project manager was required full time by the Owner or the Contract Documents and any costs associated with the failure to complete the Work early or in advance of the date required by the Contract Documents; and
- .2 The Owner shall have no liability for, and the Contract Amount shall not be increased related to, any claims of third parties, including subcontractors, unless and until the liability of the Contractor for

such has been established in a court of competent jurisdiction and any such liability of the Owner shall be limited in the same manner as described in subparagraph .1.

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

14.7 If the Claim by the Contractor is for an extension of the Contract Time, the following shall apply in addition to all other provisions applicable to the Claim:

.1 The Contractor has been delayed in its performance by an act or omission of the Owner and through no fault of the Contractor;

.2 The Contractor has been delayed in its performance by unusually severe weather that could not reasonably have been anticipated or by another event not within its reasonable control;

.3 At the time it occurs or during its occurrence, the delay will preclude completion of the Project in the time required by the Contract Documents; and

.4 Any extension of the Contract Time shall be the Contractor's sole and exclusive remedy for any delay except a delay caused by the active interference of the Owner with the Contractor's performance which active interference continues after written notice to the Owner. The Owner's exercise of any of its rights or remedies under this Contract, including ordering changes in the Work, directing suspension, rescheduling or correction of the Work, do not constitute active interference.

14.8 If a Claim is made based on an error, inconsistency or omission in the Contract that was reasonably susceptible to discovery by the Contractor and was not reported in accordance with Paragraph 2.3, that Claim shall be denied.

14.9 All Claims made by the Contractor in accordance with Article 14 shall be reviewed and evaluated by the Owner. All claims made by the Owner in accordance with Article 14 shall be reviewed and evaluated by the Contractor. If the Claim is not made in strict accordance with Article 14, it shall be rejected as waived. Any failure by the Owner to reject the Contractor's Claim for failure to meet the requirements of Article 14 is not binding on the Owner and the Owner may reject the Contractor's Claim for such failure. Any failure by the Contractor to reject the Owner's Claim for failure to meet the requirements of Article 14 is not binding on the Contractor, and the Contractor may reject the Owner's Claim for such failure.

14.10 No later than seven (7) days from receipt of the Claim by the Owner or Contractor, the parties shall:

.1 Make a written request for more data to support the Claim;

.2 Attempt to facilitate resolution of the Claim through informal negotiations; or

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

14.11 If the Owner or Contractor requests more data from the other party under subparagraph 14.2.1, the Owner or Contractor shall respond no later than seven (7) days from receipt of such request, and provide additional data, provide a date certain by which additional data will be provided, or state that it will not provide additional data. Upon receipt of data, if any, in accordance with this section, the Owner or Contractor will complete the evaluation of the Claim. Failure to respond at all or failure to provide data by the date

specified in the response to the request shall result in the Claim being evaluated based on the information in the Owner's or Contractor's possession.

14.12 In evaluating the Contractor's Claim, the Owner may consult with other persons with knowledge or expertise that may assist the Owner in its evaluation. In evaluating the Owner's Claim, the Contractor may consult with other persons with knowledge or expertise that may assist the Contractor in its evaluation.

14.13 No later than fourteen (14) days after receipt of the Contractor's Claim, the Owner shall, in writing, notify the Contractor of its decision regarding the Claim. No later than fourteen (14) days after receipt by the of the Owner's Claim, the Contractor shall, in writing, notify the Owner of its decision regarding the Claim.

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

ARTICLE 15 SUBCONTRACTORS

15.1 Upon issuance of a Work Order or Notice to Proceed (NTP) by the Owner, the Contractor shall identify to the Owner, in writing, those parties intended as subcontractors on a Project not otherwise named in the Contractor's bid. The Owner shall, in writing, state any objections the Owner may have to one or more of such subcontractors. The Contractor shall not enter into a subcontract with an intended subcontractor with reference to whom the Owner objects. All subcontracts shall afford the Contractor rights against the subcontractor which correspond to those rights afforded to the Owner against the Contractor herein, including those rights of Contract Termination as set forth in this Contract. All subcontractors shall, throughout the duration of this Contract, be properly licensed as Idaho Public Works Contractors.

15.2 The Contractor conditionally assigns each of its subcontracts related to the Project to the Owner. All subcontracts between the Contractor and the subcontractors shall obligate the subcontractor to such conditional assignment. Upon a Termination by the Owner for cause under Paragraph 20.1, the Owner may accept such conditional assignment by written notification to the applicable subcontractor and to the Contractor. Such acceptance is subject to the rights of the Surety, if any, relating to the Contract.

ARTICLE 16 CHANGES IN THE WORK

16.1 General

.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article and elsewhere in the Contract Documents; and

.2 Changes in the Work shall be performed under applicable provisions of the Contract Documents and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.

16.2 Change Orders

.1 A "Change Order" is a written instrument prepared by the Design Professional, Owner or Owner's representative and signed by the Owner, Contractor and Owner, stating their agreement upon: a change in the work, any adjustment in the Contract Amount and any adjustment in the Contract Time;

.2 Methods used in determining adjustments to the Contract Amount may include those listed in subparagraph 16.3.4;

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

.4 Any Change Order prepared, including those arising by reason of the parties' mutual agreement or by mediation, shall constitute a final and full settlement of all matters relating to or affected by the change in the Work, including all direct, indirect and consequential costs associated with such change and any and all adjustments to the Contract Amount and Contract Time. In the event a Change Order increases the Contract Amount, the Contractor shall include the Work covered by such Change Order in the Contractor's Request for Payment as if such Work were originally part of the Project and Contract Documents; and

.5 By the execution of a Change Order, the Contractor agrees and acknowledges that it has had sufficient time and opportunity to examine the change in Work which is the subject of the Change Order and that it has undertaken all reasonable efforts to discover and disclose any concealed or unknown conditions which may to any extent affect the Contractor's ability to perform in accordance with the Change Order. Aside from those matters specifically set forth in the Change Order, the Owner shall not be obligated to make any adjustments to either the Contract Amount or Contract Time by reason of any conditions affecting the change in Work addressed by the Change Order, which could have reasonably been discovered or disclosed by the Contractor's examination.

16.3 Construction Change Directive (CCD)

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

.2 A Construction Change Directive, within limitations, may also be used to incorporate minor changes in the Work agreed to by the designated CWI Program Manager, the Owner's representative and the Contractor's superintendent or project manager. The limits of these representatives' authority with regard to Construction Change Directives shall be documented in writing by the Owner and Contractor;

.3 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order;

.4 If the Construction Change Directive provides for an adjustment to the Contract Amount, the adjustment shall be based on one (1) of the following methods:

- .1) Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2) Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3) Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or

.4) As provided in subparagraph 16.3.7;

.5 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Owner or Owner's representative in writing within forty-eight (48) hours of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Amount or Contract time.

.6 A Construction Change Directive signed by the Contractor indicates the agreement of the Contractor therewith, including adjustment in Contract Amount and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be incorporated into a future Change Order;

.7 If the Contractor does not respond promptly or disagrees with the method for adjustments in the Contract Amount or Contract Time, the method and the adjustment shall be determined by the Design Professional on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Amount, an allowance for overhead and profit in accordance with subparagraph 16.3.11. In such case of an increase in Contract Amount, and also under subparagraph 16.3.4, the Contractor shall keep and present, in such form as the Design Professional may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this subsection shall be limited to the following:

- .1) Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom and workers' compensation insurance;
- .2) Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .3) Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4) Costs of permit fees and sales, use or similar taxes related to the Work; and
- .5) Additional costs of supervision and field office personnel directly attributable to the change;

.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change which results in a net decrease in the Contract Amount shall be for the actual net cost of the decrease, confirmed by the Owner. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change;

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

.10 When the Owner and Contractor agree with the determination by the Design Professional concerning the adjustments in the Contract Amount and Contract Time, or otherwise reach shall be recorded by preparation and execution of an appropriate Change Order; and

.11 For purposes of subparagraphs 16.2.3 and 16.3.7, the allowance for combined overhead, profit, bonds and insurance shall be limited as follows, unless otherwise provided in the Contract Documents:

- .1) For total changes of \$10,000 or less in direct cost, the amount of overhead, profit, bonds and insurance for the Contractor and all subcontractors of any tier combined shall not exceed twenty percent (20%) of direct costs;
- .2) For total changes exceeding \$10,000 in direct cost, the amount allowed for overhead, profit, bonds and insurance for the Contractor and all subcontractors of any tier combined shall not exceed fifteen percent (15%) of direct costs; or
- .3) The Contractor will determine the apportionment between the Contractor and its subcontractors of allowable amounts of overhead, profit, bonds and insurance.

16.4 The Owner will have authority to order minor changes in the Work not involving adjustment in the Contract Amount or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly.

ARTICLE 17 DISCOVERING AND CORRECTING DEFECTIVE OR INCOMPLETE WORK

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

17.2 If any of the Work is covered, concealed or obscured in a manner not addressed by Paragraph 17.1, it shall, if directed by the Owner or Owner's representative to be uncovered and displayed for the Owner's inspection. If the uncovered Work conforms strictly with this Contract, the costs incurred by the Contractor to uncover and subsequently replace such Work shall be borne by the Owner. Otherwise, such costs shall be borne by the Contractor.

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

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

17.5 The Owner may, but shall not be required to, choose to accept defective or nonconforming Work. In such event, the Contract Amount shall be reduced by the lesser of: (i) the reasonable costs of removing and correcting the defective or nonconforming Work; or (ii) the difference between the fair market value of the Project as constructed and the fair market value of the Project had it not been constructed in such a manner as to include defective or nonconforming Work. If the remaining portion of the unpaid Contract Amount, if any, is insufficient to compensate the Owner for the acceptance of defective or nonconforming Work, the Contractor shall, upon written demand from the Owner, pay the Owner such remaining compensation for accepting defective or nonconforming work.

ARTICLE 18 TERMINATION BY THE CONTRACTOR

18.1 The Contractor may terminate the Contract if the Work is stopped for a period of ninety (90) consecutive days through no act or fault of the Contractor or a subcontractor, sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

- .1 Issuance of an order by a court or by another public authority having jurisdiction and authority which requires all Work to be stopped; or
- .2 An act of government, such as a declaration of national emergency, which requires all Work to be stopped.

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

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

19.1 The Owner may, at any time and without cause, order the Contractor, in writing, to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine. If the Owner directs any such suspension, the Contractor must immediately comply with same.

19.2 In the event the Owner directs a suspension of performance under this Article, and such suspension is through no fault of the Contractor, the Contract Amount and Contract Time shall be adjusted for increases in the cost and time caused by such suspension, delay or interruption to cover the Contractor's reasonable costs, actually incurred and paid, of:

- .1 Demobilization and remobilization, including such costs paid to subcontractors;
- .2 Preserving and protecting Work in place;
- .3 Storage of materials or equipment purchased for the Project, including insurance thereon; and
- .4 Performing in a later, or during a longer, time frame than that provided by this Contract.

19.3 The adjustment of the Contract Amount shall include an amount for a reasonable profit. The adjustment of the Contract Amount shall not include any amount not otherwise allowed under this Contract, including any limitations applicable to Claims. The Contractor shall provide supporting documentation related to any increase upon request of the Owner. No adjustment shall be made to the extent:

- .1 That performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
- .2 That an equitable adjustment is made or denied under another provision of the Contract; or
- .3 Reasonable costs of settling and paying Claims arising out of the Termination of subcontracts or orders pursuant to this Paragraph 20.3.

ARTICLE 20 TERMINATION BY THE OWNER

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

20.1 If the Contractor does not perform the Work, or any part thereof, in accordance with the Contract Documents, or in a timely manner; does not supply adequate labor, supervisory personnel, or proper equipment or materials; fails to pay subcontractors; fails to timely discharge its obligations for labor, equipment, and materials; proceeds to disobey applicable law; or otherwise breaches this Contract, then the Owner, in addition to any other rights it may have against the Contractor, may terminate the Contract and assume control of the Project site and of all materials and equipment at the site and may complete the Work. In such case, the Contractor shall not be paid further until the Work is complete. Upon such Termination, the Owner may, subject to any superior rights of the Surety, take possession of the site and of all materials, equipment, tools and construction equipment and machinery thereon owned by the Contractor; accept assignment of those subcontracts conditionally assigned under Paragraph 15.2; and finish the Work by whatever reasonable method the Owner may deem expedient.

20.2 When the Owner terminates the Contract for cause as provided in Paragraph 20.1, the Contractor shall not be entitled to receive further payment until the Work is finished and shall only be entitled to payment for Work satisfactorily performed by the Contractor in accordance with the Contract Documents. If the costs of finishing the Work, including any compensation for changes in Design Professional's services and expenses, exceed the unpaid balance, the Contractor shall pay the difference to the Owner. This obligation for payment shall survive termination of the Contract. The Contractor shall also terminate outstanding orders and subcontracts. The Contractor shall settle the liabilities and Claims arising out of the termination of subcontracts and orders. In the event the Contractor is terminated by the Owner for cause pursuant to Paragraph 20.1 and it is subsequently determined by a court of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a Termination under Paragraph 20.3 and the provisions of Paragraph 20.3 shall apply.

20.3 The Owner may, at any time and for any reason, terminate this Contract. The Owner shall give no less than seven (7) days' written notice of such Termination to the Contractor specifying when termination becomes effective. The Contractor shall incur no further obligations in connection with the Work and the Contractor shall stop Work when such Termination becomes effective. The Contractor shall also terminate outstanding orders and subcontracts. The Contractor shall settle the liabilities and Claims arising out of the Termination of subcontracts and orders. The Owner may direct the Contractor to assign the Contractor's right, title and interest under termination orders or subcontracts to the Owner or its designee. The Contractor shall transfer title and deliver to the Owner such completed or partially completed Work and materials, equipment, parts, fixtures, information and Contract rights as the Contractor has. When terminated pursuant to this section, the following shall apply:

.1 The Contractor shall submit a Termination Claim to the Owner specifying the amounts claimed due because of the Termination, together with costs, pricing or other supporting data required by the Owner. Failure by the Contractor to file a Termination Claim within ninety (90) days from the effective date of Termination shall be deemed a complete waiver by the Contractor of any right to any payment;

.2 Before or after receipt of the Termination Claim, the Owner and the Contractor may agree to the compensation, if any, due to the Contractor hereunder; and

.3 If the Contractor has filed the Termination Claim but the Contractor and the Owner do not agree on an amount due to the Contractor, the Owner shall pay the Contractor the following amounts:

.1) Unpaid Contract amounts for labor, materials, equipment and other services provided or perfected prior to termination and acceptable to or accepted by the Owner;

- .2) Reasonable costs incurred in preparing to perform the terminated portion of the Work, and in terminating the Contractor's performance, plus a fair and reasonable allowance for direct job-site overhead and profit related to such preparation (such profit shall not include anticipated profit or consequential damages); provided, however, that if it appears that the Contractor would have not profited or would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated loss, if any; and
- .3) Reasonable costs of settling and paying Claims arising out of the Termination of subcontracts or orders pursuant to this Paragraph 20.3.

20.4 Costs described in subparagraphs 20.3.3.2 or 20.3.3.3 shall not include amounts paid in accordance with other provisions hereof. In no event shall the total sum to be paid the Contractor under subparagraph 20.3.3 exceed the total Contract Amount, as properly adjusted, reduced by the amount of payments previously or otherwise made and by any other deductions permitted under this Contract and shall in no event include duplication of payment.

ARTICLE 21 CONTRACTOR'S LIABILITY INSURANCE

21.1 The Contractor, subcontractor and sub-subcontractor shall purchase and maintain in full force and effect from a company or companies lawfully authorized to do business in the State of Idaho such insurance as will protect the Contractor, subcontractor and sub-subcontractor from claims set forth below which may arise out of or result from the Contractor's or subcontractor's operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a subcontractor or by anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable:

- .1 Claims under workers' or workmen's compensation, disability benefits and other similar employee benefit acts which are applicable to the work to be performed;
- .2 Claims for damages because of bodily injury, occupational sickness or disease or death of the Contractor's employees;
- .3 Claims for damages because of bodily injury, sickness or disease or death of any person other than the Contractor's employees;
- .4 Claims for damages insured by usual personal injury liability coverage which are sustained: (i) by a person as a result of an offense directly or indirectly related to employment of such person by the Contractor; or (ii) by another person;
- .5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting there from;
- .6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 Claims for bodily injury or property damage arising out of completed operations; and
- .8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Article 12.

21.2 The insurance required by Paragraph 21.1 above shall be written for not less than limits of liability specified in this Contract or as required by law, whichever is greater. Coverage's, whether written on an

occurrence or claims- made basis, shall be maintained without interruption from date of commencement of the Work until date of final payment and termination of any coverage required to be maintained after final payment. In addition, for any insurance required that is obtained on a claims-made basis, "tail coverage" is required at the completion of the work for twenty-four (24) months. Continuous claims-made coverage will be acceptable in lieu of "tail coverage" provided the retroactive date is on or before the effective date of this Contract or twenty-four (24) months "prior acts" coverage is provided.

.1 The insurance required by Paragraph 21.1 above shall be written for not less than the following limits:

.1) *Workers Compensation and Employer's Liability:*

(a) State Workers Compensation: Statutory

(b) Employer's Liability: \$100,000 per Accident

\$500,000 Disease, Policy Limit

\$100,000 Disease, Each Employee

.2) *Comprehensive Commercial General Liability and Umbrella Liability Insurance:*

Contractor shall maintain Commercial General Liability ("CGL") and, if necessary, commercial umbrella insurance with a limit of not less than \$1,000,000.00 each occurrence. If such CGL insurance contains a general aggregate limit, it shall apply separately to this project location;

CGL insurance shall be written on Insurance Services Office ("ISO") occurrence form CG 00 01 12 04 or a substitute form providing equivalent coverage and shall cover liability arising from premises, operation, independent contractors, products-completed operations, personal (including employee acts) and advertising injury and liability assumed under an insured contract (including the tort liability of another assumed in a business contract);

Owner shall be included as an additional insured under the CGL, using ISO additional insured endorsement CG 20 10 and CG 20 37 or their equivalent, which endorsement shall include coverage for the Owner with respect to liability arising out of the Work, including completed operations of Contractor, and which coverage shall be maintained in effect for the benefit of Owner for a period of two (2) years following the completion of the work specified in this Contract. Additional insured coverage as required in this subparagraph shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to the Owner;

(a) For the hazards of explosion, collapse, and damage to underground property, commonly referred to as XCU, coverage shall be required if the exposures exist; and

This coverage may be provided by the subcontractor if the Owner and prime Contractor are named as additional insureds;

.3) *Business Auto and Umbrella Liability Insurance:* Contractor shall maintain business, auto liability and, if necessary, commercial umbrella liability insurance with a limit of not less than \$1,000,000 each accident;

Such insurance shall cover liability arising out of any auto (including owned, hired, and non-owned autos);

Business auto coverage shall be written on ISO form CA 00 01, CA 00 05, CA 00 12, CA 00 20 or a substitute form providing equivalent liability coverage;

If hazardous waste will be hauled, Contractor shall obtain *pollution liability coverage* equivalent to that provided under the ISO pollution liability-broadened coverage for covered autos endorsement (CA 99 48) and the Motor Carrier Act endorsement (MCS 90) shall be attached;

- 4) If the General Liability coverage is provided by Commercial Liability policies the:
 - .1 General Aggregate shall be not less than \$2,000,000; and
 - .2 Fire legal liability shall be provided in an amount not less than \$100,000 per occurrence; and
- 5) Umbrella Excess Liability. An umbrella policy may be used in combination with other policies to provide the required coverage.

21.3 The Owner shall be named as additional insured or loss payee, as applicable, on the insurance required in subparagraphs 21.2.1.2, 21.2.1.3 and 21.2.1.5 above, and the insurance shall contain the severability of interest clause as follows:

"The insurance afforded herein applies separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the company's 'liability. "

21.4 The Contractor may include all subcontractors as insured parties under the Contractor's policies in lieu of separate policies by each subcontractor. The Contractor must furnish the College of Western Idaho, with the required endorsements or certificates of insurance from each subcontractor which names of the subcontractor, its officials, employees and volunteers as insured parties.

21.5 Certificates of Insurance for Workers' Compensation shall be on the standard form. Certificates of Insurance for Commercial or Comprehensive General Liability shall be the most current ACORD Form 25 or 28, must be acceptable to the Owner and shall be filed with the Owner prior to commencement of the Work. The Owner may require proof of coverage by an endorsement. The certificates, or endorsements if required, and the insurance policies required by this Article shall contain a provision that coverage afforded under the policies will not be canceled or allowed to expire until at least thirty (30) days' prior written notice has been given to the Owner. If any of the foregoing insurance coverage are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final Contractor's Request for Payment as required by Article 7. Information concerning reduction of coverage shall be furnished by the Contractor with reasonable promptness in accordance with the Contractor's information and belief.

ARTICLE 22 OWNER'S LIABILITY INSURANCE

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

ARTICLE 23 PROPERTY INSURANCE

23.1 Unless otherwise provided, the Owner shall purchase or maintain, from a company or companies lawfully authorized to do business in the State of Idaho, *property insurance* in an amount not less than the Contract Amount. Such property insurance shall be maintained until final payment to the Contractor has been made. This insurance shall include interests of the Owner, the Contractor, subcontractors and sub-subcontractors.

23.2 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, but not necessarily be limited to insurance against the perils of fire (with extended coverage) and mischief, collapse, earthquake, flood, windstorm, temporary buildings and debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and shall cover necessary and reasonable expenses for the College of Western Idaho representative's expenses required as a result of such insured loss.

23.3 If the property insurance requires deductibles, the Owner shall pay costs of such deductibles.

23.4 *Loss of Use Insurance.* The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of the Owner's property due to fire or other hazards, however caused surety form certified approved to be the same as the AIA Document A312, and shall be executed by a Surety, or Sureties, reasonably acceptable to the Owner and authorized to do business in the State of Idaho.

23.5 The Contractor authorizes the Owner to negotiate and agree on the value and extent of, and to collect the proceeds payable with respect to, any loss under a policy of insurance carried by the Owner pursuant to any of the provisions of this Article. The Owner shall have full right and authority to compromise any claim, or to enforce any claim by legal action or otherwise, or to release and discharge any insurer, by and on behalf of the Owner and Contractor. The Owner shall provide written notice to Contractor of: (i) its having reached any such settlement or adjustment with an insurer; and (ii) the receipt of any funds pursuant to this Article. Any objection by the Contractor to a settlement or adjustment made under this Article must be made in writing to the Owner within five (5) business days of the notice from the Owner. The Owner and the Contractor agree to attempt to resolve the dispute by mutual agreement.

23.6 A loss under the Owner's property insurance shall be adjusted by the Owner and made payable to the Owner for the insured parties, as their interests may appear, subject to requirements of any applicable mortgagee clause.

23.7 The Owner shall deposit proceeds so received, in a manner in which such proceeds can be separately accounted for, which proceeds the Owner shall distribute in accordance with such agreement as the parties in interest may reach. If after such loss no other special agreement is made and unless the Owner terminates the Contract pursuant to Article 20, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 16.

23.8 The Contractor shall pay subcontractors their shares of the insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require subcontractors to acknowledge the Owner's authority under this Article 23 and make payments to their sub-subcontractors in similar manner.

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

ARTICLE 24 PERFORMANCE AND PAYMENT BONDS

24.1 The Contractor shall furnish separate performance and payment bonds to the Owner. Each bond shall set forth a penal sum in an amount not less than the Contract Amount and shall include a power of attorney attached to each bond. The signature of both the Contractor (principal) and the Surety are required. If the Surety is incorporated, both bonds must have the corporate seal. Each bond furnished by the Contractor shall incorporate by reference the terms of this Contract as fully as though they were set forth verbatim in such bonds. In the event the Contract Amount is adjusted by Change Order executed by the Contractor, the penal sum of both the performance bond and the payment bond shall be deemed increased by like amount. The performance and payment bonds furnished by the Contractor shall be AIA Document A312, or a standard surety form certified approved to be the same as the AIA Document A312, and shall be executed by a Surety, or Sureties, reasonably acceptable to the Owner and authorized to do business in the State of Idaho.

24.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall permit a copy to be made.

24.3 It is the Contractor's obligation to notify the Surety in the event of changes in the Contract Documents, which in the absence of notification might serve to discharge the Surety's obligations, duties or liability under bonds or the Contract.

ARTICLE 25 PROJECT RECORDS

25.1 All documents relating in any manner whatsoever to the Project, or any designated portion thereof, which are in the possession of the Contractor or any subcontractor of the Contractor, shall be made available to the Owner or the Owner's representative for inspection and copying upon written request. Furthermore, said documents shall be made available, upon request by the Owner, to any state, federal or other regulatory authority and any such authority may review, inspect and copy such records. Said records include all drawings, plans, specifications, submittals, correspondence, minutes, memoranda, tape recordings, videos or other writings or things which document the Project, its design and its construction. Said records expressly include those documents reflecting the cost of construction to the Contractor. The Contractor shall maintain and protect these documents for no less than four (4) years after final completion or Termination of the Contract or for any longer period of time as may be required by law or good construction practice.

ARTICLE 26 MISCELLANEOUS PROVISIONS

26.1 The law is hereby agreed to be the law of the State of Idaho. The parties further agree that venue or any proceeding related to this Contract shall be in Ada County, Idaho, unless otherwise mutually agreed by the parties.

26.2 Pursuant to Section 54-1904A, Idaho Code, within thirty (30) days after a Work Order or Notice to Proceed (NTP) by the Owner, the Contractor shall file with the Idaho State Tax Commission, with a copy to the Owner, a signed statement showing the date of Work Order or NTP, the names and addresses of the home offices of contracting parties, including all subcontractors, the state of incorporation, the Project Number and a general description of the type and location of the Work, the amount of the prime contracts and all subcontracts and all other relevant information which may be required on forms which may be prescribed by the Idaho State Tax Commission. .

26.3 Before entering into a Contract, the Contractor shall be authorized to do business in the State of Idaho and shall submit a properly executed Contractor's Affidavit Concerning Taxes (Exhibit D).

26.4 Pursuant to Section 44-1002, Idaho Code, it is provided that each Contractor "must employ ninety-five percent (95%) bona fide Idaho residents as employees on any job under any such contract except where under such contracts fifty (50) or less persons are employed the contractor may employ ten percent (10%) nonresidents, provided, however, in all cases employers must give preference to the employment of bona fide residents in the performance of said work, and no contract shall be let to any person, firm, association, or corporation refusing to execute an agreement with the above mentioned provisions in it; provided, that, in contracts involving the expenditure of federal aid funds this act shall not be enforced in such a manner as to conflict with or be contrary to the federal statutes prescribing a labor preference to honorably discharged soldiers, sailors, and marines, prohibiting as unlawful any other preference or discrimination among citizens of the United States." (Ref. Section 44-1001, Idaho Code)

26.5 The Contractor shall maintain, in compliance with Title 72, Chapter 17, Idaho Code, a drug-free workplace program throughout the duration of this Contract and shall only subcontract work to subcontractors who have programs that comply with Title 72, Chapter 17, Idaho Code.

26.6 As between the Owner and Contractor as to acts or failures to act, any applicable statute of limitations shall commence to run and any legal cause of action shall be deemed to have accrued in any and all events in accordance with Idaho law.

26.7 The Contractor and its subcontractors and sub-subcontractors shall comply with all applicable Idaho statutes with specific reference to Idaho Public Works Contractors' licensing laws in the State of Idaho, Title 54, Chapter 19, Idaho Code, as amended.

.1 Pursuant to Section 54-1902, Idaho Code the Contractor shall not subcontract in excess of eighty percent (80%) of the Work.

26.8 The Contractor is and shall remain in compliance with Executive Order 2009-10 which requires that the Contractor does not knowingly hire or engage any illegal aliens or persons not authorized to work in the United States and that it takes steps to verify that it does not hire or engage any illegal aliens or persons not authorized to work in the United States. Any misrepresentation in this regard or any employment of persons not authorized to work in the United States constitutes a material breach and shall be cause for the imposition of monetary penalties not to exceed five percent (5%) of the amount per violation and/or Termination of this Contract. The Contractor also acknowledges that, if it is a natural person, it is subject to Title 67, Chapter 79, Idaho Code regarding verification of lawful presence in the United States.

26.9 The Contractor acknowledges that the Owner may review, and ask others involved with the Project to review, the Contractor's performance on the Project. The Contractor further acknowledges that the Owner may use the results of the evaluation in evaluating the Contractor for purposes of awarding future projects.

26.10 This Agreement may be extended for an additional 12-month period at no change in contract amount or conditions if agreed to in writing by the Contractor and the Owner sixty (60) days prior to its expiration. Two such consecutive extensions may be authorized prior to re-bidding.

ARTICLE 27 EQUAL OPPORTUNITY

The Contractor shall maintain policies of employment as follows:

27.1 The Contractor and the Contractor's subcontractors shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age or national origin. The Contractor shall take affirmative action to insure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, color, sex, age or national origin. Such action shall include the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination;

rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the policies of non-discrimination.

27.2 The Contractor and the Contractor's subcontractors shall, in all solicitation or advertisements for employees placed by them or on their behalf; state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, age or national origin.

ARTICLE 28 SUCCESSORS AND ASSIGNS

28.1 Each party binds itself, its successors, assigns, executors, administrators or other representatives to the other party hereto and to successors, assigns, executors, administrators or other representatives of such other party in connection with all terms and conditions of this Contract. The Contractor shall not assign this Contract or any part of it or right or obligation pursuant to it without prior written consent of the Owner. If Contractor attempts to make assignment without consent of Owner, Contractor shall remain legally responsible for all obligations under this Contract.

ARTICLE 29 SEVERABILITY

29.1 In the event any provision or section of this Contract conflicts with applicable law or is otherwise held to be unenforceable, the remaining provisions shall nevertheless be enforceable and shall be carried into effect.

ARTICLE 30 MEDIATION

30.1 Contractor Claims for additional cost or time are subject to Article 13, shall be reviewed as provided in accordance with that Article and, as a condition precedent to litigation, are subject to dispute resolution attempts and mediation in accordance with this Article. All other issues and disputes arising from this contract are also subject to dispute resolution attempts and mediation in accordance with this Article, as a condition precedent to litigation.

30.2 The parties agree that resolution of any dispute or disagreement without formal legal proceedings is to their mutual benefit and to the benefit of the Project.

30.3 The parties agree to make every reasonable attempt to resolve any issues or disputes informally. The parties further agree that prior to the institution by either of legal or equitable proceedings of any kind, and as a condition precedent thereto, any dispute between the Contractor and the Owner related to the Contract, including a dispute over the Owner's decision regarding a Claim, shall be subject to mediation as follows:

.1 If the issue to be mediated involves only a dispute regarding the Contract Time, no request to mediate shall be made unless liquidated damages have been assessed by the Owner. If the issue to be mediated involves a Claim or other financial dispute, no request to mediate shall be made unless the amount is \$50,000 or more or until there are cumulative Claims or disputes amounting to \$50,000 or more; provided, however, that a mediation request can be made as to any Claim or financial matter at any time after Substantial Completion;

.2 The party seeking mediation shall notify the other party in writing of its mediation request. In such written request, the requesting party must clearly describe the issues it believes are subject to mediation;

.3 Within fifteen (15) days of receipt of the mediation request, the non-requesting party shall respond in writing to the request;

.4 Unless the Owner and the Contractor agree to other rules for mediation, mediation shall be in accordance with the Construction Industry Rules of Arbitration and Mediation Procedures in effect at the time of the mediation;

.5 The parties shall share the mediator's fee and any filing fees equally; provided, however, that if a party makes a written request to the mediator without satisfying the requirements of this section and by doing so incurs any costs or fees, that party shall be solely responsible for the costs or fees;

.6 Unless otherwise mutually agreed to by the parties, the mediation shall be in Boise, Ada County, Idaho;

.7 The parties shall cooperate in arranging the other details of mediation, such as selection of the mediator, mediation dates and times;

.8 The parties agree that all parties necessary to resolve the matter shall be parties to the same mediation proceeding; provided, however, that no subcontractor or sub-subcontractor shall attend the mediation absent advance notice and consent from the Owner;

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

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

30.4 If mediation fails to resolve the dispute, either party may file an action in the courts of Idaho in accordance with the venue provision contained in this Contract.

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

OWNER: College of Western Idaho

Tony Meatte
Vice President Finance and Administration

Date

Craig Brown
Vice President Operations

Date

CONTRACTOR:

Date

EXHIBIT A SUMMARY OF WORK

College of Western Idaho - Modular Buildings

The College of Western Idaho is expanding and growing to accommodate our increased enrollment. CWI is in need of additional office space at our Nampa Campus to facilitate this growth. Three modular buildings will be placed northeast of the Nampa Academic Building Located at 5500 East Opportunity Dr. These three modular buildings will be 60ft x 60ft and will require foundations. A separate but associated infrastructure project will proceed this work. Drawings related to this infrastructure project will be available for reference.

EXHIBIT B PARTIES TO CONTRACT

ADDRESSES and AUTHORIZED REPRESENTATIVES: The names, addresses and authorized representative of the Owner, the Contractor and Owner are:

OWNER: The College of Western Idaho
6042 Birch Lane
Nampa, ID 83687
Aaron Whitman, Facilities Planning Manager – 208-562-2654

CONTRACTOR:

CONTRACTORS:

EXHIBIT C INTENTIONALLY LEFT OUT

EXHIBIT D CONTRACTOR'S AFIDAVIT CONCERNING TAXES

STATE OF _____)

COUNTRY OF _____)

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

Name of Contractor

Address

City and State

By:

(Signature)

Subscribed and sworn to before me this _____ day of _____,
_____.

Commission expires:

NOTARY PUBLIC, residing at

EXHIBIT E SUBCONTRACTORS TO CONTRACT

ADDRESSES and AUTHORIZED REPRESENTATIVES: The names, addresses and authorized representative of the Subcontractor(s) are:

SUBCONTRACTOR(S):

EXHIBIT F NOTICE TO PROCEED

TO CONTRACTOR:

CONTRACT DATE:

ARCHITECT:

CONTRACT AMOUNT:

DATE OF ISSUANCE:

OWNER:

You are hereby notified to commence work on the above reference contract on/or before _____ and are to substantially complete the work in accordance with requirements of the schedule; therefore your contract completion date is _____.

The contract provides for the sum of \$500.00 as liquidated damages for each consecutive calendar day after the above established substantial completion date in which the work remains incomplete. Completion dates will be established by a "Certificate of Substantial Completion."

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

Your payment estimates must be submitted on forms acceptable to the Owner. We will be most happy to assist you in preparing the payment estimate forms.

A pre-construction meeting will be held at _____(location).

Sincerely,

Signature

Printed Name

Title

EXHIBIT G IDAHO STATE TAX COMMISSION REQUEST FOR TAX RELEASE
EF00234 (CONTRACTOR TO ATTACH)

EXHIBIT H RELEASE OF CLAIMS

(TO BE COMPLETED FOR FINAL PAYMENT)

I, _____, do hereby release the College of Western Idaho from any and all claims of any character whatsoever arising under and by virtue of contract number _____

Dated _____ as amended, except as herein stated.

Dated _____

Contractor _____