

PUBLIC WORKS FIXED PRICE CONTRACT

(Blackfoot Cemetery)

This Public Works Contract ("Contract") is entered into as of the effective date set forth below by and between the State of Idaho, Division of Veterans Services (the "Division") and the individual, partnership, corporation or other entity executing this Contract (the "Contractor"). For and in consideration of the covenants contained in this Contract, the parties agree as set forth herein.

Section I – Contract Documents

1.1 The Contract consists of and precedence is established by the order of the following documents incorporated into this Contract: 1) any amendment executed by the parties, with a more recently executed amendment taking precedence over an earlier executed amendment; 2) this Public Works Contract; 3) the Request for Informal Bids; and 4) the Contractor's Informal Bid. These documents are complementary and what is required by one shall be binding as if required by all. In the case of any conflict or inconsistency arising under the documents, a document identified with a lower number in this section shall supersede a higher numbered document to the extent necessary to resolve any such conflict or inconsistency. No conflict or inconsistency shall be deemed to occur in the event an issue is addressed in one of the above-mentioned documents but is not addressed in another of such documents. No conflict or inconsistency shall be deemed to occur in the event an issue addressed in one of the above-mentioned documents is an additional or supplemental requirement to an issue addressed in another of such documents.

1.2 The following attachments are incorporated into the Contract by this reference:

Request for Informal Bids and all attachments thereto (the "Request for Bids")
Contractor's Informal Bid (the "Bid")
Scope of Work (the "Scope of Work")
Affidavit concerning Alcohol and Drugs.
Affidavit concerning Taxes.

Section II – Project

The Contractor shall perform the services, including supplying and installing materials, set forth in the Request for Bids and the Bid (collectively, these services are the "Project"). The Contractor shall perform the Project at the Division location set forth in the Request for Bids (the "Worksite"). The Contractor shall not substitute or vary the materials or subcontractors specified in the Request for Bids or the Bid without the prior written permission of the Division.

Contractor shall coordinate Contractor's performance of the Project with Darin Sorensen 208-780-1350. Contractor shall maintain the Worksite in a neat and orderly condition as reasonably directed by the above Project coordinator and shall comply with all reasonable procedures established by such Project coordinator.

Contractor must provide an Automatic Gate Opener that meets or exceeds the specifications listed in the Scope of Work and as further determined in Exhibit A – Automated Barrier Gate.

Section III – Term

This Contract is effective on **DATE HERE** and shall expire upon acceptance of the Project by the Division or earlier termination as provided herein. Contractor shall commence work after receiving a notice to proceed (the “Commencement Date”) and shall complete such work on or before **DATE HERE** (the “Completion Date”). This Contract may be modified, including extensions, only as provided in section 8.10 and as allowed by law.

Section IV – Compliance with Law

Contractor shall comply with all requirements of federal and state statutes, rules, and regulations applicable to Contractor and to the Project. Applicable laws include, but are not limited to: Public Works Contractors licensing pursuant to Idaho Code title 54 chapter 19; state and federal occupational health and safety laws; trade and professional licensing and certification laws; building codes; the provisions of Idaho Code title 44 chapter 10 concerning employment under public works contracts; Idaho Code title 63 chapter 15 concerning authorization to do business and payment of taxes; and, the provisions of Idaho Code section 72-1717 concerning drug-free workplaces.

Section V – Performance and Warranty

Contractor shall transfer all warranties and guarantees for products and materials installed by Contractor and its agents, including subcontractors, to the Division. Contractor and its agents shall comply with all manufacturer’s specifications and instructions concerning the installation of products and materials on the Project.

Contractor shall guarantee that Contractor’s and its agents’ work is free from defects in materials and workmanship for a period of one (1) year following the Completion Date. Contractor shall repair or replace any defect arising within such guarantee period free of charge or cost to the Division.

Section VI – Costs and Billing

The Division shall not be liable to the Contractor for any expenses Contractor pays or incurs unless otherwise agreed to in writing by the Division or for services performed prior to the Commencement Date. Except as set forth in the Contract, the Contractor shall supply, at its sole expense, all equipment, tools, materials or supplies to perform the Project.

Division shall pay, and the Contractor shall accept as full and complete payment for the Contractor’s timely performance of its obligation herein, the fixed price contract amount of **DOLLAR AMOUNT HERE**, which amount shall include payment for all labor and materials provided by Contractor, as well as any other expenses incurred by Contractor. If a federal or state audit indicates that payments to the Contractor fail to comply with applicable federal or state laws, rules or regulations, the Contractor shall refund and pay to the Division any compensation paid to Contractor arising from such noncompliance, plus costs, including audit costs.

Travel and other business expenses incurred by the Contractor in the performance of this agreement shall not be billed to or reimbursed by the Division, but rather such expenses shall be the responsibility of and borne entirely by the Contractor, unless agreed upon in writing in advance by the Division.

The Contractor shall pay all applicable sales and use taxes and any costs associated with materials, parts and equipment necessary to perform the services required by this agreement. Neither travel and other business expenses, nor taxes and costs associated with any materials, parts or equipment necessary to perform the services required by this agreement shall serve as a basis for Division to be obligated to make payment to the Contractor in any amount which exceeds the fixed price contract amount established herein.

The Contractor shall submit one invoice at the time the project is completed to the Division. Invoice shall contain the following:

- The name and address of the Contractor.
- The date(s) the Contractor performed each service.
- A description of the service.

The Division, in its discretion, may require written documentation of invoice items as a condition of payment. If the Division requests written documentation substantiating an invoice item, the item shall be severed from the invoice until the Division approves the item and the Division shall not be liable for payment prior to approval. Upon approval of an invoice, the Division shall make payment in accordance with Idaho Code section 67-2302. The Division may withhold payment in the amount of costs or losses to the Division from performance by the Contractor failing to meet the requirements of this Contract and from the Contractor's failure to complete the Project by the Completion Date.

Section VII –Bonding and Insurance

7.1 If the Project costs exceed fifty thousand dollars (\$50,000.00), Contractor shall secure and maintain in force until all work on the Project is completed, at Contractor's expense, performance and payment bonds issued by a surety or sureties licensed to conduct business in the State of Idaho and acceptable to the Division. The performance and payment bonds shall be issued in the full amount of the Project costs.

7.2 Contractor shall obtain and maintain insurance at its own expense as required herein for the duration of the Contract, and comply with all limits, terms and conditions stipulated. Policies shall provide, or be endorsed to provide, all required coverage. The Contractor shall provide certificates of insurance or certified endorsements as applicable for the insurance required. The Contractor shall not commence work under this Contract until satisfactory evidence of all required insurance is provided to the Division.

All insurance, except for Workers Compensation, and Professional Liability/Errors and Omissions shall name the State of Idaho and (agency) as Additional Insured. All insurance shall be with insurers rated A-, VII, or better in the latest Bests Rating Guide, and be in good standing and authorized to transact business in Idaho. The coverage provided by such policies shall be primary. Policies may contain deductibles, but such deductibles shall not be deducted from any damages due the Division or the state of Idaho.

If any of the liability insurance required for this Contract is arranged on a “claims-made” basis, “tail coverage” will be required at the completion or termination of this Contract for a duration of twenty-four (24) months thereafter. 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-months “prior acts” coverage is provided. Contractor will be responsible for furnishing certification of “tail coverage” or continuous “claims-made” coverage.

By requiring insurance herein, the Division does not represent that coverage and limits will necessarily be adequate to protect the Contractor, and such coverage and limits shall not be deemed as a limitation on the Contractor’s liability under the indemnities granted to the Division.

Contractor shall maintain insurance in amounts not less than the following:

Commercial General Liability (CGL) with a limit of not less than \$1,000,000 each occurrence, and \$1,000,000 annual aggregate, if defense is outside the limits. If defense is inside the limits, the limit must be \$2,000,000 each occurrence, and \$2,000,000 aggregate. If necessary, a commercial umbrella or excess policy may be used to meet the limits required, providing the CGL is listed on the underlying insurance in the umbrella or excess policy, and the umbrella/excess policy meets the requirements above for acceptable carriers.

If specified in an attachment to this Contract, Automobile Liability including owned, non-owned, and hired liability with a limit of not less than \$1,000,000 each occurrence, and \$1,000,000 aggregate. If necessary, a commercial umbrella or excess policy may be used to meet the limits required, providing the Auto is listed on the underlying insurance in the umbrella or excess policy, and the umbrella/excess policy meets the requirements above for acceptable carriers.

Workers Compensation Insurance in amounts as required by statute in all states in which the contractor performs work, and Employers’ Liability with a limit of \$100,000 Bodily Injury by Accident-each Accident, \$100,000 Bodily Injury by disease-each employee, \$500,000 Bodily Injury by Disease-policy limit.

If specified in an attachment to this Contract, Professional Liability insurance covering any damages caused by an error, omission or any negligent acts. Combined single limit per occurrence and annual aggregate limit shall not be less than the amounts specified in such attachment or the equivalent.

Section VII – Miscellaneous Provisions

8.1. Assignment and Subcontracting. Unless otherwise allowed by the Division in this Contract Contractor shall not subcontract all or any portion of the Contract without the prior written approval of the Division. The Division will approve subcontracts in the Division’s sole judgment and under such terms and conditions as the Division shall deem necessary, including but not limited to licenses and insurance coverage Notwithstanding the Division's approval of any subcontract, the Contractor shall be solely responsible for the satisfactory performance of all subcontractors and subcontracted services and for the compensation of all subcontractors. Contractor shall be and shall remain liable for all damages to the Division caused by negligent performance or non-performance of the subcontracted services.

Neither party may assign its rights or delegate its duties, in whole or in part, without the prior written consent of the other except that Contractor may assign as collateral its right to payment under the Contract with prior written notice to the State.

8.2 Taxes. As required by Idaho Code section 63-1503, Contractor, in consideration of securing the work contemplated by this Agreement, recognizing that the business in which Contractor is engaged is of a transitory character, and that in the pursuit thereof, Contractor's property used therein may be without the state when taxes, excises, or license fees to which Contractor is liable become payable shall:

a. Promptly pay when due all taxes, (other than on real property), excises and license fees due to the state, its subdivisions, and municipal and quasi-municipal corporations therein, accrued or accruing during the term of this Agreement, whether or not the same shall be payable at the end of such term;

b. If the said taxes, excises, and license fees are not payable at the end of said term, but liability for the payment thereof exists, even though the same constitute liens upon Contractor's property, secure the same to the satisfaction of the respective officers charged with the collection thereof; and,

c. In the event of Contractor's default in the payment or securing of such taxes, excises, and license fees, Contractor consents that the Division may withhold from any payment due Contractor hereunder the estimated amount of such accrued and accruing taxes, excises, and license fees for the benefit of all taxing units to which Contractor is liable.

8.3. Termination. Either party may terminate the Contract immediately upon written notice, or upon such notice as such party, in its sole discretion, deems appropriate, if at any time: (a) the other party is in material breach of any warranty, term, condition, covenant or obligation under the Contract; (b) judicial interpretation of federal or state laws, regulations, or rules renders fulfillment of the Contract infeasible or impossible; (c) Contractor's license or certification required by law is suspended, not renewed, or is otherwise not in effect at the time service is provided; (d) Contractor fails to comply with any applicable law, regulation, or rule; or, (e) the actions or inactions of the Contractor materially jeopardize one or more of the following: payments to the Division under Medicare, Medicaid, or a United States Department of Veterans Affairs program; or, compliance with the terms of a federal or state license or certification held by the Division.

8.4. Indemnification. Contractor shall indemnify, defend and save harmless the State of Idaho and the Division, its officers, agents and employees from and against any and all liability, claims, damages, losses, expenses, actions, attorneys' fees and suits whatsoever caused by or arising out of or relating to the activities of Contractor or its officers, employees, subcontractors, or agents under this contract, or arising from the Contractor's, its officers, employees, subcontractors, or agents failure to comply with any applicable state, federal, local law, statute, rule, regulation or act. This duty to indemnify, defend and hold harmless shall encompass any claims that include or allege negligence of contractor, its agents, officers or employees other than claims which arise solely out of the negligence on the part of the State of Idaho, and this duty shall survive the termination or expiration of this contract.

8.5. Governing Law, Registration and Service of Process. The Contract shall be governed by and construed under the laws of the State of Idaho and the parties hereto consent to

the jurisdiction of the state courts of Ada County in the State of Idaho in the event of any dispute with respect to the Contract. Businesses transacting business with the state of Idaho must register with the Idaho Secretary of State. Contractor must independently determine whether they are required with the Secretary of State and, if so, must register and remain in good standing for the term of this Contract. If Contractor does not maintain a valid registered agent set forth in the records of the Secretary of State, Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested, or the international equivalent at its last known address. Service shall be completed upon Contractor's actual receipt of process, or upon the Division's receipt of the return of service documents as refused or undeliverable. Contractor shall have thirty (30) calendar days after completion of service in which to respond.

8.6. Officials Not Personally Liable. In no event shall any official, officer, employee or agent of the State of Idaho or of the Division be liable or responsible for any representation, statement, covenant, warranty or obligation contained in, or made in connection with, the Contract, express or implied.

8.7. Notices. Any notice given in connection with the Contract shall be given in writing and shall be delivered either by hand or by certified mail, return receipt requested, to the other party at the address stated below the party's signature. Either party may change its address by giving notice of the change in accordance with this section.

8.8. Attorney Fees. In the event of a legal proceeding of any kind instituted under the Contract or instituted to obtain performance or to remedy a default under the Contract, the prevailing party shall be awarded such additional sums as the court may adjudge for reasonable attorney fees and to pay all costs and disbursements incurred in connection therewith.

8.9. Fiscal Necessity and Non-Appropriation. The Division is a government entity and it is understood and agreed that the Division's payments herein provided for shall be paid from Idaho State Legislative appropriations. The Legislature is under no legal obligation to make appropriations to fulfill this Contract. This Contract shall in no way or manner be construed so as to bind or obligate the state of Idaho beyond the term of any particular appropriation of funds by the State's Legislature as may exist from time to time.

The Division reserves the right to terminate this Contract in whole or in part (or any order placed under it) if, in its sole judgment, the Legislature of the State of Idaho fails, neglects, or refuses to appropriate sufficient funds as may be required for the Division to continue such payments, or requires any return or "give-back" of funds required for the Division to continue payments, or if the Executive Branch mandates any cuts or holdbacks in spending, or if funds are not budgeted or otherwise available, or if the Division discontinues or makes a material alteration of the program under which funds were provided. The Division shall not be required to transfer funds between accounts in the event that funds are reduced or unavailable.

All affected future rights and liabilities of the parties shall thereupon cease within ten (10) calendar days after notice to the Contractor. Further, in the event of non-appropriation, the Division shall not be liable for any penalty, expense, or liability, or for general, special, incidental, consequential or other damages resulting therefrom.

8.10. Nonwaiver of Breach. The failure of the Division to require strict performance of any term or condition of the Contract, or to exercise any option herein, in any one or all instances

shall not be construed to be a waiver or relinquishment of any such term or condition. The same shall be and remain in full force and effect unless there is a prior written waiver by the Division.

8.11. Complete Statement of Terms. The Contract constitutes the entire agreement between the parties hereto and shall supersede all previous proposals, oral or written, negotiations, representations commitments, and all other communications between the parties. The Contract may not be released, discharged, changed, extended, modified, subcontracted or assigned in whole or in part, and no claim for additional services not specifically provided herein will be allowed by the Division, except to the extent provided by an instrument in writing signed by a duly authorized representative of the Division and the Contractor.

8.12. Illegal Aliens. The Contractor must comply with the Immigration Reform and Control Act (IRCA) of 1986 and must complete an I-9 for all its staff to verify their identity and employment authorization. Any misrepresentation in this regard or any employment of persons not authorized to work in the United State constitutes a material breach of this Contract and shall be cause for termination.

8.13. Notice to Contractors and Agents as required by 6032 of the Deficit Reduction Act of 2005. Consistent with section 6032 of the Deficit Reduction Act of 2005 (the "DRA"), the Division has established a policy that provides detailed information about the False Claims Act, the Program Fraud and Civil Remedies Act, state false claims laws, and its own policies and procedures for detecting and preventing fraud. The policy also describes whistleblower protections under the federal and state laws. A copy of this policy can be obtained by requesting a copy from the Division. For purposes of the DRA, the Center for Medicare and Medicaid Services' ("CMS") position is that contractors or agents must adopt the policy of the contracting entity and provide information concerning the policy to all employees who have contact with the contracting entity. CMS has defined "contractor or agent" as a contractor or agent that, on behalf of an entity like the Division, furnishes or otherwise authorizes the furnishing of Medicaid health care items or services, performs billing or coding functions, or is involved in monitoring healthcare. Contractor may be a contractor or agent of the Division for purposes of the DRA.

8.14. Nondiscrimination. Acceptance of this Contract binds the Contractor to the terms and conditions of Section 601, Title VI, Civil Rights Act of 1964, in that "No person in the United States shall, on the grounds of race, color, national origin, or sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance." In addition, "No other wise qualified handicapped individual in the United States shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance" (Section 504 of the Rehabilitation Act of 1973). Furthermore, for contracts involving federal funds, the applicable provisions and requirements of Executive Order 11246 as amended, Section 402 of the Vietnam Era Veterans Readjustment Assistance Act of 1974, Section 701 of Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967 (ADEA), 29 USC Sections 621, et seq., the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972, U.S. Department of Interior regulations at 43 CFR Part 17, and the Americans with Disabilities Action of 1990, are also incorporated into this Agreement. The Contractor shall comply with pertinent amendments to such laws made during the term of the Agreement and with all federal

and state rules and regulations implementing such laws. The Contractor must include this provision in every subcontract relating to this Agreement.

8.15. Anti-Boycott of Israel: CERTIFICATION CONCERNING BOYCOTT OF ISRAEL

Pursuant to Idaho Code section 67-2346 (effective July 1, 2021), if payments under the Contract exceed one hundred thousand dollars (\$100,000) and Contractor employs ten (10) or more persons, Contractor certifies that it is not currently engaged in and will not for the duration of the Contract engage in, a boycott of goods or services from Israel or territories under its control. The terms in this section defined in Idaho Code section 67-2346 shall have the meaning defined therein.

8.16. Disclosure of Abortion related matters: By signing this contract, Contractor acknowledges the following: The State is subject to the No Public Funds for Abortions Act. Idaho Code title 18, chapter 87 (the "Act") and State employee who intentionally violate the provisions of the Act are subject to criminal prosecution. The State requests that the Contractor disclose, unless Contractor is within one of the exemptions provided in the Act, if it or an affiliate is or becomes, during the term of this Contract (If Contractor is awarded this Contract), an abortion provider and if it will use State facilities or public funds to provide, perform, participate in, promote or induce, assist, counsel in favor, refer or train a person for an abortion related activity. Please refer to the Act for definitions of the terms.

8.17. Ownership or Operation by China. Pursuant to Idaho Code section 67-2359, Contractor certifies that it is not currently owned or operated by the government of China and will not for the duration of the Contract be owned or operated by the government of China. The terms in this section defined in Idaho Code section 67-2359 shall have the meaning defined therein.

8.18. Boycott of Certain Industries. Pursuant to Idaho Code section 67-2347A, Contractor certifies that it is not currently engaged in, and will not for the duration of the Contract engage in, a boycott of any individual or company because the individual or company (1) engages in or supports the exploration, production, utilization, transportation, sale, or manufacture of fossil fuel-based energy, timber, minerals, hydroelectric power, nuclear energy, or agriculture; or (2) engages in or supports the manufacture, distribution, sale, or use of firearms, as defined in section 18-3302(2)(d), Idaho Code. The definitions in Idaho Code section 67-2347A shall apply to the terms in this provision.

8.19. Sovereign Immunity. Nothing contained herein shall be deemed to constitute a waiver of the State of Idaho's sovereign immunity, which immunity is hereby expressly reserved.

IN WITNESS WHEREOF, the parties have executed this agreement.

CONTRACTOR:

STATE OF IDAHO:

Division of Veterans Services

By _____
Its _____

By _____
Its Purchasing Agent

Address:

Address: 351 Collins Rd
Boise, Idaho 83702

Attention:
Date: _____

Attention: Daniel Arnold
Date: _____

DRAFT