



## **ADVERTISEMENT FOR BIDS**

The Teton County, Idaho, Solid Waste and Recycling will accept separate sealed bids, identified on the envelope, for the supply of:

### **SOLID WASTE HAULING SERVICES**

The County of Teton in the State of Idaho ("County") is soliciting responses to this request for bids (RFB) for the solid waste hauling services from the Teton County Transfer Station. Proposals will be received by Teton County at the office of the Teton County Clerk, 150 Courthouse Drive #208, Driggs Idaho 83422 until 10:00 a.m. local time on Wednesday, May 25th 2022. The RFB submittal opening will occur at the County Engineer/Public Works Director's office on Wednesday May 25th, 2022 10:05 a.m. local time.

The Bid Requirements will be available by May 9, 2022, at the Teton County Recorder's Office at 150 Courthouse Drive #208, Driggs, Idaho 83422. Electronic copies of the Bid Requirements will be posted on the County Website: [www.tetoncountyidaho.gov](http://www.tetoncountyidaho.gov). Questions may be directed to Solid Waste Supervisor at 208-354-2905 ex. 521 or Public Works Director at 208-354-0245.

The Contractor shall comply with all fair labor practices and must meet the requirements of State statutes.

No Bid may be withdrawn after the scheduled time for the public opening of the bids specified above.

Teton County reserves the right to reject any or all Bids received, to waive informalities, to postpone the award of the contract for a period of not to exceed sixty (60) days, and to accept the lowest responsive and responsible Bid which is in the best interest of Teton County.



**Teton County Solid Waste and Recycling  
Request for Bids  
Solid Waste Hauling Services  
May 4, 2022**

**1) Purpose of Request:**

- a. The County of Teton in the State of Idaho (“County”) is soliciting responses to this request for bids (RFB) for the hauling of solid waste from the Teton County Transfer Station to the Circular Butte Landfill located in Terreton, Idaho.

**2) Time Schedule:**

- a. The County will follow the following general timetable:
  - i) Issue RFB May 4, 2022.
  - ii) Deadline for Submittal of Responses to RFB (opening);
  - iii) The deadline for submitting the responses is May 25<sup>th</sup>, 2022 at 10:00 a.m. local time.
  - iv) The RFB submittal opening will occur at the County Engineer/Public Works Director’s office on Wednesday May 25<sup>th</sup>, 2022 10:05 a.m. local time.
  - v) Contract will begin July 01, 2022.

**3) Instructions to Proposers:**

- a. All responses shall be sent to:  
Darryl Johnson, Public Works Director  
Teton County  
150 Courthouse Drive  
Driggs, ID 83422

**OR**

E-mailed to Darryl Johnson, Public Works Director at; [djohnson@co.teton.id.us](mailto:djohnson@co.teton.id.us)

**OR**

Hand delivered to the County Clerk/Recorder office at:  
150 Courthouse Drive,  
Driggs, ID.

- b. Please place your bid in a sealed envelope and clearly label “Bid for Solid Waste Hauling Services” and the name of the respondent.
- c. An authorized representative of the firm must complete and sign the bid.
- d. See attached Bidders Checklist for items required to be submitted with Bid. All other documents are required at the time of Contract Award.

- e. Any questions concerning the RFB shall be directed to Danny O'Donnell / Solid Waste Supervisor at (208)354-2905 ext. 521 or emailed to [dodonnell@co.teton.id.us](mailto:dodonnell@co.teton.id.us).

**4) Terms and Conditions:**

- a. The County reserves the right to reject any and all bids, and to waive minor irregularities in any RFB response.
- b. The County reserves the right to request clarification of the information submitted, and to request additional information from any respondent.
- c. Any RFB response may be withdrawn up until the date and time set above for opening of the RFB responses.
- d. Companies may submit written questions concerning this RFB to the Contact Person for receipt no later than 5:00 PM local time on May 11, 2022. Questions may be submitted to Danny O'Donnell via email to [dodonnell@co.teton.id.us](mailto:dodonnell@co.teton.id.us). Questions received after the stated deadline will not be answered. No oral statement of any person shall modify or otherwise change or affect the terms or conditions stated in the RFB, and changes to the RFB, if any, shall be made in writing only and issued in the form of an Addendum to the RFB and highlighted in the RFB. All addenda will be noticed on the County website at [www.tetoncountyidaho.gov](http://www.tetoncountyidaho.gov). Bidders are responsible for checking website for addenda.

**5) Requirements for Solid Waste Hauling Services:**

- a. The Waste Hauler shall provide a semi-truck and trailer on TCSW site at all times that accommodates the Transfer Station loading tunnel and Circular Butte Landfill. All equipment provided by the contractor must be insured. Trucks that are onsite are not required to be licensed.
- b. The trailer must be an open top, walking floor (or other type of self-unloading mechanism) style trailer with a minimum length of 45 feet. A height of 13 feet and a width of approximately 102 inches is required. (The loading area in the tunnel at the Transfer Station is 45 feet long, 98 inches wide and 14'4" tall)
- c. The minimum legal net hauling trailer capacity shall be 20 tons.
- d. Single walled aluminum trailers are inadequate for hauling solid waste and are prone to damage by construction materials. The county will not be liable for wall damage to single walled aluminum trailers caused by materials at the time of unloading.
- e. The Waste Hauler is responsible for mobilizing vehicles for proper loading and optimizing access for operators, weighing out vehicles and replacing full trailers with empty trailers before leaving the site.

**6) Pick Up and Drop off Locations and Distances:**

- a. Solid Waste shall be picked up from Teton County Solid Waste at 1088 Cemetery Road Driggs, Idaho 83422 and dropped off at Circular Butte Landfill at 1571 North 800 East Terreton, Idaho 83450. The distance from Teton County Solid Waste to Circular Butte Landfill is approximately 86 miles.

**7) Teton County Solid Waste (TCSW) Year Round Hours of Operation**

Sunday and Monday: Closed  
Tuesday through Friday: 8 am to 3 pm  
Saturday: 8 am to 1 pm

**8) Hauled Loads and Seasonal Variance:**

- a. An estimated 575 loads (11,250 tons) will be hauled to Circular Butte this year with an expected growth of 10% annually. An exact number of loads annually are not guaranteed due to variances in operation.
- b. During summer season (May-September) the contractor should expect to haul two trucks three times a week and three trucks twice a week (Tuesday through Saturday). No guarantee is made as to the number trips/hauls per day or week.
- c. The remainder of the year (October-April) the contractor can expect to haul approximately two trucks a day to the Circular Butte Landfill. No guarantee is made as to the number trips/hauls per day or week.

**9) Contract:**

- a. The contract is for three years with an option for the County to extend the contract annually for up to five years.
- b. The terms of any Contract resulting from the solicitation and any Purchase Order issued for multiple years under the Contract are contingent upon sufficient appropriations being made by the Legislature or other appropriate government entity. Notwithstanding any language to the contrary in the solicitation, purchase order, or any other Contract document, the procuring agency may terminate its obligations under the Contract if sufficient appropriations are not made by the Legislature or other appropriate governing entity to pay amounts due for multiple year agreements. The Requesting (procuring) Agency's decisions as to whether sufficient appropriations are available shall be accepted by the supplier and shall be final and binding.
- c. The contract may be cancelled for cause or without cause by the County or the trucking company upon thirty days written notice to the other party, or may be terminated immediately, in writing, in the event of a default by the other party to any term or condition of this Agreement. If contractor does not fulfill his responsibilities stated in this agreement and fails to dispose of garbage to Circular Butte Landfill in a timely manner; the County reserves the right to contract a third party if waste accumulated onsite becomes a public health hazard and leaves the County Solid Waste out of compliance with the Transfer Station Operation Plan, Idaho Department of Environmental Quality and Eastern Idaho Public Health District.
- d. The trucking company shall be paid monthly by the County based on the number of loads hauled. Trucking company invoicing shall show break down on bill for date of individual loads referencing Teton County Transfer Station ticket numbers, Circular Butte ticket numbers, fuel surcharge and proof of weekly fuel price sheet for surcharge. The bill shall be expressed per load hauled.

**10) Bidder's Certification:**

- a. Bidder certifies that:
  - i) This Bid is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any collusive agreement or rules of any group, association, organization, or corporation;
  - ii) Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid;

- iii) Bidder has not solicited or induced any individual or entity to refrain from bidding;  
and
- iv) Bidder has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the Contract. For the purposes of this Paragraph 4.01.D:
- “corrupt practice” means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process;
  - “fraudulent practice” means an intentional misrepresentation of facts made (a) to influence the bidding process to the detriment of Owner, (b) to establish bid prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
  - “collusive practice” means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish bid prices at artificial, non-competitive levels; and “coercive practice” means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.
  - “coercive practice” means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.



## Bidder Response Form

Bidder's Corporation/Partnership Name: \_\_\_\_\_

Bidder's Business Address: \_\_\_\_\_

Bidder's Phone Number: \_\_\_\_\_ Bidder's Fax: \_\_\_\_\_

Bidder's Email: \_\_\_\_\_

By (Signature): \_\_\_\_\_

Name & Title (typed or printed): \_\_\_\_\_

SUBMITTED ON: \_\_\_\_\_

### Solid Waste Hauling to Circular Butte Landfill:

Item No.	Description	Maximum Legal Net Hauling Capacity Per Load (Tons)*	Cost per Ton (\$)	Cost Per Load (\$)
1	No Road Restrictions (Normal Operations)			+ F. S.
2	Partial Road Restrictions (Some Breakup Limits)			+ F. S.
3	Full Road Restrictions (All Roads Breakup Limits)			+ F. S.

Bid prices listed shall include all applicable wages, mobilizations, taxes and fees.

\*Minimum Net Hauling Capacity Per Load is 20 Tons

NOTE; Bids shall be based on Fuel Surcharge schedule shown on following page. Do not include F.S in Cost per Load value.

Bids will be evaluated based on most economical cost per load

Addendum No

Addendum Date



**Teton County Solid Waste and Recycling  
Solid Waste Hauling Services  
FUEL SURCHARGE SCHEDULE**

Fuel surcharge is based on the U.S. Energy Information Administration Weekly Retail Diesel Prices, Rocky Mountain (PADD4) for the week of delivery.

<b>At Least</b>	<b>But Less Than</b>	<b>Fuel Surcharge</b>
\$ 2.77	\$ 2.88	7%
\$ 2.88	\$ 2.99	8.00%
\$ 2.99	\$ 3.10	9.00%
\$ 3.10	\$ 3.21	10.00%
\$ 3.21	\$ 3.32	11.00%
\$ 3.32	\$ 3.43	12.00%
\$ 3.43	\$ 3.54	13.00%
\$ 3.54	\$ 3.65	14.00%
\$ 3.65	\$ 3.76	15.00%
\$ 3.76	\$ 3.87	16.00%
\$ 3.87	\$ 3.98	17.00%
\$ 3.98	\$ 4.09	18.00%
\$ 4.09	\$ 4.20	19.00%
\$ 4.20	\$ 4.31	20.00%
\$ 4.31	\$ 4.42	21.00%
\$ 4.42	\$ 4.53	22.00%
\$ 4.53	\$ 4.64	23.00%
\$ 4.64	\$ 4.75	24.00%
\$ 4.75	\$ 4.86	25.00%
\$ 4.86	\$ 4.97	26.00%
\$ 4.97	\$ 5.08	27.00%
\$ 5.08	\$ 5.19	28.00%
\$ 5.19	\$ 5.30	29.00%
\$ 5.30	\$ 5.41	30.00%
\$ 5.41	\$ 5.52	31.00%
\$ 5.52	\$ 5.63	32.00%



## **Teton County Solid Waste and Recycling BIDDER'S CHECK LIST**

The Bidder's Check List is offered to assist the prospective bidder in checking his/her Bid. This checklist does not relieve the bidder from properly completing his/her Bid.

Check off when completed:

1. \_\_\_\_\_ Are all blank spaces filled out on Bid Form?
2. \_\_\_\_\_ Have questions arising from the bidding, contract, specifications or plans been submitted to the proper authority and resolved in the proper manner?
3. \_\_\_\_\_ Are Bid amounts shown correctly as well as extensions and totals? Recheck for errors or omissions.
4. \_\_\_\_\_ Are authorized signatures properly affixed to the Bid form, giving also title?
5. \_\_\_\_\_ Have all Addenda been received and acknowledged with the proper signature on the Bid Form?
6. \_\_\_\_\_ In order for a Bid to be considered, the Bid form and other required attachments must be placed in a properly addressed sealed envelope and delivered to the specified authority or submitted electronically prior to the time designated for the bid opening.
7. \_\_\_\_\_ Has Bidder performed examinations in accordance with the Instructions to Bidders?
8. \_\_\_\_\_ Has Bidder included required attachments:
  - Proof of insurance as required in Contract
  - Articles of Incorporation

**All other required documents shall be submitted prior to execution of contract**





## **INDEPENDENT CONTRACTOR’S AGREEMENT FOR SOLID WASTE HAULING SERVICES**

This Independent Contractor’s Agreement (hereinafter “Agreement”) is made between (the “Contractor”), and Teton County, Idaho, a body corporate and politic (the “County”).

### **1) SCOPE OF WORK**

Contractor shall perform the “Work” - described generally as hauling Acceptable Waste (which is defined as all waste except Excluded Waste, which is defined below) from the Teton County Transfer Station located at 1088 Cemetery Road, Driggs, Idaho (the “Transfer Station”) to the Circular Butte Landfill located in 1571 North 800 East, Terreton, Idaho (the “Landfill”). In the event that the destination for waste changes from Circular Butte landfill, Teton County reserves the right to renegotiate base rates for hauling to the new location.

### **2) TERM OF AGREEMENT**

The initial term of this Agreement is three years, contingent upon annual budget approval from the Board of County Commissioners. County has the option to extend the Agreement for five additional one-year periods. To exercise the option, County must provide notice to Contractor thirty days prior to the expiration of the current term.

### **3) CONTRACTOR RESPONSIBILITIES**

- a. Contractor shall provide a semi-truck and trailer to be at the Transfer Station site at all times. All equipment provided by Contractor must be insured. On-site trucks are not required to be licensed.
- b. Trucks must not smoke to the point that visibility and breathing are inhibited when trailers are being mobilized, especially in the transfer building. The air supply system must operate properly so the brake system can function as intended.
- c. An open-top, self-unloading (live floor) trailer with a minimum length of 45 feet and an approximate width of 102 inches and height of 13 feet is required. The trailer must be able to fit in the loading tunnel, which has the following dimensions: 45 feet long, 98 inches wide, 14 feet 4 inches high.
- d. Contractor shall be prepared to haul trailers filled to a minimum of 23 tons.
- e. Contractor is responsible for covering all loads.
- f. Contractor is responsible for the Acceptable Waste during transport and any clean-up resulting from the acts or omissions of Contractor; provided, however, County acknowledges and agrees that Contractor does not take title to such Acceptable Waste.

- g. Contractor is responsible for any tickets received while hauling material from the transfer station, including but not limited to tickets for littering and overweight loads.
- h. Contractor is responsible for any damage caused by Contractor to County equipment and County property, including damage caused when entering and leaving the transfer station; provided, however, County warrants that County's pavement, curbing or other driving surface or any right of way reasonably necessary for Contractor to provide the services described herein are sufficient to bear the weight of all of Contractor's equipment and vehicles reasonably required to perform such services. Contractor will not be responsible for damage to any such pavement, curbing, driving surface or right of way.
- i. Contractor shall remove tarps from trailers prior to entering the loading tunnel. Tarps should be out of the way when trucks are being loaded.
- j. Contractor must be on site and ready and able to move or remove and replace its equipment (trucks and trailers) within sixty-minutes of a request from County. There is no set pickup time. Contractor is responsible for mobilizing vehicles for proper loading and better access for operators, weigh out vehicles and replacing full trailers with empty trailers before leaving the transfer station site.
- k. No financial reimbursement will be allowed for weighing and loading time delays.
- l. Contractor employees shall follow all Transfer Station safety rules including, but not limited to, the hard hat requirement in the truck tunnel and no cell phone use policy.
- m. Contractor shall operate in compliance with OSHA and DOT regulations. Contractor shall obtain and maintain all licenses, business permits and other permits required to perform the services of this Agreement.
- n. Equipment will be used in confined spaces while moving trailers. Trucks must be properly maintained so as to operate in a manner that does not create unsafe issues due to excessive smoking or other unsafe conditions.
- o. Delivery of loads to Landfill in subzero weather conditions can result in the loads freezing during travel and cause a condition that will not allow the load to be dumped from the trailer. Any loads leaving the Transfer Station for disposal in weather conditions at or below zero degrees Fahrenheit must receive approval from County before leaving the Transfer Station for the Landfill. Teton County shall not reimburse contractor for any returned full loads delivered in these weather conditions without prior County approval.
- p. There is minimal load weight variance due to freezing weather conditions and frozen garbage. Trailers will be loaded to maximum legal weight during adverse weather conditions.
- q. County will give the contractor's driver discretion on loading weight up to 1,000 pounds below maximum gross weight during snow and ice conditions.
- r. Contractor will ensure that trucks have sufficient fuel to complete the haul to Landfill before drivers weigh out a load at the Transfer Station. Weigh allowance will not be approved for trucks weighed out on empty tanks.
- s. Contractor must share in the responsibility for tunnel safety. There are markings for specific trucks/trailer combinations showing the proper place to stage/park the trucks in the tunnels. County Personnel will instruct Contractor's drivers regarding these marks and how to properly use them. Drivers shall use the G.O.A.L. safety practice for staging trucks to be loaded. G.O.A.L. safety standard is as follows: Get Out and Lock. Acceptable Waste landing on the tunnel floor should be minimized through proper staging trailers.

**4) COUNTY RESPONSIBILITIES**

a. County shall pay Contractor the following amounts:

- i) Base Rate: \$\_\_\_\_\_ per load;
- ii) Addition Tonnage Rate: For loads with a net weight over 23.3 tons, County shall provide the base rate of \$\_\_\_\_\_ plus an additional \$24.84 per net ton for the amount over 23.3 net tons;
- iii) Fuel Surcharge: County shall pay a fuel surcharge based on the U.S. Energy Information Administration Weekly Retail Diesel Prices, Rocky Mountain (PADD4) for the week of delivery at the following amounts:

At Least	But Less Than	Fuel Surcharge
\$ 2.77	\$ 2.88	7%
\$ 2.88	\$ 2.99	8.00%
\$ 2.99	\$ 3.10	9.00%
\$ 3.10	\$ 3.21	10.00%
\$ 3.21	\$ 3.32	11.00%
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\$ 4.20	\$ 4.31	20.00%
\$ 4.31	\$ 4.42	21.00%
\$ 4.42	\$ 4.53	22.00%
\$ 4.53	\$ 4.64	23.00%
\$ 4.64	\$ 4.75	24.00%
\$ 4.75	\$ 4.86	25.00%
\$ 4.86	\$ 4.97	26.00%
\$ 4.97	\$ 5.08	27.00%
\$ 5.08	\$ 5.19	28.00%
\$ 5.19	\$ 5.30	29.00%
\$ 5.30	\$ 5.41	30.00%
\$ 5.41	\$ 5.52	31.00%
\$ 5.52	\$ 5.63	32.00%

- iv) Contractor shall invoice County on a monthly basis, and County shall pay Contractor within thirty (30) days of the receipt of such invoice.
- b. County will perform a pre-load inspection of every trailer upon arrival at the Transfer Station. County will perform a post-load inspection prior to trailer departure from the Transfer Station.
- c. Any equipment furnished hereunder by Contractor shall remain the property of Contractor; however, County acknowledges that it has care, custody and control of the equipment while at the Transfer Station and accepts responsibility for all loss or damage to the equipment

(except for normal wear and tear or for loss or damage resulting from Contractor's handling of the equipment) caused by the County's negligence or willful misconduct. County is not responsible for tarp damage. Single walled aluminum trailers are inadequate for hauling solid waste and are prone to being easily damaged by construction materials. County will not be liable for wall damage to single walled aluminum trailers caused by materials at the time of unloading. County will be responsible for floor or wall damage if caused by county equipment or county operators while loading the trailer. Contractor shall manage the repair process from damage caused by the County and will pass on the repair cost to the County.

- d. Only Teton County employees with a Class A commercial driver's license will be allowed to move Contractor's truck and/or trailer.
- e. County will not heap garbage above tarp support cross bars, and the County will remove garbage above the tarp support cross bars.
- f. County will remove snow at the Transfer Station during hours of operation, but the County will not remove snow outside of operating hours or on days when the Transfer Station is closed.

## **5) CONTRACTOR REPRESENTATIONS**

- a. In order to induce the County to enter into this Agreement, Contractor makes the following representations:
  - i) Contractor is performing its obligations under this contract as an independent Contractor.
  - ii) Contractor represents that neither the Contractor nor any of its employees are employed by the County, nor employed by any other person affiliated with or associated with the County.
  - iii) Contractor is an independent contractor for all purposes, including, without limitation, federal, state, and local taxation, FICA and employment taxes, unemployment insurance, and worker's compensation. Contractor understands, acknowledges, and agrees that it shall be responsible for the payment of all such taxes and expenses, and Contractor shall be solely responsible for paying its employees.
  - iv) Contractor has examined and carefully studied the Contract Documents and the other related data in the Bidding Documents.
  - v) Contractor is familiar with and is satisfied as to the general, local, and other conditions that may affect cost, progress, and performance of the Work.
  - vi) Contractor is familiar with and is satisfied as to all federal, state, and local laws and regulations that may affect cost, progress, and performance of the Work.
  - vii) The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
  - viii) Contractor shall comply with all laws and regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable laws and regulations, the County shall not be responsible for monitoring Contractor's compliance with any laws or regulations.
  - ix) Contractor has all equipment and tools of the trade necessary to accomplish its obligations under this contract.

- x) Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for, bidding on, or in executing the Contract.
- xi) Contractor represents that it is an organized business entity registered as a foreign business entity with the Idaho Secretary of State.

## **6) COUNTY REPRESENTATIONS**

- a. In order to induce Contractor to enter into this Agreement, County makes the following representations:
  - i) The County shall not deposit in Contractor's equipment or otherwise place for collection by Contractor any liquid, radioactive, volatile, corrosive, highly flammable, explosive, biomedical, infectious, biohazardous, toxic or hazardous material as defined by applicable federal, state or local laws or regulations ("Excluded Waste"). Notwithstanding any other term contained herein, Contractor shall have no obligation to collect any waste which is, or which Contractor reasonably believes to be, Excluded Waste. Title to and liability for any Excluded Waste shall remain with the County, even if Contractor inadvertently transports such Excluded Waste.
  - ii) The County shall comply with all laws and regulations applicable to the performance of the Work.

## **7) NO AGENCY**

- a. Contractor shall have no authority, whatsoever, to enter into any agreement, contract, or undertaking on behalf of the County.

## **8) TIME IS OF THE ESSENCE**

- a. Contractor recognizes that time is of the essence in this Contract and that the County will suffer financial loss if the Work is not performed timely. Allowing delays only for occurrences resulting from an event of force majeure, if Contractor neglects, refuses, or fails to timely perform the Work, Contractor shall pay liquidated damages to the County in the amount of \$1,200.00 for each day that the Contractor fails to complete the Work specified in this Agreement.
- b. A fine of \$1200 will be applied to the contractor if, at the end of a work day, 3 loads of Household waste, as determined by Transfer Station staff, remain on site when extra trucks were requested the day previous or before. Depending on the composition of the material, 3 loads can weigh anywhere from 38 to 60 tons.
- c. County reserves the right to self-haul or engage a third party to undertake the Work. Contractor will be responsible for any increased costs to the County due to self-haul or third party engagement in addition to any applicable liquidated damages amounts.
- d. County will inform Contractor of special events in advance of the event for the purpose of in order to understand and account for unique needs for that specific event.

## **9) TERMINATION**

- a. Notwithstanding any representations or language to the contrary, the County may terminate its obligations under the Agreement if sufficient appropriations are not made by the Board of County Commissioners to pay amounts due beyond the first year of this

Agreement. County's decisions as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final and binding.

- b. If during the Term of this Agreement either party shall be in breach of any provision of this Agreement, the other party may suspend its performance hereunder until such breach has been cured or terminate this Agreement; provided, however, that no termination of this Agreement shall be effective until the complaining party has given written notice of such breach to the breaching party and the breaching party has failed to cure such breach within thirty (30) days after its receipt of such notice. Upon any such failure to cure, the complaining party may terminate this Agreement by giving the breaching party written notice of such termination, which shall become effective upon receipt of such notice..

#### **10) INSTRUMENT FOR SECURING PERFORMANCE**

- a. Prior to Service Commencement, Contractor shall file with County an instrument, in form reasonably acceptable to County, securing Contractor's faithful performance of Contractor's obligations under this Agreement. The principal sum of the instrument shall be not less than One Hundred Thousand Dollars (\$100,000). The instrument may be in the form of a letter of credit, performance bond, or other performance guarantee and shall remain in force during the Term. If the instrument is performance bond it shall be executed by a surety company designated as an admitted insurer in good standing with and authorized to transact business in this State by the Idaho Department of Insurance and otherwise reasonably: acceptable to the County. The premium for such bond or letter of credit, or any other charges related in any way to Contractor's obtaining or maintaining any and all such instruments, shall be fully borne and paid by Contractor. Recovery under the instrument shall not preclude County from seeking additional damages for Contractor's default under this Agreement.

#### **11) INSURANCE**

- a. The Contractor shall furnish the County with current certificates of coverage of the Contractor, and proof of payment by the Contractor, for workers' compensation insurance, general liability insurance, motor vehicle insurance, Contractors' Idaho Department of Transportation Compliance Record and such other insurance as the County may require from time to time. The Contractor shall maintain all such insurance coverage and shall furnish the County with certificates of renewal coverage and proofs of premium payments upon request.

#### **12) INDEMNIFICATION**

- a. In the event that any act or omission by Contractor in the course of performing its obligations under this Agreement give rise to or result in a claim against the County, Contractor agrees that they will fully and completely cooperate with the County and its agents, and/or insurers or attorneys, in helping to resolve such claim or, if necessary, litigate the claim on behalf of the County. Contractor further agrees that it will indemnify and hold harmless the County from any and all liabilities, costs and expenses incurred in connection with or arising out of Contractor's acts or omissions in the course of performing its duties and obligations under this Agreement or the failure of Contractor to observe and perform the duties and obligations pursuant to the legal and ethical standards established by any local, state or federal jurisdiction or association. Notwithstanding

anything contained herein to the contrary, Contractor shall have no obligation to indemnify the County or the County's contractors, or their respective public officials, officers, agents, directors, or employees, to the extent any such claims, actions, lawsuits, losses, expenses, injuries, damages, judgments or liabilities arise out of: (i) the negligence or willful misconduct of the County or the County's contractors, or their respective public officials, officers, agents, directors, or employees, (ii) the County's breach of any of the terms, conditions, representations, or warranties contained in this Agreement, or (iii) the violation of any law, rule, regulation, ordinance, order, permit, or license by the County or the County's contractors, or their respective public officials, officers, agents, directors, or employees. This indemnity obligation shall survive termination of the affiliation between the County and the Contractor pursuant to this Agreement or otherwise.

**13) FORCE MAJUERE**

- a. Neither party shall be liable for failure to perform its obligations under this Agreement if such failure is caused by any event or condition not existing as of the date of this Agreement and not reasonably within the control of the affected party, provided that the affected Party promptly notifies the other party of the occurrence of the event or condition and takes all reasonable steps to resume performance of its obligations.

**14) ASSIGNMENT**

- a. Contractor may not delegate, subcontract or assign any of the obligations and duties hereunder to any other person, firm or entity without the express written approval of the Board of County Commissioners. Contractor shall not be entitled to any payment or compensation from the County for any costs or expenses incurred in conjunction with any subcontracting, assigning or further delegating work or assignments to anyone else.

**15) BUSINESS OF CONTRACTOR**

- a. The Contractor is engaged in the business of doing the Work. Copies of the following documents verifying the Contractor's established business shall be provided to the County within thirty days of the execution of this Agreement:
  - i) Articles of Incorporation;
  - ii) Idaho Foreign Registration Statement; and
  - iii) Federal Employer Tax Identification Number

COUNTY  
TETON COUNTY, IDAHO

CONTRACTOR

\_\_\_\_\_  
BY:  
TITLE:  
DATE:

\_\_\_\_\_  
BY:  
TITLE:  
DATE:

## PERFORMANCE BOND

Any singular reference to Contractor, Surety, Owner, or other party shall be considered plural where applicable.

---

CONTRACTOR (*Name and Address*):

SURETY (*Name, and Address of Principal Place of Business*):

OWNER (*Name and Address*):

### CONTRACT

Effective Date of Agreement:

Amount (**Figures**):

Description (*Name and Location*):

### BOND

Bond Number:

Date (*Not earlier than Effective Date of Agreement*):

Amount:

Modifications to this Bond Form:

Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Performance Bond to be duly executed by an authorized officer, agent, or representative.

### CONTRACTOR AS PRINCIPAL

### SURETY

\_\_\_\_\_  
Contractor's Name and Corporate Seal (Seal)

\_\_\_\_\_  
Surety's Name and Corporate Seal (Seal)

By: \_\_\_\_\_  
Signature

By: \_\_\_\_\_  
Signature (Attach Power of Attorney)

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

Attest: \_\_\_\_\_  
Signature

Attest: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

*Note: Provide execution by additional parties, such as joint venturers, if necessary.*



Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to Owner for the performance of the Contract, which is incorporated herein by reference.

If Contractor performs the Contract, Surety and Contractor have no obligation under this Bond, except to participate in conferences as provided in Paragraph 2.1.

If there is no Owner Default, Surety's obligation under this Bond shall arise after:

- Owner has notified Contractor and Surety, at the addresses described in Paragraph 9 below, that Owner is considering declaring a Contractor Default and has requested and attempted to arrange a conference with Contractor and Surety to be held not later than 15 days after receipt of such notice to discuss methods of performing the Contract. If Owner, Contractor, and Surety agree, Contractor shall be allowed a reasonable time to perform the Contract, but such an agreement shall not waive Owner's right, if any, subsequently to declare a Contractor Default; and
- Owner has declared a Contractor Default and formally terminated Contractor's right to complete the Contract. Such Contractor Default shall not be declared earlier than 20 days after Contractor and Surety have received notice as provided in Paragraph 2.1; and
- Owner has agreed to pay the Balance of the Contract Price to:
  - Surety in accordance with the terms of the Contract; or
  - Another contractor selected pursuant to Paragraph 3.3 to perform the Contract.

When Owner has satisfied the conditions of Paragraph 2, Surety shall promptly, and at Surety's expense, take one of the following actions:

- Arrange for Contractor, with consent of Owner, to perform and complete the Contract; or
- Undertake to perform and complete the Contract itself, through its agents or through independent contractors; or
- Obtain bids or negotiated proposals from qualified contractors acceptable to Owner for a contract for performance and completion of the Contract, arrange for a contract to be prepared for execution by Owner and contractor selected with Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Contract, and pay to Owner the amount of damages as described in Paragraph 5 in excess of the Balance of the Contract Price incurred by Owner resulting from Contractor Default; or
- Waive its right to perform and complete, arrange for completion, or obtain a new contractor, and with reasonable promptness under the circumstances:
  - After investigation, determine the amount for which it may be liable to Owner and, as soon as practicable after the amount is determined, tender payment therefor to Owner; or
  - Deny liability in whole or in part and notify Owner citing reasons therefor.

If Surety does not proceed as provided in Paragraph 3 with reasonable promptness, Surety shall be deemed to be in default on this Bond 15 days after receipt of an additional written notice from Owner to Surety demanding that Surety perform its obligations under this Bond, and Owner shall be entitled to enforce any remedy available to Owner. If Surety proceeds as provided in Paragraph 3.4, and Owner refuses the payment tendered or Surety has denied liability, in whole or in part, without further notice Owner shall be entitled to enforce any remedy available to Owner.

After Owner has terminated Contractor's right to complete the Contract, and if Surety elects to act under Paragraph 3.1, 3.2, or 3.3 above, then the responsibilities of Surety to Owner shall not be greater than those of Contractor under the Contract, and the responsibilities of Owner to Surety shall not be greater than those of Owner under the Contract. To the limit of the amount of this Bond, but subject to commitment by Owner of the Balance of the Contract Price to mitigation of costs and damages on the Contract, Surety is obligated without duplication for:

The responsibilities of Contractor for correction of defective Work and completion of the Contract; Additional legal, design professional, and delay costs resulting from Contractor's Default, and resulting from the actions of or failure to act of Surety under Paragraph 3; and Liquidated damages, or if no liquidated damages are specified in the Contract, actual damages caused by delayed performance or non-performance of Contractor.

Surety shall not be liable to Owner or others for obligations of Contractor that are unrelated to the Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than Owner or its heirs, executors, administrators, or successors.

Surety hereby waives notice of any change, including changes of time, to Contract or to related subcontracts, purchase orders, and other obligations.

Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the Work or part of the Work is located, and shall be instituted within two years after Contractor Default or within two years after Contractor ceased working or within two years after Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

Notice to Surety, Owner, or Contractor shall be mailed or delivered to the address shown on the signature page.

When this Bond has been furnished to comply with a statutory requirement in the location where the Contract was to be performed, any provision in this Bond conflicting with said statutory requirement shall be deemed deleted herefrom and provisions conforming to such statutory requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

#### Definitions.

**Balance of the Contract Price:** The total amount payable by Owner to Contractor under the Contract after all proper adjustments have been made, including allowance to Contractor of any amounts received or to be received by Owner in settlement of insurance or other Claims for damages to which Contractor is entitled, reduced by all valid and proper payments made to or on behalf of Contractor under the Contract.

**Contract:** The agreement between Owner and Contractor identified on the signature page, including all Contract Documents and changes thereto.

**Contractor Default:** Failure of Contractor, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Contract.

Owner Default: Failure of Owner, which has neither been remedied nor waived, to pay Contractor as required by the Contract or to perform and complete or otherwise comply with the other terms thereof.

FOR INFORMATION ONLY – *(Name, Address and Telephone)*

Surety Agency or Broker:

Owner's Representative *(Engineer or other party)*:

DRAFT