

# Request for Fixed Price Quote

## *Project Abstract* *Health Information Exchange of Montana, Inc.*

The Health Information Exchange of Montana, Inc. (HIEM) is a rural health network initiated by five independently owned and operated hospitals who have formally come together to address their shared unique geographic and technological challenges in order to exchange basic medical information and expand telehealth applications in northwest and north central Montana. It is a non-profit organization comprised solely of 501(c)(3) healthcare organizations and supported by dozens of affiliate partners within our service area, across our region and throughout Montana.

The HIEM has successfully deployed several notable telehealth applications in the past seven years. Each hospital is linked into a common Picture Archiving & Communications System (PACs) and work with centralized radiologists in the network hub of Kalispell. Three of the hospitals share hospital information systems. Video conferencing is available throughout the network, and a number of telemedicine patient-care examination facilities have been implemented. This has been accomplished through collaborative governance of shared objectives, and by ensuring financial sustainability through each participant paying appropriate fees for these services.

In 2006, the Founding Members of the HIEM, who had worked together on an informal basis for so long, decided to formalize the network into its own 501(C)3 organization. Today the HIEM has seven member organizations, each of which represent dozens of other healthcare providers in each of their respective communities. Healthcare goals presently underway include the expansion of the PACs system and telemedicine exam facilities, implementation of telepharmacy, teledentistry, telemental health services and expansion of shared electronic health records throughout the network region.

# Request for Fixed Price Quote

## Notice to Bidders

### Fiber Back Bone

Responses will be received by the Health Information Exchange of Montana (HIEM) for communications infrastructure and supporting facilities in North and North West Montana. The infrastructure and supporting facilities will include the following basic elements:

1. An unrestricted fiber-based communications network path of no less than 12 fibers connecting the towns of:
  - a) Conrad, MT
  - b) Shelby, MT
  - c) Cut Bank, MT
  - d) Browning, MT
  - e) Whitefish, MT
2. Hotel facilities in each of the towns listed in item one (1) and at required signal regeneration points. Hotel facilities must include at least:
  - a) Fiber patch panels appropriate for the termination of fiber optic cable runs within each of the towns indicated in item one (1).
  - b) Rack space appropriate for the installation of fiber optic transmission, routing, signal regeneration and system monitoring equipment.
  - c) Appropriate power infrastructure including DC power distribution, fuse panels and battery backup.
  - d) Climate controlled facilities suitable for the 24/7 operation of communications and supporting equipment.
3. Access points and/or hand-holds within each of the towns listed in item one (1).
4. Drawings of all network elements including:
  - a) Paths
  - b) Buildings (including GPS and Address information)
  - c) Rack Space
  - d) Power Facilities
  - e) Access Points (including GPS and Address information)

Beyond the basic elements listed earlier in this document a successful bidder will submit a

maintenance agreement proposal and service level agreement which will include, as separate and distinct line items, ala carte pricing (subject to an annual rate review) for the following items for one (1), five (5), ten (10) and twenty (20) year periods:

1. 24x7x365 network monitoring for all network elements housed or operated or located on or within the bidders facilities.
2. 24x7x365 coverage for network maintenance and/or repairs.
3. Disaster Recovery testing and planning.
4. Housing for spare equipment.
5. Fiber repair both along the fiber back bone path and within the towns being serviced by the back bone even if the fiber repairs are not on or within the facilities operated by the bidder.

The successful bidder will be required to provide payment and performance bonds or statutorily acceptable alternatives for 100% of the contract price. A proposal bond equal to 10 percent of the proposal amount is required with proposal submittal. All proposals shall be irrevocable for 90 days.

## RFQ Contact Information

Responses must be submitted by US mail or courier and be addressed to:

Charles T. Pearce  
Health Information Exchange of Montana  
C/O Kalispell Regional Medical Center  
310 Sunnyview Lane  
Kalispell, MT 59901  
[cpearce@krmc.org](mailto:cpearce@krmc.org)

Any and all questions regarding this RFQ should be submitted in writing or via email and directed to:

Charles T. Pearce  
Health Information Exchange of Montana  
C/O Kalispell Regional Medical Center  
310 Sunnyview Lane  
Kalispell, MT 59901  
[cpearce@krmc.org](mailto:cpearce@krmc.org)

Any and all technical questions regarding this RFQ should be submitted in writing or via email and directed to:

Candy Deruchia  
Health Information Exchange of Montana  
C/O Kalispell Regional Medical Center  
310 Sunnyview Lane  
Kalispell, MT 59901  
[cderuchia@krmc.org](mailto:cderuchia@krmc.org)

All questions and answers submitted to HIEM, as part of this RFQ will be made available to all bidders.

## General Information to Bidders

Sealed proposals will be received by Charles Pearce, Health Information Exchange of Montana, C/O Kalispell Regional Medical Center, 310 Sunnyview Lane, Kalispell, MT, 59901 up to 3:00 PM Mountain Time, 30 days from the electronic posting of this document on the Universal Service Administrative Company website.

Each submitted response must include two (2) copies of all documents that comprise the complete response to the RFQ.

Electronically transmitted responses (FAX, email, etc.) to this RFQ will not be accepted. However, submitted responses must be accompanied by a CD-ROM including electronic copies of any documents submitted.

HIEM will not receive or consider a proposal unless the bidder is determined eligible by the Universal Service Administrative Company and holds a valid Service Provider Identification Number.

There are no mandatory pre-qualifications required for this contract.

There will not be any pre-offer conference.

No engineering drawings or documents will be supplied.

Bid will be awarded on the basis of quality, understanding of project needs and goals & overall cost effectiveness.

## Proposal Submission Requirements

To be responsive to this RFP, proposals shall specifically address the following information. The proposal shall be bound with tabs identifying each section. The body of this statement shall not exceed 25 pages. Under no circumstances will HIEM be responsible for any of the Bidder's costs or expenses incurred in submitting a proposal. Each prospective Bidder responding to this RFP does so solely at its own cost and expense. Proposer must submit 2 copies of the response and a CD-ROM containing an electronic copy of their response. All electronic documents and materials must be submitted in either .doc or .pdf format.

Each Bidder's submission must include:

1. Company Name & Address
2. Contact Name & Address
3. Identity of key employees who will be assigned to provide and service the network elements during fiber back bone deployment, post deployment fiber back bone operation and integration/connection with network spokes into the towns and facilities being serviced by the fiber back bone.
4. The number of calendar days required to deploy and make ready the network elements described above.
5. Actual response documents under the cover of Proposal Form below.

## Selection Criteria

All RFQ responses will be evaluated on the basis of quality, understanding of project needs and goals & overall cost effectiveness.

## Rights Reserved

HIEM reserves the right to:

1. Reject any response not in compliance with all FCC pilot program guidelines or procedures.
2. Reject any response not meeting or differing from the specifications set forth herein.
3. Waive any and all minor irregularities or informality in the response submitted when, in the opinion of HIEM, it is in its best interest to do so.
4. Consider the competency and responsibility of bidders in making any awards.

5. Reject a selected bidder if within a reasonable time determined solely at the discretion of HIEM, Bidder has not executed a project contract.
6. Hold the three bids determined best by HIEM under consideration until the final award is made, provided that HIEM shall award the contract 30 days from the posting date per the official USAC website.
7. Extend the deadline for submitting bids.
8. Seek other proposals, if deemed in the best interest HIEM.
9. Reject all bids and seek other bids, if deemed in the best interest HIEM.

## Bonds

The successful final bidder shall furnish 100% performance and payment bonds payable to HIEM conditioned upon compliance with and fulfillment of all the terms and provisions of the contract, plans and specifications and all applicable laws and the prompt payment, as due, to all persons supplying labor and/or materials for the processing of the work provided for in the specifications.

The bond shall be executed by a surety company authorized to transact business in the State of Montana within ten days after notice of intent to award the contract. The bonds are to be furnished by the company who will build and provide the network elements proposed.

An alternative to bonds as allowed by state statute and subject to the approval of HIEM may be considered. The performance security includes the preparation and completion of design and related professional services as specified in the contract.

## Insurance

The final bidder shall provide the following insurance:

A Certificate of Liability Insurance coverage with a carrier rated A or better by Best Insurance guide, listing the dollar amount of the coverage with the bid, not less than \$5,000,000 total aggregate coverage.

Certificate of Workers' Compensation Insurance.

## Liability

Final bidder, if its response is accepted, shall defend against any and all suits and assume all liability for the use of any patented process, device or article forming a part of the facility furnished and constructed under the contract. It is the intent that HIEM, its officers, directors, personnel, representatives and associates are to receive indemnification from the bidder for any failure to perform, including professional errors and omissions, negligence, design warranties, construction operations and faulty work claims.

## Requirement for Representative in Montana

The successful bidder must be qualified to do business in Montana.

## Solicitation and Award Protest Procedures

Solicitation/Award protests must be submitted in writing within 7 calendar days of solicitation/award posting to:

Charles Pearce  
Health Information Exchange of Montana  
C/O Kalispell Regional Medical Center  
310 Sunnyview Lane  
Kalispell, MT 59901  
[cpearce@krmc.org](mailto:cpearce@krmc.org)

## Negotiations

HIEM shall permit negotiation with bidders. The purpose of negotiations is to approve specific plans, specifications, and other provisions of the contract. If successful negotiations are not concluded with the first selected bidder, HIEM will enter into negotiations with the next selected bidder, continuing in this manner to work down through the next selected bidders until a contract has been negotiated or HIEM determines to reject all proposals.

## Workmanship

Workmanship shall be the best grade and shall conform in all respects to the best practices in the

industry.

## Guaranties and Warranties

The bidder must guarantee all workmanship on work and network elements provided.

The bidder warrants all network elements and other improvements to be free from defects in design, construction and workmanship for a period of two (2) years after the network elements are placed in operation and shall, at its own cost and expense, promptly repair or replace, at the discretion of HIEM, all parts of the fiber back bone or other improvement that fails on account of defective design, materials, construction or workmanship. The bidder and HIEM may, at HIEM's option, arrange for the performance of such necessary work by HIEM, at the expense of the contractor, at the rate of actual labor costs plus 50% overhead and actual material cost.

Bidder further warrants the major components installed in, on and around the fiber back bone and other improvements furnished under their response to be free from defects in construction and workmanship for a period of two (2) years after the fiber back bone is accepted or placed in operation and shall, at its own cost and expense, promptly furnish to HIEM all parts necessary for the repair or replacement of any defective parts. Bidder shall also reimburse HIEM for necessary labor to complete the repair. Costs for such work shall be based upon HIEM's actual labor cost plus 50% overhead and actual material cost.

## Responsibilities for Elements

Other than damage and loss insured under HIEM's property insurance as required by the General Conditions, bidder shall promptly remedy damage and loss and shall assume all costs and be responsible for all the work, materials, equipment, other real or personal property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavement, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction, and all improvements associated with the fiber back bone installation project, prior and up to the transfer of possession to HIEM, upon completion of the contract work.

## Equal Opportunity Employer

In connection with the execution of the contract, the bidder shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, or any other protected class, recognized by state and/or federal law: The bidder shall take affirmative action to insure that applicants are employed and that employees are treated during their employment

without regard to race, religion, color, sex, national origin, or any other protected class, recognized by state and/or federal law. Such actions shall include, but will not be limited to, the following: employment, promotion, demotion or transfer; recruitment or recruitment advertising; lay-off or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

Companies with an employee count of 10 or more are required to have filed a Form 100 with the EEOC.

### No Waiver of Legal Rights

HIEM shall not be precluded or stopped by any measure, completion or acceptance of the work and payment therefore from showing that any such measurement, estimate or certificate is untrue or incorrectly made or that the work or materials do not conform in fact to the contract: HIEM shall not be precluded or stopped, notwithstanding any measurement, estimate or certificate and payment in accordance therewith, from recovering from the bidder for its failure to comply with the terms of the contract. Neither acceptance by HIEM or any representative of HIEM, nor any payment for acceptance of the whole or any part of the work on any extension of time, or any possession taken by HIEM shall operate as a waiver of any portion of the contract or of any power herein reserved of any right to damages herein provided. A waiver of any breach of the contract shall not be held as a waiver of any other subsequent breach of the contract.

### Liquidated Damages

The completion of the fiber back bone is important to HIEM for life/safety communications. If delivery is not timely, HIEM will be damaged. Evaluation of such damages would be difficult, if not impossible, to calculate. The parties, therefore, agree that liquidated damages of \$250.00 per day are part of the consideration for the bidder's price and that the sum of \$250.00 per day is a reasonable sum for such damages.

## Brand Names

To the extent the RFQ specifications profile any brand name or specific piece of equipment, it fits HIEM's needs for this project. If a bidder can provide "equal or better than" materials or equipment, where a particular brand name is mentioned, that is acceptable. This applies throughout the entire RFQ. Acceptability determination is in the sole discretion of HIEM.

## Proposal Form

Health Information Exchange of Montana  
C/O Kalispell Regional Medical Center  
310 Sunnyview Lane  
Kalispell, MT 59901  
[cpearce@krmc.org](mailto:cpearce@krmc.org)

This proposal is submitted to the Health Information and Exchange of Montana (HIEM), C/O Charles T. Pearce, Kalispell Regional Medical Center, 310 Sunnyview Lane, Kalispell, MT 59901

1. 1. The undersigned bidder proposes and agrees, if this proposal is accepted, to enter into a sale agreement with HIEM in the form included in the contract documents and to provide all network elements as specified or indicated in the contract documents for the contract price and within the contract time indicated in this proposal and in accordance with the contract documents.
2. Bidder accepts all of the terms and conditions of the instruction to bidders, including without limitation, those dealing with disposition of bid proposal security. The bid proposals may not be amended or withdrawn and are subject to acceptance for sixty (60) days after the date of proposal opening. Selected bidder will sign the agreement and submit the security and other documents required by the contract documents within ten (10) days after the date of HIEM's notice of intent to award.

In submitting this bid, bidder represents as more fully set forth in the agreement, that:

(a) Bidder has examined copies of the contract documents and the following addenda:

Date: \_\_\_\_\_  
Date: \_\_\_\_\_  
Date: \_\_\_\_\_  
Date: \_\_\_\_\_

and also copies of any advertisement or General Information to Bidders;

(b) Bidder has examined the legal site and locality where the work is to be performed and/or network elements are required, the requirements (federal, state, and local, ordinances, rules, and regulations) and the conditions affecting cost, progress, or performance of work, and has made such independent investigation as HIEM deems necessary;

(c) This proposal is genuine and not made in the interest or on behalf of any undisclosed person, firm, or corporation, and is not submitted in conformity with any agreement or rules of any group, association, organization, or corporation; proposer has not directly or indirectly induced or solicited any other proposer to submit a false or sham proposal; HIEM has not solicited or induced any person, firm, or corporation to refrain from

bidding and HIEM has not sought by collusion to obtain for himself any advantage over any other bidder or HIEM ;

(d) HIEM does not have to award any contract based on the bid proposals submitted. Any award which HIEM makes will be on the basis of quality, understanding of project needs and goals & overall cost effectiveness of the bid response as determined by HIEM.

3. Bid will be awarded on the basis of quality, understanding of project needs and goals & overall cost effectiveness.
4. Bidder will complete the work and/or provide the network elements for the following price:  
\$\_\_\_\_\_00
5. Bidder will complete the work and/or provide the required network elements within \_\_\_\_\_ days of the bid award.
6. Bidder acknowledges that he has reviewed the provisions of this agreement as to liquidated damages and the event of failure to complete the work or provide the network elements on time and has considered those potential damages in formulating this proposal.
7. Bidders acknowledges that if they are unable to complete the project and deliver network components on schedule, due to an act of God, HIEM may at its discretion extend the dates of delivery and project completion.
8. Bidder acknowledges that HIEM, at any time the need arises, may order changes in the scope of the-work without invalidating the Agreement. If such changes increase or decrease the amount due under the contract documents, or in the time required for performance of the work, an equitable adjustment shall be authorized by change order. HIEM or its representative may also, at any time, by issuing a field order, make changes in the details of the work. Unless the bidder reasonably believes the field order is in error as it jeopardizes the work; the health, safety and welfare of workers; or HIEM's future use of the new facilities, the bidder shall proceed with the performance of any changes in the work so ordered, even in the absence of agreement on adjustment, if any, in the contract amount or time lines. If the bidder believes such field order entitled the bidder to a change in contract price or time, or both, or that the field order is in error as described above, bidder shall give HIEM's representative written notice thereof within ten (10) days after receipt of the field order. Thereafter, the bidder shall document the basis for the change in contract price or time within ten (10) days.
9. The following documents are attached to and made a condition to the proposal:

(a) Non-Collusion Affidavit.

10. Bidder agrees and certifies as follows:

(a) The bidder has not discriminated against minorities, women or emerging small business enterprises in obtaining any subcontracts required under this contract.

(b) The bidder has complied with all Federal, State and Local laws with respect to any and all work and/or network elements required in order to fulfill this contract.

11. Communications concerning this bid proposal shall be addressed to:

Bidder Contact: \_\_\_\_\_

Bidder Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Submitted this \_\_\_\_ day or \_\_\_\_\_, 200\_\_.

\_\_\_\_\_

Corporate/Company Name & Seal

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

Business Address: \_\_\_\_\_

Phone: (\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_

State of Incorporation: \_\_\_\_\_

ATTEST:

\_\_\_\_\_

Secretary of Proposing Corporation

Non-Collusion Affidavit  
Health Information Exchange of Montana  
Fiber Back Bone

I state that I am \_\_\_\_\_ of \_\_\_\_\_ and that I am authorized to make this affidavit on behalf of my firm, and its owners, directors, and officers. I am the person responsible in my firm for the price(s) and the amount of this proposal.

I state that:

1. The price(s) and amount of this bid proposal have been arrived at independently and without consultation, communication or agreement with any other contractor, bidder or potential bidder, except as disclosed on the attached appendix.
2. That neither the price(s) nor the amount of this bid proposal, and neither the approximate price(s) nor approximate amount of this bid proposal, have been discussed with any other contractor, bidder or potential bidder, except as disclosed on the attached appendix.
3. No attempt has been made or will be made to induce any firm or person to refrain from bidding on this contract, or to submit a bid proposal higher than this bid proposal, or to submit any intentionally high or noncompetitive bid proposal or other form of complementary bid proposal.
4. My firm has made this bid proposal in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary or other noncompetitive bid proposal.
5. \_\_\_\_\_, its affiliates, subsidiaries, officers, directors and employees are not currently under investigation by any governmental agency and have not in the last four years been convicted of or found liable for any act prohibited by State or Federal law in any jurisdiction, involving conspiracy or collusion with respect to proposing on any public contract, except as described on the attached appendix.

I state that \_\_\_\_\_ understands and acknowledges that the above representations are material and important, and will be relied on by HIEM in awarding the contract(s) for which this bid proposal is submitted. I understand and my firm understands that any misstatement in this affidavit is and shall be treated as fraudulent concealment from HIEM of the true facts relating to the submission of proposals for this contract.

\_\_\_\_\_  
Name of Company

\_\_\_\_\_  
Position

This instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 200\_ by

\_\_\_\_\_  
Notary Public of \_\_\_\_\_

## Agreement

THIS AGREEMENT is made this \_\_\_\_\_ day of \_\_\_\_\_, 200\_, by and between the Health Information Exchange of Montana hereinafter called HIEM, and \_\_\_\_\_ herein after called Contractor, in consideration of mutual covenants hereinafter set forth, agree as follows:

1. Work. Contractor shall complete all work as specified in the contract documents and in accordance with the documents and drawings provided for the project known as the Fiber Back Bone.
2. Materials. Contractor will furnish all materials, permits, supplies, tools, equipment, labor and other services necessary for the construction and completion of the project described herein.
3. Contract Time. The work will commence within ten (10) calendar days after the date of award and all work will be completed and network elements will be provided by the Contractor within \_\_\_\_\_ ( \_ . \_\_\_\_ ) days unless the period for completion is extended otherwise by the contract documents or by written agreement of the parties.
4. Contract Price. HIEM shall pay Contractor for performance of the work and network elements provided in accordance with the documents the sum of \$ \_\_\_\_\_ as shown in the bid proposal.
5. Liquidated Damages. The parties agree that if the work is not completed and the network elements are not provided within the schedule set forth above, the Contractor will be responsible to HIEM for the sum of \$250.00 for each day or part day that the project is incomplete. The parties agree that the liquidated damages provision in this agreement has been considered by the Contractor in establishing the amount of the Contractor's proposal and, as such, is part of the negotiations of this contract. The parties further agree that the amount of liquidated damages is a reasonable forecast of just compensation for the harm caused by any breach and that this harm is one which is impossible or very difficult to accurately estimate. The parties further agree that the damages stated herein are not a penalty.
6. Progress Payments. HIEM shall make progress payments on account of the contract & network element price on the basis of the Contractor's application for payment as recommended by HIEM on or about the last day of each month during construction as provided herein. All progress payments shall be on the basis of progress of the work measured by the schedule of values provided for in the General Conditions. Prior to substantial completion, progress payments will be an amount equal to not more than 95% of the work completed and 95% of the materials and equipment not incorporated in the work, but delivered and suitably stored, less in each case the aggregate of payments previously

made. Upon substantial completion, HIEM shall pay an amount sufficient to increase total payments to Contractor to 95% of the contract price, less such amounts as HIEM shall determine in accordance with the General Conditions. Final payment shall be upon final completion and acceptance of the work and network elements. Payment shall be received for approval at the next regularly scheduled board meeting.

Note: 15% of payment to Contractor will originate with HIEM. 85% of payment will originate with FCC/USAC. HIEM will not pay or be responsible for late interest payments for the FCC portion of payment owed Contractor. HIEM will be responsible for promptly and correctly submitting the necessary forms and documents required by FCC/USAC for release of payment to Contractor.

7. Contract Documents. The term “contract documents” means and included the following:

- (a) Request for Quote;
- (b) General Information to Bidders;
- (c) Bid Proposal;
- (d) Bid Proposal Bond;
- (e) Agreement;
- (f) General Conditions;
- (g) Payment Bond;
- (h) Performance Bond;
- (i) Notice of Award;
- (j) Notice to Proceed;
- (k) Drawings attached;
- (l) Change Orders;
- (m) Addenda;
- (n) Proof of Insurance;
- (o) W-9.

8. Contractor's Representations. In order to induce HIEM to enter into this agreement, Contractor makes the following representations:

(a) Contractor has familiarized himself with the nature and extent of the contract documents, work, locality, and with all local conditions and federal, state, and local laws, ordinances, rules, and regulations which, in any manner, may affect cost, progress, or performance of the work;

(b) Contractor has studied carefully all reports, investigations, and tests of subsurface and latent physical conditions at the site affecting cost, progress, or performance of work which were relied upon in the preparation of the drawings and specifications;

(c) Contractor has made or has caused to be made examinations, investigations, tests and studies of reports and related data, in addition to those referred to in (b), which Contractor deems necessary for the performance of the work, determination of the contract price, and completion of the building within the contract time in accordance with the other terms and conditions of the contract documents. No additional examinations, investigations, tests, reports, or similar data are or will be

required by Contractor for such purposes;

(d) Contractor has reconciled the results of all such observations, examinations, investigations, tests, reports, and data with the terms and conditions of the contract documents;

(e) Contractor has given HIEM's representative written notice of all conflicts, errors or discrepancies which he has discovered in the contract documents and the written resolution thereof by HIEM's representative is acceptable to the Contractor.

9. Miscellaneous.

(a) No assignment by a party hereto of any rights under or interests in the contract documents will be binding on another party to this contract without the written consent of the parties sought to be bound; and specifically but without limitation, monies which may become due and monies which are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law) and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the contract documents.

(b) This agreement shall be binding upon all parties to the contract and their respective partners, successor, heirs, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the contractual documents.

THIS AGREEMENT is effective on the \_\_\_ day of \_\_\_\_\_, 200\_;

HIEM:

Contractor:

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

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

Address for giving notices:

Address for giving notices:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

ATTEST:

ATTEST:

\_\_\_\_\_

\_\_\_\_\_

## General Conditions

Section I. Definitions - Whenever used in these General Conditions or in the other contract documents, the following terms have the meanings indicated which are applicable in both the singular and plural or masculine or feminine thereof:

1. Addenda - Written or graphic instruments issued prior to the execution of the Agreement which modify or interpret the contract documents, drawings and specifications by additions, deletions, clarifications, or corrections.
2. Bid Proposal - The offer or proposal of the proposer submitted on the prescribed form setting forth the prices for the work to be performed.
3. Bonds - Proposal, performance and payment bonds and other instruments of security.
4. Change Order - A written order to the Contractor signed by HIEM authorizing an addition, deletion or revision in the work, or an adjustment in the contract price or the contract time issued after the effective date of the agreement.
5. Contract Price - The total monies payable to the Contractor under the terms and conditions of the contract documents.
6. Contract Time - The number of calendar days stated in the contract documents for completion of the work.
7. Contractor - The person, firm, or corporation with whom HIEM has executed the Agreement.
8. Drawings - The part of the contract documents which show the characteristic and scope of the work to be performed and are referred to in the contract documents.
9. HIEM Representative - That person appointed by the Board of Directors of HIEM to act as HIEM's representative in all matters relating to this contract.
10. Field Order- A written order issued by HIEM representative which orders minor changes in work not involving an adjustment in the contract price or an extension of the contract time.
11. Substantial Completion - The date certified by HIEM representative when the construction of the project or a specified part thereof is sufficiently completed in accordance with the contract documents so that the project or a specified part can be utilized for purposes for which it is intended.
12. Subcontractor - An individual, firm, or corporation having a direct contract with the Contractor or with any other subcontractor for the performance of a part of the work at the site.
13. Supplier - Any person or organization who supplies materials or equipment for the work,

including that fabricated to a special design but who does not perform labor at the site.

14. Work - All labor necessary to produce the construction required by the contract documents and all materials and equipment incorporated or to be incorporated in the project.
15. Written Notice - Any notice to any party to the Agreement or relative to any part of this agreement in writing and considered delivered and the service thereof completed when posted by certified mail or registered mail to the party at his last given address as shown on the Agreement, or when delivered in person to the party or his authorized representative on the work.

## Section 2. Preliminary Matters

1. Delivery of Bonds - When the Contractor delivers the executed Agreements to HIEM, Contractor shall also deliver to HIEM such bonds as the Contractor may be required to furnish.
2. Copies of Documents - HIEM shall furnish to Contractor up to three (3) copies of the contract documents as are reasonably necessary for the execution of the work. Additional copies will be furnished upon request at the cost of reproduction.
3. Commencement of Contract Time - The contract time will commence to run on the day indicated in the Notice to Proceed.
4. Insurance - Before undertaking any work on the project, Contractor shall provide HIEM with certificates of insurance including a comprehensive general liability and other insurance as will provide protection for the claims set out below which may arise out of or result from Contractor's performance of the work and Contractor's other obligations under the contract documents whether such performance is by Contractor or any subcontractor, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:
  - (a) Claims under workers or worker's compensation disability benefits or other similar employee benefits;
  - (b) Claims for damages because of bodily injury, occupational sickness or disease or death of Contractor's employees;
  - (c) Claims for damages because of bodily injury, sickness or disease of any person other than Contractor's employees;
  - (d) Claims for damages insured by personal injury liability coverage which is sustained by any person as a result of an offense directly or indirectly related to the employment of such person by Contractor or by any other person for any other reason;
  - (e) Claims for damages other than to the work itself because of injury or destruction of tangible property, including loss of use resulting there from;
  - (f) Claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.
  - (g) The limits of such liability shall be comprehensive general liability, \$5,000,000; automobile, \$500,000; bodily injury \$500,000; and property damage \$50,000.
5. HIEM Insurance - HIEM shall be responsible for purchasing and maintaining its own liability insurance. HIEM shall also purchase and maintain property insurance upon the work at the site to the full insurable value thereof and shall include the interest of HIEM, Contractor and subcontractors in the work against the perils of fire and extended coverage. All other risk of loss at the work site shall be borne by Contractor until acceptance of work and network

elements by HIEM.

6. Subrogation Waiver - HIEM and Contractor waive all rights against each other and the subcontractors and their agents and employees for damages caused by fire or other perils to the extent covered by insurance provided in the above paragraph. The Contractor shall require similar written waivers from each subcontractor and each such waiver shall be in favor of all other parties enumerated in this paragraph.

### Section 3. Contract Documents

1. The contract documents comprise the entire agreement between HIEM and Contractor concerning work and network elements. They may be altered only by written modification.
2. The contract documents are complementary; what is called for by one is binding as if called for by all. If, during the performance of the work, Contractor finds a conflict, error or discrepancy in the contract documents, Contractor shall report it to HIEM representative in writing at once and before proceeding with the work affected thereby.
3. It is the intent of the specifications and drawings to describe the complete project to be constructed in accordance with the contract documents. Any work which may reasonably be inferred from the specifications or drawings as being required to produce the intended result shall be supplied whether or not it is specifically called for. When words which have a well known technical or trade meaning are used to describe work, materials, or equipment, such words shall be interpreted in accordance with such meaning. Reference to standard specifications, manuals, or codes of any technical society, organization, or association, or to the code of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard, specification, manual or code in effect at the time of the opening of the proposal, except as may be otherwise specifically stated. However, no provision of any reference, standard, specification, manual or code shall change the duties and responsibilities of HIEM, Contractor, or any of their agents or employees from those set forth in the contract documents. Clarifications and interpretations of the contract documents shall be issued by HIEM representative.
4. Re-use of Documents - Neither Contractor nor any subcontractor, manufacturer, fabricator, supplier, or distributor shall have or acquire any title to or ownership rights in any of the drawings, specifications, or other documents which are a part of this contract. They may not be re-used by any party without the express written consent of the owner and of the preparer of the drawings.

#### Section 4. Materials, Service and Facilities

1. It is understood that, except as otherwise specifically stated in the contract documents, the Contractor shall provide and pay for all materials, labor, tools, equipment, water, lights, power, transportation, supervision, temporary construction of any nature, and all other services and facilities of any nature whatsoever necessary to execute, complete, and deliver the work within the specified time.
2. Materials and equipment shall be stored so as to ensure the preservation of their quality and fitness for the work. Stored materials and equipment to be incorporated in the work shall be located so as to facilitate prompt inspection. All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned as directed by the manufacturer.
3. All materials and equipment shall be of good quality and new except as otherwise provided in the contract documents.
4. Equivalent- Materials and Equipment - Whenever materials or equipment are specified or described in drawings or specifications by using the name of proprietary item or the name of a particular manufacturer, fabricator, supplier or distributor, the name of the item is intended to establish the type, function and quality required. Unless the name is followed by words indicating that no substitution is permitted, materials or equipment of other manufacturers, fabricators, suppliers, or distributors may be accepted by HIEM representative if sufficient information is submitted by Contractor to allow HIEM representative to determine that the material proposed is equivalent to that named,
5. Contractor shall be fully responsible for all acts and omissions of his subcontractors and of persons and organizations directly or indirectly employed by them and of persons or organizations for whose acts any of them may be liable to the same extent Contractor is responsible for the acts and omissions of persons directly employed by Contractor. Nothing in these documents creates any obligation on the part of HIEM to pay or to see to the payment of any monies due any subcontractor or other person or organization except as may otherwise be required by law.
6. Contractor shall be solely responsible for obtaining on behalf of HIEM all governmental authority, including but not limited to rights of way, easements, building permits, and permits needed to comply with all environmental and zoning laws.

## Section 5. Fees, Taxes and Permits

1. Contractor shall pay all applicable royalties and license fees. Contractor shall defend all suits or claims for infringement of any patent rights and save HIEM harmless from loss on account thereof.
2. All permits and licenses, including SDC or other governmental fees, licenses and inspections required for construction shall be obtained at the expense of Contractor. HIEM shall assist the Contractor when necessary in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the work, and which are applicable at the time of opening the proposals. Contractor shall pay all charges of utility service companies for connections to the work. Contractor shall pay all sales, consumer, use and other similar taxes required to be paid by him in accordance with the laws of the place of the project.

## Section 6. Survey, Permits and Regulations

1. HIEM shall furnish all boundary surveys and establish all base lines for locating principal component parts of the work together with a suitable number of bench marks adjacent to the work as shown in the contract documents. From the information provided by HIEM, unless otherwise specified in the contract document, Contractor shall develop and make all detailed surveys needed for construction such as slope stakes, stakes for piling locations, and other working points, lines, elevations and cut sheets.
2. The Contractor shall carefully preserve bench marks, reference points and stakes and, in case of willful or careless destruction, Contractor shall be charged with the resulting expense and shall be responsible for any mistakes which may be caused by unnecessary loss or disturbance.

## Section 7. Protection of Work, Property and Persons

Contractor will be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the work. Contractor will take all necessary precautions for the safety of, or provide the necessary protection to prevent injury, damage, or loss to all employees on the work and other persons who may be affected thereby, all the work and all materials or equipment to be incorporated therein, whether in storage on or off the site, and the property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designed for removal, relocation, or replacement in the course of construction. Contractor will remedy all damage, injury or loss to any property caused, directly or indirectly, in whole or in part, by the Contractor, any subcontractor, or anyone directly or indirectly employed by any of them or any for whose acts any of them may be liable except for acts directly attributable to HIEM or HIEM's representative or any employed by either of them and whose acts are not attributable directly or indirectly in whole or in part to the fault or negligence of Contractor.

Contractor will notify HIEM immediately in the case of any workman's compensation related injury or event. Contractor will conduct safety meetings at the beginning of each shift and maintain supporting documentation for a period of 2 years after the completion of the project. This documentation will be made available to HIEM immediately upon request.

## Section 8. Supervision by Contractor

The Contractor will supervise and direct the work. Contractor will be solely responsible for the means, methods, techniques, sequences, and procedures of construction. The Contractor will employ and maintain on the work a qualified supervisor who shall have been designated in writing by the Contractor as the Contractor's representative at the site. The supervisor shall have full authority to act on behalf of the Contractor and all communications given to the supervisor shall be as binding as if given to the Contractor. The supervisor shall be present on the site at all times as required to perform adequate supervision and coordination of the work.

## Section 9. Changes in Work

HIEM, at any time the need arises, may order changes in the scope of the-work without invalidating the Agreement. If such changes increase or decrease the amount due under the contract documents, or in the time required for performance of the work, an equitable adjustment shall be authorized by change order. HIEM or its representative may also, at any time, by issuing a field order, make changes in the details of the work. Unless the Contractor reasonably believes the field order is in error as it jeopardizes the work; the health, safety and welfare of workers; or HIEM's future use of the new station, the Contractor shall proceed with the performance of any changes in the work so ordered, even in the . absence of agreement on adjustment, if any, in the contract amount or time lines. If the Contractor believes such field order entitled the Contractor to a change in contract price or time, or both, or that the field order is in error as described above, Contractor shall give HIEM's representative written notice thereof within two (2) days after receipt of the field order. Thereafter, the Contractor shall document the basis for the change in contract price or time within five (5) days.

## Section 10. Changes in Contract Price

The contract price may be changed only by a written signed change order. The value of any work covered by a change order or of any claim for increase or decrease in the contract price shall be determined by one or more of the following methods in the order of precedence listed below:

1. Unit prices previously approved.
2. An agreed lump sum.
3. The actual cost of labor, direct overhead, materials, supplies, and other services necessary to complete the work plus an amount not to exceed 10% of the actual work to cover the cost of general overhead profit.

## Section 11. Limitations on Liquidated Damages

The Contractor shall not be charged with liquidated damages when the delay in completion of the work is due to the following and the Contractor has promptly given written notice of such delay to HIEM or its representative:

1. Unforeseeable causes beyond the control and without the fault or negligence of Contractor, including but not restricted to acts of God or of the public enemy, acts of HIEM, acts of another Contractor in performance of the contract with HIEM, fires, floods, epidemics, quarantine restriction, strikes, freight embargoes, and abnormal and unforeseen weather; an
2. Any delays of subcontractors occasioned by any of the causes specified above.

## Section 12. Correction of Work

1. Contractor shall promptly remove from the premises all work rejected by HIEM's representative for failure to comply with the contract documents, whether incorporated in construction or not, and the Contractor shall promptly replace and re-execute the work in accordance with the contract documents and without expense to HIEM and shall bear the expense of making good all work of other Contractors destroyed or damaged by such removal or replacement.
2. All removal and replacement work shall be done at contractor's expense. If Contractor does not take action to remove rejected work within five (5) days after receipt of written notice, HIEM may remove such work and store the materials at the expense of the Contractor.
3. HIEM may request the immediate removal of any employee from the project at any time and for any reason. Contractor will comply with this request.

## Section 13. Subsurface Conditions

The Contractor shall promptly and before such conditions are disturbed, except in the event of an emergency, notify HIEM by written notice of:

1. Subsurface or latent physical conditions at the site differing materially from those in the contract documents, if indicated.
2. Unknown physical conditions at the site of an unusual nature, differing markedly from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the contract.

HIEM shall promptly investigate the conditions and if found that such conditions do so materially differ and cause an increase or decrease in the cost of or in the time required for performance of the work, an equitable adjustment shall be made and the contract documents shall be modified by a change order. Any claim of the Contractor for adjustment hereunder shall not be allowed unless Contractor has given the required written notice.

#### Section 14. Suspension of Work, Termination Delay

1. If Contractor is adjudged a bankrupt or insolvent or if Contractor makes a general assignment for the benefit of Contractor's creditors, or if a trustee or receiver is appointed for the Contractor or for any of Contractor's property, or if Contractor files a petition to take advantage of any debtor's act or to reorganize under bankruptcy or applicable laws, or if Contractor repeatedly fails to supply sufficient skilled workmen or suitable material or equipment, or if Contractor repeatedly fails to make prompt payments to subcontractors for labor, materials, or equipment, or if Contractor disregards laws, ordinances, rules, regulations, or orders of any public body having jurisdiction of the work, or if Contractor disregards the authority of HIEM's representative or if Contractor otherwise violates any provision of the contract documents, then HIEM may, without prejudice to any other right or remedy, after giving the Contractor and his surety a minimum of five (5) day's notice from delivery of the written notice, terminate the services of the Contractor and take possession of the project and all materials, equipment, tools, construction equipment, machinery thereon owned by Contractor and finish the work by whatever method Contractor may deem expedient. In such case, the Contractor shall not be entitled to receive any further payment until the work is finished. If the unpaid balance of the contract price exceeds the direct and indirect costs of completing the project, including compensation for additional professional services, such excess shall be paid to the Contractor. If the costs exceed such unpaid balances, the Contractor will pay the difference to HIEM. Such costs incurred by HIEM will be determined by HIEM and incorporated in a change order.
2. Where the Contractor's services have been so terminated by HIEM, the termination shall not affect any right of HIEM against the Contractor then existing or which may thereafter accrue. Any retention or payment of monies by HIEM due the Contractor will not release the Contractor from compliance with the contract documents.
3. After five (5) days from delivery of written notice to the Contractor, HIEM may, without cause and without prejudice to any other right or remedy, elect to abandon the project and terminate the contract. In such case, the Contractor shall be paid for all work executed and any expense sustained plus reasonable profit for the work performed.

#### Section 15. Equal Opportunity

The Contractor agrees to comply-with the applicable provisions of the Equal Opportunity Act of 1972 and the Civil Rights Act of 1964 as amended. The Contractor shall have the obligation to ensure that the employees and applicants for employment are not discriminated against because of race, creed, color, sex, or national origin.

## Section 16. HIEM Requirements

1. Contractor shall pay promptly, as due, all persons supplying labor or materials for the prosecution of the work provided for in the contract, and shall be responsible for such payment of all persons supplying such labor or material to any Subcontractor.

(a) HIEM requires the prime contractor to include a clause in each subcontract requiring contractor to pay the first-tier subcontractor for satisfactory performance under its subcontract within ten (10) days out of such amounts as are paid to the prime contractor by the public contracting agency; and

(b) HIEM requires the prime contractor to include a clause in each subcontract requiring contractor to pay an interest penalty to the first-tier subcontractor if payment is not made within thirty (30) days after receipt of payment from the public contracting agency.

(c) HIEM requires the prime contractor to include in every subcontract a requirement that the payment and interest penalty clauses be included in every contract between a subcontractor and a lower-tier subcontractor or supplier.

(d) HIEM reserves the right to approve or reject all subcontractors prior to the start of work.

2. Contractor shall not permit any lien or claim to be filed or prosecuted against HIEM on account of any labor or material furnished and agrees to assume responsibility for satisfaction of any such lien so filed or prosecuted.
3. HIEM is not responsible, but may withhold funds owed to the Contractor, for payment of any claim for labor or materials furnished to the Contractor or a Subcontractor by any person in connection with the contract as such claim becomes due, the public contracting agency may pay such claim to the persons furnishing the labor or material and charge the amount of payment against funds due or to become due Contractor by reason of the contract. If Contractor fails, neglects or refuses to make prompt payment of any claim for labor or materials furnished to the Contractor or a Subcontractor by any person in connection with the contract as such claim becomes due, the public contracting agency may pay such claim to the persons furnishing the labor or material and charge the amount of payment against funds due or to become due Contractor by reason of the contract. Should HIEM choose to make payment of a claim in the manner authorized hereby shall not relieve the Contractor or his surety from this or its obligation with respect to any unpaid claim. If HIEM is unable to determine the validity of any claim for labor or material furnished, HIEM may withhold from any current payment due Contractor an amount equal to said claim until its validity is determined and the claim, if valid, is paid.
4. If the Contractor or a first-tier Subcontractor fails, neglects, or refuses to make payment to a person furnishing labor or materials in-connection with the public contract for a public

improvement within thirty (30) days after receipt of payment from the public contracting agency or contractor, the contractor or first-tier subcontractor shall owe the person the amount due plus interest charges commencing at the end of the ten (10) day period that payment is due and ending upon final payment, unless payment is subject to a good faith dispute. The rate of interest charged to Contractor or first-tier Subcontractor on the amount due shall equal three times the discount rate on ninety (90) day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve District that includes Montana on the date that is thirty (30) days after the date when payment was received from the public contracting agency or from the Contractor, but the rate of interest shall not exceed thirty (30) percent. The amount of interest may not be waived. HIEM shall not be responsible for any interest as it may relate to the FCC/USAC portion of any payments owed.

5. Contractor shall promptly, as due, make payment to any person, co-partnership, association, or corporation, furnishing medical, surgical and hospital care or other needed care and attention, incident to sickness or injury, to employees of such Contractor, of all sums which the Contractor agrees to pay for such services and all monies and sums which the Contractor collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service.
6. The Contractor must give notice to employees who work on this contract in writing, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and the days per week that the employees may be required to work.
7. Contractor certifies that it has not discriminated against minorities, women or emerging small business enterprises in obtaining any required subcontractors.
8. Contractor certifies its compliance with the Montana tax laws.

## Section 17. Warranty and Guarantee

1. Contractor warrants and guarantees to HIEM that all work will be in accordance with the contract documents and will not be defective. Prompt notice of all defects shall be given to Contractor. All defective work, whether or not in place, may be rejected, corrected or accepted. Contractor understands that in Montana, its various departments, and agencies, might have to be consulted and be allowed to inspect the work and sign off in each particular area where work is performed or network elements are provided. At all times HIEM representative and appropriate inspectors shall have access to the work for inspection and testing. Contractor shall provide proper and safe , conditions for such access.
2. Where any law, ordinance, rule, regulation, code, or other order of any public body having jurisdiction requires any work or part thereof to specifically inspected, tested or approved, Contractor shall assume full responsibility therefore and pay all costs in connection therewith and furnish HIEM representative the required certificates of inspection, testing or approval. If any work to be inspected, tested, or approved is covered without written concurrence of HIEM representative, it must be, if requested, uncovered for observation. Such uncovering shall be at the Contractor's expense.
3. Neither observations by HIEM representative nor inspection tests or approvals by others shall relieve the Contractor from Contract's obligations to perform the work in accordance with the contract documents.
4. If, within two (2) year(s) after the date of final completion and sign-off and payment of any retainage by HIEM to the Contractor, there is any defect in materials or workmanship, the Contractor shall promptly, without cost to HIEM and in accordance with HIEM's written instructions, either correct such defective work or, if it has been rejected by HIEM, remove it from the site and replace it with non-defective work. If Contractor does not promptly comply with the terms of such instructions, or in an emergency where a delay would cause serious risk of loss or damage, HIEM may have the defective work corrected or the rejected work removed and replaced, and all direct or indirect costs of such removal and replacement including compensation for additional professional services shall be paid by Contractor. Such additional professional services include the services of any attorney employed by HIEM to assist it in dealings with the Contractor. If the Contractor does not pay for such work, or does not see that such work is performed as required by this section, a claim may be made upon Contractor's bond for payment of such work. All notices sent to Contractor shall have copies sent to Contractor's surety.
5. Contractor warrants and guarantees that title to all work, materials, and equipment covered by the application for payment, whether incorporated in the project or not, will pass to HIEM at the time of payment, free and clear of all liens, claims, security interests and encumbrances of any kind and by any party whomsoever.

## Section 18. Bond Form

All bond forms shall be in the standard forms of the issuing company.

## Section 19. Payments to Contractor

1. By the 26th day of each month, the Contractor will submit to HIEM representative a partial payment estimate filled out and signed by the Contractor covering the work performed during the period covered by the partial payment estimate and supported by such data as HIEM's representative may reasonably require. If payment is requested on the basis of materials and equipment not incorporated in the work but delivered and suitably stored at or near the site, the partial payment estimate shall also be accompanied by such supporting data, satisfactory to HIEM. The HIEM's representative will, within ten (10) days after receipt of each partial payment estimate, either indicate in writing his approval of payment and present the partial payment estimate to HIEM, or return the partial payment estimate to the Contractor indicating in writing his reasons for refusing to approve payment. In the latter case, the Contractor may make the necessary corrections and resubmit the partial payment estimate. HIEM will, within 10 days of the next board meeting after presentation to it of an approved partial payment estimate, but in no event later thirty (30) days after receipt of Contractor's invoice, pay the Contractor a progress payment on the basis of the approved partial payment estimate. HIEM shall retain five percent (5%) of the amount of each payment until final completion and acceptance of all work covered by the contract documents. HIEM at any time, however, after fifty percent (50%) of the work has been completed, if it finds that satisfactory progress is being made, may reduce retainage on the current and remaining estimates. When the work is substantially complete (operational or beneficial occupancy), the retained amount may be further reduced to only that amount necessary to assure completion. On completion and acceptance of a part of the work on which the price is stated separately in the contract documents, payment may be made in full, including retained percentages, less authorized deductions.
2. The request for payment may also include an allowance for the cost of such major materials and equipment which are suitably stored either at or near the site.
3. Prior to substantial completion, HIEM, with the approval of HIEM representative and with the concurrence of the Contractor, may use any completed or substantially completed portions of the work. Such use shall not constitute an acceptance of such portions of the work.
4. HIEM shall have the right to enter the premises for the purpose of doing work not covered by the contract documents. This provision shall not be construed as relieving the Contractor of the sole responsibility for the care and protection of the work, or the restoration of any damaged work except such as may be caused by agents or employees of HIEM. Such entry or work shall only be allowed to the extent it does not interfere with the Contractor's work.

5. Upon completion and acceptance of the work, HIEM representative shall issue a certificate attached to the final payment request that the work has been accepted under the conditions of the contract documents; The entire balance found to be due the Contractor, including the retained percentages, but except such sums as may be lawfully retained by HIEM, shall be paid to the Contractor within thirty (30) days of completion and acceptance of the work.
6. The Contractor will indemnify and save HIEM or HIEM's agents harmless from all claims growing out of the lawful demands of subcontractors, laborers, workmen, mechanics, material, and furnishers or machinery and parts thereof, equipment, tools, and all supplies, incurred in the furtherance of the performance of the work. The Contractor shall, at HIEM's request, furnish satisfactory evidence that all obligations of the nature designated above have been paid, discharged or waived. If the Contractor fails to do so, HIEM may, after having notified-the Contractor, either pay unpaid bills or withhold from the Contractor's unpaid compensation a sum of money deemed reasonably sufficient to pay any and all such lawful claims until satisfactory evidence is furnished that all liabilities have been fully discharged whereupon payment to the Contractor shall be resumed in accordance with the terms of the contract documents, but in no event shall the provisions of this sentence be construed to impose any obligations upon HIEM to either the Contractor, his surety or any third party. In paying any unpaid bills of the Contractor, any payment so made by HIEM shall be considered as a payment made under the contract documents by HIEM to the Contractor and HIEM shall not be liable to the Contractor for any such payments made in good faith. The Contractor will also indemnify and save HIEM or HIEM's agents harmless from all claims growing out of any failure to secure required governmental authority of any kind, needed to properly complete its performance under the contract, including but not limited to, rights of way, easements, environmental approvals, building permits, inspections, zoning approvals, workers' compensation insurance, or OSHA.
7. If HIEM fails to make payment thirty (30) days after approval by HIEM representative, in addition to the other remedies available to the Contractor, there shall be added to each such payment interest at the maximum legal rate commencing on the first day after said payment is due-and continuing until the payment is received by the Contractor.
8. Upon project completion and final sign off by HIEM title to material and equipment will be establish by HIEM. Contractors insurance will cover all materials and equipment until project completion and final sign off.

#### Section 20. Cleanup

1. From time to time as the work progresses and immediately after completion of the work, the Contractor shall clean up and remove all refuse and unused materials of any kind resulting from the work. Upon failure to do so within 24 hours after directed, the work may be done by HIEM and the cost thereof to be deducted from any payment due the Contractor.
2. After all other work embraced in the contract is completed and before final acceptance of the contract, the entire right-of-way and driveways, alleys, and side street approaches, slopes, ditches, utility trenches, and construction areas shall be neatly finished to the lines, grades and cross sections shown in the specifications.
3. As a condition precedent to final acceptance of the project, the Contractor shall remove all

equipment and temporary structures, and all rubbish, waste and generally clean the right-of-way and premises.

#### Section 21. Use of Light, Power and Water

The Contractor shall furnish temporary light, power, and water complete with connecting piping, wiring, lamps, and similar equipment necessary before the work is improved. The Contractor shall install, maintain and remove temporary lines upon completion of work. The Contractor shall obtain all permits and bear all costs in connection with temporary services and facilities at no expense to the owner.

#### Section 22. Arbitration

1. All claims, disputes, and other matters in question between HIEM and Contractor arising out of, or relating to the contract documents, including rescission, reformation, enforcement, or the breach thereof except for claims which may have been waived by the making or acceptance of final payment, may be decided by arbitration in HIEM's sole discretion, in accordance with any additional rules mutually agreed to by both parties.
2. No demand for arbitration of any claimed dispute or other matter shall be effective until after a claim or demand is made to the Board of Directors and the Board of Directors at its next regularly scheduled meeting has rendered a written decision with respect thereto denying the claim or demand. No demand for arbitration of any such claim, dispute, or other matter shall be made later than thirty (30) days after the date on which the board has rendered a written decision in respect herein. The failure to demand arbitration within said 30 days shall result in the board's decision being binding upon the board and the Contractor.
3. Notice of demand for arbitration shall be filed in writing with the other party to the agreement: The demand for arbitration shall be made within the 30-day period specified above. HIEM, if not the party demanding arbitration, has the option of allowing the matter to proceed with arbitration or by written notice within five (5) days after receipt of a demand for arbitration, reject arbitration and require the other party to proceed through the courts for relief. If arbitration is followed, the parties agree that the award rendered by the arbitrators will be final, judgment may be entered upon it in any court having jurisdiction thereof, and will not be subject to modifications or appeal except to the extent permitted by Montana law.
4. If HIEM and the Contractor cannot agree upon the person to act as an impartial arbitrator, the Federal Mediation and Conciliation Service shall be requested to submit a list of five arbitrators. HIEM and the Contractor shall alternatively strike two names. The right to strike first shall be determined by lot or as otherwise agreed by the parties. After each party has exercised its right to strike two names, the one remaining on the list shall be designated as the impartial arbitrator.
5. The authority of the arbitrator shall be limited to determining only questions involving the

interpretation or application of an expressed provision of this agreement and all other matters are excluded from arbitration. The arbitrators shall have no authority to add to, subtract from, or to change any of the terms of the agreement, to change any existing wage/contract rate, to establish a new wage/contract rate or to attempt to interpret or apply in any manner whatsoever any alleged implied obligations as against either HIEM or the Contractor. The decision of the arbitrator shall be final and binding on each of the parties, and they will abide thereby subject to such laws as may apply. The fee charged by the arbitrator shall be borne equally by HIEM and the Contractor. Any issue or dispute not presented or carried forward by either party in a timely manner shall be considered settled in the favor of the party that presents the last written answer accepted by the arbitrator. If either party decides to pursue the case this decision will be without prejudice to position of either party.

### Section 23. Attorney's Fees.

If suit, action or arbitration is brought either directly or indirectly to rescind, interpret or enforce the terms of this contract, the prevailing party shall recover and the losing party hereby agrees to pay reasonable attorney's fees incurred in such proceeding, in both the trial and appellate courts, as well as the costs and disbursements. Further, if it becomes necessary for HIEM to incur the services of an attorney to enforce any provision of this contract without initiating litigation, Contractor agrees to pay HIEM's attorney's fees so incurred. Such costs and fees shall bear interest at the maximum legal rate from the date incurred until the date paid by losing party.