

**GENERAL CONDITIONS
TABLE OF CONTENTS**

1. DEFINITIONS 1

2. SCOPE OF CONTRACT 2

3. EXECUTION, CORRELATION AND INTENT OF DOCUMENTS..... 2

4. PROJECT AREA..... 2

5. VERBAL AGREEMENTS..... 2

6. MODIFICATIONS 2

7. SCHEDULING AND PRECONSTRUCTION CONFERENCE 2

8. BONDS, WORKMAN COMPENSATION, PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE 3

9. LANDS FOR WORK..... 4

10. DIFFERING SITE CONDITIONS..... 4

11. MATERIALS, APPLIANCES, EMPLOYEES AND EQUIPMENT 5

12. FIRE PREVENTION 6

13. PROTECTION OF EXISTING STRUCTURES, UTILITIES AND WORK..... 6

14. COORDINATION 7

15. SAFETY..... 7

16. ROYALTIES AND PATENTS 8

17. TAXES 8

18. COMPLIANCE WITH LAWS, RULES, ORDINANCES AND REGULATIONS..... 9

19. SHOP DRAWINGS 9

20. GENERAL GUARANTY 10

21. WARRANTY OF TITLE 11

22. CERTIFICATE OF COMPLIANCE WITH STANDARDS AND CODES 11

23. INDEMNITY AND HOLD HARMLESS 12

24. TESTS AND INSPECTIONS..... 13

25. AUTHORIZED CHANGES IN THE WORK 13

26. DELAY/ EXTENSIONS OF CONTRACT TIME 14

27. SCHEDULING UPDATES 15

28. VARIATIONS IN QUANTITIES..... 15

29. CORRECTIONS, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK 15

30. LIQUIDATED DAMAGES	17
31. COUNTY AND PROJECT MANAGER’S RIGHT TO TERMINATE CONTRACT/SUSPENSION AND TERMINATION FOR CONVENIENCE	18
32. CONTRACTOR’S RIGHT TO STOP WORK OR TERMINATE CONTRACT	21
33. PAYMENTS WITHHELD PRIOR TO FINAL ACCEPTANCE OF WORK	21
34. ASSIGNMENT.....	22
35. SEPARATE CONTRACTS	22
36. CLAIMS REVIEW PROCESS.....	22
37. COVENANT AGAINST CONTINGENT FEES OR GRATUITIES	25
38. SITE RESTORATION AND CLEANUP	25
39. CONTRACT PERIOD	26
40. COST INFORMATION AND CERTIFICATION	26
41. MANNER OF PAYMENT	27
42. CONTRACTOR FOR PUBLIC WORKS TO PAY OR SECURE TAXES	28
43. COST INFORMATION AND CERTIFICATION	29
44. PAYMENT FOR EXTRA WORK	29
45. NOTIFICATION OF CESSATION OR RESTART OF WORK.....	29
46. CONTRACT PRICING.....	32

GENERAL CONDITIONS

1. DEFINITIONS

Contractor: The successful bidder or an authorized agent (in writing) to be present on the contractor's behalf.

County: Idaho County is the holder of the FEMA Hazard Mitigation Grant, and approver for reimbursement of said funds. Reimbursements will be awarded from the County.

Project Manager: The contract supervisor. As an agent representing the interests of Idaho County. It is understood and agreed between parties that this contract does not create an employer/employee relationship. Idaho County is in no way associated or otherwise connected with the performance of any service under this contract.

(EDRR) Early Detection and Rapid Response: Approach used to monitor and control invasive plants in areas of highest concern for the spread of invasive plants.

Hang ups: Partially severed trees or stems severed but not on the ground.

Invasive Plant: A non-native plant species that is able to grow and spread quickly to the point of adversely affecting native plant communities and ecosystems (U.S. Department of Agriculture, Natural Resources Conservation Service)

Leave tree: A preferred tree or bush to be retained within the vegetation management area as designated by the Project Manager, identified and, or corresponded to the Contractor.

Masticate: The chipping of undesired material and plants using a drum style chipping head.

Mulch: By product of chipping.

Native Plant: A plant that is part of the balance of nature in a particular region or ecosystem; this natural balance has likely developed over centuries or millennia.

OHWM Ordinary High-Water Mark: The normal upper most scour mark of the stream caused by the flowing waters of the stream.

Riparian Restoration: The act of restoring riparian areas (the interface between land and the river or stream) to their original, pre-wildfire conditions through methods such as removal of invasive species and planting or reseeding native species.

Slash: All severed trees, tops and debris created as a result of cutting activity.

Soil Stabilization: The act of altering physical, chemical, or biological properties of soils to improve qualities such strength and provide erosion control.

Targeted Invasive Weed Species: In this project this list will include meadow knapweed, Rush Skeletonweed, yellow toadflax, leafy spurge, hardheads, Japanese knotweed, and yellow starthistle.

Units: For the purpose of this contract identifies areas of vegetation management which are shown on project maps.

Weed: A plant that is not valued in the location in which it is growing; weeds can be native or nonnative species.

2. SCOPE OF CONTRACT

It is the intention of this agreement that Work shall be done in a workmanlike manner, as called for in the Contract Documents to the satisfaction and final approval of the County and Project Manager.

3. EXECUTION, CORRELATION AND INTENT OF DOCUMENTS

This project is focused on Riparian Restoration, and Upland Vegetation Restoration and Reseeding. Riparian Restoration will include removing invasive blackberry thickets within 100+- feet of the ordinary high-water mark of ephemeral streams, within the footprint of the Clearwater Complex Fire, with the use of mastication or hand equipment, and the joint use of spot chemical treatment, planting of native trees and shrubs, and reseeded with native seed mixes. Upland Vegetation Restoration and Reseeding will include application of chemical to treat invasive weed species and reseeded of the sites with native or approved non-native grass mixes.

4. PROJECT AREA

The Clearwater Complex Vegetation Management Project encompasses approximately 1785 acres within the burn scar of the Clearwater Complex Fire on privately owned property. The project area includes work along perennial waterways such as the Clearwater River, Lolo Creek, Lawyer Creek, Sevenmile Creek, Tom Taha Creek, numerous ephemeral streams; County road rights-of-way (ROW), and on State, Tribe, and private property affected by the fire.

5. VERBAL AGREEMENTS

No verbal agreements or conversations with any officers, agents, or employees of the County and Project Manager, either before or after execution of this contract, shall affect or modify any of the terms or obligations contained in any of the documents comprising the Contract Documents.

6. MODIFICATIONS

This contract may not be released, discharged, changed or modified except by an instrument in writing signed by a duly authorized representative of each of the parties.

7. SCHEDULING AND PRECONSTRUCTION CONFERENCE

Contractor, upon award of the Work project shall provide the County with a planned work schedule. As the schedule changes throughout contract period any significant changes will be given to the Project Manager in order for him to update plans and notify the effected landowners before activities commence. The Contractor shall schedule a meeting with the County and Project Manager or his duly authorize representative prior to any start of activities. Contractor shall instruct his primary Subcontractors or their representatives to attend this meeting. Contractor shall bring to this meeting,

a schedule as provided in this Section a complete list of Subcontractors for all phases of the Work, a list of known material suppliers for all phases of the Work, the designated safety employee as required in General Condition 16, as well as all insurance and bonds required in General Conditions. The location of this meeting shall be at the work site or a mutually agreeable location.

Prior to the commencement of the Work, Contractor shall designate a competent Superintendent and will inform County and Project Manager in writing of the Superintendent's name and contact information and, upon request Contractor shall provide the qualifications, experience and address of the Superintendent. Superintendent will be present at the Work site at all times while Work is actually in progress and will have complete authority to represent and act for Contractor. Superintendent shall supervise and direct the Work. All directions given to Superintendent by County and Project Manager shall be as binding on the Contractor as if they were given directly to Contractor. If Contractor's Superintendent or any of his assistants are or become unsatisfactory to County and Project Manager, then the unsatisfactory employees shall be promptly replaced upon request of County and Project Manager at no additional expense to the County and Project Manager.

If the total amount of the Contract Price exceeds one million dollars (\$1,000,000.00), the Contractor will furnish a CPM schedule both in hardcopy and in electronic media format.

If the total amount of the Contract Price does not exceed one million dollars (1,000,000.00), the Contractor may use a Bar Scheduling Chart in hardcopy.

Contractor shall diligently prosecute the Work, providing sufficient labor, materials and other supplies at all times to assure performance of the Work in an orderly fashion according to the schedule and to ensure that the Work is complete and acceptable by the time set for Completion.

8. BONDS, WORKMAN COMPENSATION. PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE

Pursuant to Title 54, Chapter 19 of the Idaho Code, Contractor shall furnish bonds acceptable to the County and Project Manager, within 10-days after date of award by County and Project Manager, and prior to commencing the Work.

A performance bond equal to ten percent (10%) of the cost of the contract for each unit shall be deposited with the County by certified check, or money order made payable to Idaho County until all the project work has been completed to satisfaction per the terms of this contract.

Surety companies providing bonds under paragraph (a) above shall be listed on the current Federal Treasury List published annually in the FEDERAL REGISTER.

Worker's Compensation. Contractor shall provide Certificates of Insurance showing statutory Worker's Compensation coverage and showing Employer's Liability coverage with minimum limits of \$1,000,000. County and Project Manager need not be named as additional insured on the Employer's Liability coverage or the Worker's Compensation coverage. County and Project Manager must be given 30 days prior written notice of cancellation of either coverage.

Automobile. Contractor shall provide Certificates of Insurance showing that it maintains Comprehensive Automobile Liability Insurance for all owned, non-owned and hired vehicles with single limits of at least \$1,000,000 per occurrence. Such coverage must name County and Project

Manager as a co-insured and Contractor must provide a Certificate showing such coverage and showing that such coverage will not be canceled by the insuring company without 30 days prior written notice to County and Project Manager.

General Liability. Contractor shall procure and maintain until the Work has been completed and accepted by the County and Project Manager, Commercial General Liability with Loggers Broadform coverage with combined single limits of not less than \$1,000,000 per occurrence. Contractor shall provide Certificates of Insurance which show broad form property damage coverage including, but not limited to, damage arising from blasting and collapse of structure. The Policy must include Contractor's Protective Liability Insurance and completed operations coverage. Coverage should be extended to include Contractor, Subcontractor(s) and any independent contractors directly or indirectly employed by either of them. The General Liability policy shall be endorsed to include personal injury, libel, slander, and false arrest. All policies shall be written on an occurrence basis rather than claims made. Such coverage may be provided by separate policy for Contractor and for County and Project Manager, or by naming County and Project Manager as an Additional Named Insured. If coverage is obtained by naming County and Project Manager as an Additional Named Insured, the policy must contain a Separation of Insured Clause and the Certificate must so indicate. If the required coverage is obtained through a Commercial General Liability policy backed with Umbrella Coverage, the certificate for Umbrella Coverage must show that County and Project Manager will be given 30 days prior written notice of cancellation.

9. LANDS FOR WORK

The County and Project Manager shall provide, as indicated on the drawings, the lands on which Work under this agreement is to be done, rights-of-way for access to same, and such other lands as are designated on the drawings for use by all parties performing work, or the inspection thereof, within the Work area.

The Contractor shall provide, at his sole expense and without liability to the County and Project Manager, any additional lands and access thereto that may be required for temporary construction facilities, and/or storage of materials.

10. DIFFERING SITE CONDITIONS

The Contractor shall promptly, and before such conditions are disturbed, notify the Project Manager in writing of unknown physical conditions at the site, of an unusual nature differing materially from those ordinarily encountered and generally recognized as inhering in work of the character provided in the Construction Documents.

The Project Manager shall promptly investigate the conditions and if he finds that such conditions do materially so differ and cause an increase or decrease in the Contractor's costs of, or time required for performance of, any part of the Work under the Contract Documents (whether or not changed as a result of such condition), an equitable adjustment shall be made and the agreement modified in writing accordingly.

No claim of the Contractor for differing site conditions shall be considered or allowed unless the Contractor shall have given notice as required herein.

No claim by the Contractor for an equitable adjustment hereunder shall be allowed if asserted after final payment under this agreement.

11. MATERIALS, APPLIANCES, EMPLOYEES AND EQUIPMENT

Unless otherwise stipulated, the Contractor shall provide and pay for all materials, labor, water, tools, equipment, light, power, transportation, and other facilities necessary for execution and completion of the Work.

Unless otherwise specified, all materials incorporated in the permanent Work shall be new; both workmanship and materials shall be of good quality. The Contractor shall, if required, furnish the County and Project Manager satisfactory evidence as to the kind and quality of materials used in said construction.

The Contractor shall at all times enforce strict discipline and good order among his employees and shall seek to avoid employing on the job any unfit person or persons, or anyone not skilled in the work assigned to him. In the event any of the Contractor's employees are found to be incompetent, unreliable, fail to perform in a workmanlike manner, or as instructed, or who shall commit trespass upon any public or private property in the vicinity of said Work, such employee shall be discharged by the Contractor immediately and shall not again be employed on said project.

It shall be the duty of the Contractor herein to prevent employees, agents, or Subcontractors of the Contractor, from performing work in a negligent manner. The Contractor agrees to indemnify, save and hold harmless the landowner, Project Manager, and Idaho County from any and all negligent acts, liability, loss, or damages caused by or arising out of the negligence of the Contractor's employees, Subcontractors, officers, or agents.

The Contractor's tools and equipment used on the Work shall be furnished in sufficient quantity and of a capacity and type that will safely perform the work specified and shall be maintained and used in a manner that will not create a hazard to persons or property, or cause a delay in the progress of the work.

Maintenance of Public Haul Roads. On projects involving the hauling of material and equipment over public highways and streets, the Contractor shall maintain and restore such highways and streets to a condition equally as good as they were in when hauling was started. No separate payment will be made for such maintenance or restoration. Dust nuisance due to the Contractor's hauling operations on public highways, streets and special detours shall be abated in a satisfactory manner by the application of water or dust palliative as directed. Payment will be made as provided under Subsection 205.05, of the ITD Specifications, or as Extra Work if no contract item has been provided.

The Project Manager or his designee will determine the acceptability of the condition and appearance of the traffic control and work zone devices. Devices determined to be unacceptable are to be immediately removed from the site and replaced with acceptable devices.

The Contractor shall continuously maintain adequate protection of all work from damage and shall take all reasonable precautions to protect the County and Project Manager's

property from injury or loss arising out of, or in connection with, this agreement. The Contractor shall reimburse County and Project Manager for any and all damages or loss to the Work or to the property of the County and Project Manager resulting from lack of reasonable protective precautions or negligence of Contractor, except as may be due to error in the Contract Documents or caused by agents or employees of the County and Project Manager.

The Contractor shall protect the Work and materials from damage due to the nature of the work, the elements, carelessness of other contractors, or from any cause whatever until the completion and acceptance of the Work. Unless otherwise provided, all loss or damage arising out of the nature of the Work to be done under the Contract Documents from any unforeseen obstructions or defects which may be encountered in the prosecution of the Work or from the action of the elements, shall be sustained by the Contractor.

The Contractor shall always safeguard the County and Project Manager's property from injury or loss in connection with the Work. The Contractor shall always safeguard and protect from damage its own work, and that of adjacent property, as provided by law or the Contract Documents. All passageways, guard fences, lights, and other facilities required for protection by state or municipal laws, regulations and local conditions, must be provided for and maintained.

In an emergency affecting the safety of life or property, the Contractor is hereby permitted to act at his discretion to prevent such threatening loss or injury. Any compensation claimed by the Contractor as a result of said emergency shall be determined pursuant to the terms of the Contract Documents.

12. FIRE PREVENTION

The Contractor will adhere to the State rules and regulations which set forth fire prevention safety precautions for woods operations. Information is available by the project manager or the Idaho Department of Lands.

13. PROTECTION OF EXISTING STRUCTURES, UTILITIES AND WORK

Where work performed by the Contractor could cause damage or inconvenience to railway, telegraph, telephone, television, power, oil, gas, water, sewer, irrigation systems or services or utilities of a similar nature, work shall be suspended until all arrangements necessary for the protection of these utilities and services have been made by the contractor at no additional cost to the County and Project Manager.

Contractor shall notify all utility and other similar companies that may be affected by the construction operations at least two (2) working days in advance of such operation. Under no circumstances shall Contractor expose any utility without first obtaining permission from the appropriate agency. Once permission has been granted, Contractor shall locate, expose, and provide temporary support for all existing underground utilities.

Power poles and telephone poles within the right-of-way shall be protected at no cost to the County and Project Manager. If interfering power poles, telephone poles, guy wires, or anchors are encountered, Contractor shall notify the Project Manager and the appropriate utility company at least

two (2) working days in advance of construction operations to permit the necessary arrangements for protection or relocation of the interfering structure.

The Contractor shall be solely and directly responsible to the operators of such properties for any damage, injury, expense, loss, inconvenience, delay, suits, actions, or claims of any character brought because of any injuries or damage that may result from the management operations under this contract, and shall indemnify the County and Project Manager from any loss therefrom.

If the Contractor, while performing management operations, discovers utility facilities not identified by the County and Project Manager in the contract drawings or specifications, he shall immediately notify the Project Manager and the utility in writing.

14. COORDINATION

Contractor shall cooperate in the coordination of the separate activities in a manner that will provide the least interference with the County and Project Manager's operation, other contractors, and utility companies working in the area, and in the interfacing and connection of the separate elements of the overall project Work.

If any difficulty or dispute should arise in the accomplishment of the above, the problem shall be brought immediately to the attention of the Project Manager for resolution.

All contractors working on the site are subject to this requirement for cooperation, and all shall abide by the Project Manager's decision in resolving project coordination problems without additional cost to the County and Project Manager. Wherever work being done by the County and Project Manager's employees, or any other contractor is contiguous to Work covered by these Contract Documents, the respective rights of the various interests involved shall be established by the Project Manager to secure the completion of the various portions of the work in general harmony.

15. SAFETY

The Contractor shall be solely and completely responsible for safety conditions at the job site, including safety of all persons (including employees) and property during performance of the Work. This requirement shall apply continuously and not be limited to normal working hours.

Safety provisions shall conform to U.S. Department of Labor (OSHA), the State Occupational Safety and Health Act, and all other applicable federal, state, and local laws, ordinance, codes, those requirements set forth below and any regulations that may be detailed in other parts of these Contract Documents. When any of these requirements are in conflict, the more stringent requirement shall be followed. The Contractor's failure to thoroughly familiarize himself with all safety requirements shall not relieve him from compliance with the obligations and penalties set forth herein.

The Contractor shall develop and maintain for the duration of the Work, a safety program that will effectively incorporate and implement all required safety provisions.

The duty of the Project Manager to conduct operation reviews of the Contractor's work is not intended to include a review or approval of the adequacy of the Contractor's safety supervisor, the safety program, or any safety measures taken in, on, or near the management site.

The Contractor, as part of his safety program, shall maintain at the job site, safety equipment applicable to the work prescribed by the aforementioned authorities, all articles necessary for giving first-aid to the injured, and shall establish the procedure for the immediate removal to a hospital or a doctor's care of persons (including employees) who may be injured on the job site.

If death or serious injuries or damages are caused, the accident shall be reported immediately by telephone or messenger to the County and Project Manager. In addition, the Contractor must promptly report in writing to the County and Project Manager all accidents whatsoever arising out of or in connection with the performance of the Work (whether on or adjacent to the site) giving full details and statements of witnesses.

If a claim is made by anyone against the Contractor, or any Subcontractor on account of any accident, the Contractor shall promptly report the facts in writing to the County and Project Manager, giving full details of the claim.

16. ROYALTIES AND PATENTS

Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if, to the actual knowledge of County and Project Manager, its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by County and Project Manager in the Contract Documents. To the fullest extent permitted by laws and regulations, Contractor shall indemnify and hold harmless County and Project Manager, Project Manager, County and Project Manager's Consultants, and the officers, directors, partners, employees or agents, and other consultants of each and any of them from and against all claims, costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement or patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

17. TAXES

Contractor shall pay all applicable sales, consumer, use and other similar taxes required to be paid by Contractor in accordance with the law and regulations of the State of Idaho and federal government during the performance of the Work.

In the event of the Contractor's default on the payment of taxes, excises, and license fees as set forth in Idaho Code 63-1503 (as amended), the County and Project Manager shall have the authority to withhold from any payment due Contractor under these Contract Documents, the estimated amount of such accrued and accruing taxes, excises, and license fees for the benefit of all taxing authorities to which Contractor is liable. In compliance with Idaho Code 63-1504 (as amended), the Contractor shall submit a certification with each construction payment request certifying that it has paid all taxes, excises, and license fees due to the state and its taxing units, due and payable during the term of the contract for such construction, and that it has secured all such taxes, excises, and license fees liability for the payment of which has accrued during the term of such contract, notwithstanding they

may not yet be due or payable.

18. COMPLIANCE WITH LAWS, RULES, ORDINANCES AND REGULATIONS

The Contractor agrees to comply with all federal, state, and city laws, rules, ordinances or regulations as well as all currently adopted specifications of County and Project Manager for highway construction in effect at the time the contract is awarded, except where otherwise noted in the Contract Documents. Contractor shall comply with the provisions of Chapter 10, Title 44, Idaho Code, relating to the employment of residents of the State of Idaho.

Contractor shall waive all notices and comply with all laws, rules, ordinances and regulations applicable to the performance of the Work unless expressly exempt by applicable laws, rules ordinances and regulations. County and Project Manager shall not be responsible for monitoring Contractor's compliance.

If Contractor performs any work, knowing or having reason to know that it is contrary to any laws, rules, ordinances or regulations, Contractor shall bear all claims, costs, losses, and damages (including, but not limited to all fees, fines, and charges of engineers, attorneys or other professionals as well as all costs of any action, administrative, judicial or other) relating to the violation of such laws, rules, ordinances or regulations.

DISCRIMINATION PROHIBITED. Notwithstanding the foregoing, in performing this agreement, contractor shall not discriminate against any person on the basis of race, color, religion, sex, national origin, age or non-job related handicap, or because of prior military service or current military status, and shall comply with all applicable federal and state laws and regulations and executive orders of governmental agencies relating to civil and human rights.

19. SHOP DRAWINGS

All required shop drawings, machinery details, layout drawings, etc., shall be submitted in four copies to the Project Manager for review and comment. Submission shall be sufficiently in advance of construction requirements to afford ample time for checking, including time for correcting, resubmitting, and rechecking, if necessary.

The Contractor shall review and approve all drawings prior to submittal to the Project Manager. The approval shall bear a stamp or specific written indication that Contractor has satisfied Contractor's obligations under the Contract Documents. Any drawings submitted without the Contractor's approval will not be considered and will be returned for proper re-submission. Before submitting each drawing, the Contractor shall have determined and verified:

All field measurements, quantities, dimensions, specified performance criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto.

All materials with respect to intended use, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work.

All information relative to means, methods, techniques, sequences, and procedures of management and safety precautions and programs incident thereto; and

Contractor shall have reviewed and coordinated each shop drawing with other shop drawings and with the requirements of the Work and the Contract Documents.

If any drawings show variations from the requirements of the Contract Documents because of standard shop practice or other reason, the Contractor shall make specific mention of such variations in his letter of transmittal in order that, if acceptable, suitable action may be taken for proper adjustment of Contract Price and/or Contract Time; otherwise, the Contractor will not be relieved of the responsibility for executing the Work in accordance with the Contract Documents even though drawings with variations may have been approved.

Such review and comment by the Project Manager is only for general conformance with the information given in the Contract Documents and does not relieve the contractor of responsibility of correctness of the details and dimensions, nor does it waive any requirements of the specifications.

20. GENERAL GUARANTY

In addition to any other warranties contained in the Contract Documents, the Contractor warrants, except as provided in paragraph (i) of this section, that Work conforms to the Contract Documents and is free of any defect in equipment, material, or design furnished, or workmanship performed by the Contractor or any Subcontractor or supplier at any tier.

This warranty shall continue for a period of one (1) year from the date of Final Acceptance of the Work. If the County and Project Manager takes possession of any part of the Work before Final Acceptance, this warranty shall continue for a period of one (1) year from the date the County and Project Manager takes possession.

The Contractor shall remedy at the Contractor's expense any failure to conform, or any defect. In addition, the Contractor shall remedy at the Contractor's expense any damages to County and Project Manager-owned or controlled real or personal property, when that damage is the result of:

Contractor's failure to conform to contract requirements; or

Any defect of equipment, material, workmanship, or design furnished.

The Contractor shall restore any work damaged in fulfilling the terms and conditions of this section. The Contractor's warranty with respect to work repaired or replaced will be one (1) year from the date of repair or replacement.

The Project Manager shall notify the Contractor, in writing, within a reasonable time after the discovery of any failure, defect or damage.

If the Contractor fails to remedy any failure, defect or damage within a reasonable time after receipt of notice, the County and Project Manager shall have the right to replace, repair, or otherwise remedy the failure, defect, or damage at the Contractor's expense.

With respect to all warranties, expressed or implied, from Subcontractors, manufacturers, or suppliers for work performed and materials furnished under the Contract Documents, the Contractor shall:

Obtain all warranties that would be given in normal commercial practice;

Require all warranties to be executed in writing, for the benefit of the County and Project Manager, if directed by the Project Manager; and

Enforce all warranties for the benefit of the County and Project Manager, if directed by the Project Manager.

In the event the Contractor's warranty under paragraph (b) of this clause has expired, the County and Project Manager may bring suit at its expense to enforce a Subcontractor's, manufacturer's or supplier's warranty.

This warranty provision shall not limit the County and Project Manager's rights with respect to latent defects, gross mistakes or fraud.

21. WARRANTY OF TITLE

No material, supplies, or equipment to be installed or furnished under the Contract Documents shall be purchased, subject to any chattel mortgage or under a conditional sale, lease purchase, or other agreement by which an interest therein or in any part thereof is retained by the seller or supplier.

The Contractor shall warrant good title to all materials, supplies, or equipment installed or incorporated in the Work and upon completion of all construction work, shall deliver the same together with all improvements and appurtenances constructed or placed thereon by him to County and Project Manager free from claims, liens, or charges. Neither the Contractor nor any person, firm, or corporation furnishing any material or labor for any work covered by this contract shall have any right to a lien upon any improvement or appurtenance thereon. Nothing contained in this paragraph, however, shall defeat or impair the right of persons furnishing materials or labor to recover under any bond given by the Contractor for their protection or any rights under any law permitting such persons to look to funds due the Contractor in the possession of County and Project Manager. The provisions of this requirement shall be given to all persons furnishing materials for the work when no formal contract is entered into for such materials.

Title to property shall be passed to the County and Project Manager upon payment unless otherwise agreed to by the County and Project Manager and Contractor.

22. CERTIFICATE OF COMPLIANCE WITH STANDARDS AND CODES

A certificate of compliance shall be furnished for materials specified to a recognized standard or code prior to use of any such materials in the Work. The Project Manager may permit the use of certain materials or assemblies prior to sampling and testing, if accompanied by a certificate of compliance.

The certificate shall be signed by the manufacturer of the material or the manufacturer of assembled materials and shall state that the materials involved comply in all respects with the requirements of

the specifications. A certificate of compliance shall be furnished with each lot of material delivered and the lot so certified shall be clearly identified in the certificate.

All materials used on the basis of a certificate of compliance may be sampled and tested at any time. The fact that material is used on the basis of certificate of compliance shall not relieve the Contractor of responsibility for incorporating material in the work which conforms to the requirements of the Contract Documents and any such material not conforming to such requirements will be subject to rejection whether in place or not.

The Project Manager reserves the right to refuse permission for use of material on the basis of a certificate of compliance.

The certificate of compliance and its disposition shall be in a form acceptable to the Project Manager.

23. INDEMNITY AND HOLD HARMLESS

To the fullest extent permitted by laws and regulations, Contractor shall indemnify and hold harmless the County and the Project Manager, its commission, employees and consultants, from and against all claims, costs, losses, and damages (including, but not limited to all fees and charges of engineers, architects, attorneys and other professional and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, including any such claim, cost, loss or damage:

1. That is attributable to bodily injury, sickness, disease or death or to injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting there from; and
2. That is caused in whole or in part by any negligent act or omission of Contractor, any Subcontractor, any supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable, regardless of whether or not caused in part by any negligence or omission of any individual or entity hereunder or whether liability is imposed upon such indemnified party by laws and regulations, regardless of the negligence of any such individual or entity; and
3. In any and all claims against County and Project Manager, its commission, employees and consultants, by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable.

The indemnification obligation under this Section shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Contractor or any such Subcontractor, supplier, or other individual or entity under worker's compensation acts, disability benefits acts, or other employee benefit acts.

24. TESTS AND INSPECTIONS

The project manager will inspect the contract work to determine if treatment is satisfactory. Inspection reports will be provided to the Contractor, and Idaho County. Any deficiencies may be corrected as the contract work progresses. The Project Manager has authority to decide questions of fact arising in regard to quality and accepting of equipment to be used, materials furnished, all work performed, and recommendation for payment.

The contractor is encouraged to observe the Project Manager's field inspection. As the basis for payment; inspections for compliance with specifications will be made for work reported as completed by the Contractor. All plots will be random and averaged together to determine payment. Plot information includes reserve trees, surplus trees and an ocular observation to determine the acceptable amount of mulching, grinding and separation of ground fuels. This determination based on treatment of 95% of the total area.

Contractor shall give Project Manager timely notice, but no less than one working day of readiness of the work for all required inspections, tests or approvals and shall cooperate with inspection and testing personnel to facilitate required inspection or tests.

If laws or regulations of any public body having jurisdiction require any work (or part thereof) specifically to be inspected, tested or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests or approvals, pay all costs in connection therewith, and furnish Project Manager the required certificates of inspection or approval.

If any work (or the work of another) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Project Manager, it must, if requested by Project Manager, be uncovered for observation. If such work is found to be in accordance with the Contract Documents, the County and Project Manager shall pay the cost of re-inspection and replacement. If such work is not in accordance with the Contract Documents, the Contractor shall pay all costs.

25. AUTHORIZED CHANGES IN THE WORK

Without invalidating the Contract Documents, and without notice to any surety, the Project Manager may, at any time or from time to time, order additions, deletions, or revisions in the Work by a Written Amendment, a Change Order, or a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the work to be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).

If Project Manager and Contractor are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the Contract Price or Contract Time, or both that should be allowed as a result of a Written Amendment, a Change Order or a Work Change Directive, the Change will be governed by either Extra, Altered and Force Account Work provision or payment based upon Bid Schedule unit prices.

Contractor shall not be entitled to an increase in Contract Price or an extension of the Contract Time with respect to any work performed that is not required by the Contract Documents as amended,

modified or supplemented, except in the case of any emergency affecting the safety or protection of persons or the Work or property at the site or adjacent thereto, provided that the Contractor gives the Project Manager prompt written notice of such emergency.

Project Manager and Contractor shall execute appropriate Change Orders covering:

1. changes in the Work which are:
 - (i) ordered by the Project Manager; (ii) required because of acceptance of defective work or Project Manager's correction of defective work; or (iii) agreed to by the parties;
2. changes in the Contract Price or Contract Time which are agreed to by the parties, including any undisputed sum or amount of time for work actually performed in accordance with a Change Order or Work Change Directive; and
3. changes in the Contract Price or Contract Time which embody the substance of any written decision rendered by Project Manager pursuant to the Claims and Disputes provision; provided that the Contractor may appeal any written decision by the Project Manager in accordance with this provision, but during any such appeal, Contractor shall carry on the Work and adhere to the schedule as provided in section 7(c) of these General Conditions.

If notice of any change affecting the general scope of the Work or a provision of the Contract Documents (including, but not limited to, Contract Price or Contract Time) is required by the provision of any bond to be given to a surety, the giving of any such notice shall be Contractor's responsibility. The amount of each applicable bond will be adjusted to reflect the effect of any such change.

26. DELAY/ EXTENSIONS OF CONTRACT TIME

Force Majeure: If Contractor is prevented from performing any of its obligations under the Contract Documents by reason of fire, flood, windstorm, earthquake, other Acts of God, civil disturbance, riots, order of any court or administrative body (not due to the fault of Contractor), or any other cause beyond the control of Contractor and without the fault on the part of Contractor, the time allotted by the Contract Documents for performance of the obligations that are so prevented shall be extended one day for each day of delay. Contractor shall make no claim for extension of Contract Time pursuant to this paragraph unless it notifies the Project Manager, in writing, of the existence of any delay excused herein within 24 hours after the beginning of such force majeure and of the termination of such period of delay within 24 hours after its termination.

Normal Weather Conditions: There shall be no extension of time granted to Contractor for delay due to normal weather conditions. Normal weather conditions shall be considered based upon historical weather patterns as established by recognized weather service bureaus. Normal weather patterns include such seasonal variations (including but not limited to windstorms) as might be reasonably expected by the Contractor to occur from year to year. Only delays resulting from weather conditions substantial (more adverse than seasonal averages that might be anticipated based upon historical data) shall be considered for a time extension.

Delay Caused by County and Project Manager or Others, No-Damage-for Delay: Should Contractor's progress be interfered with or the completion of the Work be prevented through failure

of County and Project Manager to provide required services, or for any reason attributable to County and Project Manager, its agents, or others, then in that event, Contractor will be entitled to an extension of time, day for day, with which to complete the Work. This is a **NO-DAMAGE-FOR-DELAY-CONTRACT**, and Contractor's only remedy for delay shall be an extension of time as provided herein.

Time and Evidence Required for Claim Submission: Claims for extension of time pursuant to (b) and (c) shall be made in writing to the Project Manager no more than ten (10) days after the occurrence of the delay; otherwise they shall be waived. In the case of a continuing cause for delay, only one claim is necessary. Accompanying the claim shall be a narrative setting forth the category upon which the Contractor is basing the claim.

27. SCHEDULING UPDATES

The Contractor shall provide an updated schedule in the manner set forth in section 7, including narratives explaining any modifications or changes to the Project Manager simultaneously with the Contractor's "Request for Progress Payment". Failure to provide updated schedule will delay payment as provided for in section 34.

28. VARIATIONS IN QUANTITIES

The estimate of quantities listed in the Bid Proposal are approximate only and the County and Project Manager shall have the right to increase or decrease the quantities of contract items.

Where the quantity of a pay item in this contract is an estimated quantity and where the actual quantity of such pay item varies by more than 25% above or below the estimated quantity stated in the contract, an equitable adjustment in the contract price shall be made upon demand of either party to the contract. The equitable adjustment shall be based upon any increase or decrease in costs due solely to the variations above 125% or below 75% of the estimated quantity. When the total pay quantity of an item of work is less than 75% of the contract bid quantity, payment for the work will in no case exceed the payment that would have been made for performance of 75% of the bid item quantity at the contract unit price. Detailed pricing information shall be provided for all negotiated pricing adjustments.

If the quantity variation is such as to cause an increase in the time necessary for completion, the Contractor may request, in writing, an extension of Contract Time, to be received by the Project Manager within ten (10) days from the beginning of the delay, or within such further period by the Project Manager before the date of final settlement. Upon the receipt of a written request for an extension, the Project Manager shall ascertain the facts and make an adjustment for extending the completion date if warranted, in the judgment of the Project Manager.

29. CORRECTIONS, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

Prompt notice of all defective work of which Project Manager has actual knowledge will be given to Contractor. All defective work may be rejected, corrected, or accepted as provided in this provision.

If the work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the work in such a way that the completed Work will conform to the Contract Documents, Project Manager may order Contractor to stop the work, or any portion

thereof, until the cause for such order has been eliminated; however this right of Project Manager to stop the work shall not give rise to any duty on the part of the Project Manager to exercise this right for the benefit of the Contractor, any Subcontractor, any supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

A Contractor shall correct all defective work, whether or not fabricated, installed, or completed, or if the work has been rejected by the Project Manager, remove it and replace it with work that is not defective and is consistent with Contract Documents. Contractor shall pay all claims, all fees and charges of engineers, attorneys, architects, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or removal including, but not limited to all costs of repair or replacement of work of others.

Correction Period.

If within one year after the date of Final Acceptance or such longer period of time as may be prescribed by laws or regulations or by the terms of any applicable special guarantee required by the Contract Documents or by any specific provision of the Contract Documents, any work is found to be defective, whether latent or patent, or if the repair of any damages to the land or areas made available for Contractor's use by County and Project Manager or permitted by laws or regulations is found to be defective, Contractor shall promptly, without cost to County and Project Manager and in accordance with Project Manager's written instructions:

(i) repair such defective land or areas or (ii) correct such defective work or, if the defective work has been rejected by Project Manager, remove from the project and replace it with work that is not defective and conforms with the Contract Documents, and (iii) satisfactorily correct or repair or remove and replace any damage to the work of others or other land or areas resulting therefrom. If Contractor does not promptly comply with the terms of such instructions or in an emergency where delay would cause serious risk of loss or damage, Project Manager may have the defective work removed and replaced. All claims, all fees and charges of engineers, attorneys, architects, and other professionals and all court or arbitration or other dispute resolution costs arising out of or relating to such correction or removal including, but not limited to, all costs of repair or replacement of work of others will be paid by Contractor.

In special circumstances where a particular completed portion of Work is placed in use as provided by section 40(e), the correction period for that completed portion may start at an earlier date if so provided in the Specifications or by Written Amendment.

Where defective work (and damage to other work resulting therefrom) has been corrected or removed and replaced under this section, the correction period with respect to such work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

Contractor's obligations under this section are in addition to any other obligation or warranty. This section shall not be construed as a substitute for or a waiver of the provisions any applicable statute of limitation or repose.

Acceptance of Defective Work. If, instead of requiring correction or removal and replacement of defective work, Project Manager may accept such work. Contractor shall pay all claims, all fees and charges of engineers, attorneys, architects, and other professionals and all court or arbitration or other dispute resolution costs attributable to Project Manager's evaluation of and determination to

accept such defective work and the diminished value of the work. If any such acceptance occurs prior to the Project Manager's recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work and County and Project Manager shall be entitled to an appropriate decrease in Contract Price reflecting the diminished value of Work accepted. If such acceptance occurs after final payment, Contractor will pay to the County and Project Manager the difference between the value of the non-defective Work and the defective Work.

Correction of Defective Work by County and Project Manager.

If Contractor fails within a reasonable time after written notice from Project Manager to correct defective work or to remove and replace rejected work as required by Project Manager, or if Contractor fails to perform the work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, Project Manager may, after seven (7) calendar days notice to Contractor, correct and remedy any such deficiency.

In exercising the rights and remedies under this subsection, Project Manager shall proceed expeditiously. In connection with such corrective and remedial action, Project Manager may exclude Contractor from all or part of the site, take possession of all or part of the work and suspend Contractor's services related thereto, take possession of Contractor's tools, appliances, construction equipment and machinery at the site and incorporate in the work all materials and equipment stored at the site or for which County and Project Manager has paid Contractor but which are stored elsewhere. Contractor shall allow Project Manager, other contractors and consultant's access to the site to enable County and Project Manager/Project Manager to exercise the rights and remedies under this subsection.

All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, attorneys, architects, and other professionals and all court or arbitration or other dispute resolution costs) incurred or sustained by County and Project Manager in exercising the rights and remedies under this section will be charged against the Contractor. A Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and County and Project Manager shall be entitled to an appropriate decrease in the Contract Price. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal or replacement of Contractor's defective work.

Contractor shall not be allowed an extension of the Contract Time (or Milestones) because of any delay in the performance of the Work attributable to the exercise by the County and Project Manager/Project Manager of the rights and remedies under this subsection.

30. LIQUIDATED DAMAGES

Contractor guarantees the completion date stated in the Contract Agreement including any extension granted thereto. Failure to complete the Work shall entitle the County and Project Manager to deduct from the monies due to the Contractor as liquidated damages.

It is agreed that the actual damages and loss which County and Project Manager would incur as a result of Contractor's default in its obligation to complete the Work by such firm completion date would be impracticable and extremely difficult to determine. It is therefore agreed that in the event of such delay or default, Contractor shall pay County and Project Manager the amount stated in the Contract Documents per calendar day as liquidated damages and not as a penalty, for each calendar day, until the actual date of completion of the Work. Contractor agrees that all sums payable by Contractor to County and Project Manager as liquidated damages pursuant to this section may be deducted by County and Project Manager from the Contract Price to be paid to Contractor for the Work. It is further agreed that this section shall not constitute a waiver of any rights of County and Project Manager to damages or other remedies of County and Project Manager under the Contract Documents or otherwise for Contractor's improper performance or default in performance, including delay or failure of Contractor to complete the Work.

31. COUNTY AND PROJECT MANAGER'S RIGHT TO TERMINATE CONTRACT/SUSPENSION AND TERMINATION FOR CONVENIENCE

- a. The Contract may be terminated in whole or in part by the County and Project Manager in accordance with this section, whenever the County and Project Manager shall determine that such termination is in its best interest. Termination shall be affected by delivery to the Contractor of a written notice of termination specifying the extent to which the contract is terminated and the date upon which such termination becomes effective. Termination by the County or Project Manager will result in forfeiture of bond.
- b. After receipt of a written notice of termination, and except as other directed by the Project Manager, the Contractor shall:
 - 1) Stop work on the date and to the extent specified in the Notice of Termination;
 - 2) Place no further orders or subcontracts for materials, services or facilities, except as may be necessary for completion of such portion of the Work not terminated;
 - 3) Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the notice of termination;
 - 4) Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts with the approval of the Project Manager;
 - 5) Transfer title and deliver to the County and Project Manager, in the manner, at the times, and to the extent, if any, directed by the Project Manager; the fabricated or unfabricated parts, work in process, completed and accepted work, supplies, and other materials produced as a part of, or acquired in connection with the performance of the Work terminated by the notice of termination; and the completed or partially completed plans, drawings, information, and other property not previously furnished by the County and Project Manager and which, if the Work had been completed, would have been required to be furnished to the County and Project Manager;
 - 6) Complete performance of such part of the work not terminated by the notice of

termination; and

- 7) Take such action as may be necessary, or as the Project Manager; may direct, for the protection and preservation of property which is in the possession of the Contractor and in which the County and Project Manager has or may acquire an interest.
 - a. At any time, but no later than submittal of the Contractor's termination claim (d), the Contractor may submit to the Project Manager; a list, certified as to quantity and quality, of any or all remaining items in possession of the Contractor, ordered by the Contractor to use in this Work and now no longer useful due to Notice of Termination. The Contractor may request the Project Manager; to remove such items or enter into a storage agreement covering them. No later than fifteen (15) days thereafter, the Project Manager; will accept title to such items and remove them or enter into a storage agreement with Contractor, provided that the list submitted to the Project Manager; shall be subject to verification. Within forty-five (45) days from the date of submission of the certified list, any necessary adjustment to correct the list shall be made prior to final settlement.
 - b. After receipt of a notice of termination, the Contractor shall submit to the Project Manager; its termination claims certified pursuant to General Condition section 39(6). Such claim such be submitted promptly, but no later than ninety (90) days from date upon which such termination becomes effective, unless an extension is requested by the Contractor and is granted upon good cause by the Project Manager in writing. If the Contractor fails to submit the termination claim within the time allowed and any extensions granted, the Project Manager may determine, on the basis of information available to the Project Manager, the amount, if any, due to the Contractor by reason of the termination and shall thereupon pay to the Contractor the amount so determined.
 - c. Subject to the provisions of paragraph (d), the Contractor and the Project Manager may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the total or partial termination of work pursuant to this section. Such amount or amounts may include an allowance for profit on work done equal to that provided in "Extra, Altered or Force Account Work" section, provided, that such agreed amount or amounts, exclusive of settlement costs, shall not exceed: (1) the total Contract Price as reduced by the amount of payments previously made and (2) the Contract Price of work not terminated. The Contract shall be by change order pursuant to General Provision 25, accordingly, and Contractor shall be paid the agreed amount. Nothing in paragraph (f) of this section shall be deemed to limit, restrict or affect the amount or amounts which may be agreed upon to be paid to the Contractor by the County and Project Manager in this paragraph (e).
 - d. In the event Contractor and the Project Manager fail to agree, as to the total amount to be paid to Contractor by reason of the termination, the County and Project Manager shall pay to Contactor the amounts determined as follows, without duplication of any amounts agreed upon paragraph in (e):

- 1) With respect to Contract Work performed prior to the date upon which termination becomes effective, the total (without duplication of any items) of:
 - i) the cost of such completed and accepted work;
 - ii) the cost of settling and paying claims arising out of the termination under the subcontracts or orders as provided in (b)(4) above, exclusive of the amounts paid or payable on account of supplies or materials delivered or services furnished by the subcontractor prior to the effective date of the notice of termination of work under these Contract Documents, which amounts shall be included in the cost on account of which payment is made under (i) above; and
 - iii) a combined sum for overhead and profit on work performed equal to that provided in “Extra, Altered or Force Account Work”, General Provision 48; provided, that if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, no profit shall be included or allowed under this subparagraph and appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss; and

- 2) The reasonable cost of the preservation and protection of property incurred under (b)(7); and any other reasonable cost incidental to the termination, including accounting, legal, clerical and other expenses reasonably necessary to the determination of the amount due the Contractor as the result of the termination.

The total sum to be paid to Contractor under (1) above shall not exceed (1) the total Contract Price as reduced by the amount of payments previously made and (2) the Contract Price of work not terminated. Except for normal spoilage, and except to the extent that the County and Project Manager shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to the Contractor under (1) above, the fair market value, as determined by the Project Manager, of property which is destroyed, lost, stolen, or damaged so as to become undeliverable to the County and Project Manager.

- e. The Contractor shall have the right of appeal, as provided in General Provision 39 from any decision or determination by the Project Manager under this section.
- f. In arriving at the amount due Contractor under this section there shall be deducted: all unliquidated advances or other payments on account theretofore made to the Contractor, applicable to the terminated portion of these Contract Documents; and any claim which the County and Project Manager have against the Contractor in connection with these Contract Documents.
- g. If the termination is partial, the contractor may file a proposal with the Project Manager for equitable adjustment of the price(s) of the continued portion of the Work pursuant to General Condition Section 39 within

ninety (90) days from the notice of partial termination/suspension unless extended in writing by the Project Manager.

- h. Limitation of Liability. Notwithstanding anything to the contrary contained herein, Contractor hereby waives any form of consequential or indirect damages. Such prohibited damages include, but are not limited to, lost profits; home office overhead, or any form of overhead not directly incurred at the project site; wage or salary increases; ripple or delayed damages; loss of productivity; increased cost of funds for the project; extended capital costs; loss opportunity to work on other projects; inflation on costs of labor, material or equipment; non-availability of labor, material or equipment due to delays; increase of cost of bonding due to delays; or any other indirect loss arising from the conduct of the parties.

32. CONTRACTOR'S RIGHT TO STOP WORK OR TERMINATE CONTRACT

If work should be stopped by an order, directive or instruction of any court, public authority, or regulatory agency for a period of three (3) months or more, through no fault of the Contractor or of anyone employed by him, or if the County and Project Manager should fail to pay the Contractor within sixty (60) calendar days any sum recommended by the Project Manager, and not in dispute with County and Project Manager, then, in such event, the Contractor may upon seven (7) calendar days written notice to the Project Manager, stop work or terminate this Contract Agreement and recover from the County and Project Manager payment for all work acceptably completed through the date of termination.

33. PAYMENTS WITHHELD PRIOR TO FINAL ACCEPTANCE OF WORK

The COUNTY AND PROJECT MANAGER may withhold or, on account of subsequently discovered evidence, nullify the whole or part of any certificate of payment to such extent as may be necessary to protect itself from loss on account of:

Defective work not remedied.

Claims filed, or reasonable evidence indicating public filing, of claims by other parties against the Contractor.

Failure of the Contractor to make payments properly to all Subcontractors or for material or labor.

Damage to another contractor or individual not remedied.

Work not completed.

The Contract Price that has been reduced by Written Amendment or Change Order.

County and Project Manager has been required to correct defective work.

Contractor's persistent failure to perform the work in accordance with the Contract Documents (including, but no limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the progress schedule established in the Contract Documents).

Contractor's disregard of laws, rules, ordinances or regulations of any public body having jurisdiction.

Contractor's disregard of the authority of the Project Manager, including failure to consistently respond to Field Directives, written instructions or correspondence in a timely manner.

Failure to provide scheduling update simultaneous with "Request for Progress Payment".

As the above grounds for withholding are removed, payment shall be made for amount withheld.

34. ASSIGNMENT

The Contractor shall not assign the Contract Agreement in whole or in part, without the express written consent of the County and Project Manager; nor shall the Contractor assign any monies due, or to become due to him hereunder, without the previous written consent of the County and Project Manager. Assigning the Agreement shall not relieve the Contractor or his surety from any contract obligation.

35. SEPARATE CONTRACTS

The County and Project Manager reserves the right to let other contracts or otherwise have work performed in connection with this Work. The Contractor shall afford other contractors reasonable opportunity for the execution of their work, and shall properly schedule and coordinate his work so as to minimize conflicts. Contractor shall cooperate and coordinate its work with other contractors employed by County and Project Manager in order to ensure that the work of each shall be commenced and completed without delay.

36. CLAIMS REVIEW PROCESS

A. Request for Review of Claim. Contractor may file a written request to the County and Project Manager, to review any claim for additional compensation, for a time extension or for other relief not approved by the Project Manager.

- 1) If the impact of the claim is continuing, the Contractor shall supplement the General Information and Specific Documentation required below, in a timely manner.
- 2) During the performance of any disputed work, the Contractor shall keep complete records of extra costs and time incurred.
- 3) The Contractor shall provide to the County and Project Manager the General Information and Specific Documentation required below, to support the claim no later than 30 calendar days following the date the claim has fully matured or the date the project is completed, whichever occurs first.
- 4) All records pertaining to the claim shall be retained by the Contractor, subcontractors, and all low tier sub-contractors until the claim is fully resolved.

B. General Information Required. Claimant shall promptly submit a written statement setting forth the following:

- 1) The nature and circumstances which caused the claim;
- 2) The date or dates of events giving rise to the claim;

- 3) The contract provisions upon which the claim is based;
- 4) A complete explanation of why Idaho County is responsible for the Contractor's additional claimed costs;
- 5) The amount of additional compensation claimed;
- 6) The time extension claimed; and
- 7) A description of any other relief requested and the factual basis for such relief.

C. Specific Documentation Required. Full documentation of the claim shall contain the following elements.

- 1) A detailed chronological description of events and circumstances which caused the claim, identifying the dates, locations, and items of work affected by the claim.
- 2) Reference to the specific provisions of the contract or laws which support the claim and a statement of the reasons why such provisions support the claim.
- 3) Copies of any of the Contractor's documents and the substance of any oral communication that would support the claim. Manuals that are standard to the industry, which are used by the Contractor, may be included by reference.
- 4) If an adjustment of time for the performance of the contract is sought:
 - a. The specific days and dates for which it is sought;
 - b. The specific reasons the Contractor believes a time adjustment should be granted and is compensable, if overhead costs are being claimed;
 - c. The specific provisions of the Contract Documents under which a time adjustment should be granted;
 - d. If required by the contract, the Contractor's detailed analysis of the critical path on the as – built or actual schedule to demonstrate the justification for a time adjustment;
 - e. The Contractor's Daily Record of work performed, Request for Information Log, Submittal Log, Change Order Log; and
 - f. If required by the contract, an approved baseline schedule and monthly updates in electronic format and all "look ahead" schedules.
- 5) If additional monetary compensation is sought, the exact amount sought and a breakdown of that amount into the following the categories:
 - a. Labor. Listing of individuals, classification, hours worked etc.
 - b. Materials. Invoices, purchase orders, etc.
 - c. Equipment. Listing detailed description (make and model), hours of use and dates of use. Equipment rates shall be at the applicable Blue Book Rate, which was in effect when the work was performed, as set forth in General Condition 44.
 - d. Detailed Job Site Overhead costs.
 - e. Home Office Overhead (General and Administrative)
 - f. Other categories as specified by the Contract Documents of County and Project Manager.
- 6) The General Information and Specific Documentation submitted shall be accompanied by a notarized statement from the Contractor containing the following certification:
- 7) The Contractor shall permit the County and Project Manager access to these and any other records needed for evaluating the claim.

D. Audits. All records of the Contractor, subcontractors and all lower tier subcontractors pertaining to any claim shall be open to inspection and/or audit by representatives of the County and Project Manager. Inspection and/or audit may be performed by employees of the County and Project Manager or by an independent consultant under contract with the County and Project Manager. The Contractor, subcontractors, or lower tier subcontractors shall provide adequate facilities, acceptable to the County and Project Manager and its auditors, for the inspection and/or audit process during normal business hours. The Contractor, subcontractors, and lower tier subcontractors shall make a good faith effort to cooperate with the auditors. The District shall provide reasonable advance notice of the scheduling of an audit. Information obtained in such audits shall be maintained as confidential information by the County and Project Manager to the extent provided by law.

Failure of the Contractor, subcontractors, or lower tier subcontractors to maintain and retain sufficient records to allow the auditors to verify all or a portion of the claim or failure to permit the auditor access to the records of the Contractor, subcontractors, or lower tier subcontractors shall be grounds for denial of that portion of the claim.

The auditors shall have available to them the following documents pertaining to the claim:

- All daily time sheets and contractor/subcontractor daily reports.
- All union agreements.
- All insurance records.
- All payroll and employee benefits records.
- All materials, equipment rental and subcontractor invoices and payment records.
- All Contractor-owned equipment records.
- All job cost reports.
- All cash disbursement journals.

For claims seeking recovery of home office overhead, all financial statements for all years reflecting the operations on this contract and, if deemed appropriate, additional financial statements for three (3) years preceding execution of the contract. All other documents which support the amount of the claim.

All documents and computation sheets used in bidding the project to the extent the claim is based upon any portion of the original bid.

All scheduling documentation.

E. Grounds for Claim Denial.

1. Failure of the Contractor, subcontractors, or lower tier subcontractors to provide all of the required General Information and Specific Documentation shall be grounds for denial of that portion of the claim;
2. If the District determines that the General Information and Specific Documentation (including Audit information, if applicable) provided does not support the claim or a portion thereof, the County and Project Manager shall have grounds to deny the portion of the claim that is not supported;

3. Failure of the Contractor, subcontractors, or lower tier subcontractors to maintain and retain sufficient records to allow the auditors to verify all or a portion of the claim or failure to permit the auditor access to the records of the Contractor, subcontractors, or lower tier subcontractors shall be grounds for denial of that portion of the claim.

F. County and Project Manager Decision/Further Review, Arbitration or Litigation. The County and Project Manager shall issue a written decision on the claim within thirty (30) days, or such other period as the parties agree, after full documentation of the claim is submitted. Failure of the County and Project Manager to issue a decision within such time shall be deemed a denial of the claim. In the event the Contractor does not accept the decision of the County and Project Manager or denial of the claim by reason of failing to issue a decision, the Contractor may request the Director to review the claim. If the Director fails to issue a written decision on the claim within thirty (30) days (or such other period as the parties agree) after receiving the Contractor's request or upholds the decision of the County and Project Manager, the parties may, by written agreement, submit the matter to mediation or binding arbitration in accordance with procedures set forth in such agreement. In the absence of a resolution of the claim or an agreement to arbitrate, either party may pursue its remedies in court.

37. COVENANT AGAINST CONTINGENT FEES OR GRATUITIES

The Contractor warrants that no individual, firm, partnership, or corporation has been employed or retained to solicit or secure this agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fees, excepting bona fide employees of the Contractor or bona fide firms owned by the Contractor established for the purpose of securing business. For breach of this warranty County and Project Manager shall have the right to annul this agreement without liability, or in its discretion, to deduct from the Contract Price or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

The County and Project Manager may by written notice to the Contractor terminate the right of the Contractor to proceed, if it is found after notice and hearing by the County and Project Manager or its duly authorized representative, that gratuities (in the form of entertainment, gifts, or otherwise) with a value in excess of \$25.00 Twenty-Five Dollars were offered or given by the Contractor or by any agent or representative of the Contractor to any officer or employee of the County and Project Manager for any reason, including, but not limited to the making of any determination with respect to the performance of such contract.

38. SITE RESTORATION AND CLEANUP

At all times during construction of the Work, Contractor shall keep the premises clean and orderly, and upon completion of the Work shall repair all damages caused by him and leave the area free of rubbish or excess materials of any kind.

Contractor shall stockpile excavated materials in a manner that will cause the least damage to adjacent lawns, grassed areas, gardens, shrubbery, or fences, regardless of whether these are on private property, or on State of Idaho or County and Project Manager's rights-of-way. Contractor shall remove all excavated materials from grassed and planted areas; leave these surfaces in a condition equivalent to their original condition, and replace topsoil areas with topsoil, raked and graded to conform to original contours.

Upon completion of operations, Contractor shall hand-rake and drag all former grassed and planted areas, leaving all disturbed areas free from rocks, gravel, clay or any other foreign material and ready, in all respects for seeding. The finished surface shall conform to the original surface and shall be free-draining and free from holes, ruts, rough spots, or other surface features detrimental to a seeded area.

All existing drainage and irrigation facilities shall be cleaned, graded, and natural drainage restored. Facilities broken or damaged shall be restored to their original condition and location.

39. CONTRACT PERIOD

The contract work will become in effect once signed by all parties. Work will be completed by

_____.

40. COST INFORMATION AND CERTIFICATION

Documents Available for Inspection. For the purposes of determining equitable adjustments in the Contract Price as a result of proposed or actual additions to, deletions from or changes in the performance of Work under the Contract Documents, or when proceeding under General Condition 39 (Claims and Disputes) or General Condition 48, Extra, Altered or Force Account, Contractor's wage, payroll, and cost records pertaining to request for additional costs shall be open to inspection and/or audit by representatives of County and Project Manager. The Contractor shall retain these records on the premises. Cost records of all subcontractors and all lower tier subcontractors shall be retained and open to similar inspection and/or audit process during normal business hours. The Contractor, subcontractors, and lower tier subcontractors shall make a good faith effort to cooperate with the auditors. The Contractor will be provided with reasonable notice before the first day the audit is scheduled to commence. All cost records shall be retained until the claim is resolved. Information obtained in such audits shall be maintained by County and Project Manager to the extent provided by law as confidential information.

Failure of the Contractor, subcontractors, or lower tier subcontractors to maintain and retain sufficient records to allow the auditors to verify all or a portion of the claim or to permit the auditor access to the books, ledgers or any other records of the Contractor, subcontractors, or lower tier subcontractors shall constitute a waiver of that portion of the claim.

At a minimum, the auditors shall have available to them the following manner provided herein prior to further pursuing their claim by binding documents pertaining to the claim:

All daily time sheets and supervisors' daily reports.

All union agreements.

All insurance, welfare, and benefits records.

All payroll registers.

All earnings statements and records.

All payroll tax statements and records.

All materials records, invoices and requisitions.

All materials cost distribution sheets.

All equipment records.

All vendors, rental agencies, subcontractor's and lower tier subcontractor's invoices.

All subcontractor's and lower tier subcontractor's payment certificates.

All canceled checks for both payroll and vendors.
All Job cost reports.
All job payroll ledgers.
All general ledgers.
All cash disbursement journals.
All financial statements for all years reflecting the operations this contract.

In addition, County and Project Manager may require, if it deems appropriate, additional financial statements for three (3) years preceding execution of the contract and three years following final acceptance of the project.

All documents that relate to each and every construction claim for this project together with all documents that support the amount of damages as to each claim for this project.

Worksheets, Accounting Spreadsheets or any other documents used to prepare the elements of the construction claim including but not limited to labor, benefits and insurance, materials, equipment, subcontractors, all documents which establish the time periods, individuals involved, the hours for the individuals, and the rates for all the individuals.

All documents and computation sheets used during the course of bidding to the extent the claim is based upon the original bid.

All scheduling documentation.

- a. Certification. All Certifications required by County and Project Manager shall meet the certification requirements set forth in General Condition 39.

41. MANNER OF PAYMENT

Payment will be made on whole units with satisfactory inspection. A work quality of 95% or higher is required for payment. Payment is pass or fail. If greater than 5% untreated or satisfactorily treated areas are found on sample plots areas, the Contractor shall rework areas designated by the Project Manager until work quality is above 95%. A minimum of 10 random placed plots will be needed showing less than 95% contract compliance to require contractor to retreat area to achieve adequate performance or reduce overall performance payments.

Example: 1/50 ac., Plot 16'8" radius, 871.2 sq ft/plot
Number of Sq ft not treated/871.2=percentage not treated
7 x7 area not masticated or sprayed
Plot 1-7x7 = 49 square ft not treated
Plot 2-3x9 = 27
Plot 3-4x6 = 24
Plot 4-9x7 = 63
Plot 5- 1x3 = 3
Plot 6- 4x2 = 8
Plot 7- 5x5 = 25
Plot 8-2x6 = 12
Plot 9- 6x7 = 42
Plot 10- 0x0 =0

Total 253 sq ft not treated/8712 sq ft =.029=.97% treated satisfactory

The Contractor exceeded contractor minimum requirements and full payment will be made.

Based on inspection results, if work quality percentage falls below 95%, the Project Manager will notify the contractor (written and orally) to improve the quality of work. If the quality of work is not raised to an acceptable level within five consecutive work days, after written notification the Project Manager may recommend contract termination by the County.

Retainage. County and Project Manager shall retain 5% of all partial payments until final inspection and acceptance of Work has been completed. All retainage minus any and all monies due and owed by the Contractor to the County and Project Manager will be paid as a part of the final payment. No interest will be paid on retainage.

Final Payment. Within 60-calendar days after the completion and issuance of Final Acceptance of Work, the County and Project Manager shall pay the Contractor the full amount of the Contract Price, less all partial payments previously made, any monies due under General Condition 42 and any further monies due to the County and Project Manager.

42. CONTRACTOR FOR PUBLIC WORKS TO PAY OR SECURE TAXES

Pursuant to Idaho Code section 63-1503 (as amended), the Contractor, in consideration of securing the business of erecting or constructing public works in this state, recognizing that the business in which he is engaged is of a transitory character, and that in the pursuit thereof, his property used therein may be without the state when taxes, excises, or license fees to which he is liable become payable, agrees:

- a. To pay promptly when due all taxes, (other than on real property), excises and license fees due to the state, its subdivisions, and municipal and quasi-municipal corporations therein, accrued or accruing during the term of this contract, whether or not the same shall be payable at the end of such term.
- b. That if the said taxes, excises, and license fees are not payable at the end of said term, but liability for the payment thereof exists, even though the same constitute liens upon his property, to secure the same to the satisfaction of the respective officers charged with the collection thereof; and
- c. That, in the event of his default in the payment or securing of such taxes, excises, and license fees, to consent that the department, officer, board, or taxing unit entering into this contract may withhold from any payment due him hereunder the estimated amount of such accrued and accruing taxes, excises, and license fees for the benefit of all taxing units to which said contractor is liable.
- d. That in compliance with Idaho Code 63-1504 (as amended), the Contractor shall submit a certification with each construction payment request certifying that it has paid all taxes, excises, and license fees due to the state and its taxing units, due and payable during the term of the contract for such construction, and that it has secured all such taxes, excises, and license fees liability for the payment of which has accrued during the term of such contract, notwithstanding they may not yet be due or payable.

43. COST INFORMATION AND CERTIFICATION

For the purposes of determining equitable adjustments in the Contract Price as a result of proposed or actual additions to, deletions from or changes in the performance of Work under the Contract Documents, or when proceeding under General Condition 39 (Claims and Disputes) the Contractor shall (when requested to do so by the Project Manager) provide the County and Project Manager with copies of payrolls and other cost data applicable to the Work. All such cost information shall be certified by the Contractor and/or his Subcontractors as being true, complete and correct and shall be furnished to the County and Project Manager within three (3) working days following the Project Manager's written request.

44. PAYMENT FOR EXTRA WORK

Adjustments, if any, in the amounts to be paid to the Contractor by reason of any change, addition, or deduction shall be determined by one of the following methods:

By an acceptable lump sum proposal which includes supporting documentation regarding labor, material and equipment estimates from the Contractor; or

By contract unit prices contained in the contract, or by unit prices mutually agreed upon by the Contractor and the County and Project Manager; or

c. By force account,

It is the responsibility of the Contractor, before proceeding with any change, to satisfy himself that the change has been properly authorized by the County and Project Manager. No charge for extra work or any other change will be allowed unless the extra work or change has been authorized in writing by the County and Project Manager and the compensation or method thereof is stated in such written authority.

When payment for extra work is by lump sum, agreed price(s), or by unit prices mutually agreed upon by the Contractor and the County and Project Manager, the Contractor shall include in such agreed upon prices any and all applicable taxes on taxable materials used in such work.

45. NOTIFICATION OF CESSATION OR RESTART OF WORK:

The Contractor will notify the Project Manager prior to ceasing operations for three days or more and will notify the Project Manager before restarting operations after shutdown of three days or more. This can be done by phone, e-mail, or in person.

Specifications All Units:

1. All vehicles shall stay on roadways unless specific authorization is given by the Project Manager for off-road travel.
2. Gates must remain closed and locked at all times. No camping is allowed behind gates. Access behind gates will be provided by the Project Manager.
3. Signs shall be posted at access points to identify that equipment is chipping/grinding trees in the area.

4. The Contractor shall be responsible for picking up and properly disposing of all trash generated as a result of this contract at the end of each day.
5. Equipment will be fueled and maintained at least 100 feet from any water source.
6. All trees to be cut shall be completely severed below the lowest live limb and the resultant stump shall be no taller than six (6) inches measured from the ground on the uphill side. The cut surface of stumps should be horizontal (level) when finished.
7. Cut trees or parts of cut trees shall not be left hanging up in leave trees or adjacent stands. This is extremely dangerous.
8. Work hours shall be limited to the time between one-half hours before sunrise to one-half hour after sunset each day.
9. If the Contractor or agent observes general public within the work area during operation, the Contractor will stop work and ask the individuals to vacate the area. If the individuals will not leave the Contractor may go to another area and make every attempt to contact the Project Manager.
Mechanically grind all slash, surplus trees and brush to 90% consumption. All surplus vegetation and slash shall be ground or cut such that no woody piece is greater than 3 feet in length and no surplus vegetation exists taller than 2 feet. Down logs greater than 12 inches in diameter do not need treatment. Any salvage requires written approval of the landowner administered by the Project Manager.

Under penalty of law for perjury or falsification, the undersigned,

(Name)

(Title)

(Company)

hereby certifies that the claim is made in good faith; that the supporting data is accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the actual cost and/or time adjustment for which the Contractor believes the Nez Perce County is liable; and that I am duly authorized to certify the claim on behalf of the Contractor.

(Signature)

(Dated)

Subscribed and sworn before me this ___ day of _____

(Signature)

Notary Seal

My commission expires: _____

A total of _____ acres requiring treatment depicted in **spreadsheet** below.

46. Contract Pricing

CONTRACTOR NAME: _____

1. Mastication/ Hand Treatment Bid Price per acre = _____

Total Bid price/ac = _____ **x 93.2 ac =** _____

2. RIPARIAN RESTORATION SPRAY BID PRICE / AC = _____

MOBILIZATION RATE: _____

TOTAL BID PRICE/AC= _____ **X93.2 AC =** _____

3. RESEEDING AREA SPRAY BID PRICE / AC = _____

MOBILIZATION RATE: _____

TOTAL BID PRICE/AC= _____ **X195 AC=** _____

4. PARDEE R/W SPRAY BID PRICE PER MILE = _____

TOTAL BID PRICE PER MILE _____ **X6.71 MILES=** _____

5. CARROT RIDGE R/W SPRAY BID PRICE = _____

TOTAL BID PRICE PER MILE _____ **X6.86 MILES=** _____

6. CARROT RIDGE EDRR SPRAY BID PER ACRE= _____

TOTAL BID PRICE/ AC= _____ **X87.15AC=** _____

Contractors name (print) _____

Contractor signature: _____

Contractors tax ID # _____

County Commissioner _____

County Commissioner _____

County Commissioner _____