

**COEUR D'ALENE TRIBE
NATURAL RESOURCES DEPARTMENT**

Contract for Tree Planting, 2012

This Contract is entered into between the Coeur d'Alene Tribe, ("Tribe"), P.O. Box 408, Plummer, ID, 83851, by and through its Coeur d'Alene Tribal Forestry Program ("Program") and _____ ("Contractor") by and through its agent _____, located at _____.

Recitals

- A. The Coeur d'Alene Tribe is a sovereign nation, recognized by executive order and other federal law, with its own government, unique culture and history and a variety of natural resources on its Coeur d'Alene Reservation, including timber reserves and forestlands, and
- B. The Coeur d'Alene Tribe wishes to contract with an entity whose agents possess the skills and capabilities to plant tree and spot spray seedlings within the Coeur d'Alene Reservation for a period in spring, 2012, and
- C. The above-named Contractor claims to possess such skills and capabilities.
- D. The foregoing Recitals are hereby incorporated into and made an integral part of this Contract.
- E. The Coeur d'Alene Tribe's Forest Development Forester and/or Technician Norris Boothe and/or Ron LaSarte will be the Tribe's Contract Representative.
- F. The Contractor's Representative is _____.

Terms

Contractor agrees to perform such professional services as are set forth in this Contract, and the Tribe agrees to pay Contractor such amounts as are specified in this Contract, all upon the following terms and conditions:

1.0 Scope of Services

- 1.1 Approximate planting block boundaries are shown on the project maps attached hereto as Exhibit A.
- 1.2 Contractor agrees to plant approximately 81,500 conifer seedlings on approximately 262.4 acres in 4 areas according to planting specifications described in Exhibit B, which is attached hereto and which is hereby fully incorporated into and made a part of this Contract.
- 1.3 Contractor agrees to provide herbicides and spot spray around seedlings on approximately 245.9 acres, according to application instructions described in Exhibit B, on applicable herbicide labels, and Worker Protection Standards. Handlers and workers shall have pesticide safety training and shall be supervised by a licensed professional applicator.
- 1.4 Contractor shall perform all required services in connection with this project, including furnishing all necessary professional and clerical personnel, transportation, supplies and equipment.

2.0 Term and termination

- 2.1 The Contractor will begin work as soon as practicable after receiving the signed copy of this Contract and the notice to proceed. All work shall be completed within a reasonable time of initiating work on this contract (average production of 25 acres per day).
- 2.2 The Contract will terminate on **June 8, 2012** or upon completion of contracted services.
- 2.3 This Contract may be terminated by the Coeur d'Alene Tribe or by the Contractor without cause upon 10 days written notice, or sooner if both parties agree. This Contract shall terminate if tribal funds cease to be available.
- 2.4 The Tribe may terminate this contract without penalty or cost at any time if the work being performed by the Contractor is determined by the Tribe, in its sole discretion, not to be reasonably satisfactory.
- 2.5 Either party may terminate this contract upon a breach by the other.

- 2.6 If this agreement is terminated pursuant to this section, the terminating party shall send written notice of same. The Contractor will receive payment only for accomplished work completed to contract specifications, less any adjustments per section 2.4.
- 2.7 If this agreement is terminated by the Tribe pursuant to provision 2.4, the costs incurred by the Tribe in hiring a replacement contractor will be deducted from the contract amount.

3.0 Payment

3.1 The total amount to be paid under this contract, contingent upon the Coeur d’Alene Tribe’s approval of the Contractor’s work, is as shown below:

Planting Block	Planting Area	Planting Bid Rate/Acre	Plant Bid Rate/Block	Spray Bid Rate/Acre	Spray Acres	Spray Bid Rate/Block	Total Bid Price
1. A619 CRP	86 ac.				86		
2. A619 Field 4	41.7 ac.				41.7		
3. Ness Rd. Velpar	91.4 ac.				91.4		
4. Ness Rd. Mix	8.5ac.				8.5		
5. Senkler Rd.	18.3 ac.				18.3		
6. Tamiyel Strips	16.5 ac.				0		
TOTALS:	262.4 Ac.	Total:		Total:	245.9 ac.	Total:	

- 3.2 The total bid price for each tract shall be the basis for payment, unless circumstances limit or expand the area planted in any tract. In such event the area actually planted will be determined by Global Positioning System and multiplied by the bid rate per acre.
- 3.3 The Program shall inspect each block for planting quality and for spray quality, as specified in Exhibit B, Section III Inspections and Acceptance.
- 3.4 The Program shall furnish an inspection report to the Contractor, showing the planting and/or spraying quality, actual acres per section 3.2 for accepted planting block(s) and any adjustments required by Exhibit B, Section III. INSPECTIONS AND ACCEPTANCE, subsection E. Penalties and/or subsection F. Acceptance and Payment.
- 3.5 The Program shall pay the Contractor for accepted blocks upon submission of periodic invoices specifying the amount due according to cost per acre shown in Section 3.1 and any adjustments per Section 3.4.

4.0 Tribal Employment Rights Ordinance (TERO)

Contractor is required to complete a TERO Compliance Plan and have it approved before initiating work. Contractor is responsible for filing payroll reports and following all aspects of the TERO in hiring and conduct of the work. Contact James Nilson at (208)686-6107 about TERO related questions.

5.0 Performance Bond

Contractor shall post a performance bond in the amount of \$_____ (5% of total bid price) to secure satisfactory performance of this contract, to be refunded upon final completion and approval of all obligations. In the event Contractor fails to satisfactorily perform this contract, the performance bond will be forfeited.

6.0 Independent Contractor

Both parties agree that Contractor will act as an independent contractor in the performance of its duties under this contract. Contractor shall be responsible for payment of all applicable fees including federal, state and local taxes arising from its activities under this contract. Contractor is also responsible for obtaining all necessary federal or local permits in order to perform such work. The Tribe assumes no responsibility for damage to property, Contractor or employee injuries.

7.0 Indemnification

The Contractor shall indemnify and hold harmless the Tribe and its guests, agents, and employees from and against all

claims, damages, losses and expenses, including but not limited to attorney's fees arising out of or resulting from the performance of the Contractor's duties pursuant to this Contract, provided that any such claim, damage, loss or expense is caused in whole or in part by any negligent act or omission of the Contractor, anyone directly employed by the Contractor or anyone for whom the Contractor may be liable, regardless of whether or not such act or omission is in part that of a party indemnified hereunder.

8.0 Assignment and delegation, subcontracting

The Contractor may not assign the rights nor delegate the duties described under this Contract, nor subcontract any part of the work to be performed pursuant to this Contract without the Tribe's written approval. The Tribe may attach any reasonable conditions or limitations to the employment of any subcontractor.

9.0 Binding Effect

This Contract is for the benefit only of the parties hereto and shall inure to and bind the parties hereto and their respective heirs, legal representatives, successors and assigns.

10.0 Notice

Any notice under this agreement shall be in writing and delivered in person or by public or private courier service (including the U.S. Postal Service Express Mail) or certified mail with return receipt requested or by facsimile. All notices shall be addressed to the parties at the following addresses or at such other addresses as the parties may from time to time direct in writing.

For the Coeur d'Alene Tribe:

Name: Kurt Mettler, Forest Manager
Address: P.O. Box 408, 850 A Street, Plummer, ID 83851
Phone: 208-686-1315
Fax: 208-686-1855

For the Contractor:

Name: _____
Address: _____
Phone: _____
Fax: _____

Any notice shall be deemed to have been given on the earlier of (a) actual delivery or refusal to accept delivery, (b) the date of mailing by certified mail, or (c) the day facsimile delivery is verified. Actual notice, however and from whoever received, shall always be effective.

11.0 Forum

This contract shall be governed by the laws of the Coeur d'Alene Tribe.

12.0 Sovereign Immunity

Nothing in this Contract shall be construed as a waiver or diminishment of the Coeur d'Alene Tribe's inherent sovereign immunity.

13.0 Severability

The terms of this Contract are severable such that if any term or provision is declared by a court of competent jurisdiction to be illegal, void, or unenforceable, the remainder of the provisions shall continue to be valid and enforceable.

14.0 Non-waiver

The delay or failure of the Tribe to exercise any of its rights under this Contract for a breach by the Contractor shall not be deemed to be a waiver of such rights, nor shall the same be deemed to be a waiver of any subsequent breach by the Contractor, either of the same provision or otherwise.

15.0 Representations

The Contractor represents and warrants that it has the full right and legal authority to enter into and fully perform this Contract in accordance with its terms without violating the rights of any third party and that it has all governmental licenses, permits or other authorizations necessary to perform the duties herein described. The individual executing this Contract on behalf of Contractor represents and warrants that he or she is duly authorized to execute and deliver this Contract on behalf of Contractor in accordance with duly adopted organizational documents or agreements.

16.0 Insurance

16.1 Contractor warrants that worker's compensation insurance is purchased for all employees of Contractor engaged in the performance of work under this Contract and shall provide the Tribe with a Certificate of Insurance to verify the same prior to the execution of this Contract. Any change in status of such insurance shall be immediately reported to the Tribe.

16.2 Contractor shall provide comprehensive general liability insurance in an aggregate amount of not less than one million dollars (\$1,000,000.00) which does not exclude the type of work being performed by Contractor under this contract. This requirement may be satisfied by obtaining appropriate endorsement for this particular project to any umbrella policy of liability insurance Contractor maintains. Proof of such coverage is required prior to execution of this contract and any changes in the status of such insurance shall be immediately reported to the Tribe.

17.0 Warranties

Contractor warrants that all Contractor and Contractor's employees will be properly certified to perform the work described herein, and that all laws, licenses and other requirements to perform said work will be complied with by Contractor. Contractor agrees to warrant remedy any activities/work without cost to the Tribe. The Tribe shall notify Contractor of such discrepancies within one year of Contractor's completion of work under this contract. Otherwise such warranty expires.

18.0 Proprietary Rights and Confidentiality

The Contractor may, in the process of performing his or her duties under the terms of this Contract, have access to records, materials, research, products, services, inventions, processes, designs, drawings, engineering, marketing or finances which is designated in writing to be confidential or proprietary, or if disclosed orally, is confirmed promptly in writing as having been disclosed as confidential or proprietary. Contractor warrants that he will not disclose any such information to anyone for any purpose without express written authorization by the Tribe.

19.0 Entire Agreement; Modification

This Contract and its Attachments constitute the entire understanding between the parties with respect to the subject matter herein. It may not be amended except by an agreement signed by the authorized representatives of the Tribe and the Contractor.

20.0 Cultural Resources Management (CRM) Compliance

20.1 The Contractor and Contractor's staff will participate in a 1 hour cultural resource awareness training session with CRM staff, provided free of charge, prior to or within 2 days of starting work.

20.2 If suspected or actual cultural resources are encountered during the work, the CRM staff will be notified immediately. Assessment will begin as soon as possible, generally the same day or the next day.

CRM staff contacts are:

John Hartman: 208-301-0014 cell or 208-686-8402 office.

Jill Wagner: 208-582-1347 cell or 208-686-1572 office.

20.3 Work may continue OUTSIDE a 150' radius around the suspected/actual cultural resource. Once an assessment has been made by CRM and Forestry staff, procedures will be developed to proceed with work or to change the plan for work depending on the assessment.

20.4 No photos of suspected or actual cultural resources are to be taken.

20.5 In the case of possible human remains, the standard CRM procedures are to be followed. A copy can be provided upon request.

IN WITNESS WHEREOF, the parties agree to the provisions set forth herein as evidenced by the signatures of their authorized representatives below:

CONTRACTOR:

Date: ___/___/___

COEUR D'ALENE TRIBE

Alfred M. Nomee, Natural Resources Director

Date: ___/___/___

Robert A. Matt, Administrative Director

Date: ___/___/___

Exhibit A Maps

<u>Tree Planting Areas</u>	<u>Page</u>
A619 CRP Fields 2, 3, 4, 5 and 13	7
Ness Road Road CRP	8
Senkler Road Interplanting	9
Tamiyel Strips	10

SAMPLE