

COEUR D'ALENE TRIBE

Contract for Chadalamalqwn Site Preparation

This Contract ("Contract") is entered into between the Coeur d'Alene Tribe, P.O. Box 408, Plummer, ID, 83851, ("Tribe"), by and through its Coeur d'Alene Tribal Forestry Program, and _____, by and through its agent _____, for mechanical site preparation in areas specified herein on Exhibits A-1 and A-2, on the Chadalamalqwn Logging Unit.

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 prepare two areas for planting by scarifying to remove brush, slash and undesirable saplings from certain areas on the Tribe's reservation.
- 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, Norris Boothe and/or Forest Development Technician, Ron LaSarte will be the Tribe's Contract Representative (CR).
- F. The Contractor's Representative is Contractor's name.

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 The treatment units shown on the maps labeled Exhibit A-1 and A-2 are seed tree/shelterwood cuts bounded by roads, property lines, old fire lines or otherwise identified by flagging hung from vegetation along the boundaries.

1.2 Contractor agrees to scarify or otherwise remove excess brush and undesirable saplings, as specified in Section 2.1 Vegetation Control in the "Technical Specifications", which is attached hereto as Exhibit B and which is hereby fully incorporated into and made a part of this Contract.

1.4 Contractor agrees to treat slash as specified in Exhibit B, Section 2.2 Slash Treatment.

1.5 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 possible after receiving the signed copy of this Contract and the notice to proceed, weather permitting. All work shall be completed within a reasonable time of initiating work on this contract.

2.2 The Contract **will terminate on August 15, 2012**, or upon completion of contract services, whichever is sooner.

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 work completed to contract specifications, as computed based on the methods described in section 3.0. The Contractor shall remove all equipment, personal property and debris from the project area within two weeks following contract termination.

2.7 If the contract 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 performance bond and/or any payment due to the Contractor.

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, will be:

UNIT	ACRES	BID RATE PER ACRE	TOTAL BID PRICE
A366 ST	10.8	/acre	
A367 South	28.2	/acre	
TOTAL	39.0 acres	CONTRACT TOTAL	\$ 0.00

3.2 The CR shall inspect each unit as specified in Exhibit B, Section 3.3 to determine satisfactory completion of services required by this contract.

3.3 The Tribe shall pay the Contractor for blocks accepted by the Tribe, upon submission of periodic invoices specifying acres accomplished and documented with field inspection reports, less any deductions required below.

3.4 Payment rates are subject to Exhibit B, Section 3.3.

3.5 Deductions: merchantable sawlog material cut or damaged by the Contractor will be charged at stumpage rates under the Chadalamalqwn Logging Unit. Minimum merchantability standards are at least 12 feet in length with a minimum scaling diameter of 6 inches on the small end.

3.6 Partial payments may be requested for accepted areas and made no more often than once every 2 weeks.

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 other 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 the contract total price to secure satisfactory performance of this contract, to be refunded upon final completion and approval of all obligations. In the event Contractor defaults on the contract at any time, Contractor shall be liable for expenses incurred by or caused to the Tribe as a result of such default in an amount determined by the Forest Manager of the Coeur d'Alene Tribe.

6.0 Road Maintenance

Contractor agrees to avoid road damage to private and Tribal roads accessing the project, including prevention of berms and ruts. Contractor is liable for repair, maintenance and/or payment for any road damage caused by his operations.

7.0 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, state or local permits in order to perform such work. The Tribe assumes no responsibility for damage to property, Contractor or employee injuries.

8.0 Indemnification

The Contractor shall indemnify and hold harmless the Tribe and its guests, agents, 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.

9.0 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.

10.0 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.

11.0 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, 402 Anne Antelope Avenue, Plummer, ID 83851
Phone: 208-686-1315 Fax: 208-686-8600

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.

12.0 Forum

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

13.0 Sovereign Immunity

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

14.0 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.

15.0 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.

16.0 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.

17.0 Insurance

17.1 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.

17.2 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.

18.0 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.

19.0 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, maps, 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.

20.0 Entire Agreement; Modification

This Contract and its Exhibits and/or 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.

21.0 Cultural Resources Management (CRM) Compliance

21.1 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 3 days of starting work.

21.2 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.

Appropriate staff includes:

John Hartman: 208-301-0014 cell; 208-686-8402 work.

Jill Wagner: 208-582-1347 cell; 208-686-1572 work.

21.3 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.

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

21.5 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:

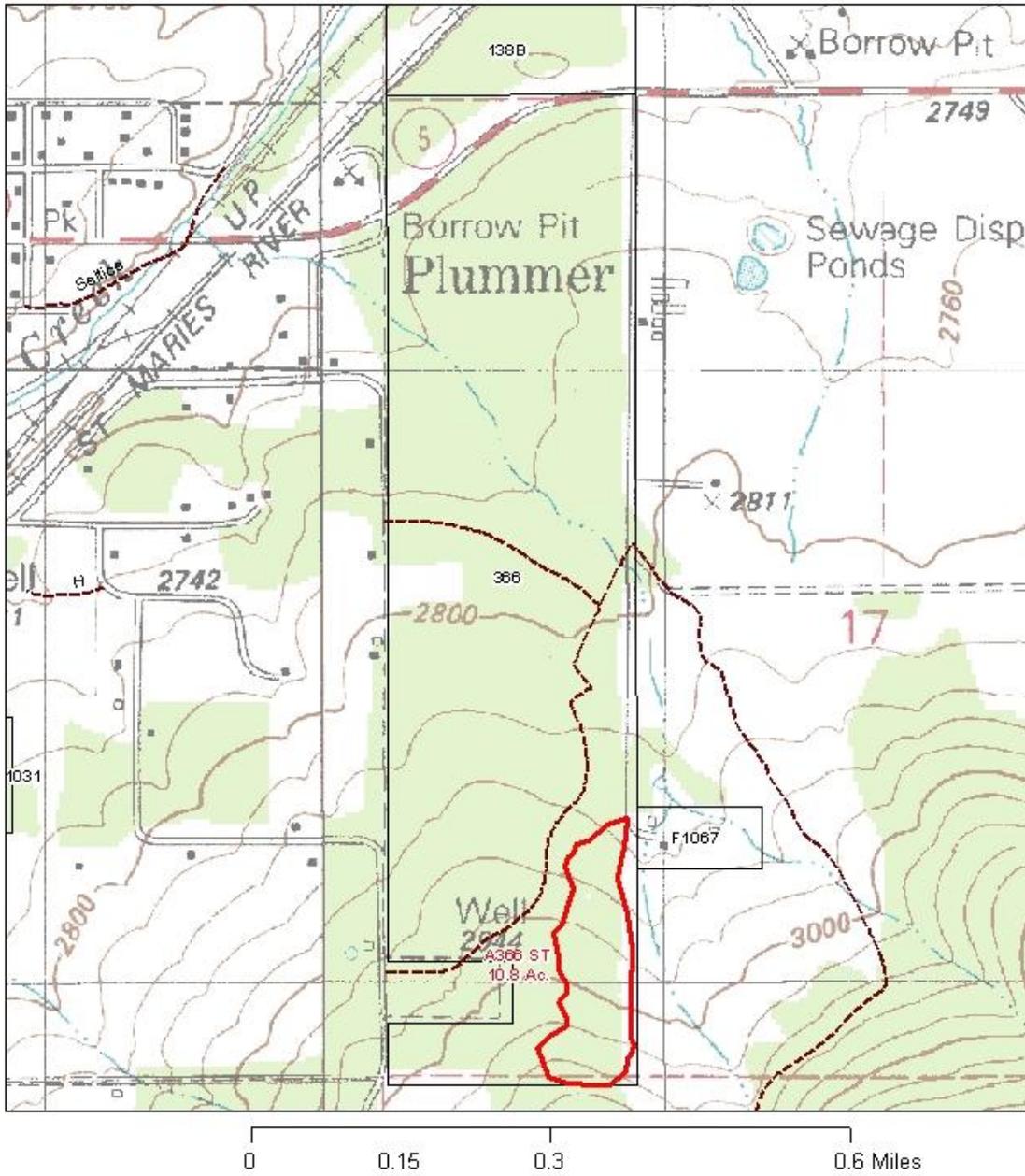
(Title) Date

COEUR D'ALENE TRIBE

Natural Resources Director Date

Administrative Director Date

Exhibit A-1: A366 ST
 Chadalamalqwn Site Prep
 Coeur d'Alene Reservation
 Sec. 17, T46N, R4 W, Boise Meridian, Idaho



- Legend**
- Site Prep
 - Dirt Roads



The information depicted on the map is the result of digital analysis performed on a database consisting of information from a variety of governmental and other credible sources. The accuracy of the information presented is limited to the collective accuracy of the database on the date of the analysis. The information is believed to be accurate and reasonable efforts have been made to ensure the accuracy of the map. However, the Coeur d'Alene Tribe expressly disclaims responsibility for damages or liability that may arise from the use of the map. The product is the property of the Coeur d'Alene Tribe and its use is thereby restricted. In particular, only those parties who have received express written permission from the Coeur d'Alene Tribe may disseminate, copy, publish or release the information contained herein.

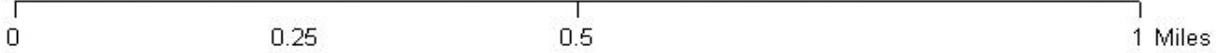
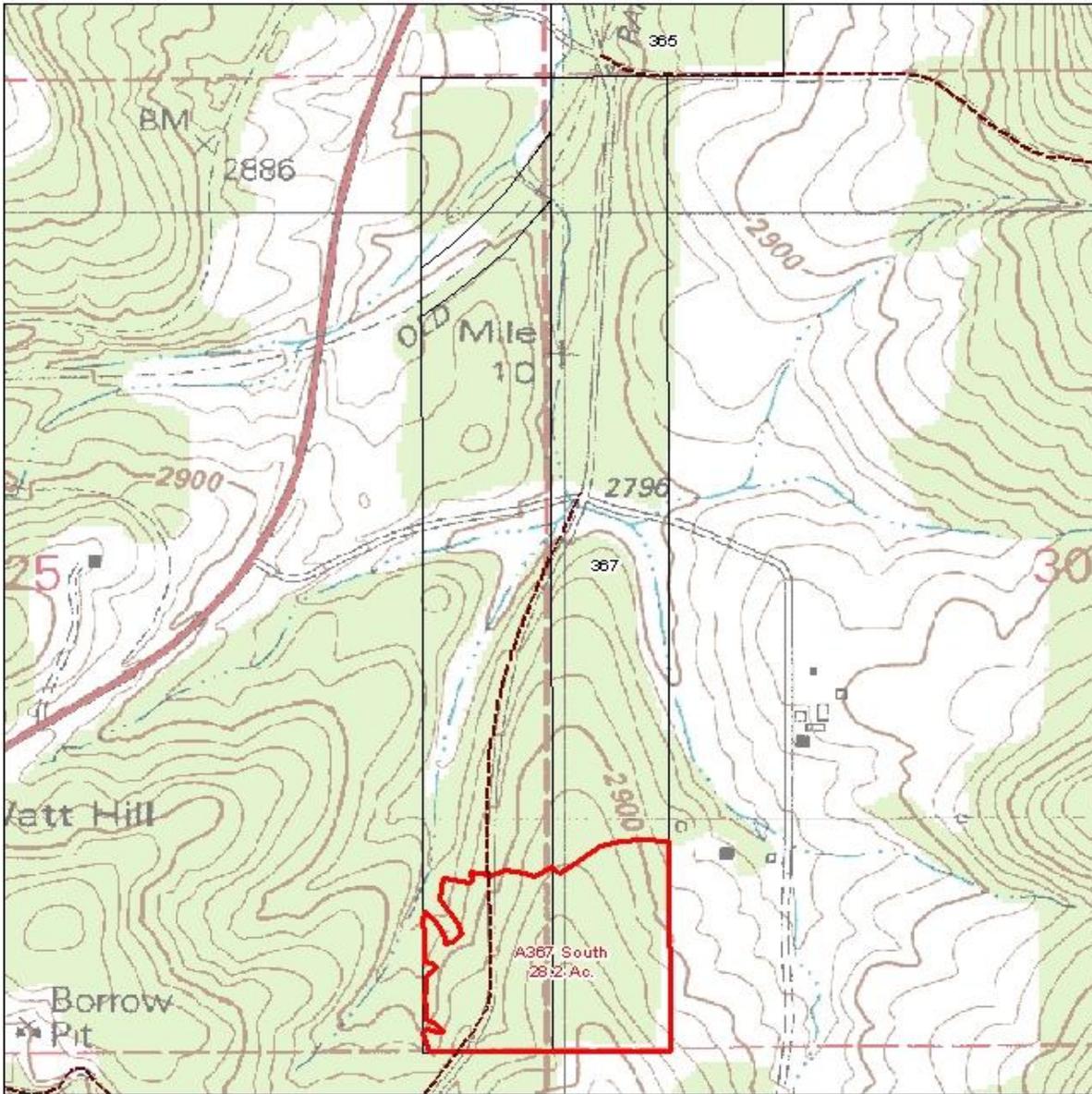
File Name: nboishepitol.mxd
 For information on the map or other maps please contact us at nboishe@coeurtribe-nan.gov

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Map produced by Tribal Forestry

Date: 6/19/2012

Exhibit A-2: A367 South
 Chadalamalqwn Site Prep
 Coeur d'Alene Reservation
 Sec. 30, T46N, R4 W & Sec. 25, T46N, R5W, Boise Meridian, Idaho



- Legend**
- Site Prep
 - Dirt Roads



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Map produced by Tribal Forestry
 Date: 6/19/2012

EXHIBIT B: SPECIFICATIONS
2012 SITE PREPARATION
COEUR D'ALENE RESERVATION

1.0 Introduction

- 1.1 **Purpose:** The purpose of site preparation is to enable tree planting and enhance seedling growth by treating brush and damaged and/or undesirable conifers and treating slash concentrations in portions of the project area that are not occupied by desirable trees.
- 1.2 **Contractor Responsibilities**
- 1.2.1 Contractor is responsible for safe operation and maintenance of his equipment.
- 1.2.2 Contractor shall avoid damaging existing facilities, including but not limited to, fences, gates, utility lines, roads and erosion control structures. If damaged by his operation, Contractor shall be financially responsible for repair or replacement of all existing facilities to their condition prior to the approval date of the Contract.
- 1.2.3 During closed fire season, May 20 to October 10, employees must carry a personal fire extinguisher while operating a power tool. The Contractor will keep a shovel and a water container with a minimum of five (5) gallons of water near the work site for fire suppression. Contractor will notify the Tribe, local, state or federal agencies as soon as possible if a fire on or near the project area.
- 1.3 **Tribal Obligations**
- 1.3.1 The Tribe will provide training and perform all inspections necessary to ensure the satisfactory completion of this contract. Inspections will be performed periodically and in a timely manner to assure that any problems are promptly brought to the attention of the Contractor.
- 1.3.2 Following notice of completion, the Contract Representative (CR) will inspect the work site on the next available workday. Availability is subject to prior scheduling of Forestry personnel, but inspections will have priority over other activities except fire control or prescribed burning.

2.0 Technical Specifications

- 2.1 **Vegetation Control (Scarification)**
- 2.1.1 Contractor shall uproot standing brush and damaged or undesirable saplings within seed tree cuts, exposing mineral soil on at least 60% of the project area. The remaining 40% of the project area shall include those areas occupied by desirable trees (see 2.1.5), untreated wildlife cover left in strips not to exceed 10 feet in width, slash piles and/or windrows.
- 2.1.2 The scarified area shall be arranged throughout understocked portions of the project area. Contractor and the CR shall agree to an operating plan describing Contractor's equipment and the general pattern and spacing required to meet these specifications.
- 2.1.3 Saplings are defined as conifers at least **3** feet tall and up to **6** inches in diameter at breast height (DBH). Saplings with broken tops, 30% or more of the crown defoliated, dead tops, galls or bark damage (on more than ½ of the circumference) on the bole or pushovers that lean more than 15 degrees from vertical are considered "damaged".
- 2.1.4 Douglas-fir and grand fir saplings are considered undesirable on these sites and shall be removed unless within **12** feet of a seed tree or desirable sapling.
- 2.1.5 Desirable trees include western larch, ponderosa pine and white pine saplings and conifers, birch, aspen, and cottonwood more than **6** inches in DBH. Desirable trees shall not be damaged during site preparation.

2.1.6 Vegetation control is not required within **12** feet of desirable trees, which should prevent damage. If the CR observes such damage, a warning will be issued and the operating plan may be modified to prevent further damage.

2.1.7 After one warning, any desirable trees damaged by the contractor to the extent described in section 2.1.2 shall be assessed at the amount of \$1.00 per foot of tree height or for merchantable-sized trees, the Chadalamalqwn Logging Unit stumpage rate(s) for the appropriate species will be used to assess damages. Damage assessments shall be withheld from payments due to Contractor or from the bond in the case of default.

2.2 Slash Treatment

2.2.1 Contractor shall pile, windrow, chip or masticate existing slash and slash resulting from vegetation control, without significantly reducing the soil exposure below the target specified in section 2.1.1.

2.2.2 Piles or windrows of slash, chips or chunks shall be primarily arranged in areas where uprooting brush is not required, but up to 20% of the cleared area may be occupied by small piles, defined as a pile that covers less than 80 square feet at ground level.

2.2.3 Slash piles or windrows shall be clean and free of loose soil.

2.2.4 Contractor shall not be responsible for disposal of “large woody debris” that exceeds **6** inches in small end diameter, including blowdown, snags, long butts or cull logs. Limbs attached to large woody debris shall be removed from at least one side and piled with other slash.

2.3 Soil Protection

2.3.1 Vegetation control and slash treatment shall be accomplished with equipment approved by the CR, such as a “brush rake” attachment with tines spaced approximately 1 to 2 feet apart.

2.3.2 Tines shall penetrate the soil no more than 18 inches while uprooting vegetation, and shall not contact the soil within 4 feet of a pile or windrow while rolling, “feathering” or shaking soil from the slash being piled.

2.3.3 Operations shall be suspended when soil moisture would decrease traction or be highly susceptible to compaction or rutting, as determined by the CR.

3.0 Inspection and Acceptance

3.1 The Tribe will furnish an inspector(s) to the site periodically as work progresses, to ensure adequate compliance to contract provisions. The Contractor is encouraged to observe the inspection and may request inspection summaries. Upon notice of completion, the Tribe will conduct the final inspection of the block within one week of the notice of completion, generally on the next available workday. Availability of inspectors is subject to prior scheduling of Forestry personnel.

3.2 Notification: The Contractor shall notify the Tribe within one workday of the completion of a block. The notice of completion can be verbal, by email or in writing.

3.3 Inspection Procedure: The CR may accept work if deemed satisfactory after walk through inspections, direct further work if needed or conduct formal transects to determine acceptability.

3.3.1 Walk through inspections would be used where periodic inspections have indicated ongoing compliance with Section 2.0: Technical Specifications. The walk through would confirm that site preparation has been completed and unquestionably meets specifications.

3.3.2 If the CR cannot confirm compliance through walk through inspections, he will pace across the project area in a series of transects. The number of paces through satisfactory treatment will be

compared to the number of paces through desirable trees and untreated cover and the number of paces beside slash piles (using normal pacing offset procedure).

3.3.2.1 The percentage of each transect exposed and accessible for planting according to specifications in Sections 2.1.1 and 2.1.2 must be at least 60% for full payment at the bid rate and 50% for payment at 90% of the bid rate.

3.3.2.2 Slash treatment and soil protection will be visually assessed while pacing or through separate transects. The CR will direct further work if less than 50% of each transect is exposed and accessible for planting, if slash piling needs improvement or if soil needs to be smoothed.

3.3.3 Re-inspection: A re-inspection will be conducted on all blocks reworked within one week of notification of rework, generally on the next available workday. Inspections after rework will be made in the same manner as the first inspection, but will use different transects.

3.4 Acreage

3.4.1 Acreage Measurements: The acreages shown in Section 3.1 of the Contract are calculated from horizontal distances measured by Global Positioning System (GPS) input to the Tribe's Geographic Information System (GIS), rounded to the nearest tenth (0.1) acre. Unless physical deletions or additions are made on the ground, the acreage for the units as shown in Section 3.1 of the Contract is final, subject only to the remeasurement provision below.

3.4.2 Remeasurement: The Tribe reserves the right to correct erroneous acreage figures shown in Section 3.1 of the Contract, or to account for physical deletions or additions to the actual treatment unit area made by the Contract Representative.

3.4.3 The Contractor may request, in writing, remeasurement of any treatment unit under this contract if he/she believes the acreage stated in Section 3.1 of the Contract is incorrect. Remeasurement will be made on the ground within the established boundaries. Remeasurement will be based on standard horizontal measurements, using GPS and GIS.

3.4.3.1 If remeasurement determines a variance of five (5) percent or less, at a precision of one tenth (0.1) acre, the actual cost to the Tribe of conducting the remeasurement will be deducted from payment due the Contractor, and no adjustment will be made in the acreage.

3.4.3.2 If remeasurement determines a variance of greater than five (5) percent adjusted to the nearest tenth (0.1) acre, payment will be based on the remeasured acreage. The cost of conducting the remeasurement in this instance will be borne by the Tribe.