

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

2014 Spot Spray Contract

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 Insert contractor here ("Contractor") by and through its agent Insert Name, located at Insert Address.

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, capabilities and a Pesticide Applicator License to apply herbicides to planting spots for site preparation within the Coeur d'Alene Reservation for a period in fall, 2014, 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 Insert 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 Prior to initiating any contract work, the Contractor and Officer in Charge will meet at the project area to go over specifications by treatment block. Approximate treatment block boundaries are shown on the project maps attached hereto as Exhibits A-1 to A-4.
- 1.2 Contractor agrees to provide herbicide and spot spray in 4 treatment blocks according to application instructions described in Exhibit B, on applicable herbicide labels and Worker Protection Standards. Treatment shall be supervised by a Professional Applicator licensed in the Forest Environment or Agricultural Herbicide categories.
- 1.3 Estimated number of spots to be sprayed is 21,245. The estimate is not guaranteed, but is based on planned spacing of spots within treatment blocks.
- 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 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 (minimum production of 18 acres per day).
- 2.2 The Contract will terminate on **November 30, 2014** 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 provision 2.7.
- 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 on the Coeur d’Alene Tribe’s approval of the Contractor’s work, is as shown below:

Treatment Block	Acres	Estimated Number of Spots	Bid Price per Acre	Bid Price per Block
Eagle Interplant	18.5	2500	\$	\$
A64C & D	6.3	1800	\$	\$
Tamiyel Replant	53.4	14,845	\$	\$
Ruark Field	6.0	2100	\$	\$
Totals:	84.2	21,245	-	\$

- 3.2 The total bid price for each tract shall be the basis for payment, unless the Program and the Contractor agree to modify the area to be treated in any tract. In such event the area actually treated will be traversed with a Global Positioning System receiver, and actual acres will be multiplied by the bid price per acre.
- 3.3 The Program shall inspect work on each block, as specified in Exhibit B, Section 2 Inspections.
- 3.4 The Program shall pay the Contractor for accepted blocks upon submission of periodic invoices specifying the amount due according to cost per block listed in Section 3.1, as adjusted for actual acres, work quality and/or penalties.

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 and requirements of this contract. In the event that 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 or Contractor or employee injuries.

7.0 Indemnification

To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Tribe, the Program, and their guests, agents, employees from and against all claims, damages, losses and expenses, including but not limited to attorneys 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 Program's written approval. The Program 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 Email: kmettler@cdatribe-nsn.gov

For the Contractor: Name: _____
Address: _____
Phone: _____
Fax: _____ Email: _____

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

The forum for any dispute concerning this contract shall be the Coeur d'Alene Tribal Court. This contract shall be constructed in accordance with the contract laws of the Coeur d'Alene Tribe as applicable. In the absence of such laws, the Trier of fact may utilize the laws of the State of Idaho as guidelines.

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.

20.0 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.

21.0 Amendments

This Contract may be amended at any time by mutual consent of the parties involved if such amendments are in writing and signed by each of them. If such change causes an increase or decrease in the cost of, or the time required for, the performance of any part of the work under the Contract, a mutually satisfactory adjustment shall be made in the price or delivery schedule.

22.0 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 4 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

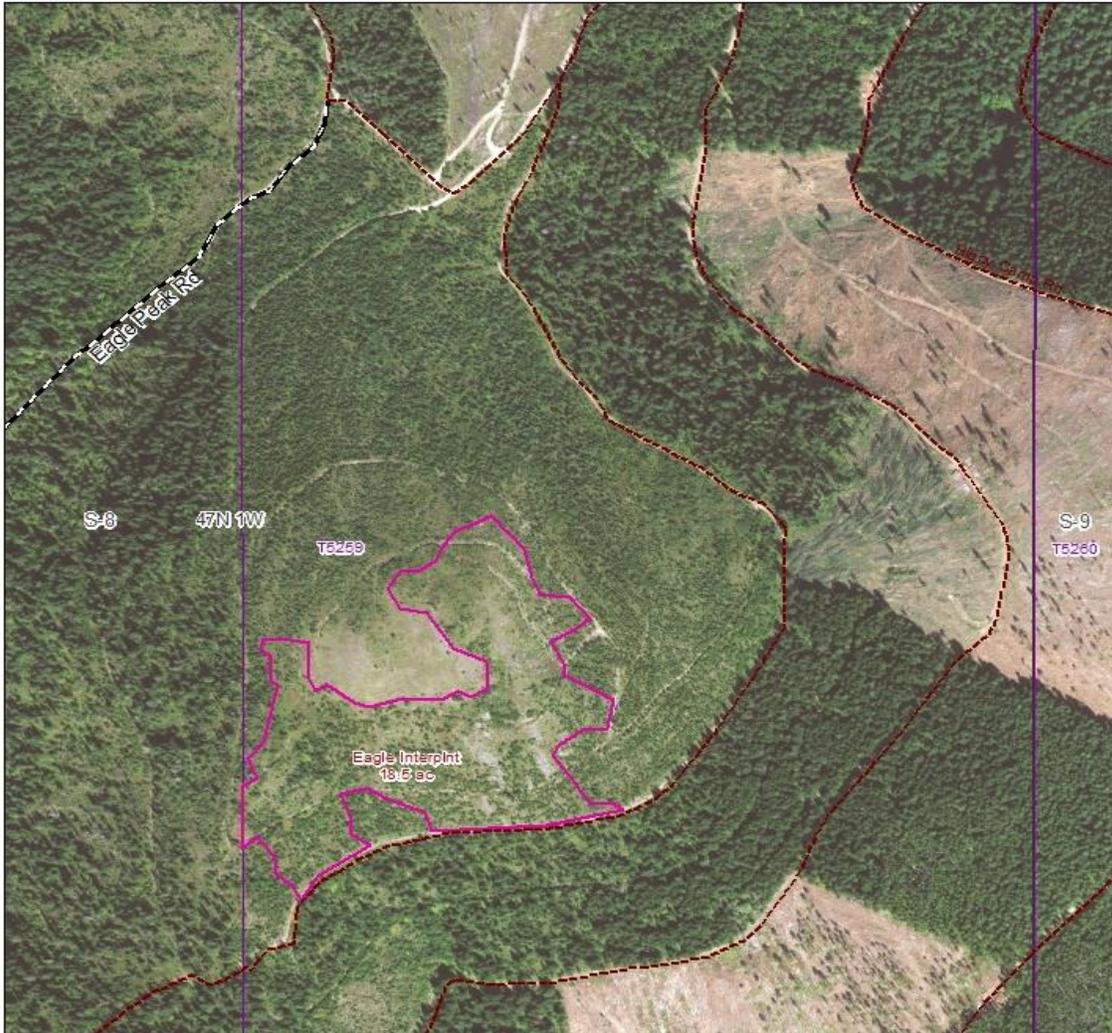
Date: ___/___/___

Robert A. Matt, Administrative Director

Date: ___/___/___

EXHIBIT A-1

**Coeur d'Alene Reservation
2014 Spot Spray Contract
Eagle Interplant**



The information depicted on this 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 its database on the date of its 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 may be liable for damages or liability that may arise from the use of this map. This product is the property of the Coeur d'Alene Tribe and its use is thereby restricted. In particular, only those parties who have received explicit written permission from the Coeur d'Alene Tribe may disseminate, copy, publish or release the information contained herein.

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Date: 9/12/2014

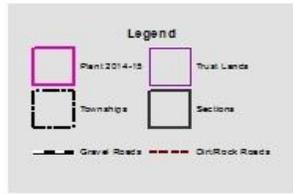
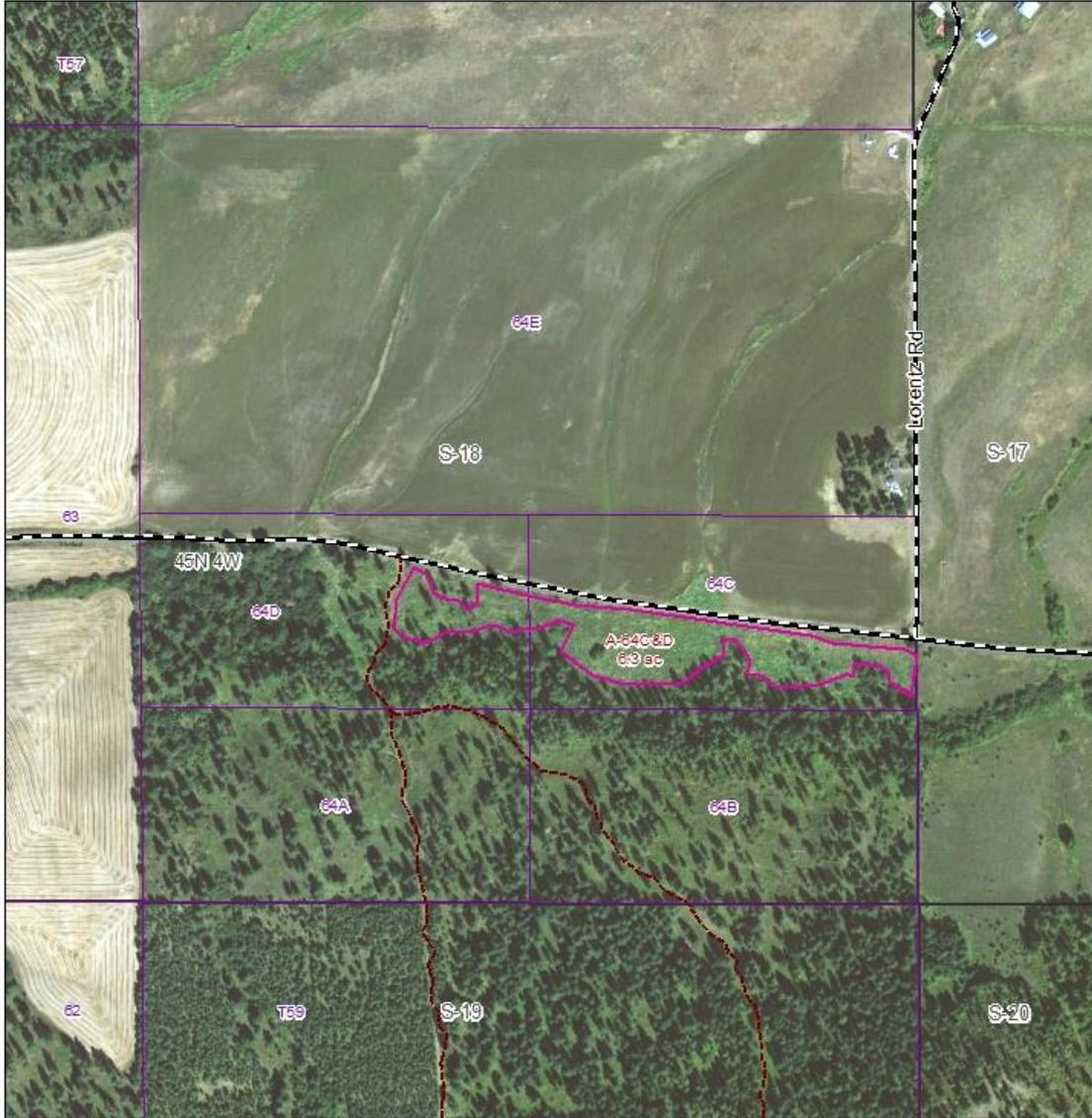


EXHIBIT A-2

**Coeur d'Alene Reservation
2014 Spot Spray Contract
A-64C&D**



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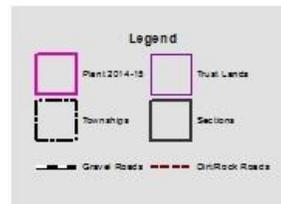


EXHIBIT A-3

Coeur d'Alene Reservation
2014 Spot Spray Contract
Tamiyel Replant



0 0.125 0.25 0.5 Miles

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Date: 9/12/2014

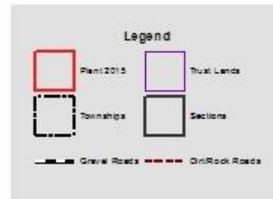
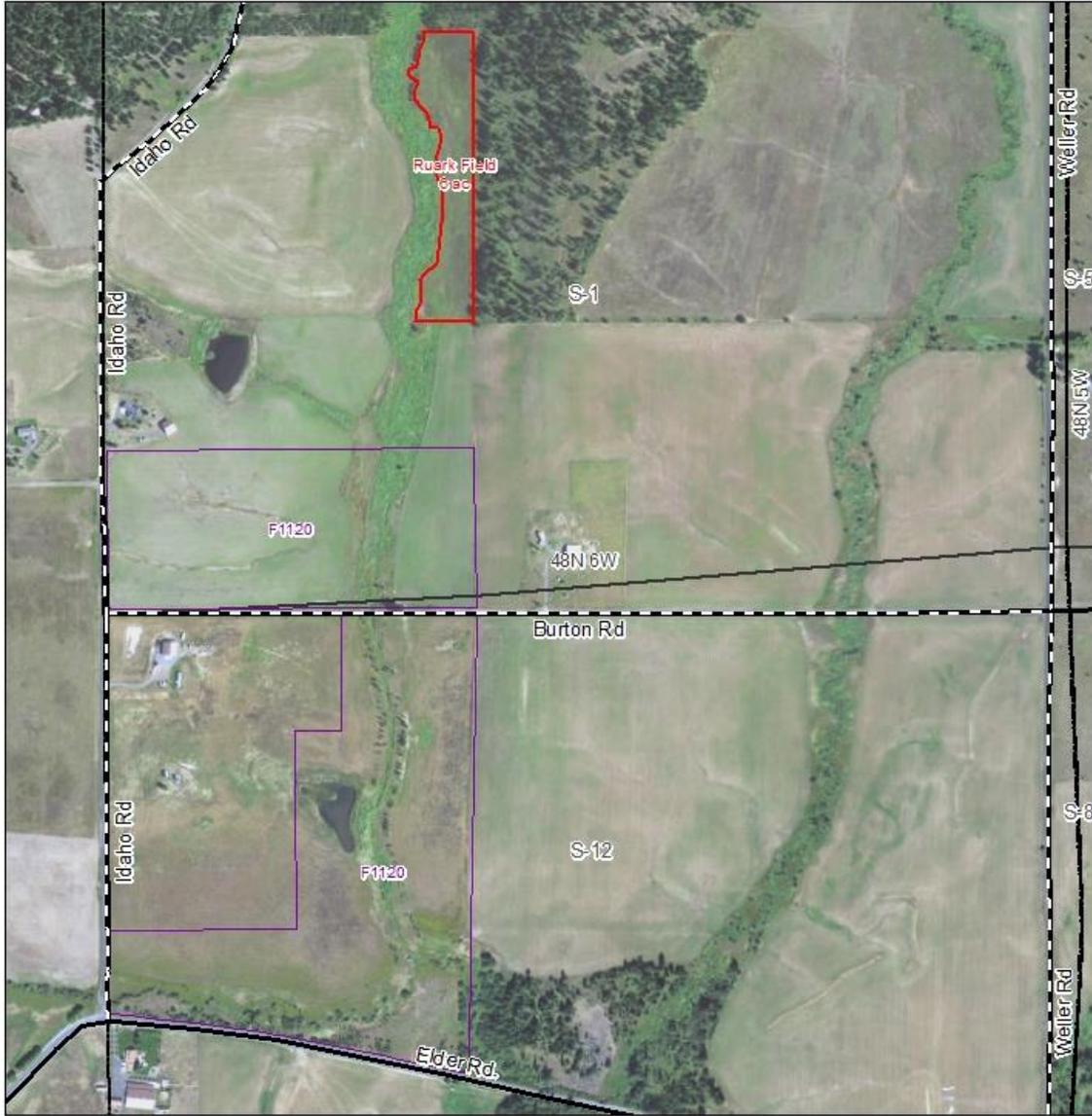


EXHIBIT A-4

**Coeur d'Alene Reservation
2014 Spot Spray Contract
Ruark Field**



0 0.25 0.5 Miles

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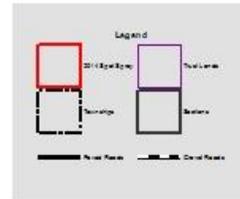


Exhibit B: Herbicide Specifications and Inspections

1. SPOT HERBICIDE APPLICATION.

- 1.1 The contractor shall provide and apply herbicide under supervision of a Professional Applicator licensed to apply pesticides in a forested environment.
- 1.2 The Eagle Interplant block shall be treated by spot spraying with the equivalent of 24 ounces per acre of Chopper or Polaris SP to 5 feet diameter circles around bamboo stakes used to mark planting spots.
- 1.3 Other treatment blocks shall be treated by spot spraying with the equivalent of 4 quarts of Velpar L (hexazinone) per acre to a 5 feet diameter circle around planting spots at approximately 12' by 12' spacing, selected by the contractor's crew.
- 1.4 A Meter-Jet calibrating spray attachment or equivalent method shall be used to apply herbicide with 1 to 2 ounces per gallon of dye added to the tank mix. The tank mix should include approximately 3.43 ounces of Polaris SP per gallon of water or 18.28 ounces of Velpar L (hexazinone) per gallon of water.

2. INSPECTIONS: Acceptance of work and payment will be based on inspections by Tribal Forestry. Copies of inspection cards shall be available to the contractor on the next work day after inspection.

- 2.1 At least one (1) percent of each treatment block will be inspected, using circular fixed area plots. Plots will be located throughout the planted area on a systematic grid from a randomly located first plot. Plot centers will be located and marked on the ground with flagging. The plot number will be written on flagging near or on plot center.
- 2.2 Inspectors shall count the number of spots sprayed on the plot, up to the number of planting spots available. On each plot, number of planting spots and number of sprayed spots will be recorded.
- 2.3 Depending on visibility of dye, inspections may be delayed until the herbicide takes effect.
- 2.4 $\text{Work quality} = \frac{\text{total number of sprayed spots}}{\text{total number of planting spots}}$.

3. ACCEPTANCE AND PAYMENT.

- 3.1 Each completed treatment block with work quality of ninety percent (90%) or more shall be accepted by the Tribe for payment at 100% of the spot spraying bid price per tract.
- 3.2 Payment for any completed planting block with work quality of less than ninety percent (90%) shall be based upon the work quality percentage of the spot spraying price per acre.
- 3.3 Garbage left on or near the planting block by the contractor after notification by Tribal Forestry shall result in penalties for littering in the amount of \$100.00 per offense to be deducted from payments to the contractor.