Six Way Thin Timber Sale Contract No. 341-04-60
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STATE OF OREGON

DEPARTMENT OF FORESTRY

Six Way Thin Timber Sale Contract No. 341-04-60

This contract, made and entered into duplicate, by and between the STATE OF OREGON – DEPARTMENT OF FORESTRY, by and through the State Forester, hereinafter called "STATE," and _____, hereinafter called "PURCHASER," shall become binding on the latest date below and upon signature of both parties. The parties do hereby agree as follows:

Section 1. Sale of Timber. Under the terms and conditions of this contract, STATE sells to PURCHASER, and PURCHASER buys from STATE, that Board of Forestry timber designated and described in the section titled, "Designated Timber," which for all purposes of this contract is hereinafter referred to as "timber." The location of designated timber is shown on Exhibit A. PURCHASER shall pay STATE the "purchase price for timber" set forth in Section 44. The purchase price shall be paid to STATE in accordance with the payment schedule in Section 42.

This is a sale of "State timber" as defined in OAR 629-031-0005 and may not be exported. The Forest Resources Conservation Amendments Act of 1993 authorizes Oregon and other western states to prohibit the export of unprocessed timber from public lands. PURCHASER must comply with the provisions of the federal act, ORS 526.801 through 526.831, and OAR 629-031-0005 through 629-031-0045 in disposing of State timber from this timber sale.

Section 2. Quality and Quantity of Timber. STATE makes no guarantee or warranty to PURCHASER as to the quality or quantity of the timber. PURCHASER shall be liable to STATE for the total purchase price even if the quantity or quality of timber actually cut, removed, or designated for taking is more or less than that estimated by STATE.

Further, STATE makes no representation, warranty, or guarantee of the accuracy of any information either provided by STATE or made available by STATE under the Public Records Law with respect to this contract. PURCHASER agrees to bear exclusive responsibility for, and to accept all risks associated with, the actual conditions on the areas of operations and PURCHASER's computation of its bid for this contract.

THIS CONTRACT, SECTIONS 1 THROUGH 73 AND EXHIBITS A THROUGH H INCORPORATED HEREIN, CONSTITUTES THE ENTIRE CONTRACT BETWEEN THE PARTIES. NO WAIVER, CONSENT, MODIFICATION, OR CHANGE OF TERMS OF THIS CONTRACT SHALL BIND EITHER PARTY, UNLESS IN WRITING AND SIGNED BY BOTH PARTIES. SUCH WAIVER, CONSENT, MODIFICATION, OR CHANGE, IF MADE, SHALL BE EFFECTIVE ONLY IN THE SPECIFIC PURPOSE GIVEN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS CONTRACT. PURCHASER, BY THE SIGNATURE BELOW OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT SHE/HE HAS READ THIS CONTRACT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

STATE OF OREGON - DEPARTMENT OF FORESTRY	[PURCHASER] (SEAL)
_____	By: _____
Assistant State Forester	
Date: _____	Date: _____

Section 3. Definitions of Terms.

PURCHASER's Authorized Representatives means the representatives authorized by PURCHASER to receive any notice or instructions from STATE on behalf of PURCHASER and to take any action required in regard to performance of PURCHASER under the contract. PURCHASER's Authorized Representatives are identified in the Operations Plan.

Contract means the entire written agreement between the parties, including but not limited to the Notice of Timber Sale, Invitation to Bid or Request for Proposal, Instructions to Bidders, specifications, terms, and conditions, Exhibits, Operations Plan, change notices, if any, the accepted bid, and the purchase order or price agreement document.

Operations means all the activities conducted by PURCHASER under this contract, including project work, logging, or post harvest activities; or the furnishing of all materials, equipment, labor, and incidentals necessary to successfully complete any individual item or the entire contract.

Areas of Operations means the locations where PURCHASER performs the operations described in the contract.

Operations Plan means the document by which PURCHASER notifies STATE of the plans and schedule for completing the operations described in the contract. It also contains the names of the subcontractors, PURCHASER's Authorized Representatives, and STATE's Authorized Representatives.

Permit means any permit required by a federal, state, or local government agency before operations under this contract may lawfully begin or continue. Permit includes an incidental take permit under the federal Endangered Species Act.

Project Location means the points or areas designated as such on Exhibit A and located on the ground by reference to points, stations, natural land features, improvements, or area boundary signs.

STATE means the Oregon Department of Forestry, State Forester, or a duly Authorized Representative of the State Forester.

Timber Sale Area means the area or areas designated as such on Exhibit A and located on the ground by reference to legal subdivisions, monuments, natural land features, improvements, or sale boundary signs.

Down Timber is defined as timber that is down as of the date of this contract, as determined by STATE.

Section 4. Examination of Plans, Exhibits, and Areas of Operations. It is understood that the PURCHASER, before submitting a Bid, has made a careful examination of the contract; has become fully informed as to the quality and quantity of materials and the character of the operations required; and has made a careful examination of the areas of operations and the location and conditions of the operations, including the sources of supply for materials. The STATE will in no case be responsible for any loss or for any unanticipated costs that may be suffered by the PURCHASER as a result of the PURCHASER's failure to acquire full information in advance in regard to all conditions pertaining to the operations. No oral agreement or conversation with any officer, agent, or personnel of the STATE, either before or after the execution of this contract, shall affect or modify any of the terms or obligations herein contained.

Section 5. Title to Timber. During the period of this contract, and any extension, PURCHASER shall have the right to cut and remove the timber. Such right shall be conditioned upon PURCHASER complying with the provisions of this contract.

The ownership of and title to the timber shall pass to PURCHASER as the timber is paid for and removed from the timber sale area. Any right of PURCHASER to cut and remove the timber shall expire and end at the time this contract, or any extension, terminates. All rights and interests of PURCHASER in and to the timber and logs

remaining on the timber sale area shall, at that time, automatically revert to and revest in STATE, without compensation to PURCHASER.

Section 6. Bond and Time. PURCHASER shall not commence work on the areas of operations until written notification has been received from STATE that the performance bond, payment bond, insurance, first payment, and fully executed contract have been received and accepted.

(a) Performance bond:

(b) Completion date of contract: October 1, 2006.

Time is of the essence in this contract. PURCHASER shall complete and fully perform this contract within the time specified above, unless extended in accordance with Section 26. In order to facilitate the timely completion of work under this contract, PURCHASER shall be required to submit an Operations Plan as required under Section 39. The Operations Plan shall automatically be incorporated into, and made a part of, this contract. PURCHASER may be required to perform uncompleted contractual obligations at a time later than stated above or in Section 26. Notification of these obligations and their completion date shall be made in writing by STATE.

Section 7. Assignment of Contract. PURCHASER shall not assign, sell, or transfer rights, or delegate responsibilities under this contract, in whole or in part, without the prior consent of the STATE. STATE may consent only when assignment is consistent with STATE's fiduciary duties. No such written approval shall relieve PURCHASER of any obligations of this contract, and any transferee shall be considered the agent of the PURCHASER and bound to perform in accordance with the contract. PURCHASER shall remain liable as between the original parties to the contract as if no assignment had occurred. PURCHASER agrees to pay STATE a $250 administrative fee for processing each assignment.

Section 8. Subcontracting. It is understood and agreed that if all or any part of the operations is subcontracted, such subcontracting done by PURCHASER shall in no way relieve PURCHASER of any responsibility under this contract. PURCHASER shall notify STATE in writing of the names and addresses of each subcontractor prior to the commencement of any contract work by the subcontractor.

Section 9. Hold Harmless. PURCHASER shall defend and hold harmless the State of Oregon, the Oregon Board of Forestry, the State Forester, their officers, agents, employees, and members, from all claims, suits, actions, or liens of any nature resulting from or arising out of the activities of PURCHASER or its subcontractors, agents, or employees under this contract, including any claim based upon an alleged failure to obtain any necessary permit, license, or approval. PURCHASER shall indemnify and hold STATE harmless against any liability for premiums, contributions, or taxes payable under any Workers' Compensation, Disability Benefits, Old Age Benefits, including FICA, or tax withholding laws.

Section 10. Severability. If any provision of this contract is declared by a court to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the particular provision held to be invalid.

Section 11. Waiver. Failure of STATE to enforce any provision of this contract shall not constitute a waiver or relinquishment by STATE of the right to such performance in the future, nor of the right to enforce any other provision of this contract.

Section 12. Choice of Law and Venue. This contract shall be governed by and construed in accordance with the laws of the State of Oregon, as interpreted by the Oregon courts. Any litigation arising out of this contract shall be conducted in Marion County, Oregon.

BONDING AND INSURANCE

Section 13. Performance and Payment Bonds.

(a) Performance Bond. PURCHASER shall furnish STATE with a performance bond, in an amount as stated in Section 6, which shall guarantee complete compliance by PURCHASER with the terms and conditions of this contract and the faithful performance of all required obligations, including payments on timber. Bonds may be in the form of surety bonds, cash, cashier's or certified check, money order, assignment of surety, irrevocable letters of credit, or other securities as determined acceptable by the State Forester. Surety bonds must be written by a surety company authorized to do business in the State of Oregon, on a form provided by STATE.

Bonds will be retained for 120 days after acceptance of operations.

(b) Payment Bond. PURCHASER shall furnish an acceptable payment bond or blanket payment bond to STATE as guarantee for payment for timber. Payment bonds may be in the form of surety bonds, cash, cashier's or certified check, money order, assignment of surety, irrevocable letters of credit, or other securities as determined acceptable by the State Forester. Surety bonds must be written by a surety company authorized to do business in the State of Oregon, on a form provided by STATE. The bonds shall be in an amount at least equal to the value of timber estimated to be removed during a one-month plus 15-day billing period as determined by STATE. In any event, the amount shall not be less than one installment payment as specified in Section 42. Under a payment bond, PURCHASER may remove timber for a 30-day period, after which time, payment becomes due and owing. PURCHASER shall make cash payment within 15 days following the end of the monthly period. Upon payment for timber removed in the monthly period, the payment guarantee may be applied as a guarantee for a subsequent period.

A blanket payment bond shall be in an amount at least equal to the value of the timber estimated to be removed from all contracts covered by the blanket payment bond during a one-month plus 15-day billing period as determined by STATE. PURCHASER shall obtain and furnish STATE with a written consent of surety on forms provided by STATE for coverage of any contracts to which the blanket payment bond may apply. In no event shall PURCHASER remove timber with a value greater than the amount of the payment guarantee.

Section 14. Insurance. PURCHASER shall secure, at PURCHASER's expense, and keep in effect during the term of this contract, the following insurance coverages, in a policy or policies issued by an insurance company or companies authorized to do business in the State of Oregon. The issuing company or companies shall indicate on the insurance certificates that STATE shall be given not less than 30 days' notice of any cancellation, material change, or intent not to renew such policy. Any failure to comply with the reporting provisions of this insurance, except for the potential exhaustion of aggregate limits, shall not affect the coverage(s) provided to the State of Oregon, the STATE, and their divisions, officers, and employees.

The coverage shall be as follows:

(a) Commercial General Liability insurance covering personal injury and property damage in an amount not less than $500,000 combined single limit per occurrence, with no more than $5,000 deductible, with a contractual liability to include all contracts involving the work to be performed under this contract.

(b) Automobile Liability insurance in an amount not less than $500,000 combined single limit per occurrence. This coverage can be provided by combining the Automobile Liability protection with the Commercial General Liability policy.

(c) Loggers Broad Form coverage in an amount not less than $500,000, with no more than $5,000 deductible, for costs of fire control, losses or damage from fire, and other causes arising or resulting from activities of PURCHASER, employees, contractors, and others working or acting for PURCHASER.

(d) Worker's Compensation insurance as statutorily required for persons performing work under the contract.

(e) Primary Coverage. Insurance carried by PURCHASER under this contract shall be the primary coverage, and the STATE's insurance is excess and solely for damages or losses for which the STATE is responsible.

(f) "Tail" or "Basis of Occurrence" Coverage. If any of the aforementioned liability insurance is arranged on a "claims made" basis, "tail" coverage will be required at the completion of this contract for a duration of 24 months or the maximum time period the PURCHASER's insurer will provide such if less than 24 months. PURCHASER will be responsible for furnishing certification of "tail" coverage as described or continuous "claims made" liability coverage for 24 months following contract completion. Continuous "claims made" coverage will be acceptable in lieu of "tail" coverage, provided its retroactive date is on or before the effective date of this contract.

(g) The insurance policy or policies required under this section, excluding Loggers Broad Form, shall name the State of Oregon, the Oregon Board of Forestry, the Department of Forestry, the State Forester, their officers, agents, employees, and members as additional insureds.

(h) As evidence of the insurance coverage required by this contract, PURCHASER shall furnish a certificate or certificates of insurance including all of the foregoing coverages to STATE.

LAWS AND REGULATIONS

Section 15. Payments, Contributions, and Liens. PURCHASER shall:

(a) Make payment promptly, as due, to all persons supplying to such contractor labor or material for the prosecution of the work provided for in such contract.

(b) Pay all contributions or amounts due the Industrial Accident Fund from such contractor or subcontractor incurred in the performance of the contract.

(c) Not permit any lien or claim to be filed or prosecuted against the state, county, school district, municipality, municipal corporation, or subdivision thereof, on account of any labor or material furnished.

(d) Pay to the Department of Revenue all sums withheld from the employees pursuant to ORS 316.167.

If PURCHASER fails, neglects, or refuses to make prompt payment of any claim for labor or services furnished to PURCHASER or a subcontractor in connection with work to be done under this contract, as such claim becomes due, STATE may pay such claim to the person furnishing the labor or services and obtain reimbursement from PURCHASER or from PURCHASER's performance bond. Payment of any claim in such manner shall not relieve PURCHASER or surety from obligations with respect to any unpaid claims.

Section 16. Permits, Licenses, and Safety. PURCHASER shall procure all permits and licenses, pay all charges and fees, and give all notices necessary and incident to the due and lawful prosecution of the operations.

STATE may at any time require PURCHASER to satisfy STATE that operations under this contract comply with state, federal, and local laws and regulations. STATE may require PURCHASER to obtain a permit, license, or approval from the governmental body or agency responsible for administering applicable laws before PURCHASER may begin or continue an operation under this contract.

In the performance of the operations, PURCHASER shall use every reasonable and practicable means to avoid damage to property and injury to persons. The responsibility of PURCHASER stated herein shall cease upon the operations being accepted as complete by STATE.

Section 17. Workers' Compensation Insurance. PURCHASER shall perform the operations in accordance with the requirements of the Workers' Compensation Law of the State of Oregon during the term of this contract. In addition, the PURCHASER, its subcontractors, if any, and all employers providing work, labor, or materials under this contract are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017 and 656.029, which requires them to provide workers' compensation coverage that satisfies Oregon law for all their subject workers. Out-of-state employers must provide Oregon workers' compensation coverage for their workers who work at a single location within Oregon for more than 30 days in a calendar year. Contractors who perform the operations without the assistance or labor of any employee need not obtain such coverage.

Section 18. Labor Laws and Prevailing Wages. Insofar as applicable to the operations, PURCHASER shall comply with all state and federal laws in the employment and payment of labor.

Section 19. Laws, Regulations, and Orders. PURCHASER shall at all times observe and comply with all federal and state laws, including the Endangered Species Act of 1973, as amended (16 U.S.C. 1531-1536, 1538-1540), ORS 496.172 to 496.192 Threatened and Endangered Wildlife Species, and ORS 564.100 to 564.135 Threatened and Endangered Plants, and lawful regulations issued thereunder, and local bylaws, ordinances, and regulations, which in any manner affect the activities of PURCHASER under this contract. PURCHASER shall observe and comply with all orders or decrees that exist at present and those which may be enacted later by bodies or tribunals having any jurisdiction or authority over such activities of PURCHASER.

PURCHASER shall comply with Oregon laws and with the rules and regulations of the Oregon Forest Practices Act, Oregon State Board of Health, and the Environmental Quality Commission relating to the protection of soil, air, and water resources.

PURCHASER agrees to comply with Title VI of the Civil Rights Act of 1964, and with Section V of the Rehabilitation Act of 1973.

Compliance with All Government Regulations. PURCHASER shall comply with all federal, state, and local laws, codes, regulations, and ordinances applicable to the operations.

PURCHASER shall comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations; and

PURCHASER shall not discriminate against disadvantaged minority, women, or emerging small business enterprises in the awarding of subcontracts.

PURCHASER shall maintain, in current and valid form, all licenses and certificates required by law, regulation, or this contract when performing the operations.

Failure to comply with any or all of the requirements of this section shall be a breach of contract and constitute grounds for contract termination. Damages or costs resulting from such noncompliance shall be the responsibility of PURCHASER.

LEGAL RELATIONS AND RESPONSIBILITY TO PUBLIC

Laws to be Observed. The following is a list of federal, state, and local agencies of which the STATE has knowledge that have enacted ordinances or regulations relating to environmental pollution and the preservation of natural resources that may affect the performance of the contract:

FEDERAL AGENCIES	
Agriculture, Department of Forest Service Soil Conservation Service	Housing and Urban Development, Department of
Coast Guard	Solar Energy and Energy Conservation Bank
Commerce, Department of National Marine Fisheries Service	Interior, Department of Bureau of Land Management Bureau of Indian Affairs Bureau of Mines Bureau of Reclamation Geological Survey Minerals Management Service U.S. Fish and Wildlife Service
Defense, Department of Army Corps of Engineers	Labor, Department of Mine Safety and Health Administration Occupation Safety and Health Administration
Energy, Department of Federal Energy Regulatory Commission	Transportation, Department of Federal Highway Administration
Environmental Protection Agency	Water Resources Council
Health and Human Services, Department of	
STATE AGENCIES	
Administrative Services, Department of	Geology and Mineral Industries, Department of
Agriculture, Department of Soil and Water Conservation Commission	Human Resources, Department of
Columbia River Gorge Commission	Land Conservation and Development Department
Consumer and Business Services, Department of	Parks and Recreation, Department of
Energy, Department of	State Engineer
Environmental Quality, Department of	State Lands, Division of
Fish and Wildlife, Department of	Water Resources Department
Forestry, Department of	
LOCAL AGENCIES	
City Councils	Design Commissions
County Courts	Historical Preservation Commission
County Commissioner, Board of	Planning Commissions

STATE makes no representations concerning tax liability or consequences arising from this sale of State timber. It is PURCHASER's sole responsibility to determine what tax liability may be incurred as a result of purchasing State timber, regardless of whether the State timber is growing or located on State-owned land. PURCHASER shall be responsible for paying all applicable timber harvest or severance taxes and shall indemnify and hold harmless the STATE against any tax claims arising from the purchase of State timber.

Section 20. Trespass. PURCHASER shall be exclusively responsible for any damage or removal of non-designated timber, or trespass beyond the boundaries of the areas of operations resulting from any activities of PURCHASER. Any trespass resulting from the activities of PURCHASER may be considered grounds for placing the contract in violation or default. Damages for any trespass shall be charged as follows:

(a) Treble the contract value, as defined in Section 44, "Log Prices," for each species involved in the trespass, if PURCHASER's action is willful or intentional; or

(b) Double the contract value, as defined in Section 44, "Log Prices," for each species involved in the trespass, if PURCHASER's action is not willful or intentional.

As used in this section, the term "willful" or "intentional" includes, but is not limited to: any voluntary or deliberate activity by the PURCHASER, its employees, contractors, subcontractors, or agents which results in the removal or damage to any timber not described under the section titled, "Designated Timber," including removal or damage arising from a mistake of law or fact concerning the designated timber.

MATERIALS AND IMPROVEMENTS

Section 21. Materials from State Property. PURCHASER shall not take, sell, use, remove, or otherwise dispose of any sand, gravel, rock, earth, or other material obtained or produced from within the limits of rights-of-way, gravel pits, rock quarries, or other property owned by or held by any agency of the State of Oregon, unless authorized by this contract or written consent of STATE.

Section 22. Materials and Improvements. Title to materials, improvements, and other property required of PURCHASER by this contract shall vest in and become the property of STATE at the time such are furnished by PURCHASER and accepted by STATE. Only materials, improvements, and property free and clear of liens, claims, and encumbrances shall be furnished by PURCHASER.

All existing improvements located on State land, and any improvements placed on State land by PURCHASER which become the property of STATE, shall be safeguarded by PURCHASER. If such improvements are injured, damaged, or removed from the areas of operations by PURCHASER or by contractors of PURCHASER, such improvements shall be repaired (or replaced, in the event of removal,) as soon as possible by PURCHASER, without cost to STATE.

Section 23. Removal of Equipment and Materials. Within 30 days after completion of the requirements of this contract, PURCHASER shall remove from the areas of operations, and other property owned or controlled by STATE, all equipment, materials, and other property PURCHASER has placed or caused to be placed thereon that is not to become the property of STATE. It is agreed that any such equipment, materials, and other property that are not removed within 30 days, shall become the property of STATE and may be used or otherwise disposed of by STATE without notice or obligation to PURCHASER or to any party to whom PURCHASER may transfer title. Nothing in this section shall be construed as relieving PURCHASER from an obligation to clean up and to burn, remove, or dispose of debris, waste materials, and such, in accordance with the provisions of this contract. PURCHASER shall indemnify STATE for expenses as a result of cleanup, removal or disposal of debris, waste materials, and such.

Section 24. Conditions of Areas of Operations.

Use of Areas of Operations. PURCHASER shall confine equipment, storage of materials and operation to the limits indicated by contract, law, ordinances, permits or directions of the STATE's Authorized Representative. PURCHASER shall follow the STATE's Authorized Representative's instructions regarding use of the areas of operations, if any.

In addition, PURCHASER shall be responsible for regular cleaning in compliance with all federal, state, and local laws rules and ordinances.

Protection of Workers, Property, and Public. The PURCHASER is responsible to manage the operations to mitigate impacts to the operations, including authorized changes, which may adversely affect cost, schedule, or quality.

The PURCHASER is responsible for the actions of all personnel, laborers, suppliers, and subcontractors in the performance of the operations.

PURCHASER shall maintain continuous and adequate protection of all of the Work from damage, and shall protect the STATE's workers and property from injury or loss arising in connection with this contract. PURCHASER shall remedy to the STATE's satisfaction, any damage, injury, or loss, except such as may be directly due to errors in the contract or caused by authorized representatives or personnel of the STATE. PURCHASER shall adequately protect adjacent property as provided by law and the contract.

PURCHASER shall take all necessary precautions for the safety of all personnel on the areas of operations, and shall comply with the contract and all applicable provisions of federal, state, and municipal safety laws to prevent accidents or injury to persons on, about or adjacent to the areas of operations. PURCHASER shall erect and properly maintain at all times, as required by the conditions and progress of the operations, all necessary safeguards for protection of workers and the public against any hazards created by the operations. PURCHASER shall designate a responsible employee or associate on the areas of operations, whose duty shall be the prevention of accidents. The name and position of the person designated shall be reported to the STATE's Authorized Representative. The STATE's Authorized Representative has no responsibility for safety on areas of operations. Safety on areas of operations is the responsibility of the PURCHASER.

In an emergency affecting the safety of life or of the operation or of adjoining property, the PURCHASER, without special instruction or authorization from the STATE's Authorized Representative, shall act reasonably to prevent threatened loss or injury, and shall so act, without appeal, if instructed by the STATE's Authorized Representative. Any compensation claimed by the PURCHASER on account of emergency work shall be equitably determined.

Environmental Pollution. Unless disposition of environmental pollution is specifically a part of this contract, PURCHASER shall immediately notify STATE of any hazardous substance(s) which PURCHASER discovers or encounters during performance of the operation. "Hazardous substance(s)" are those substances, materials, or wastes regulated by state or federal law. PURCHASER shall immediately cease operating in any particular area of the operations where a hazardous substance(s) has been discovered or encountered, if continued operations in such area would present a bona fide risk or danger to the health or well being of PURCHASER's or any subcontractor's work force.

Upon being notified by PURCHASER of the presence of hazardous substance(s) on the areas of operations, STATE shall arrange for the proper disposition of such hazardous substance(s).

Spill Responsibility. PURCHASER will be held responsible for any and all releases of environmental pollution during performance of the contract which occur as a result of, or are contributed by, actions of its agent, personnel, or subcontractors. PURCHASER agrees to promptly dispose of such spills or leaks to satisfaction of the STATE and proper regulatory agencies in a manner that complies with applicable federal, state, and local laws and regulations. Cleanup shall be at no cost to the STATE.

PURCHASER shall obtain the STATE's written consent prior to bringing onto the areas of operations any (i) environmental pollutants or (ii) hazardous substances or materials, as the same or reasonably similar terms are used in any applicable federal, state, or local statutes, rules, or ordinances. Notwithstanding such written consent from the STATE, the PURCHASER, at all times, shall:

(a) Properly handle, use, and dispose of all environmental pollutants and hazardous substances or materials brought onto the areas of operations, in accordance with all applicable federal, state, or local statutes, rules, or ordinances;

(b) Be responsible for any and all spills, releases, discharges, or leaks of (or from) environmental pollutants or hazardous substances or materials which PURCHASER has brought onto the areas of operations; and

(c) Promptly clean up, without cost to the STATE, such spills, releases, discharges, or leaks to the STATE's satisfaction and in compliance with all applicable federal, state, or local statutes, rules or ordinances.

PURCHASER shall be liable for any and all costs, expenses, damages, claims, and causes of action, or any of them, related to or arising out of a spill, release, discharge, or leak of (or from) any environmental pollutant or hazardous substance or material. PURCHASER shall be liable to the extent such spill, release, discharge, or leak was caused or contributed to by PURCHASER's (i) negligence or (ii) failure to perform in accordance with the contract. Nothing in this section shall limit PURCHASER's liability or responsibility under Section 14, "Insurance," of this contract.

PURCHASER shall report all reportable quantity releases to applicable federal, state, and local regulatory and emergency response agencies. Reportable quantities are found in 40 CFR, Part 302, Table 302.4 for hazardous substances and in OAR 340-108 for petroleum products. Upon discovery, regardless of quantity, PURCHASER must telephonically report all releases to the STATE. A written follow-up report shall be submitted to STATE within 48 hours of the telephonic report. Such written report shall contain, as a minimum:

(1) Description of items released (identity, quantity, manifest no., and all other documentation required by law);

(2) Whether amount of items released is EPA/DEQ reportable, and, if so, when it was reported;

(3) Exact time and location of release, including a description of the area involved;

(4) Containment procedures initiated;

(5) Summary of communications about the release PURCHASER has had with members of the press or State officials other than STATE;

(6) Description of cleanup procedures employed or to be employed at the site, including disposal location of spill residue; and

(7) Personnel injuries, if any, resulting from, or aggravated by, the release.

Environmental Clean-up. Prior to contract termination, PURCHASER shall notify the STATE that all environmental pollution clean-up which was performed as a part of this contract has been disposed of in accordance with all applicable rules, regulations, laws, and statutes of all agencies having jurisdictions over such environmental pollution. The notice shall indemnify and hold harmless the STATE from any claims resulting from the disposal of the environmental pollution including removal, encapsulation, transportation, handling, and disposal.

EXTENSIONS, MODIFICATIONS, SUSPENSIONS, CANCELLATIONS, DELAYS, AND DEFAULT

Section 25. Causes Beyond Control. Neither party of this contract shall be held responsible for delay or default caused by fire, riot, acts of God, sovereign, public enemy, and/or war which is beyond that party's control. The STATE may terminate this contract upon written notice after determining such delay or default will reasonably prevent successful performance of the contract.

In the event a cause or causes beyond control impact this contract, the STATE may grant a reasonable extension of time and shall not additionally compensate the PURCHASER.

Section 26. Extension of Time. STATE may extend the time for performance of this contract upon written request from PURCHASER or upon STATE's own motion. Except as provided in Section 29, a request for extension:

- shall be accompanied by the written consent to an extension of the security by PURCHASER's surety;
- shall state the date to which the extension is desired, the area of the operations to be affected, and the reason(s) for the extension; and
- must be received by STATE no later than 30 days prior to the expiration date of this contract unless the need for extension occurred within the 30 days prior to the expiration date, in which case the request must be received prior to the expiration date.

Requests for extension may be granted for any reason except changes in timber market conditions. STATE shall grant a request for an extension only when it determines that extension would be in the best interests of STATE. In no event shall an extension exceed one year.

When STATE grants a request for extension, it may condition that grant upon any condition it determines is necessary to protect the interests of the STATE. Such conditions may include, but may not be limited to, the following:

(a) Payment at time of extension of the full amount of the unpaid balance of the purchase price. In the case of scale or weight sales, such payment shall be an advance deposit, based on remaining volume, as estimated by STATE.

(b) If PURCHASER is not otherwise in arrears in required payments, STATE may grant additional time for payment of the unpaid balance on the condition that PURCHASER make installment payments based on removal of designated timber as required by Section 42 of this contract, plus interest on all payments received after the original expiration date.

(c) Completion of designated requirements of this contract, such as fire trail construction, snag felling, slash preparation operations on logged portions of the timber sale area, and road construction or maintenance.

(d) Payment of an extension fee in an amount determined by STATE (not less than $50). Such fee shall be based upon the loss of production, extra reforestation costs, brush control costs, slash disposal costs, or other costs which may be caused by the extension.

(e) Waiver of full payment, or payment of interest on unpaid balance, if STATE determines that extenuating circumstances warrant waiver or waiver is otherwise in the best interests of STATE.

Section 27. Contract Modifications. It is understood that changes are inherent in operations of the type covered by this contract. The number of changes, the scope of those changes, and the impact they have on the progress of the original operations cannot be defined at this time. The PURCHASER is notified that changes are anticipated and that there will be no compensation made to the PURCHASER directly related to the number of changes made. Each change will be evaluated for extension of contract time and increase or decrease in compensation based on its own merit.

STATE reserves the right to make, at any time during the contract, such modifications as are necessary or desirable; provided such modifications shall not change the character of the operations to be done nor increase the cost, unless such operations or cost increase is approved in writing by PURCHASER. Any modifications so made shall not invalidate this contract nor release PURCHASER of obligations under the performance bond. PURCHASER agrees to do the modified operations as if it had been a part of the original contract.

If any change under this section causes an increase or decrease in the PURCHASER's cost of, or the time required for the performance of any part of the operations, the PURCHASER must submit a written statement setting forth the nature and specific extent of the claim. Such claim shall include all time and cost impacts against the contract and be submitted as soon as possible, but no later than 30 days after receipt of any written notice of modification of the contract.

If the PURCHASER discovers site conditions which differ materially from what was represented in the contract or from conditions that would normally be expected to exist and be inherent to the activities defined in the contract, the PURCHASER shall notify the STATE's Authorized Representative immediately and before the area has been disturbed. The STATE's Authorized Representative will investigate the area and make a determination as to whether or not the conditions differ materially from either the conditions stated in the contract or those which could reasonably be expected in execution of this particular contract. If it is determined that a differing site condition exists, any compensation or credit will be determined based on an analysis by STATE's Authorized Representative. If the PURCHASER does not concur with the decision of the STATE's Authorized Representative and/or believes that it is entitled to additional compensation, the PURCHASER may proceed to file a claim.

Claims Review Process. All PURCHASER claims shall be referred to the STATE's Authorized Representative for review. All claims shall be made in writing to the STATE's Authorized Representative not more than ten days from the date of the occurrence of the event which gives rise to the claim or not more than ten days from the date that the PURCHASER knew or should have known of the problem. Unless the claim is made in accordance with these time requirements, it shall be waived.

All claims shall be submitted in writing and shall include a detailed, factual statement of the basis of the claim, pertinent dates, contract provisions which support or allow the claim, reference to or copies of any documents which support the claim, the exact dollar value of the claim, and specific time extension requested for the claim. If the claim involves operations to be completed by subcontractors, the PURCHASER will analyze and evaluate the merits of the subcontractor's claim. PURCHASER shall forward the subcontractor's claim and PURCHASER's evaluation of such claim to STATE's Authorized Representative. The STATE's Authorized Representative will not consider direct claims from subcontractors, suppliers, manufacturers, or others not a party to this contract.

The decision of the STATE shall be final and binding unless the PURCHASER requests mediation.

Section 28. Adjustment of Contract. Notwithstanding any other provisions of this contract, STATE may, pursuant to Oregon law, make adjustments in the contract when major catastrophes or significant changes in state or federal law after the date of this contract materially affect the volume and value of timber, or project work to be done, as specified in the section titled, "Project Work," under the contract. Major catastrophes or events beyond the reasonable control of the parties are defined as windstorms, floods, fire, or other acts of God, or significant changes in state or federal law, which are beyond the control of PURCHASER and in no way connected with negligent acts or omissions of PURCHASER, its officers, employees, agents, or subcontractors. Market conditions shall not be considered a reason for contract adjustments. Such adjustments may be made to place the parties in their original status under the contract insofar as possible; provided, however, that any loss or cost to PURCHASER is in no way recoverable from third parties by PURCHASER and that PURCHASER make written application to STATE within 30 days after discovery of the damage done by the catastrophe.

If, prior to acceptance of project work, a catastrophe (as defined above) caused by a single event results in additional project work for PURCHASER involving an additional estimated cost of more than: (1) $500 for sales less than one-half million board feet; (2) $1,000 for sales of one-half million to three million board feet; or (3) $3,000 for sales over three million board feet, STATE may adjust the contract and become responsible for any additional estimated cost which exceeds the above amount. Adjustments by STATE shall be based on advertised volumes and may be accomplished by adjusting stumpage prices or payment of such cost to PURCHASER or by performing its share of the necessary work. The estimated cost of additional work shall be calculated by STATE.

If, prior to completion of the contract, a change in state or federal law, or a major catastrophe as defined above, materially affects the volume and value of timber, STATE may adjust the volume and value accordingly. STATE shall determine the adjustment volume by either an individual tree sample cruise, or a point sample cruise to a 5 percent sampling error of the volume. For purposes of this contract, "materially affect" shall mean more than $5,000.

Value adjustment shall be calculated by multiplying the volume adjustment times the contract value.

For each species sold on a recovery basis, contract value is defined as the price per MBF listed in Section 44. If species is not listed in Section 44, the highest price listed in Section 44 shall apply.

For species sold on a lump sum basis, the contract value for each species shall be determined by using STATE's unamortized timber appraisal value, multiplied by the bid-up factor. Bid-up factor shall be calculated by STATE using the following calculation: bid value all species/appraised value all species = bid-up factor.

Section 29. Violations, Suspensions, and Cancellation. If PURCHASER violates any of the provisions of this contract, STATE may, after giving written notice, suspend any further operations of PURCHASER under this contract, except those operations necessary to remedy any violations.

If PURCHASER fails to remedy a violation within the time allowed and as instructed by STATE, or if PURCHASER fails to complete work as required within any interim contract completion date or the contract expiration date, PURCHASER is in breach, and STATE may place the contract in default status as provided in OAR 629-032-0000 through 0070. Any default action taken by STATE shall be subject to the provisions of OAR 629-032-0000 through 0070 as adopted at present and as may be amended later by the agency having jurisdiction or authority over such activities. The provisions of such rules or any future amendments are incorporated into this contract and made a permanent part hereof by their reference as though fully set forth herein. The provisions are in addition to, not in lieu of, any other remedies STATE may have for breach of the contract.

STATE's Right to Suspend the Operations. The STATE and/or the STATE's Authorized Representative has the authority to suspend portions or all of the operations due to causes including, but not limited to:

(a) Failure of the PURCHASER to correct unsafe conditions;

(b) Failure of the PURCHASER to carry out any provision of the contract;

(c) Failure of the PURCHASER to carry out written instructions from STATE's Authorized Representative;

(d) Conditions, in the opinion of the STATE's Authorized Representative, which are unsuitable for performing the operations;

(e) Time required to investigate differing site conditions; and

(f) Any reason considered to be in the public interest, including but not limited to, protection of a state or federally listed threatened or endangered species.

Extension After Suspension. When a suspension occurs through no fault of PURCHASER, PURCHASER may request an extension of time for performance of this contract, for a period not to exceed the period of operations that were suspended. The request for extension must be in writing and:

(1) Shall be accompanied by the written consent to an extension of the security by PURCHASER's surety;

(2) Shall state the date to which the extension is desired and the area(s) of operations affected; and

(3) Must be received by STATE no later than 10 days following notice to PURCHASER that operations may recommence.

STATE shall not unreasonably withhold approval of extension requests made under this section.

PURCHASER's Responsibilities. For the duration of the suspension, PURCHASER is responsible to continue maintenance at the operations just as if the operations was in progress. This includes, but is not limited to, protection of completed operations, maintenance of access, protection of stored materials, temporary facilities, and clean-up.

When operations re-commence after the suspension, the PURCHASER shall replace or renew any operations damaged during the suspension, remove any materials or facilities used as part of temporary maintenance, and complete the project in every respect as though its prosecution had been continuous and without suspension.

If PURCHASER fails to remedy any violations of this contract within 10 days after receipt of the violation/suspension notice given under this section, STATE may, by written notice, cancel this contract and take appropriate action to recover all damages and expenses suffered by STATE by reason of such violations, including application of any advance payments and any performance bonds toward payment of such damages.

Section 30. Operation Delays. STATE shall have the authority to delay or suspend the operations of PURCHASER and contractors of PURCHASER, wholly or in part, under this contract for such period or periods necessary due to fire hazard conditions, severe weather occurrence, surveying for threatened or endangered species listed under the state or federal Endangered Species Act, or any other activity STATE determines to be necessary for identification, management, or protection of a threatened or endangered species. PURCHASER agrees to cooperate with surveying efforts of STATE or its contractors.

In no event shall STATE be liable for any costs incurred by PURCHASER by reason of delay or suspension under this section, including but not limited to costs of additional move-in/move-out of equipment and personnel, extra fire and equipment security, and insurance or bonding expenses.

Section 31. Disputes, Mediation, Arbitration, and Fact Finding. In the event of impasse or an adverse final decision concerning a claim or any matter in dispute under the contract, either party may submit the matter to mediation by written notice to the other party. The notice shall briefly summarize the matters in dispute, state the last position taken by each party, name the principal persons with knowledge of the matter and identify the contract provisions, statutes or regulations believed to be pertinent. Notice shall be given as soon as practicable after impasse or an adverse final decision, but not later than 10 days after impasse, mailing or delivery of a final decision. The mediator shall be mutually selected and the costs of mediation shall be shared equally. Each party shall otherwise bear its own costs.

If mediation is unsuccessful, the parties agree to proceed immediately to non-binding arbitration under the same terms for costs and selection of the arbitrator. A party rejecting an award of the arbitrator must do so in writing to the other party within 30 days of the award. The award shall otherwise be final and binding. No resort shall be had by either party to litigation until the mediation and arbitration process is exhausted. No statute of limitations or notice period shall be affected by this dispute resolution process, except that a decision of the STATE shall not be considered "final" for the purposes of ORS 183.484 until the rejection of an arbitration award by STATE.

In the event that a dispute or claim turns upon the resolution of a question of fact or of scientific or technical learning, either party may request that the mediator select a "fact finder" to examine the matter and to conduct such examinations or tests as may be necessary in the judgment of the mediator. The fact finder shall prepare a written report of the facts at issue. The conclusions of fact shall be accepted as established for the purposes of mediation, arbitration or subsequent litigation and shall be set aside only upon demonstration of fraud, gross mistake or new evidence not available at the time of fact finding.

Section 32. Termination. STATE, by written notice to PURCHASER, may terminate this contract, in whole or in part, whenever STATE determines it is in its interest to do so. After receipt of the notice, and except as directed in the notice, PURCHASER shall immediately stop activities under the contract and terminate all subcontracts to the extent they relate to the activities terminated. PURCHASER shall complete all activities not terminated.

In the event of termination or partial termination, PURCHASER agrees that its sole and exclusive remedy shall be the sum of: (1) the value of any project work completed but not yet credited through amortization; (2) the estimated expenditures for felling, bucking, lopping, skidding, and decking any products so processed, but not removed from the timber sale area; and (3) costs of acquiring and holding bonds, with documented receipts. Cost and expenditure estimates for items listed in (1) and (2) shall be based upon STATE's appraisal for the

timber sale. Lost profits, replacement costs of timber, property (real or otherwise) procured by PURCHASER in anticipation of contract fulfillment, or any other consequential damage suffered by PURCHASER shall not be reimbursable. Any interest earned on funds of the PURCHASER on deposit with STATE shall remain the property of STATE and shall not be payable to PURCHASER.

Section 33. Remedies. **In no event shall STATE be liable for incidental or consequential damages nor shall STATE's liability for any claims or damage arising out of or connected with this contract exceed the purchase price of the timber.**

If PURCHASER cuts or removes any of the timber under this contract during any period of suspension, or if PURCHASER cuts any of the timber after the expiration of the time for cutting or the cancellation of this contract, such cutting or removal shall be considered a willful trespass and render PURCHASER liable for treble damages in accordance with Section 20, "Trespass."

Section 34. Breach; STATE's Remedies. If PURCHASER fails to remedy a violation within the time allowed and as instructed by STATE, or if PURCHASER fails to complete work as required within any interim contract completion date or by the contract expiration date, PURCHASER is in breach, and STATE may pursue any and all remedies available to STATE. Such remedies include, but are not limited to: (1) making a claim on each bond provided by PURCHASER; (2) suing PURCHASER for all damages STATE incurs as a result of PURCHASER's breach; (3) suing PURCHASER for specific performance of the contract; (4) terminating the contract and reselling the breached contract; and (5) declaring PURCHASER in default, in accordance with the provisions of OAR 629-032-0000 through 0070 (as adopted at the time of contracting and as may be amended later by the agency having jurisdiction or authority over such activities). The provisions of OAR 629-032-0000 through 0070, and any future amendments, are incorporated into this contract and made a permanent part hereof by reference as though fully set forth herein. THE PROVISIONS OF OAR 629-032-0000 THROUGH 0070 ARE IN ADDITION TO, AND NOT IN LIEU OF, ANY OTHER REMEDIES STATE MAY HAVE FOR THE PURCHASER'S BREACH OF CONTRACT.

NOTICES, PLANS, AND INSPECTIONS

Section 35. Work Responsibility and Acceptance. Prior to the completion and final acceptance of operations, PURCHASER shall be held responsible for, and shall correct any injury or damage to, the operations or any part of the operations, from any cause whatsoever, unless adjustment is made pursuant to Section 28.

STATE shall make final inspection of operations done by PURCHASER within 10 calendar days after written notification is received by STATE from PURCHASER stating that the operation is complete. Following inspection, STATE shall notify PURCHASER of acceptance in writing. If the operation is not acceptable to STATE, STATE shall advise PURCHASER in writing of the particular defects to be remedied before final acceptance by STATE can be made.

Section 36. Notices. Any written notice to PURCHASER which may be required under this contract to be served on PURCHASER by STATE, may be served by personal delivery to PURCHASER or designated representative(s) by mailing the notice to the address of PURCHASER as is given in this contract, or by leaving the notice at said address. Should PURCHASER be required to notify STATE concerning the progress of the operations, or concerning any matter or complaint which PURCHASER may have regarding the contract subject matter, or for any other reason, that notification is to be made in writing and delivered or mailed to the designated representative of STATE.

Section 37. Authorized Representative. During any period of the operations, PURCHASER shall have a designated representative(s) available to STATE on the timber sale area or project location, or both, where such activity is separated. The representative(s) shall be authorized to receive any notice or instructions from STATE

on behalf of PURCHASER and to take any action required in regard to performance of PURCHASER under this contract. STATE shall designate a field representative(s) who shall be authorized to receive notices, inspect progress of the work, and issue instructions in regard to performance under the terms of this contract. Authorized representatives of STATE and PURCHASER shall be designated in the Operations Plan required by Section 39.

Section 38. Inspection. STATE, through its authorized and designated representative, shall at all times be allowed access to all parts of the operations and areas of operations of PURCHASER, as may be required to make a complete and detailed inspection. STATE shall be furnished such information and assistance by PURCHASER, or the designated representative(s).

Section 39. Pre-Operations Meeting and Operations Plan.

Pre-Operations Meeting. PURCHASER shall meet with STATE no later than 30 days from execution of the contract to discuss the Threatened and Endangered Species survey, protection, and planning requirements.

Operations Plan. PURCHASER shall prepare an Operations Plan for all operations to be conducted under this contract and submit the plan to STATE at least 5 calendar days prior to commencement of any operation. This plan shall be prepared on a form provided by STATE, and shall be used for all types of operations, including road maintenance, project work, logging, and postharvest requirements. STATE may require an on-site meeting prior to approval of the plan, attended by PURCHASER, subcontractor, and STATE representatives. STATE's approval of the plan must be obtained prior to commencement of any operation, and PURCHASER must comply with this plan. If PURCHASER fails to comply with any of the terms of the plan, including completion dates, STATE may, after giving written notice, suspend PURCHASER's operations until such time as an acceptable alternate plan is submitted by PURCHASER and that alternate plan is accepted by STATE, as provided in Section 29, "Violations, Suspensions, and Cancellation." PURCHASER shall notify STATE whenever operations will be inactive for more than 3 days, and again when operations will be resumed.

Upon approval by STATE, the Operations Plan shall automatically be incorporated into, and made part of, this contract. PURCHASER's strict compliance with the Operations Plan, as approved by STATE, is a material condition and covenant of this contract.

STATE has prepared the required Forest Practices Act (FPA) "Written Plan" for operations within 100 feet of Type F or Type D streams. Any changes to the plan must have STATE approval. PURCHASER shall comply with all provisions of the Written Plan.

Seasonal Restrictions. PURCHASER shall adhere to the following restrictions, unless otherwise approved in writing by STATE:

(a) Log hauling shall not be allowed from November 1 through March 31 (Section 54).

(b) All felling on the timber sale area must be completed by March 15, 2006 (Section 57).

(c) Ground-based operations shall not be allowed on the timber sale area from November 1 through March 31 (Section 62).

(d) Road improvement and construction shall not be allowed from November 1 through March 31 (Section 71).

(e) Activity in “live” streams shall not be allowed from September 1 through June 30 (Section 71).

(f) Seeding shall be performed only from March 1 through June 15 and August 15 through October 31 (Exhibit F).

Section 40. Protection of Markings and Monuments. PURCHASER shall not remove, alter, damage, or destroy any signs, posters, markings, land survey markers and corners, witness trees, seed trees, or corner reference

tags pertaining to the timber sale or land survey. Should such damage or disturbance occur, PURCHASER shall report it to STATE within 24 hours of the incident, and shall prevent any further damage or disturbance from occurring. PURCHASER shall, in a manner or method as directed by STATE, re-establish legal subdivision markers or monuments damaged by PURCHASER's activities. STATE may re-establish such markers or monuments and bill PURCHASER for the expense incurred.

In the event it is necessary to disturb any legal land survey corner in order to conduct any activity under this contract, PURCHASER shall notify STATE. PURCHASER shall not disturb any corner until STATE has referenced or otherwise preserved the corner.

Section 41. Simultaneous Use of Area. STATE reserves the right to issue written authorization to others to use the areas of operations, in the determination of STATE, such use will not materially interfere with the operations of PURCHASER. During the period of this contract, STATE reserves the right to sell any products or materials from the areas of operations, provided that the products or materials are not covered by this contract and that removal will not materially interfere with the operations of PURCHASER. PURCHASER shall not interfere with the use of roads by other authorized users. PURCHASER shall not be held liable for any acts, omissions, or neglect of authorized simultaneous users.

PAYMENTS AND ACCOUNTABILITY

Section 42. Payment Schedule. The purchase price for timber sold under this contract shall be paid in advance as follows:

The first payment shall be paid within 30 days of the notification of high bid or before operating, whichever occurs first. The first payment shall be 10 percent of the total estimated bid value. The total estimated bid value shall be the sum obtained by multiplying the estimated timber volumes by the prices given in Section 44 less the amount of the project work. Cash bid deposits shall be applied to the initial payment.

Subsequent payments shall be made in advance of timber removal when log hauling begins. Each payment shall be made before the value of timber removed equals one-half an advance payment or within the time period stated on the billing if PURCHASER is more than one-half of a payment in advance. The amount of each advance payment shall be calculated by dividing the total estimated bid value less the initial payment by 13; with the total estimated bid value being the sum obtained by multiplying the estimated timber volumes by the prices given in Section 44 less the amount of the project work.

STATE may accept partial payment, upon written request, if logging is inactive. However, the full amount of advance payment is paid before logging resumes. Partial payment must be sufficient to maintain a payment deposit equal to one-half of a regular advance payment.

The total purchase price shall be calculated after all log scale is reported by multiplying prices in Section 44 by the scaled volume. STATE shall refund any advance payment in excess of the total price, or PURCHASER shall pay any deficit within 30 days of notice. PURCHASER's deposit account shall not accrue interest payable to PURCHASER.

Section 43. Payments and Interest. Payments required of PURCHASER by this contract or modifications of this contract, other than those in Sections 13 and 42, shall be received by STATE within the time period stated on the instrument requesting payment from PURCHASER.

Payments received after the due date stated on the billing instrument may be subject to an interest charge. The interest rate applied to overdue payments shall be the prime interest rate in effect on the day the payment became delinquent, as established by U.S. Bank, Ladd and Bush Branch, plus 4 percent. Interest shall be calculated from the date of the original billing to the date payment is received by the State Forester.

Section 44. Log Prices. The following price schedule shall be designated as the contract value and shall apply to all logs removed from designated timber. Payment shall be for net log scale, unless noted.

Log prices shall be:

Conifer Logs	Price per MBF
Douglas-fir	$
Hemlock and other conifers	$105.31
Red cedar	$706.07
Utility (pulp) logs, adjusted gross scale	At price above
Peelable cull logs, adjusted gross scale	At price above

Hardwood Logs	Price per MBF
Red alder and other hardwoods	$300.00
Sawmill grade logs under 20 board feet	$300.00
Utility (pulp) logs, adjusted gross scale	$300.00

Contingent Price Adjustment. It is the policy of the State of Oregon that unprocessed timber shall not be exported from lands owned or managed by the STATE or any of its political subdivisions or agencies, in accordance with the terms of current federal law and the Constitution and the laws of the State of Oregon. PURCHASER specifically agrees that Section 1 is a material term of this contract and is part of the consideration offered to STATE in return for STATE's performance. In the event that any federal law or state constitutional provision or law or any provision of this contract concerning export of unprocessed timber is declared invalid by any court or administrative tribunal, PURCHASER agrees to pay to STATE a contingent price in the amount of the difference between the purchase price set forth in this section and the price obtained by PURCHASER for the exported unprocessed timber.

The default provisions of OAR 629-032-0000 through 629-032-0070 shall not apply to exported unprocessed timber. In the event that timber made available under this contract is exported in violation of this contract, PURCHASER shall be in material breach of the contract. STATE shall be entitled to cease performance of the contract and recover, in addition to the adjusted price set out above, a further sum estimated to compensate for administrative expense and the economic impact of the violation upon the State and its citizens. In no case shall this additional amount be less than $10,000 per incident.

Section 45. Log Removal. All logs defined below, except those specified in the section titled, "Reserved Timber," shall be removed as designated timber under this contract, at prices given in Section 44:

(a) Any conifer log that conforms with grading rules for peeler or sawmill grades and meets or exceeds both of the following minimum requirements: 6 inches in gross scaling diameter, containing 10 board feet (net).

(b) Any hardwood log that conforms with grading rules for No. 4 Alder log grade or better and meets or exceeds both of the following minimum requirements: 8 inches in gross scaling diameter, containing 20 board feet (net).

For purposes of log removal requirements, minimum net log volume shall be determined by the net volume of the full log length rather than the volume of individual segments.

Other logs may be removed from designated timber under this contract at prices given in Section 44.

Log grades are defined in the Official Log Scaling and Grading Rules published by the Northwest Log Rules Advisory Group in effect at the time logs are scaled.

PURCHASER shall not deliberately buck logs to reduce log sizes to less than minimum requirements for log removal, and shall take reasonable precautions to prevent breakage losses in felling and yarding.

Section 46. Log Accountability and Log Load Receipts.

Load Receipts. PURCHASER shall completely and accurately fill out all portions of a multipart, serially numbered log load receipt before each truck leaves the landing area. PURCHASER shall require the truck driver of each load of logs to sign the woods receipt. PURCHASER shall staple the load receipt and scaler receipt parts to the load as instructed on the log load receipt directions and as directed by STATE, before each truck leaves the landing area. PURCHASER shall require the scaler to record the log load receipt number on the scale ticket that is signed by the scaler, and to attach the scaler receipt part to a copy of the scale ticket and mail to STATE on the date scaled.

STATE shall issue to PURCHASER sufficient books of serially numbered log load receipts to cover up to 30 days of operation, as determined by STATE. PURCHASER shall sign a receipt for each book of receipts and be fully accountable for all serially numbered woods and scaler receipt tickets. PURCHASER shall retain all woods receipts in each book and return to STATE as soon as all receipts in each book have been used. Unused books or portions of books shall be returned to STATE during sale inactivity over 30 days, and at the completion of timber removal from the timber sale area.

PURCHASER shall account for each and every serially numbered log load receipt, and shall pay damages to STATE for all log load receipts not accounted for by proof of scaling. Damages shall consist of full stumpage rate for each missing receipt, on the basis of average volume of the 10 largest loads of logs scaled from the timber sale area, charged at the highest species rate.

PURCHASER shall not intermingle STATE timber or logs designated by this contract with any other timber or logs before log scaling occurs, unless otherwise approved by STATE.

Notification of Delivery Destination. Prior to final acceptance of contract requirements by STATE, PURCHASER shall notify STATE, in a form and manner prescribed by STATE, of the delivery destination of all timber purchased under this contract. STATE may hold PURCHASER's performance bond until satisfactory delivery destination information has been received.

Notice of Transfer of State Timber. Prior to selling, trading, exchanging, or otherwise conveying unprocessed timber sold under this contract to any other person, PURCHASER must first obtain a certification of the person's eligibility to purchase unprocessed State timber, and their intent to comply with the terms and conditions contained in OAR 629-031-0005 through 629-031-0045. The certification shall be made in a form and manner prescribed by STATE, and shall be forwarded to STATE upon completion of the transaction. Obtaining the certification shall not relieve PURCHASER of the responsibility to provide STATE with an accounting of the delivery destination of that timber.

Section 47. Log Measurement.

Scaling Locations, Rules, and Organizations. All logs from timber sold under the terms and conditions of this contract shall be: (1) scaled at a location approved in writing by STATE; (2) scaled by a third-party scaling organization with a current agreement with STATE; and (3) scaled using the Official Log Scaling and Grading Rules (as adopted by the Northwest Log Rules Advisory Group) and STATE special service scaling instructions in effect at the time the logs are scaled. Utilization scale shall be handled in accordance with the section titled, “Utilization Scale.”

PURCHASER shall enter into a written agreement with a third-party scaling organization for the scaling of logs removed from the timber sale area. PURCHASER shall furnish STATE with a copy of the scaling agreement upon request. If logs are delivered when a TPSO scaler is not present, PURCHASER must provide STATE with a method to assure protection and accountability.

PURCHASER shall provide STATE with remote check scaling opportunities for logs scaled under this contract. The last two loads at each delivery point shall be continuously available for checking. They shall remain available for a minimum of 48 hours unless replaced by other STATE loads. They shall be available as originally presented for scaling; i.e., if truck scaled, they shall be presented in bunks.

In the event scaling is suspended for any reason, hauling operations shall be immediately suspended until approved alternate scaling services are provided, or service by the scaling organization is resumed.

Accountability Violations - Remote Scaling Requirement. If PURCHASER violates any of the log accountability requirements of this contract, STATE may require all logs from timber sold under the terms and conditions of this contract to be scaled at a ramp provided by PURCHASER, in a location designated by STATE. All costs associated with this additional scaling requirement shall be paid by PURCHASER.

Cost of Scaling. All costs of scaling and all costs in connection with reports furnished to STATE shall be paid by PURCHASER.

PURCHASER shall require the scaling organization to furnish copies each week to STATE of all scaled certificates showing gross and net volumes, by species and grade, of all logs scaled during the week. Upon request by STATE, PURCHASER shall also require the scaling organization to furnish and attach a log detail listing to each weekly scale certificate showing all STATE logs included on the certificate.

Scaling Instructions. PURCHASER agrees that STATE shall provide instructions to the approved third-party scaling organization for the scaling practices to be used for timber removed from the timber sale area. Instructions shall conform to the terms of this contract, including special scales as necessary. PURCHASER shall acknowledge and sign such instructions and shall be provided a copy.

Minimum Products Specifications and Special Scale information are shown on Exhibit H.

Logs Damaged During Handling. Mechanical damage to logs shall be prevented during log handling. Deductions for handling damage shall not be allowed.

Add-Back Volume. Scaling deduction for deterioration due to delay in removal of logs from the timber sale area shall not be allowed in determining net volume. Volume of material deteriorated due to delay in removal shall be reported to STATE and paid for at the contract price. Cost for separate reports shall be paid by PURCHASER.

Special Scaling Instructions. Segment scaling or grading of logs in excess of 40 feet in gross scaling length shall use actual taper. Procedures are set forth in "Segment Scaling and Grading of Long Logs - All Species - State Forestry Department Scaling Instructions" (Westside).

Section 48. Log Branding. Unless prevented by the size or condition of the wood and approved in writing by STATE, at least one end of every log removed from the timber sale area shall be both clearly hammer branded and painted with a minimum 2-inch diameter spot of orange paint. STATE may issue PURCHASER one or more branding hammers registered to STATE. PURCHASER shall use only those brands issued by STATE for use on timber sold under this contract. Only those brands issued by STATE for use on timber sold under this contract shall be allowed on the areas of operations at any time.

In addition, PURCHASER shall brand and paint all logs left singly or in decks along rights-of-way, and shall brand and paint one end of all logs yarded and left on landings after termination of operations each day. PURCHASER shall make every effort to remove logs from roads or landings within a reasonable period of time, and agrees to notify STATE in advance of intention to leave logs decked along roads or on landings for more than 96 hours. STATE may scale such decked logs, and PURCHASER shall be responsible for the costs of such scaling and for any loss due to theft or deterioration.

If a brand registered to STATE is issued, PURCHASER agrees to sign a receipt for those branding hammers and to return them in good condition within 14 calendar days of completion of log hauling. PURCHASER shall pay a fee of $50 to STATE for each branding hammer returned to STATE in damaged and unusable condition, or $100 for each branding hammer not returned within the time specified by STATE.

If properly marked timber is subdivided into smaller pieces for any other purpose than immediate processing, each piece shall be branded with a STATE brand specifically used for this purpose, signifying the logs are State

timber and ineligible for export. Branding hammers used for this purpose may be obtained from STATE upon request, at cost.

Section 49. Hauling and Operating Time Restrictions. PURCHASER shall not haul logs from the timber sale area on weekends, New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day, or outside the hours of 5:00 a.m. to 6:00 p.m. daily, without notification and approval by STATE.

Section 50. Route of Haul. PURCHASER shall furnish to STATE, at the time of making request for scaling approval, a map showing the scaling location and the precise route which shall be used to haul logs from the timber sale area to the scaling location. Such route shall be the most direct haul route between the two points, unless another route is approved by STATE. The route of haul may be changed only with advance notice to and approval by STATE.

Upon loading at the timber sale area, a log load shall be directly hauled to an approved scaling location, if required to be scaled. Log loads shall not be stored for late delivery without written approval from STATE.

Section 51. Utilization Scale. STATE shall scale logs or portions of logs that are broken, wasted, or not removed by PURCHASER due to: (1) improper felling or bucking of the logs; (2) failure to remove the logs prior to deterioration; and (3) logs remaining on the timber sale area after completion of logging, provided the logs were merchantable prior to breakage or wastage. Material used to meet down material requirements in the section titled, "Reserved Timber," shall not be considered for utilization scale. PURCHASER shall pay for the logs at the contract price designated in Section 44. STATE shall notify PURCHASER of the volume of logs so scaled. Payment shall be considered due on such volume as if the logs were removed on the date of said notification.

In the event PURCHASER disagrees with the findings made by STATE under this section, PURCHASER may furnish scaling by a third-party scaling organization acceptable to STATE. Costs and expenses of such third party shall be paid for by PURCHASER, and the findings of the third party shall be final.

Section 52. Special Products. PURCHASER shall not sell special products from the timber sale area, or allow firewood, shake, or post cutting, or any other special product manufacturing on the timber sale area without prior written approval of STATE. Special products are any products not in log form manufactured from material having a price, or listed as "No Charge," under the contract.

ACCESS AND ROAD MAINTENANCE

Section 53. Access. PURCHASER shall use the roads shown or indicated on Exhibit A for access to the timber sale area and project locations. If PURCHASER desires to use an alternative route, it shall be PURCHASER's responsibility to secure that access and obtain STATE approval for the route. The use of access roads shall be limited to that necessary to carry out the terms and provisions of this contract. Except as otherwise provided for in this contract, PURCHASER shall have the right of access over, in, and through the timber sale area for the purpose of cutting and removing the timber or performing the operations. PURCHASER in so using, improving, or constructing roads, shall at no time have an interest in the land, other than the right of access.

Section 54. Road Maintenance. PURCHASER is responsible for normal road maintenance on roads used for any activity under this contract. Normal road maintenance shall provide for safe forest driving conditions, continuous access and road use, protection of roads from damage, water quality, and compliance with all applicable laws.

PURCHASER's responsibility for normal road maintenance commences with PURCHASER's first use of a road for any activity under the contract period and shall continue through any active periods until final acceptance of the maintenance is made by STATE. In addition, during active periods, PURCHASER is responsible for normal road maintenance needs that are caused by public use of the roads.

Should PURCHASER jointly use the road with other parties authorized under Section 41 to use the roads, each party shall be responsible for a proportionate part of normal maintenance, based upon the ratio of each party's use to total road use, as determined by STATE.

STATE may determine when maintenance is needed and issue instructions to PURCHASER specifying work to be done and the date it must be completed.

Normal road maintenance shall be inclusive of PURCHASER action needed to prevent and protect the road from seasonal weather damage, repair damage caused by road use, and restore the road to at least the road condition at commencement of use, including, but not limited to:

(a) Cut Banks and Fill Slopes.

(1) Remove slash created by operations.

(2) Remove obstructions and fallen timber.

(3) Restore stability impacted by operations.

(b) Ditches.

(1) Remove bank slough, minor slides, and obstructions.

(2) Remove slash created by operations.

(3) Restore to functional drainage.

(4) Minimize erosion and/or sediment delivery by placement and maintenance of filtering systems.

(c) Drainage Systems.

(1) Clear culvert inlets, outlets, and sediment catching basins.

(2) Maintain waterbars, drainage dips, and other water diversion measures.

(3) During active use, patrol and maintain functional drainage.

(4) Repair damaged culvert ends.

(d) Road Surfaces.

(1) Grade, shape, crown, and/or outslope surface and shoulders.

(2) Provide leveling, patching, and/or reinforcement rock for restoring purposes.

(3) Prevent contamination of road surface materials with soil and vegetative material.

(4) Prevent road surface materials from being bladed off the road.

(5) Temporarily cease road use to prevent and/or protect the road during adverse weather conditions. Examples of adverse weather conditions are freezing and thawing cycles, high soil moisture caused by rainfall events, and accumulation of snow that requires removal to continue hauling activity.

At the conclusion of log hauling operations, PURCHASER shall process and/or compact crushed rock surfacing on road segments to be determined by STATE.

Log hauling shall not be allowed from November 1 through March 31, unless otherwise approved in writing by STATE.

Extraordinary maintenance is defined as major repair work and/or damage caused by acts of God or causes beyond the control of the PURCHASER, as defined in Section 28. STATE may require PURCHASER to perform extraordinary maintenance. STATE shall describe the amount and specifications of work to be done in writing, and make adjustments in accordance with Section 28.

TIMBER SALE AREA

Section 55. Designated Timber. The timber is located on the timber sale area.

In accordance with Section 1, the following is designated timber, except as excluded by the sections titled, "Reserved Timber" and "Thinning Specifications":

All timber cut in accordance with the specifications in the sections titled, "Felling" and "Thinning Specifications," within Areas I, II, and III.

All timber within Area IV R/W.

Boundary markings are as follows:

Areas I, II, and III are posted with "Timber Sale Boundary" signs and pink and black flagging.

Area IV R/W is posted with "Right-of-Way Boundary" signs.

The boundaries between Areas I, II, and III are posted with "Area Boundary" signs.

Section 56. Reserved Timber. Reserved timber is that timber including trees, snags, and logs on the timber sale area, which is not sold to PURCHASER. The following is reserved timber and shall not be damaged, cut, or removed by PURCHASER, unless otherwise approved in writing by STATE. Failure to leave the required reserved timber shall be handled as described under Damages below.

Down Material

Tops resulting from requirements in the section titled, "Felling," and not meeting removal requirements of the section titled, "Log Removal."

Down trees and logs.

Trees and Snags

Trees reserved for snag creation in accordance with the section titled, "Snag Creation."

All snags unless determined to be a safety hazard. Felled snags shall not be yarded or removed.

Felled snags shall not be yarded.

Trees and snags within Area I marked with yellow paint.

Unmarked trees within stream buffers.

Bearing (witness) trees.

All cedar, hemlock, noble fir, and hardwoods shall be reserved from cutting unless determined to be a safety hazard by STATE, except those within rights-of-way, skid trails and roads, skyline cable corridors, and landings.

Trees within 25 feet horizontal distance of perennial Type N streams and within 25 feet horizontal distance of Type F streams shown on Exhibit A.

Trees required to meet the residual tree requirements in the section titled, "Thinning Specifications."

Boundary Trees

Trees posted with "Right-of-Way Boundary" signs within the timber sale area shall not be cut until road subgrade construction is accepted by STATE. All other trees posted with boundary signs are reserved from cutting.

Damages

PURCHASER shall be exclusively responsible for any damage to, or removal of, reserved timber. If damage to reserved timber occurs and is determined unavoidable by STATE, no charge will be made for damage.

If PURCHASER's activities result in avoidable damage to reserved timber as determined by STATE, PURCHASER shall pay for such damage at the following rates:

(a) Single the contract value shall be paid when:

(1) "Minor damage" to reserved timber occurs during the course of normal logging. Minor damage is defined as bark removed down to the cambium layer of a tree, such removal affecting at least 24 square inches, but less than damage defined as "major damage."

(2) Trees must be cut in order to facilitate operations, or for safety around landings, as approved in writing by STATE.

(b) Double the contract value or $50, whichever is greater, shall be paid when:

(1) "Major damage" to reserved timber is caused by operations of PURCHASER. Major damage is defined as follows:

(A) Bark removed down to the cambium layer over an area of the bole which has one dimension (height or circumference) greater than the diameter of the tree, or any visible bark removal on the tree roots.

(B) Residual basal area on any acre is less than the minimum specifications in the section titled, "Thinning Specifications."

(2) More than 50 percent of live crown is removed.

(3) Tree is knocked down, or leaning more than 10 degrees from vertical.

(c) Treble the contract value or $100, whichever is greater, shall be paid when:

(1) Reserved timber is intentionally cut or removed.

(2) Reserved timber is intentionally damaged.

(3) Repeated major damage occurs to reserved timber.

(4) Any intentional "notching" or undercutting of reserved timber with an axe or saw occurs.

For each species sold on a recovery basis, contract value is defined as the price per MBF listed in Section 44. If species is not listed in Section 44, the highest price listed in Section 44 shall apply.

For species sold on a lump sum basis, the contract value for each species shall be determined by using STATE's unamortized timber appraisal value, multiplied by the bid-up factor. Bid-up factor shall be calculated by STATE using the following calculation: bid value all species/appraised value all species = bid-up factor.

STATE may direct damaged timber to be left. In that case, payment for damage shall be reduced by single the contract value of such timber.

The payment for reserved timber shall not release PURCHASER from liability for other damage to the property of STATE.

If more than 8 reserved trees on any acre suffer "minor damage," or if any reserved timber suffers "major damage" as defined above, STATE reserves the right to:

(A) Suspend felling and/or yarding until corrective measures have been agreed upon by STATE and PURCHASER.

(B) Suspend felling and/or yarding from April 1 through August 1.

(C) Require limitations on log length and/or the number of logs in each yarding turn.

(D) Specify the size and type of equipment to be used.

(E) Require setting layout and engineering analysis of skyline payloads and rigging configurations.

(F) Require line pulling and winching of logs.

HARVESTING OPERATIONS

Section 57. Felling. PURCHASER shall comply with the following requirements for felling:

(a) Felled trees shall be topped at a diameter not less than 6 inches prior to yarding, unless otherwise approved in writing by STATE. Treetops below minimum log diameter shall be bucked off prior to yarding.

(b) Fell all trees and snags on Area IV R/W.

(c) Fell all snags which are 30 feet or more in height and 8 inches or more in diameter, measured 4½ feet above the ground on the uphill side, within 30 feet slope distance of roads to be constructed as shown on Exhibit A.

(d) Trees that will damage roads shall be felled prior to road construction or improvement.

(e) Prior to felling in Areas I, II, and III, PURCHASER shall arrange to have all the cutters meet with STATE to review the requirements specified in the sections titled, "Felling," "Thinning Specifications," and "Reserved Timber." PURCHASER shall give STATE 48 hours advance notice before starting a new cutter on Areas I, II, and III to allow STATE the opportunity to brief the cutter on these sections.

(f) Fell all trees equal to or greater than 8 inches DBH not needed to meet residual stand specifications in the section titled, "Thinning Specifications," except those designated as "Reserved Timber."

(g) Trees other than Douglas-fir shall not be felled without prior approval from STATE, except in rights-of-way, skid roads, cable corridors, and landings.

(h) Prior to felling a setting, all skid roads, landings, cable corridors, intermediate support trees, rub trees, and tailholds shall be marked on the setting by PURCHASER and approved by STATE. Felling of trees within cable corridors, skid roads, and landings shall be done prior to felling the remainder of the setting. Rub trees may be removed after the setting has been approved by STATE.

STATE may require certain trees or snags, described by the preceding specifications, to be left standing if they are needed for wildlife habitat, or if the snags do not constitute a fire or safety hazard. STATE shall designate such trees or snags at the time of timber felling.

Trees shall not be felled across timber sale boundaries, unless authorized in writing by STATE. Any trees that fall across timber sale boundaries shall be yarded back into the timber sale area prior to limbing or topping.

PURCHASER shall employ the following timber cutting practices on the timber sale area(s), unless otherwise approved by STATE:

(1) Logs shall be no longer than 40 feet plus trim.

(2) Trees shall be felled to the longest lay, using the necessary means (wedging, jacking, etc.), favoring a quartering uphill lead.

(3) Trees shall not be felled across draws, over ridges, or across previously felled trees.

(4) Trees that cannot be controlled into desired felling patterns (snags, rotten-butted trees, heavy leaners, etc.) shall be felled first, and the direction of subsequently felled timber corrected accordingly.

(5) Trees within the timber sale area whose best lay will be adversely affected by road construction shall be felled concurrently with right-of-way timber. PURCHASER shall notify STATE prior to cutting any trees posted with "Right-of-Way Boundary" signs.

(6) Maximum stump height shall be 12 inches or 25 percent of stump diameter, whichever is greater, unless otherwise approved by STATE. Heights shall be measured on the uphill side.

All felling on the timber sale area must be completed by March 15, 2006.

Section 58. Thinning Specifications. PURCHASER shall comply with the following requirements for selecting residual conifer trees on Areas I, II, and III:

(a) Residual tree spacing shall be varied to preserve the trees of good form and vigor with the largest diameter and height and maintain a residual stand structure within the following limits:

(1) Residual basal area on each acre shall be at least 130 square feet and not more than 150 square feet for Area I and at least 110 square feet and not more than 130 square feet for Areas II and III.

(2) The relative density target on the timber sale area is 32 on Area I and 26 on Areas II and III. STATE reserves the right to alter the residual basal area requirement where necessary to obtain the relative density target. Relative density is calculated by dividing the residual basal area by the square root of the average residual stand DBH.

(3) Residual average stand DBH shall not be less than 18 inches on Area I and 20 inches on Areas II and III.

(b) Acceptable residual conifer trees are those having a live crown ratio of at least 30 percent, and without sweep, scarring, disease, or leaning more than 10 degrees from vertical. Conifer trees with multiple tops and crooks are acceptable if the defect is at least 40 feet above the ground.

In portions of the stand where there are insufficient acceptable conifer trees to meet the residual specifications listed above, trees with the least defect and largest diameter, height, and live crown shall be preserved.

(c) Conifers less than 8 inches DBH, hardwoods, and cedars shall not be counted when calculating the residual specifications listed above.

(d) Portions of the timber sale area may have an insufficient number of trees to make thinning silviculturally desirable, as determined by STATE. PURCHASER may propose to exclude such areas from the thinning specifications and felling requirements. PURCHASER shall designate on the operations plan and mark on the ground proposed excluded areas. Proposed areas approved by STATE shall be excluded from the thinning specifications and felling requirements.

If the above conditions are not met by PURCHASER, STATE reserves the right to suspend felling until corrective measures have been taken by PURCHASER, as directed by STATE. Corrective measures include, but are not limited to:

(A) Replacement of cutters by PURCHASER; and

(B) Approval of cutters by STATE based on cutter's satisfactory completion of STATE test plots.

Section 59. Felling Inspection. STATE may inspect the felling operations to determine compliance with the thinning specifications established by sample plots. Inspection by visual reconnaissance may supplement plot data. Plot records may include: (1) residual basal area per acre; (2) residual tree DBH; (3) general comments on selection of residual trees and work quality; and (4) residual trees per acre damaged by PURCHASER. The plot data and visual reconnaissance may be used for determining the need for corrective measures, as outlined in the section titled, "Thinning Specifications."

Section 60. Snag Creation. PURCHASER shall create 325 snags on Areas I, II, and III.

(a) Top trees at least 60 feet above the ground.

(b) Leave 2 complete whorls of live branches.

(c) Notify STATE at least 24 hours prior to beginning snag creation.

(d) Snags shall be at least 75 feet from the uphill side of any road.

(e) Sever tops completely. No tops shall be left hung up in any tree, or left leaning against the bole of any tree.

(f) Remove tops from firelines, property lines, roads, and landings.

Trees selected shall be as follows:

(1) Species: Douglas-fir.

(2) At least 16 inches in diameter, measured 4½ feet above the ground on the uphill side.

(3) Left individually or in groups not to exceed 3 trees on any acre.

(4) For the timber sale area, selected trees shall be in addition to trees required to meet residual tree requirements in the section titled, "Thinning Specifications." Location and distribution is subject to STATE approval.

Section 61. Cable Yarding Specifications. Yarding systems shall be designed to minimize soil disturbance and damage to reserved timber. PURCHASER shall use cable yarding, except as approved by STATE in the Operations Plan. PURCHASER shall comply with the following when yarding Areas I, II, and III, except as approved by STATE in the Operations Plan:

(a) Logs shall have at least one end suspended when yarding across streams shown on Exhibit A.

(b) When cables pass through or over streams shown on Exhibit A, all necessary precautions shall be taken to protect all stream buffer components.

Necessary measures include, but are not limited to, the following:

(1) Pull cables out of the reserved timber prior to rigging the next yarding road.

(2) Yarding roads shall be at least 100 feet apart where they extend over or through the buffer.

(c) Place debris from yarding (tops, limbs, cull logs, etc.) in a stable location approved by STATE prior to moving to another landing area. Debris shall not be left lodged against standing trees. Material suitable for firewood cutting shall be piled separately from other slash, as directed by STATE.

(d) Soil gouging shall be limited to a depth of one foot.

(e) If tailhold or guyline trees outside of the timber sale area are necessary to facilitate yarding operations, acquire written approval from STATE prior to their use. Upon approval, clearly mark each tree and take precautions to prevent damage to said trees including, but not limited to:

(1) Using trees near the timber sale boundary that can be felled and yarded without causing damage to reserved timber.

(2) Using nylon straps to attach to tailhold trees.

(3) Using tree plates, tires, or other suitable materials between cable straps and the tree to prevent scarring the tree.

(4) Limiting notching of the tree – to prevent strap slippage – to less than 25 percent of the circumference of the tree, unless the tree has been approved to be cut and removed.

If the above precautions are followed, payment for such tree shall not be required except for trees removed per Item (1) above which shall be paid for at single the contract value, as specified in the section titled, “Reserved Timber.”

If the above precautions are not followed and activities result in damaging 50 percent or more of the circumference of such trees, damage shall be considered avoidable. Payment shall be at the rate of treble the contract value, as specified in the section titled, “Reserved Timber.”

(f) Use a self-clamping carriage that can be positioned and repositioned for each turn of logs without lowering the skyline.

(g) The carriage shall be capable of passing intermediate supports.

(h) Control logs being yarded to minimize damage to reserved timber.

(i) String cables in a manner that makes minimum contact with reserved timber.

In addition, if operations of PURCHASER threaten or cause excessive damage to the soil or reserved timber, STATE may require PURCHASER to comply with one or more of the following:

(A) Use a carriage or a skyline yarding system.

(B) Reduce the length of logs.

(C) Reduce the number of logs in each yarding turn.

(D) Do not yard logs longer than 40 feet plus trim.

Section 62. Ground-Based Operations. Those timber sale areas, or portions thereof, where ground yarding has been approved in the Operations Plan, are subject to the following restrictions, unless otherwise approved in writing by STATE:

(a) PURCHASER has the option of (1) or (2):

(1) Using any type of ground-based equipment. However, PURCHASER must limit skid roads and trails used to 10 percent of the ground yarded area and restrict equipment operations to these skid roads and trails.

(2) Using ground-based equipment of 6 pounds per square inch or less of ground pressure. However, PURCHASER must limit soil disturbance (removal or displacement of litter and topsoil) to no more than 10 percent of the ground yarded area.

(b) Preexisting skid roads and trails shall be used whenever possible, and soil disturbance or construction of new skid roads and trails shall be limited to that necessary to log the area. Total area of soil disturbance of old and new skid roads and trails used shall not exceed 10 percent of the ground yarded area.

(c) Operations shall not be conducted under conditions where soils are rutted or excavated to a depth of 6 inches or more.

(d) Equipment shall not operate on slopes greater than 35 percent. Written approval may be granted for short distances on slopes exceeding 35 percent when, in the opinion of STATE, it would be unreasonable to yard by pulling line.

(e) Yarding shall not be permitted on haul roads.

(f) Prior to the beginning of felling operations, PURCHASER shall mark the locations on the ground of all skid roads and trails, subject to STATE approval. Felling shall be "to lead" to those marked trails and those trail locations adhered to.

(g) Ground-based operations shall not be allowed on the timber sale area from November 1 through March 31.

(h) Ground yarding equipment shall not be operated within 25 feet of streams.

(i) PURCHASER shall suspend ground yarding during periods of high soil moisture, as determined by STATE.

(j) Operations shall be designed to minimize soil disturbance and damage to reserved timber.

If the above conditions are not met by PURCHASER, STATE at its option, reserves the right to require PURCHASER to suspend yarding activities, mark skid trails and roads on the ground, and obtain prior approval before resuming yarding activities.

Time lost while STATE exercises any of the above options shall not be considered cause for contract extension.

Section 63. Damage to Reforested Areas. PURCHASER shall take all necessary precautions to avoid damage to reforested areas adjacent to, within, or nearby the timber sale area. Should PURCHASER's activities damage reforestation areas shown on Exhibit A, STATE shall determine the extent of the damage, and PURCHASER shall reimburse STATE for the damage as follows:

Area A, at the rate of $5,593 per acre or $20 per tree.
Area B, at the rate of $4,809 per acre or $16 per tree.

Section 64. Protection of Watershed. PURCHASER shall take all necessary precautions to prevent damage to stream banks, any stream course, lake, reservoir, or forested wetland within or adjacent to the timber sale area. Definitions of Type F, Type D, and Type N streams contained in the Forest Practices Act apply to this contract.

In addition, PURCHASER shall perform all measures necessary to protect the stream banks, streambed, and vegetation within the stream buffers shown on Exhibit A. The stream buffers are unposted, 25 foot horizontal distance, “No Harvest” areas on each side of the stream channels.

Necessary measures include, but are not limited to, the following, unless otherwise approved in writing by STATE:

(a) Fell adjacent trees and snags away from or parallel to the buffer to prevent them from entering the buffer.

(b) Do not operate ground-based equipment within the buffer.

(c) Do not fell trees within the buffer.

(d) Cable yarding over or within the buffer shall be done in accordance with the requirements of the section titled, “Cable Yarding Specifications.”

(e) Trees that fall or slide into the Type F streams shall not be removed without prior approval from STATE.

In addition to other protective measures required, PURCHASER shall discontinue all or part of the operations under this contract upon notice from STATE that operations will cause excessive damage to the watershed.

Section 65. Protection of Utility Lines. In accordance with OAR 952-001-0020: “*ATTENTION: Oregon law requires you to follow rules adopted by the Oregon Utility Notification Center. Those rules are set forth in OAR 952-001-0010 through OAR 952-001-0090. You may obtain copies of the rules by calling the center.” (Note: The telephone number for the Oregon Utility Notification Center is (503) 232-1987/1-800-332-2344.)*

Section 66. Progressive Operations. PURCHASER shall complete the following requirements on each setting prior to moving to a new setting, unless otherwise approved in writing by STATE:

(a) Remove all logs as described under Section 45, "Log Removal."

(b) Construct cross-drainage ditches or waterbars as specified in Exhibit G and as directed by STATE.

(c) Block roads and skid trails to vehicular traffic as directed by STATE.

(d) Expend up to 20 hours with a log loader retrieving large woody debris from landing slash and stacking it on the landing, as directed by STATE.

(e) Remove all trash.

In addition, PURCHASER shall complete the following requirements within the following time frames, unless otherwise approved in writing by STATE:

(1) Complete all felling requirements as required by the section titled, “Felling,” within 14 calendar days after completion of yarding activities and prior to March 15, 2006.

(2) Complete snag creation as required by the section titled, “Snag Creation,” within 30 calendar days after completion of yarding activities.

(3) Remove all equipment and materials from the timber sale area within 30 calendar days after completion of yarding activities. See Section 23, "Removal of Equipment and Materials."

(4) Upon completion of a setting, an excavator or log loader shall pull debris from within reach of a landing and pile the debris in the center of the landing. Debris suitable for firewood shall be separated into individual piles accessible to firewood cutters. Debris shall be piled so as to facilitate pile burning, as directed by STATE.

(5) Complete road maintenance requirements of the sections titled, “Access” and “Road Maintenance,” within 30 calendar days after completion of log hauling activities.

(6) Remove right-of-way logs from a road segment prior to subgrade approval.

FIRE CONTROL AND SLASH DISPOSAL

Section 67. Precautions Against Fire. It is recognized that the activities of PURCHASER under this contract may cause extraordinary fire risk on the areas of operations. PURCHASER agrees to use the highest degree of care to prevent forest fires from starting on or from spreading to the areas of operations. PURCHASER shall require the employees and contractors of PURCHASER and the employees of such contractors to do likewise. STATE may, at any time during the contract period, require PURCHASER to prepare a Fire Plan for the areas of operations. The plan shall set forth the resources and required actions to be taken by PURCHASER and contractors of PURCHASER for the prevention and suppression of fire on the areas of operations. The plan shall meet with the approval of STATE and may be revised as necessary.

Section 68. Efforts on Fire. Should a fire occur on any part of the areas of operations, PURCHASER shall immediately proceed to extinguish the fire, provided PURCHASER was willful, malicious, or negligent in the origin of the fire, or the fire started as a result of operations, or during operations. In addition, once PURCHASER is informed of the fire, PURCHASER shall require the employees and contractors of PURCHASER and the employees of such contractors to extinguish the fire. PURCHASER shall defend and hold harmless STATE from any and all loss, costs, damage, and expense that STATE may incur as a result of any fire caused by the operations of PURCHASER, employees and contractors of PURCHASER, and employees of such contractors. In no event shall the requirements of this section be construed as relieving PURCHASER of the duty and responsibility under Oregon law to fight, control, and suppress fire on forestland. It is understood that the provisions of this section may be in addition to any duty and responsibility required by law.

Section 69. Slash Disposal. Slash is defined as all debris resulting from logging operations, construction of roads, or other improvements.

Upon completion of all provisions of this contract, STATE shall issue a release pursuant to ORS 477.580 relieving PURCHASER of the responsibility for the disposal of slash on the timber sale area. PURCHASER's responsibility shall be continuous until such a release is issued.

Section 70. Warning Signs. PURCHASER shall post and maintain signs adequately warning forest users of active felling, yarding, and hauling operations. Signs shall be posted at locations designated by STATE.

PROJECTS

Section 71. Project Work. PURCHASER shall complete the following projects in accordance with the specifications provided in Exhibits B, C, D, E, and F and written instructions from STATE. Project locations are shown on Exhibit A unless otherwise described. PURCHASER shall furnish all material unless otherwise specified.

Project Period. Work on Project Nos. 1 and 2 shall not be allowed from November 1 through March 31, unless otherwise approved in writing by STATE.

Activity in “live” streams shall not be allowed from September 1 through June 30, unless otherwise approved in writing by STATE.

Project No. 1. Construct roads between the following road points according to the specifications in Exhibits B, C, and E:

C to D, E to F, G to H, I to J, K to L, M to N, O to P, Q to R, S to T, and U to V.

Project No. 2. Improve roads between the following road points according to the specifications in Exhibits B, C, and E:

A to B

Project No. 3. Crush and spread road rock according to the specifications in Exhibit C.

Rock Source. The road rock may be obtained from STATE land at the location shown as "Rock Pit" on Exhibit A, or from other locations acceptable to STATE. Development and use of the rock pit shall be in accordance with the specifications in Exhibit D.

Right-of-Way Hauling. Prior to approval to rock constructed roads, the right-of-way logs on those portions of road to be rocked shall be hauled, unless otherwise approved by STATE.

Project No. 4. Seed areas of disturbed soil on all roads and waste areas specified in Project Nos. 1, 2, and 3 according to the specifications in Exhibit F.

Non-Project Roads. Road improvement and construction not required by this section but approved in the Operations Plan shall be subject to the following requirements, unless otherwise approved in writing by STATE:

(a) Prior to felling, PURCHASER shall mark right-of-way clearing limits and obtain STATE approval.

(b) Subgrade shall not exceed 14 feet in width.

(c) Work shall not be allowed from November 1 through March 31.

(d) Upon completion of use, roads shall be waterbarred according to the specifications in Exhibit G and blocked to vehicle traffic as directed by STATE.

(e) Seed areas of disturbed soil according to the specifications in Exhibit F.

Section 72. Completion of Projects. PURCHASER shall complete the projects in the preceding section prior to October 1, 2005.

Complete all projects on a road section prior to log hauling on that section.

If the logging operation will cause damage to a project, STATE may waive the completion date requirement until logging in that area is completed. Right-of-way logs may be removed from the road section before completion.

Section 73. Credit for Project Work. In order to compensate PURCHASER for project work that PURCHASER agrees to complete under the section titled, "Project Work," of this contract, STATE agrees to credit PURCHASER's timber account in the sum of $193,410 upon completion of and STATE's acceptance of all work, unless otherwise approved in writing by STATE.

PURCHASER may request partial credit for project work when PURCHASER has completed and STATE has accepted project work, in accordance with the following credit schedule:

Partial credit amount of $38,682 (20% project work completion)
Partial credit amount of $38,682 (40% project work completion)
Partial credit amount of $38,682 (60% project work completion)
Partial credit amount of $38,682 (80% project work completion)
Partial credit amount of $38,682 (100% project work completion)

Requests for partial credit shall be made by PURCHASER in writing and submitted to the Forest Grove District Office of the Department of Forestry at 801 Gales Creek Road, Forest Grove, Oregon 97116.