

Log Sale Contract No. 341-16-32 and 341-16-91 through 341-16-95

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STATE OF OREGON



DEPARTMENT OF FORESTRY

Oregon Department of Forestry
State Forests Division
2600 State Street, Building D
Salem, Oregon 97310
LOG SALE CONTRACT

SALE NAME: Small Fry Sorts
CONTRACT NO 341-16-32 and 341-16-91 through 341-16-95
ODF DISTRICT: Astoria

Section 1000. Signatures of Contract Parties.

This Contract (the "Contract") is by and between the STATE OF OREGON, acting by and through the State Forester on behalf of the DEPARTMENT OF FORESTRY ("STATE") and _____ ("PURCHASER"). The Contract shall be effective as of the latest date signed below. The parties do hereby agree as follows:

- (1) Signature of STATE means he/she is a duly Authorized Representative of the STATE and is authorized by STATE to make all representations, attestations, and certifications contained in this Contract and all addenda, if any, issued, and to execute this Contract document on behalf of STATE;
- (2) Signature of PURCHASER means he/she is a duly Authorized Representative of the PURCHASER, has been authorized by PURCHASER to make all representations, attestations, and certifications contained in this bid/proposal document and all addenda, if any, issued, and to execute this bid/proposal document on behalf of PURCHASER;
- (3) PURCHASER, acting through its Authorized Representative, has read, understands, and agrees to all Contract instructions, specifications, and terms and conditions contained in this Contract document (including all listed attachments and addenda, if any, issued);
- (4) PURCHASER is bound by and shall comply with all requirements, specifications, and terms and conditions contained in this Contract document (including all listed attachments and addenda, if any, issued);
- (5) PURCHASER shall comply in all respects with the terms of the resulting agreement upon award.

IN WITNESS WHEREOF, the State of Oregon hereby awards the Contract to the above Purchaser for the item(s) contained in the Contract, including all terms, conditions, and specifications. The Parties have affixed their signatures as of the latest date indicated below.

STATE:
State of Oregon, acting by and through the
DEPARTMENT OF FORESTRY

PURCHASER:
(Purchaser Name) (SEAL)

Chief, State Forests Division

By: _____
(Signature of Purchaser Authorized Representative)

Date: _____

Printed Name: _____

As its: _____

Date: _____

PART I: SALE OF TIMBER

GENERAL

Section 1010. Definition of Terms.

Authorized Representative – a representative of the PURCHASER 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.

Bidder – is a person, business, corporation, or other entity recognized by the STATE that submits a bid to enter into a contract with the STATE to purchase forest products.

Bunk – a bed for logs with a pair of stakes at each end.

Camprun – includes all grades above utility for that species.

Contract – the entire written agreement between the parties, including but not limited to the Notice of Log Sort Sale, Invitation to Bid or Request for Proposal, Instructions to Bidders, specifications, terms, and conditions, change notices, if any, and the accepted bid.

Log Load Receipt Book – a book issued by the STATE used for log load accountability. In each book there are sequentially numbered multipart pages (tickets). Each page is a four-part form. Each of the four parts, on each page, has the same identifying number. The four parts are:

Woods Receipt

Turned in to the ODF District Office that the timber sale is in.

Trucker Receipt

Retained by the log truck driver.

Load Receipt

Stapled to the log load on the truck before the truck leaves the Timber Sale Area Landing. Stays with the log load until the load is dispersed and processed at the mill.

Scaler Receipt

Stapled to the log load on the truck before the truck leaves the Timber Sale Area Landing. When the load is scaled (measured) the Scaler Receipt is transferred to the Scaling Bureau's printout of the log breakdown of the load. This log breakdown (which shows number of logs, species of logs, grades of logs, and board foot volume), along with the Scaler Receipt is sent to ODF headquarters in Salem.

Major Catastrophes – windstorms, floods, fire, landslides, or other acts of God, 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.

MBF – thousand board feet.

Pulp – any log (tops only) that does not meet the minimum requirements for saw log, as designated by STATE.

Purchase Price – for each species sold on a log sort basis, "Purchase Price" is defined as the price listed in Section 1740, "Log Prices and Log Sort Specifications."

PURCHASER's Authorized Representatives - 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.

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

TPSO (Third-Party Scaling Organization) – a scaling organization not affiliated with either the PURCHASER or STATE.

Section 1020. Sale of Logs. Under the terms and conditions of this Contract, STATE sells to PURCHASER, and PURCHASER buys from STATE, that Board of Forestry logs designated and described in Section 1740, "Log Prices and Log Sort Specifications" which for all purposes of this Contract is hereinafter referred to as "logs".

This is a sale of "State Timber" as defined in OAR 629-031-0005 and logs sold under this Contract must not be exported from the United States. PURCHASER must comply with the provisions of the Forest Resources Conservation and Shortage Relief Amendments Act of 1993, which authorizes Oregon and other western states to prohibit the export of unprocessed logs from public lands, and with ORS 526.801 through 526.831 and OAR 629-031-0005 through 629-031-0045, in disposing of logs from this log sale.

Section 1030. Title to Logs. The ownership of and title to the logs shall pass to PURCHASER before the logs are scaled following delivery to PURCHASER.

Section 1040. Quality and Quantity of Logs. STATE makes no guarantee or warranty to PURCHASER as to the quality or quantity of the logs.

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 PURCHASER's computation of its bid for this Contract.

Section 1050. Examination of Contract. PURCHASER acknowledges and agrees that, before submitting a bid, PURCHASER has made a careful examination of the terms and conditions of the Contract. STATE will in no case be responsible for any loss or for any unanticipated costs that may be suffered by PURCHASER as a result of PURCHASER's failure to acquire full Contract information in advance of submitting a bid.

COMMENCEMENT AND COMPLETION OF CONTRACT

Section 1110. Commencement of Log Deliveries. PURCHASER shall not be eligible to receive logs under the Contract until STATE provides written notification to PURCHASER that STATE has received and accepted the following:

- (a) The payment bond required under Section 1230, "Payment Bond"; and
- (b) A fully executed original of the Contract.

Section 1120. Completion Date of Contract.

STATE or its designated agent will deliver all logs sold under this Contract to PURCHASER between May 16, 2016 and July 30, 2016.

BONDING

Section 1230. Payment Bond. PURCHASER shall furnish a payment bond (or blanket payment bond for multiple Contracts) acceptable to STATE guaranteeing payment for all logs received from STATE. PURCHASER

shall keep the payment bond in effect during the term of the Contract, until released by STATE. State shall release payment bond upon thirty (30) calendar days after State has determined Purchaser has fully performed in accordance with the Contract. Payment bonds may be in the form of one or more of the following: surety bonds, cash, cashier's or certified check, money order, assignment of surety, irrevocable letters of credit, or other securities determined acceptable by the State Forester. Surety bonds (including riders) must be written by a surety company authorized to do business in the State of Oregon, on a form provided by STATE. PURCHASER's bond shall be in an amount of 20% of the total value (Bid Price per MBF Appraised Volume) rounded up to the nearest thousand.

GENERAL TERMS AND CONDITIONS

Section 1320. 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 written consent of the STATE. STATE will consent only when assignment is consistent with STATE's fiduciary duties. No such written approval shall relieve PURCHASER of any obligations under 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. Also, PURCHASER shall pay additional transportation costs, as determined by STATE, if the transferee's delivery location requires a longer haul route than the original haul route for the sort.

Section 1355. General Indemnification. PURCHASER shall indemnify, defend and hold harmless the STATE their officials, agents, and employees ("Indemnified Parties"), 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, or any claim of liability for premiums, contributions, or taxes payable under any Workers' Compensation, Disability Benefits, Old Age Benefits, including FICA, or tax withholding laws.

Section 1360. 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 1365. 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 that or any other provision of this Contract.

Section 1370. Choice of Law and Venue. This Contract shall be governed by, construed and enforced in accordance with, the laws of the State of Oregon, without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between State (or any other agency or department of the State of Oregon) and Purchaser that arises from or relates to the Contract shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this Section be construed as a waiver by the State of Oregon of any form or defense or immunity, whether based on sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the United States Constitution, or otherwise. **PURCHASER, BY EXECUTION OF THE CONTRACT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.**

Section 1380. Entire Agreement; No Modification. This Contract consists of 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, change notices, if any, and the accepted bid. 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 for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Contract. PURCHASER, by the signature of its Authorized Representative in Section 1000, "Signatures of Contract Parties," hereby acknowledges that she/he has read this Contract, understands it, and agrees to be bound by its terms and conditions.

CONTRACT CHANGES: EXTENSIONS, MODIFICATIONS, SUSPENSIONS, CANCELLATIONS, DELAYS, AND DEFAULT

Section 1510. 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, or war which is beyond that party's control. STATE may terminate this Contract upon written notice after determining such delay or default will reasonably prevent successful performance of the Contract.

Section 1530. Extension of Time. Contract extensions and any other conditions subject to the extension that are agreed to by the State must be formalized in writing and signed by Purchaser and State, and attached to this Log Sale and Purchase Contract as an addendum.

Section 1540. Contract Modifications. Modifications of the terms of this Contract must be in writing signed by PURCHASER and STATE to become effective.

COMPLIANCE WITH LAWS AND REGULATIONS

Section 1660. Tax Liability. STATE makes no representations concerning tax liability or consequences arising from this sale of State logs. It is PURCHASER's sole responsibility to determine what tax liability may be incurred as a result of purchasing State logs. 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 logs.

Section 1670. Compliance with Tax Laws. By execution of this Contract, the undersigned is authorized to act on behalf of Purchaser and that Purchaser is, to the best of the undersigned's knowledge, not in violation of any Oregon Tax Laws. For purposes of this certification, "Oregon Tax Laws" means a state tax imposed by ORS 403.200 to 403.250 (Tax For Emergency Communications), 118 (Inheritance Tax), 314 (Income Tax), 316 (Personal Income Tax), 317 (Corporation Excise Tax), 318 (Corporation Income Tax), 320 (Amusement Device and Transient Lodging Taxes), 321 (Timber and Forestland Tax), 323 (Cigarettes and Tobacco Products Tax), and the elderly rental assistance program under ORS 310.630 to 310.706; and any local taxes administered by the Department of Revenue under ORS 305.620

PAYMENTS

Section 1720. Payment Method and Schedule.

PURCHASER shall make payments to STATE and to STATE's Logging Services Contractor (hereinafter referred to as STATE's Contractor) for logs delivered to PURCHASER, as indicated in Section 1740, "Log Prices and Log Sort Specifications". **Any payments shall include reference to the Log Sale Contract number.**

Payments sent to STATE shall be sent to:

The default provisions of OAR 629-032-0000 through 629-032-0070 shall not apply to exported unprocessed logs. In the event that logs made available under this Contract are exported in violation of this Contract, PURCHASER shall be in material breach of the Contract. In such event, STATE shall be entitled to cease performance of the Contract, and shall recover, in addition to the Purchase Price and additional increment set out above, a further sum estimated by STATE 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 1750. Payment Adjustments.

Logs delivered by STATE's Contractor that do not meet the following log sort specifications as designated in Section 1740 "Log Prices and Log Sort Specifications".

- (1) Are over 1" out of tolerance of scaling diameter;
- (2) Do not meet the preferred log length specifications or multiples or combinations of preferred lengths as described in the supplemental information form; OR
- (3) Do not meet specified grade.

When the missort volume amounts to more than 5% of the total delivered sort volume, as determined by a third party scaling organization, the Purchaser shall notify State in writing prior to contract expiration and may, request a payment reduction.

For the delivery of mis-sorted logs, PURCHASER may request to STATE to reduce the payment to STATE's Contractor. The amount of payment reduction shall be calculated using the following formula:

$$\text{Missort Payment Reduction} = (B \times V) \times (.5)$$

Where: B= Bid rate from Section 1740

V = Missort volume exceeding % threshold

Payment adjustment requests shall be made by PURCHASER in writing and submitted to the Astoria District Office of the Department of Forestry at 92219 Highway 202, Astoria, Oregon 97103.

No payment made shall be evidence of the satisfactory performance of the STATE's Contractor, either wholly or in part, against the claim of STATE to the contrary.

Section 1760. Payments and Interest. Payments to both the STATE and STATE's Contractors required of PURCHASER by this Contract or modifications of this Contract must be received by STATE within the time period stated in Section 1720, "Payment Method and Schedule".

Payments received after the due date stated on the billing terms of this Contract may be subject to an interest charge. The interest rate shall not be less than the established minimum state rate on delinquent accounts. The interest rate applied to overdue payments shall be in accordance with ORS 82.010. ORS 82.010 mandates the collection of interest at the annualized rate of nine (9) percent. Interest shall be calculated from the date of the original billing terms to the date payment is received by the State Forester.

PART II: SPECIFICATIONS

ACCOUNTABILITY

Section 2015. Log Accountability and Log Load Receipts - Sawlogs.

PURCHASER shall require the scaler to record the Log Load Receipt number on the scale ticket that is signed by the scaler, attach the Scaler Receipt part to a copy of the scale ticket, and mail the scale ticket with the attached receipt to STATE on the date scaled.

PURCHASER shall not intermingle STATE logs delivered by this Contract with any other logs before log scaling occurs, unless otherwise approved by STATE.

PURCHASER shall account for each and every serially numbered Log Load Receipt. For all Log Load Receipts not accounted for by proof of scaling, STATE shall determine if unaccounted tickets are to be voided or if PURCHASER shall pay damages to STATE. Damages shall consist of full value for each missing receipt, on the basis of the average value of the 10 highest value loads of logs scaled from the Timber Sale Area, or the average value of the 10 highest value loads of logs scaled at a Scaling Location, as determined by STATE.

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.

Delivery Destination and Transfer of State Timber. Prior to conveying unprocessed timber sold under this Contract to a delivery destination or prior to selling, trading, exchanging, or otherwise conveying unprocessed timber sold under this Contract to any other person, PURCHASER must first complete an Exhibit C form selecting a delivery destination from the STATE approved scaling locations. All STATE approved scaling locations are eligible to receive unprocessed STATE timber by adhering to the terms and conditions contained in OAR 629-031-0005 through 629-031-0045.

Section 2016. Log Accountability and Log Load Receipts – Pulp Logs.

PURCHASER shall require the weigher to sign the machine-printed weight receipt and record the Log Load Receipt number on the weight receipt. The weigher shall mark the delivery location identification on the Scaler Receipt part, attach the weight receipt to it and mail it to the designated Third-Party Scaling Organization (TSPO) weekly.

PURCHASER shall account for each and every serially numbered Log Load Receipt. For all Log Load Receipts not accounted for by proof of weighing, STATE shall determine if unaccounted tickets are to be voided or if PURCHASER shall pay damages to STATE. Damages shall consist of full value for each missing receipt, on the basis of the average value of the 10 highest value loads of logs weighed, based on gross weight, from the Timber Sale Area, or the average value of the 10 highest value loads of logs weighed at a STATE approved delivery location, as determined by STATE.

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

Delivery Destination and Transfer of State Timber. Prior to conveying unprocessed timber sold under this Contract to a delivery destination or prior to selling, trading, exchanging, or otherwise conveying unprocessed timber sold under this Contract to any other person, PURCHASER must first complete an Exhibit C form selecting a delivery destination from the STATE approved delivery locations. All STATE approved delivery locations are eligible to receive unprocessed STATE timber by adhering to the terms and conditions contained in OAR 629-031-0005 through 629-031-0045.

Section 2020. Log Measurement - Sawlogs.

Scaling Locations, Rules, and Organizations: All saw logs sold under this Contract shall be: (1) scaled at a location approved in writing by STATE; (2) scaled by a third-party scaling organization that is a party to 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.

PURCHASER shall enter into a written agreement with a third-party scaling organization for the scaling of saw logs delivered under this Contract (the "Scaling Agreement"). 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.

Unless other arrangements have been made through a Log Yard Agreement between PURCHASER and STATE, PURCHASER shall provide STATE with remote check scaling opportunities for logs scaled or weighed under this Contract. The last two (2) loads at each delivery point shall be continuously available for checking. They shall remain available for a minimum of forty-eight (48) hours unless replaced by other STATE loads. They shall be available as originally presented for scaling; i.e., if truck scaled or if the load was weighed, they shall be presented in bunks.

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

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

The Scaling Agreement shall provide, and PURCHASER shall require, that the scaling organization 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. The Scaling Agreement shall authorize STATE to provide instructions to the approved third-party scaling organization for the scaling practices to be used for logs delivered to PURCHASER. 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 C to this Contract.

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

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 2021. Log Measurement – Pulp Logs. All pulp logs shall be weighed at a location approved in writing by STATE. PURCHASER shall require the gross weight and the truck tare weight for each load to be machine printed on the weight receipt. PURCHASER shall also require the weigher to sign the weight receipt and record the Log Load Receipt number on the weight receipt. A conversion factor of ten (10) short tons per MBF shall be used for determining the number of board feet. PURCHASER shall furnish copies of all weight receipts to STATE on a weekly basis, with summaries for all truck loads delivered.

PURCHASER shall enter into an agreement with a third-party scaling organization for the processing of the weight receipts.

Unless other arrangements have been made through an agreement between PURCHASER and STATE, PURCHASER shall provide STATE with remote check scaling opportunities for logs weighed under this Contract.

The last two (2) loads at each delivery point shall be continuously available for checking. They shall remain available for a minimum of forty-eight (48) hours unless replaced by other STATE loads. They shall be available as originally presented; i.e., if the load was weighed, they shall be presented in bunks.

Weighing Instructions. STATE will provide instructions to the PURCHASER for the practices to be used for Pulp logs delivered to PURCHASER. Instructions will conform to the terms of this Contract, PURCHASER shall acknowledge and sign such instructions and shall be provided a copy.

Minimum Products Specifications and Weight information are shown on Exhibit C to this Contract.

DELIVERY OPERATIONS

Section 2710. Log Delivery. STATE's Contractor will perform all hauling of logs to PURCHASER's designated delivery location. PURCHASER agrees to accept logs from the STATE's Contractor at the regular scheduled hours of the PURCHASER's receiving area, or at least between the hours of 8:00 a.m. and 5:00 p.m, Monday through Friday. No hauling or delivery of logs shall be allowed on weekends or State-observed legal holidays, unless otherwise approved in writing by STATE.

The PURCHASER may schedule times in which delivery of logs will not be accepted. The PURCHASER shall notify the STATE's Contract Administrator at least five (5) business days before the scheduled interruption or closure occurs. Major catastrophes are the only recognized valid reasons for not giving notice. The duration of the log delivery interruption shall not exceed seven (7) consecutive business days, or seven (7) total business days during the term of this Contract. STATE shall receive one (1) day extension for each day PURCHASER refuses log delivery. If PURCHASER's scheduled delivery interruption exceeds contract requirements, Purchaser will be in breach of Contract and subject to liquidated damages at a rate of \$1,000.00 per each day of breach, unless PURCHASER and the STATE have made a prior agreement in writing.