

GNA CONTRACT DIRECTORY

Effective October 2020

Reference Only – Does not need to be completed.

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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
TIMBER SALE CONTRACT

SALE NAME: Divide WUI - GNA
CONTRACT NO: KL-341-2021-GF9818-01
ODF DISTRICT: Northeast Oregon

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 furnish the designated item(s) and/or service(s) in accordance with the bid/proposal specifications and requirements, and 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) and/or service(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. Definitions of Terms.

Anchor Stump - a stump used to tie off or wrap a cable or line to firmly secure it.

Archaeological or Historical Resource - those sites, buildings, structures, and artifacts, which possess material evidence of human life and culture of prehistoric and historic past.

Areas of Operations - the locations where PURCHASER performs the Operations described in the Contract. Each Area of Operation usually has specific operating requirements.

At Price Above – material will be charged at the highest rate for that species.

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.

Basal Area - a measure of the cross-sectional area of a Tree Bole, in square feet, measured 4½ feet above the ground on the uphill side of the tree.

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, and that certifies that the timber will be harvested.

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

Contract - 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, and the accepted bid.

Cultural Resource - an Archaeological or Historical Resource. They may include objects, structures, or sites used by people in the past.

DBH (Diameter at Breast Height) - the diameter of a standing tree inclusive of the bark measured 4½ feet above the ground on the uphill side of the tree.

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

Down Wood - trees and logs on the ground.

Fire Season - when the State Forester has declared that conditions of fire hazard exist in a forest protection district or any part thereof. The State Forester designates for each district or any part thereof the date of the beginning of a Fire Season for that year. The Fire Season continues for each district or part thereof until ended by order of the State Forester when conditions of fire hazard no longer exist in that district or part thereof.

Green Tree Retention - the practice of leaving live, growing trees on a site during timber harvest as a future source of Snags, old growth trees, large diameter wood, and native seed.

Group Selection Area (GSA) – an area within the Timber Sale Area that has a unique prescription as described in this Contract. Group Selection Areas are less than five acres in most circumstances and are usually marked on the ground with boundary signs. Prescription trees are marked with paint within the Group Selection Area.

Guy Stump - a stump used to tie off or wrap a cable or line to firmly secure it.

Guyline - a cable or rope attached to something to brace, steady, or guide it.

Hazardous Substances - any substance or material that is hazardous or toxic to health or otherwise regulated or controlled under any applicable federal, state or local statute, regulation, ordinance or law.

Improvements - a permanent addition or change to real property, such as a road, structure, or utility, which increases the value of the property.

Landing - a collecting point for logs; the place to which logs are yarded for loading and transportation from the woods.

Live Crown Ratio - the length of a Tree Bole supporting the growth of live branches compared to total tree height, expressed as a percentage.

"Live" Stream - a stream with water flowing through it.

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.

Low Relative Density – an area of heavy thinning where the Relative Density of the residual stand is less than 15.

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.

Operations - 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.

Operations Plan - 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.

Patchcut – a small clearcut area; 0.5 to 2 acres in size.

Permit - 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.

Pre-Operations Meeting – the initial meeting between the Authorized Representatives of PURCHASER and STATE to discuss operational issues and requirements of the Contract, and to identify the elements to be addressed in the Operations Plan.

Project Location - 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. The location(s) where project activities occur.

Project Work - work required of the PURCHASER in addition to normal log removal and hauling activities. The PURCHASER is usually compensated for Project Work with Project Work Credits. Project Work can include, but is not limited to, road building, road improvement, rock quarry development, stream enhancement, site preparation, soil stabilization, and water runoff control measures.

Protected Genetic Parent Tree - a seed tree selected for its desirable characteristics that is designated not to be cut or harmed.

Pulp – any log (tops only) that does not meet the minimum requirements for removal in Section 2040 or 2045, Log Removal.

Purchase Price - for each species sold on a recovery basis, "Purchase Price" is defined as the price per MBF listed in Section 1740, "Log Prices." If species is not listed in Section 1740, "Log Prices," the highest price listed in Section 1740, "Log Prices," shall apply.

For bid species sold on a lump sum basis, the Purchase Price 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.

For no-bid species sold on a lump sum basis, the Purchase Price for each species shall be determined by using STATE's unamortized timber appraisal value.

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. PURCHASER's Authorized Representatives are identified in the Operations Plan.

PURCHASER's Deposit Account - an account where PURCHASER timber sale payments are deposited. This is an account set up by the State of Oregon to accept regular and advance timber sale payments from the PURCHASER. Advance payments are defined in the Payment Schedule section of the Contract.

Relative Density - a measure of the degree of closeness of trees growing side by side in a stand, in relationship with their size. The measure is expressed as a ratio of actual stand density to the maximum stand density attainable in a stand with the same mean tree volume. Relative Density is calculated by dividing the residual Basal Area by the square root of the average residual stand DBH.

Residual Tree - green tree left standing on an Area of Operation or Timber Sale Unit.

Right-of-Way Timber - trees harvested from a strip of land to enable a road to be constructed.

Setting - the area of a logging operation from which logs are yarded to a single Landing.

Slash - all woody Slash resulting from logging Operations, construction of roads, or other Improvements.

Snag - a standing dead tree, or portion of a tree, from which most of the foliage and limbs have fallen.

Stand Density Index – a measure of the degree of closeness of trees growing side by side in a stand, in relationship with their size. Stand Density Index (SDI) is calculated by dividing the average stand diameter by 10 taken to the 1.605 power, multiplied by the average trees per acre (TPA), and divided by the maximum SDI of that species. $SDI = TPA \times (Diameter/10)^{1.605}$

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

Stream Buffer - designated areas adjacent to a stream where timber is left uncut, or there are other special management or operational requirements. Stream Buffer may be marked in the field.

SUB - Submerchantable materials. SUB, as used by STATE, references that material containing at least 10 board feet (net) but less than the lower merchantable net volume limit or grade requirements for other merchantable material, as defined in Section 2045, "Log Removal."

Subcontract - assign responsibility for work required under the Contract to a party other than the PURCHASER.

SUM - lump sum material.

Tailblock - a pulley that is attached to an Anchor Stump, Guy Stump, Tailhold Stump, tree, or other sturdy object, through which a cable is passed and used to return the mainline and chokers to the cutting area from the Landing.

Tailhold - a stump, tree, or other sturdy object to which a Tailblock, cable, or line is attached.

Tailhold Stump - a stump used to tie off or wrap a cable or line to firmly secure it.

Timber Harvesting Operations - activities conducted by the PURCHASER on a timber sale to remove logs from the woods. These activities can include, but are not limited to, felling, bucking, Yarding, loading, and hauling.

Timber Sale Area - 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. It is the entire area encompassing the material that is required to be harvested.

Timber Sale Unit - a sub-area within an Area of Operation. A Timber Sale Unit usually has more operational requirements, in addition to the operational requirements of the Area of Operation.

Total Purchase Price - For sales with species sold on a recovery basis or a combination recovery basis and lump sum, Total Purchase Price is the sum of each recovery basis species' volume multiplied by the price per MBF listed in Section 1740, "Log Prices," and each lump sum basis species' lump sum price.

For sales with all species sold on a lump sum basis, Total Purchase Price is the total bid price.

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

Tree Bole - the trunk of a tree.

Unsurfaced Road - A road in which the running surface consists of the same materials as the surrounding native soils. Unsurfaced roads may also include those roads that have had some minimal surfacing added but are inadequate for use during wet weather as determined by ODF.

Utilization Scale - scaling of logs to account for merchantable material that has been lost due to logs not removed from the harvest area, or from improper logging practices that resulted in breakage or wastage to otherwise merchantable logs.

Written Plan - a plan that describes how an operation will be conducted, including the means to protect resource sites described in ORS 527.710(3)(a) (relating to the collection and analysis of resource site inventories), if applicable.

Yarding - the process of conveying logs from the cutting area to the Landing.

YUM (Yarding Unmerchantable Material) - to yard logging residue to a Landing or other specified location.

Section 1020. Sale of Timber. Under the terms and conditions of this Contract, STATE sells to PURCHASER, and PURCHASER buys from STATE, that Federal timber designated and described in Section 2210, "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 Total Purchase Price for timber set forth in Section 1710, "Purchase Price," or 1740, "Log Prices." The Total Purchase Price shall be paid to STATE in accordance with the payment schedule in Section 1720, 1751, or 1752, "Payment Schedule."

This is a sale of Federal Timber and timber harvested or 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 Act of 1990, as amended (16 USC 620, et seq.) , which authorizes the U.S. Forest Service, Oregon and other western states to prohibit the export of unprocessed timber from public lands and prohibit export in disposing of timber from this timber sale.

Section 1030. 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 following removal 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 timber and logs remaining on the Timber Sale Area shall, at that time, automatically revert to and revest in the U.S. Forest Service, without compensation to PURCHASER.

Section 1040. Quality and Quantity of Timber. STATE makes no guarantee or warranty to PURCHASER as to the quality or quantity of the Designated Timber. PURCHASER shall be liable to STATE for the Total Purchase Price set forth in Section 1710, "Purchase Price," or 1740, "Log Prices," even if the quantity or quality of Designated Timber actually cut, removed, or designated for taking is more or less than that estimated by STATE to be available for harvesting on the Timber Sale Area.

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.

Section 1050. Examination of Plans, Exhibits, and Areas of Operations. PURCHASER acknowledges and agrees that, before submitting a bid, PURCHASER: (i) has made a careful examination of the terms and conditions of the Contract; (ii) has become fully informed as to the quality and quantity of materials and the character of the Operations required; and (iii) 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. 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 information in advance in regard to all conditions pertaining to the Operations.

COMMENCEMENT AND COMPLETION OF CONTRACT

Section 1110. Commencement of Work. PURCHASER shall not commence work under the Contract until STATE provides written notification to PURCHASER that STATE has received and accepted the following:

- (a) The performance bond required under Section 1210, "Performance Bond";
- (b) The payment bond required under Section 1230, "Payment Bond";
- (c) The certificate of insurance required under Section 1240, "Insurance," subpart (i);

- (d) The first payment on the Contract specified in Section 1751, or 1752, "Payment Schedule"; and
- (e) A fully executed original of the Contract.

Further, PURCHASER shall not commence work under the Contract until PURCHASER has attended the Pre-Operations Meeting and STATE has approved the Operations Plan as specified in Section 1140, "Operations Plan."

Section 1120. Completion Date of Contract. Time is of the essence in this Contract. PURCHASER shall complete and fully perform all Operations under this Contract no later than **October 31, 2022**, unless the term of the Contract is extended in accordance with Section 1530, "Extension of Time." PURCHASER may be required to perform uncompleted Contractual obligations at a time later than stated above or in Section 1530, "Extension of Time." STATE shall notify PURCHASER in writing of these obligations and their required completion date. Upon completion of final Operations, PURCHASER shall notify STATE as required under Section 1315, "Inspection and Acceptance." The Contract will not be complete until STATE has inspected and accepted PURCHASER's performance as specified in Section 1315, "Inspection and Acceptance."

Section 1130. Pre-Operations Meeting. PURCHASER shall meet with STATE prior to STATE approval of the initial Operations Plan required by Section 1140, "Operations Plan," and prior to commencement of operations, to discuss Contract matters, including Threatened and Endangered Species protection efforts, protection of Timber Sale Area resources, and to identify key issues to be addressed in the Operations Plan.

Section 1140. Operations Plan. PURCHASER shall prepare an Operations Plan for all Operations to be conducted under this Contract and shall submit the plan to STATE at least fifteen (15) calendar days prior to commencement of any Operations. 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 post-harvest requirements. In addition to the Pre-Operations Meeting required by Section 1130, "Pre-Operations Meeting," STATE may require an on-site meeting prior to approval of the Plan, to be attended by PURCHASER, subcontractor, and STATE representatives. STATE's approval of the Plan must be obtained prior to commencement of any Operations. Upon approval by STATE, the Operations Plan(s) shall automatically be incorporated into, and made part of, this Contract as Exhibit B. Each Operations Plan shall be dated.

PURCHASER shall notify STATE prior to any period of inactivity of Operations for more than three (3) days, and again prior to resumption of Operations.

BONDING AND INSURANCE

Section 1210. Performance Bond. PURCHASER shall furnish STATE with a performance bond, in an amount of not less than the greater of (a) the value of all Project Work to be completed under the Contract, as specified in Section 2630, "Credit for Project Work," or (b) twenty percent (20%) of the Total Purchase Price, not to exceed \$500,000, rounded up to an even \$1,000 unit, which bond shall guarantee complete compliance by PURCHASER with the terms and conditions of this Contract and the faithful performance of all required obligations, including payments to all suppliers, materialmen, Contractors, and subcontractors of PURCHASER. PURCHASER's bond 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 must be written by a surety company authorized to do business in the State of Oregon, on a form provided by STATE.

Performance Bond Release

PURCHASER shall keep the performance bond in effect during the term of the Contract, until released by STATE. STATE shall release PURCHASER's bond upon the later of: (a) 180 days after final acceptance of completed Timber harvesting Operations or (b) 180 days after STATE's acceptance of all Project Work required under Section 2610, "Project Work." "Acceptance" under (a) or (b) shall not be provided until STATE has inspected and approved the work and PURCHASER has provided satisfactory evidence of PURCHASER's compliance with all other terms and conditions of the Contract.

Performance Bond Reduction

STATE shall permit PURCHASER to reduce its performance bond under the following circumstances:

180 days after final acceptance of completed Timber harvesting Operations, upon PURCHASER's request and provided no claims are then pending, STATE may permit PURCHASER to reduce the amount of their bond to an amount equal to the value of all Project Work remaining to be performed or accepted.

180 days after STATE has accepted all Project Work required under Section 2610, "Project Work," upon PURCHASER's request and provided no claims are then pending, STATE may permit PURCHASER to reduce the amount of their bond to an amount equal to twenty percent (20%) of the Total Purchase Price.

Section 1220. Claims Against PURCHASER's Performance Bond.

- (a) Claims against PURCHASER's performance bond for failure to make payments when due to suppliers, materialmen, Contractors, and subcontractors of PURCHASER shall be processed in the following manner:
 - (1) Upon receiving notice from a supplier, materialman, Contractor, or subcontractor of an unpaid obligation of PURCHASER, STATE shall notify PURCHASER and PURCHASER's surety in writing, describing the claim and specifying a date not later than fifteen (15) days from the date of the notice within which PURCHASER shall be expected to respond to the claim.
 - (2) PURCHASER shall provide, within the time requested by STATE, verification reasonably satisfactory to STATE that the claim has been satisfied or is being addressed in a manner reasonably satisfactory to STATE. If PURCHASER fails to provide such evidence within the time requested, PURCHASER shall be deemed to be in default of the Contract, and STATE shall be entitled to make a claim against PURCHASER's performance bond on behalf of the claimant.
- (b) Claims against PURCHASER's performance bond for failure to comply with or perform other obligations under the Contract shall be processed in the following manner:
 - (1) STATE shall provide notice in writing to PURCHASER and PURCHASER's surety of the nature of the failure to comply or the unperformed obligation, and shall specify a date by which the failure must be remedied.
 - (2) If PURCHASER fails to remedy the failure or to respond in writing with reasons adequate in STATE's judgment to waive the failure within the time specified in STATE's notice, PURCHASER shall be deemed to be in default and STATE shall be entitled to make a claim against PURCHASER's performance bond on behalf of STATE for an amount deemed reasonably sufficient to cure the failure.
- (c) STATE reserves the right to invoke any remedy available to it under the Contract or at law or in equity in the event STATE is required to seek redress from PURCHASER's surety for a Contract violation or default by PURCHASER including, without limitation, termination of the Contract.

Section 1230. Payment Bond. PURCHASER shall furnish a payment bond (or blanket payment bond for multiple Contracts) acceptable to STATE guaranteeing payment for all monies due STATE through this Contract, including all

timber harvested. PURCHASER shall keep the payment bond in effect during the term of the Contract, until released by STATE. 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 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 1720, "Payment Schedule."

A payment bond (or blanket payment bond for multiple Contracts) 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 1240. 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 required below that STATE shall be given not less than thirty (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, STATE, and their divisions, officers, and employees. PURCHASER shall be financially responsible for all deductibles included hereunder.

The coverage shall be as follows:

- (a) Commercial General Liability insurance covering personal injury, death, and property damage or destruction in an amount not less than \$2,000,000 combined single limit per occurrence and an amount not less than \$4,000,000 per aggregate, with Contractual liability coverage to include all Contracts involving the work to be performed under this Contract, Premises Operations, Products and Completed Operations, and Independent Contractors. Required coverage shall be for explosion, collapse, and underground damage if blasting or excavation is required or performed under the Contract. **Excess or Umbrella Liability policies may be used in combination with the Commercial General Liability insurance to cover the required liability limits.**
- (b) Automobile Liability insurance in an amount not less than \$2,000,000 combined single limit per accident. This required insurance coverage shall include Business Automobile, an endorsement for auto pollution, and shall cover pollutants such as fuel tanks carried in vehicles. **Excess or Umbrella Liability policies may be used in combination with the Automobile Liability insurance to cover the required liability limits.**
- (c) Loggers Broad Form coverage in an amount not less than \$2,000,000 for costs of fire control, losses or damage from fire, and other causes arising or resulting from activities of PURCHASER, employees, Contractors, subcontractors, 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 reasonably available in the marketplace if less than 24 months. PURCHASER shall furnish 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. If Continuous "claims made" coverage is used, Contractor shall be required to keep the coverage in effect for a duration of not less than 24 months from the end of the Contract.

- (g) The Commercial General Liability insurance and the Automobile Liability insurance required under this Contract shall include the State of Oregon, the Oregon Board of Forestry, the Department of Forestry, the State Forester, **the U.S. Forest Service**, their officers, agents, employees, and members as additional insureds. **The following language shall be used for naming additional insureds:**

ADDITIONAL INSURED: The State of Oregon, the U.S. Forest Service, the Department of Forestry, the State Forester, their officers, employees and agents as Additional Insureds but only with respect to PURCHASER's activities to be performed under this Contract. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

- (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. PURCHASER must provide this proof of insurance to STATE before the Contract period begins and prior to the commencement of work.
- (i) All insurance shall be provided by a company with an A or better rating, as determined by A.M. Best Company, unless otherwise approved in writing by STATE.

GENERAL TERMS AND CONDITIONS

Section 1310. Authorized Representatives. During any period of 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 Operations, and issue instructions in regard to plans and schedules under the terms of this Contract. State Forests Division Chief is the authorized representative to provide payment instructions. Authorized field representatives of STATE and PURCHASER shall be designated in the Operations Plan required by Section 1140, "Operations Plan."

Section 1315. Inspection and Acceptance. STATE and 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 STATE may determine to be necessary or desirable to make a complete and detailed inspection of the Operations and PURCHASER's compliance with all terms and conditions of this Contract. STATE shall be furnished operation progress status or other information and assistance by PURCHASER, or the Authorized Representative(s), as STATE may determine necessary to permit STATE to verify PURCHASER's compliance with all terms and conditions of this Contract.

PURCHASER shall notify STATE in writing upon completion of final Operations. STATE will inspect the Operations completed by PURCHASER within twenty (20) business days after receipt of written notification that final Operations are complete. Following inspection, STATE shall notify PURCHASER in writing of STATE's acceptance of PURCHASER's performance of the Contract or, if PURCHASER's Operations are not acceptable to STATE, shall advise PURCHASER in writing of the particular defects to be remedied before final acceptance by STATE can be granted.

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 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.

Section 1325. Subcontracting. PURCHASER acknowledges and agrees that if PURCHASER subcontracts all or any part of the Operations, such subcontracting 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 1330. Conditions of Areas of Operations.

Use of Areas of Operations. PURCHASER shall follow the STATE's Authorized Representative's instructions, if any, regarding use of the Areas of Operations. STATE reserves the right to issue written authorization to others to use the Areas of Operations when, in the determination of STATE, such use will not materially interfere with the Operations of PURCHASER. During the term 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 timber included in 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.

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

Section 1335. Hazardous Substances Discovered by PURCHASER. Unless disposition of Hazardous Substances is specifically made a part of PURCHASER's Operations under this Contract, PURCHASER shall immediately notify STATE of any Hazardous Substances which PURCHASER discovers or encounters during performance of Operations. PURCHASER shall immediately cease operating in any part of the Area of Operations where Hazardous Substances have been discovered or encountered, if continued Operations in such area would present a bona fide risk or danger to the environment or to the health or well-being of PURCHASER's or any subcontractor's work force.

Unless disposition of Hazardous Substances is specifically made a part of PURCHASER's Operations under this Contract, upon being notified by PURCHASER of the presence of Hazardous Substances in the Area of Operations, STATE shall arrange for the proper disposition of such Hazardous Substances.

Section 1340. Hazardous Substances Generated/Aggravated by PURCHASER. PURCHASER shall be held responsible for any and all releases of Hazardous Substances during performance of the Contract which occur as a result of, or are aggravated by, actions of its agents, personnel, or subcontractors. PURCHASER shall immediately notify STATE of any release of Hazardous Substances and, as directed by STATE, shall promptly dispose of or otherwise remediate such spills or leaks to the satisfaction of STATE and proper regulatory agencies in a manner that complies with applicable federal, state, and local laws and regulations. Remediation shall be at no cost to STATE.

PURCHASER, at all times, shall:

- (a) Properly handle, use, and dispose of all Hazardous Substances brought onto the Areas of Operations, in accordance with all applicable federal, state, or local statutes, rules, or ordinances;
- (b) Be responsible for any spills, releases, discharges, or leaks of (or from) Hazardous Substances which PURCHASER has brought onto the Areas of Operations; and
- (c) Promptly remediate, without cost to 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 report all reportable quantity releases of Hazardous Substances and petroleum products 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 340-142 for petroleum products.

Section 1350. Environmental Indemnification. PURCHASER shall indemnify and hold harmless the STATE from any claims resulting from the use, release or disposal of Hazardous Substances including their removal, encapsulation, transportation, handling, and other disposal, during the performance of this Contract, whether or not such use, release or disposal occurs within or outside the Timber Sale Area.

Section 1355. General Indemnification. PURCHASER shall indemnify, defend and hold harmless the State of Oregon, the Department of Forestry, the State Forester, their officers, agents, employees, and members ("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; provided, however, the Oregon Attorney General must give written authorization to any legal counsel purporting to act in the name of, or represent the interests of, any of the Indemnified Parties prior to such action or representation. Further, STATE, acting by and through its Department of Justice, may assume its own defense, including that of its officers, employees and agents, at any time when in STATE's sole discretion it determines that (i) proposed counsel is prohibited from the particular representation contemplated; (ii) counsel is not adequately defending the interests of STATE; (iii) important governmental interests are at stake; or (iv) the best interests of STATE are served thereby. PURCHASER's obligation to pay for all costs and expenses shall include those incurred by STATE in assuming its own defense. All provisions of this Section shall survive the termination of this Agreement.

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 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 1375. 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 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, Exhibits, Operations Plan, 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.

OWNERSHIP OF MATERIALS AND IMPROVEMENTS

Section 1410. Materials from Federal 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 the U.S. Forest Service, unless authorized by this Contract or separate written consent of STATE.

Section 1420. Materials and Improvements. Title to materials, Improvements, and other property the Contract requires PURCHASER to provide shall vest in and become the property of the U.S. Forest Service at the time such are furnished by PURCHASER and accepted by STATE. All materials, Improvements, and property furnished by PURCHASER shall be free and clear of liens, claims, and encumbrances.

PURCHASER shall keep in good repair all Improvements located on Federal land and existing at the time of execution of the Contract and any Improvements placed on Federal Land by PURCHASER which become the property of the U.S. Forest Service under this Contract. PURCHASER shall promptly repair or replace, without cost to STATE, any Improvement injured, damaged, or removed from the Areas of Operations by PURCHASER or by Contractors of PURCHASER.

Section 1430. Removal of Equipment and Materials. Within thirty (30) days after completion, and as a condition of final acceptance of PURCHASER's Operations, PURCHASER shall remove from the Areas of Operations and other property owned or controlled by the U.S. Forest Service, all equipment, materials, and other property PURCHASER has placed or caused to be placed thereon that is not to become the property of the U.S. Forest Service. PURCHASER acknowledges and agrees that any such equipment, materials, and other property that is not removed within thirty (30) days shall become the property of the U.S. Forest Service and may be used or otherwise disposed of by the U.S. Forest Service 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 and applicable law. PURCHASER shall indemnify STATE or the U.S. Forest Service for any cost or expense incurred by STATE or the U.S. Forest Service as a result of PURCHASER's failure to satisfy this obligation.

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, and/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.

In the event a cause or causes beyond the control of PURCHASER impact PURCHASER's ability to continue to perform under this Contract, STATE may grant a reasonable extension of time but shall not additionally compensate PURCHASER.

Section 1520. Cooperation With Resource Protection Efforts. STATE and the U.S. Forest Service must ensure that operations on National Forest System lands comply with Federal laws, including but not limited to: the Forest and Rangeland Renewable Resources Planning Act of 1974 (88 Stat. 476 et seq.) as amended by the National Forest Management Act of 1976 (90 Stat. 2949 et seq.; 16 U.S.C. 1601-1614) (NFMA); the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) (ESA); and the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4347) (NEPA). PURCHASER's agreement under this Section is in addition to, and shall not relieve PURCHASER of, its own independent obligation to comply with all Federal and state laws.

- (a) PURCHASER acknowledges that legal challenges involving compliance with Federal laws may occur and may affect PURCHASER's Operations under the Contract, and PURCHASER agrees to cooperate with STATE and the U.S. Forest Service's efforts to respond, as STATE and the U.S. Forest Service deem necessary or expedient, to those challenges.
- (b) PURCHASER acknowledges STATE may, by written order, delay or interrupt authorized operations under this Contract or modify this Contract, in whole or in part:
 - (i) To prevent environmental degradation or resource damage, including, but not limited to, harm to habitat, plants, animals, cultural resources, or cave resources;
 - (ii) To ensure consistency with land and resource management plans, terms and conditions in Incidental Take Statements prepared under the ESA, or documents prepared pursuant to the NEPA;
 - (iii) To conduct environmental analysis, including, but not limited to, engaging in consultation pursuant to the ESA or completing supplemental analyses under the NEPA; or
 - (iv) To address issues raised in administrative appeals or in anticipated or pending litigation, regardless of whether STATE's order is required by a court order or this Contract is named in such a proceeding.
- (c) PURCHASER further acknowledges and agrees that in the event of Contract modification, suspension, or termination, in no event is PURCHASER entitled to, nor is STATE or the U.S. Forest Service under any obligation, contractual or otherwise, to provide, lost profits, attorney fees, replacement cost of timber or other materials, or any other anticipatory losses or consequential damages, such as but not limited to reimbursement for interest or lost market opportunities, suffered by PURCHASER as a direct or indirect result of restrictions on Operations due to modification, suspension, or termination of Contract in accordance with this provision.

Section 1530. Extension of Time. STATE may extend the time for performance of this Contract upon written request from PURCHASER or at STATE's discretion. 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 Operations to be affected, and the reason(s) for the extension; and
- must be received by STATE no later than thirty (30) days prior to the expiration date of this Contract unless the need for extension occurred within the thirty (30) days prior to the expiration date, in which case the request must be received prior to the expiration date.

Requests for extension will not be granted solely due to 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 Total 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 as required by Section 1720, "Payment Schedule," of this Contract, plus interest on all payments received after the original Contract expiration date, for material harvested, and removed after the original Contract 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) There will be a required payment of an Administrative Fee of \$250.
- (e) 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.
- (f) Require interest will be applied to all advertised volume hauled after the original expiration date. ORS 82.010 mandates the collection of interest at the annualized rate of 9 percent.
- (g) Waiver of full payment or payment of interest on the unpaid balance of the Total Purchase Price, if STATE determines that extenuating circumstances warrant waiver or waiver is otherwise in the best interests of STATE.

Section 1540. Contract Modifications. PURCHASER and STATE acknowledge 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 the outset of the Contract. These changes may include, but are not limited to, changes in project specifications, project completion dates, Exhibit specifications, rock sources, excavator time requirements, seasonal restrictions, Timber Sale Area resource protection requirements, harvest methods, harvest completion dates, thinning prescriptions, tree harvest size limits, removal specifications, Reserved Timber specifications, haul route requirements, scaling requirements, and Timber Sale Area boundaries. PURCHASER acknowledges and agrees that PURCHASER is not entitled to any reduction in the Purchase Price or Total Purchase Price solely due to the number of changes required to be made in the Contract. Each change will be evaluated on its own merit to determine if an extension of the time for performance under the Contract or an increase or decrease in the Purchase Price or Total Purchase Price is warranted.

STATE reserves the right to make, at any time during the Contract, such modifications as is necessary or desirable; provided such modifications shall not change the character of the Operations to be done nor increase the cost to the PURCHASER of performing the Project Work, unless such change in the Operations or cost increase is approved in writing by PURCHASER. Any modifications so made shall not invalidate this Contract nor release PURCHASER from its obligations under the performance bond and payment bond. PURCHASER agrees to complete the modified Operations as if they had been included in the original Contract.

If any change under this section causes an increase or decrease in PURCHASER's cost of performance or the time required for the performance of any part of the Operations for which PURCHASER wishes to claim a reduction in the Purchase Price or Total Purchase Price, 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 must be submitted as soon as possible following the change, but in any event no later than thirty (30) days after receipt of any written notice of modification of the Contract.

If 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, PURCHASER shall notify STATE's Authorized Representative immediately and before the area has been disturbed. 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 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 PURCHASER does not concur with the decision of STATE's Authorized Representative and/or believes that it is entitled to additional compensation, PURCHASER may proceed to file a claim.

Claims Review Process. PURCHASER acknowledges that its exclusive remedies are defined in this Contract and all PURCHASER claims lie exclusively against STATE, not the U.S. Forest Service. All PURCHASER claims shall be referred to STATE's Authorized Representative for review. All claims shall be made in writing to STATE's Authorized Representative not more than ten (10) days from the date of the occurrence of the event which gives rise to the claim or not more than ten (10) days from the date that the PURCHASER knew or should have known of the problem. Any claim not submitted in accordance with these time requirements 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 any specific time extension requested for the claim. If the claim involves Operations to be completed by subcontractors, PURCHASER shall 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. STATE's Authorized Representative will not consider direct claims from subcontractors, suppliers, manufacturers, or others not a party to this Contract.

The decision of STATE shall be final and binding unless PURCHASER requests mediation within ten (10) days following notice of STATE's decision.

Section 1550. 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 and 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 Section 2610, "Project Work," under the Contract. Major Catastrophes are defined as 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. Market conditions shall not be considered a reason for Contract adjustments. Adjustments made under this Section, if any, shall be for the sole purpose of placing the parties in their original status under the Contract insofar as possible; provided, however, that no adjustment shall be made in response to any loss or cost to PURCHASER that is recoverable from third parties by PURCHASER. PURCHASER shall make written application to STATE within 30 days after discovery of the damage done by the Major Catastrophe.

If, prior to completion of the Contract, a Major Catastrophe (as defined above) caused by a single event or significant changes in State and Federal law results in additional Project Work for PURCHASER involving an additional estimated cost of more than: (1) \$1,000 for sales less than one-half million board feet; (2) \$1,500 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 Project Work Credits, in which event STATE will assume responsibility for any additional cost to complete the Project Work which exceeds the original project work amount. Adjustments by STATE shall be based on advertised volumes and may be accomplished by adjusting stumpage prices or payment of such additional costs to PURCHASER or by STATE assuming responsibility for performing that portion of the Project Work in excess of the original project work amount. The estimated cost of additional work shall be calculated by STATE.

If, prior to completion of the Contract, a change in State and 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 Purchase Price.

For each species sold on a recovery basis, the Purchase Price is defined as the price per MBF listed in Section 1740, "Log Prices." If species is not listed in Section 1740, "Log Prices," the highest price listed in Section 1740, "Log Prices," shall apply.

For species sold on a lump sum basis, the Purchase Price 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 of all species/appraised value of all species = bid-up factor.

Section 1560. Violations; Default; Remedies. Any failure by PURCHASER to comply with the terms and conditions of this Contract is a violation. If PURCHASER commits a violation, 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 under any interim Contract completion date or the Contract expiration date, or if PURCHASER injures or severs any timber other than Designated Timber, STATE may declare PURCHASER to be in default by providing notice of the default as required under OAR 629-032-0030. If the default is due to failure of PURCHASER to correct a violation as previously instructed, STATE may terminate the Contract as of the date specified in the earlier instruction. If the default is due to failure by PURCHASER to complete work prior to the expiration date or any interim completion date required under the Contract, or if PURCHASER injures or severs timber that is not Designated Timber, STATE may terminate the Contract without providing PURCHASER an opportunity to cure the default.

As provided in OAR 629-032-0050, within fifteen (15) days following receipt of a notice of default, PURCHASER may request a hearing before the State Forester to determine whether a default has in fact occurred. Hearings shall be governed by ORS 183-413 to ORS 183.497.

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. In the event of a default 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; or (4) terminating the Contract and reselling the timber.

Section 1570. STATE's Right to Suspend Operations. STATE and/or STATE's Authorized Representative may 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 which, in the opinion of STATE's Authorized Representative, are unsuitable for performing the Operations;
- (e) Time required by STATE to investigate differing site conditions;
- (f) Any of the conditions listed in Section 1520. Cooperation With Resource Protection Efforts;
- (g) STATE-ordered identification or protection of a state or federally listed threatened or endangered species; or
- (h) Any reason considered by STATE to be in the public interest.

In the event a suspension of Operations under (d), (e), (f) or (g) above imposes additional costs on PURCHASER, PURCHASER may submit a request for a modification of the Contract under Section 1540, "Contract Modifications"; provided, however, that no claim for a reduction in the Purchase Price or Total Purchase Price will be allowed due to changes in market conditions or lost market opportunities occurring following any suspension of Operations. In addition, 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.

Extension After Suspension. When a suspension occurs under (d), (e), (f) or (g) above, PURCHASER may request an extension of time for performance of this Contract, for a period not to exceed the period of time during which Operations 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) Shall be received by STATE no later than ten (10) days following notice to PURCHASER that Operations may recommence.

STATE normally will not withhold approval of reasonable extension requests made under this section.

PURCHASER's Responsibilities. For the duration of the suspension, PURCHASER is responsible to continue maintenance at the Area(s) of Operations just as if Operations were 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, PURCHASER shall replace or renew any Operations damaged during the suspension, remove any materials or facilities used as part of temporary maintenance, and complete Operations in every respect as though prosecution had been continuous and without suspension.

PURCHASER shall not cut or remove any timber under this Contract during any period of suspension. Any such cutting or removing shall be considered a willful trespass and shall render PURCHASER liable for triple damages in accordance with Section 1580, "Trespass."

Section 1580. Trespass. PURCHASER shall be exclusively responsible for any damage or removal of other than Designated Timber, and for damage to or removal of timber or other property beyond the boundaries of the Areas of Operations resulting from any activities of PURCHASER. Any such activity resulting from the activities of PURCHASER shall constitute a trespass, and a violation of the Contract. In addition to, and without limiting in any way any other remedies that may be available to STATE, PURCHASER shall pay to STATE damages for any trespass as follows:

- (a) For each species involved in the trespass, triple the Purchase Price if PURCHASER's action is willful or intentional; or
- (b) For each species involved in the trespass, double the Purchase Price 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 PURCHASER, its employees, Contractors, subcontractors, or agents which results in the removal or damage to any timber not described under Section 2210, "Designated Timber," including removal or damage arising from a mistake of law or fact concerning the Designated Timber.

COMPLIANCE WITH LAWS AND REGULATIONS

Section 1605. Nondiscrimination. The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or a part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, and so forth.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of discrimination, write to USDA, Director, Office of Civil Rights, 1400

Independence Avenue, S.W., Washington, D.C. 20250-9410 or call (800) 795-3272 (voice) or (202) 720-6382 (TDD). USDA is an equal opportunity provider and employer.

Section 1607. Compliance with Federal Laws. PURCHASER, by signature below, certifies that: (1) Neither the corporation or its principals have been convicted of a felony violation under any Federal law within the preceding 24 months of the effective date of the Contract; and (2) Neither the corporation or its principals have failed to file all Federal tax returns required during the three years preceding the Contract; have been convicted of a criminal offense under the Internal Revenue Code; or have been notified of any unpaid Federal tax assessment for which the liability remains unsatisfied, unless the assessment is the subject of an installment agreement or offer in compromise that has been approved by the Internal Revenue Service and is not in default

Section 1610. Permits; Licenses; 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, and shall maintain and keep such Permits and licenses current throughout the term of the Contract. PURCHASER shall notify STATE immediately if such Permits or licenses are revoked or suspended by the relevant government agency.

STATE may at any time require PURCHASER to satisfy STATE that Operations under this Contract comply with State and Federal laws, codes, regulations, and ordinances. 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 Operations under this Contract.

PURCHASER shall comply with all federal, state, and local laws, regulations, and ordinances applicable to this Contract or to PURCHASER's obligations under this Contract, as those laws, regulations, and ordinances may be adopted or amended from time to time. Without limiting the generality of the foregoing, PURCHASER expressly agrees to comply with the following laws and regulations to the extent they are applicable to the Contract: (i) the Oregon Forest Practices Act and all regulations promulgated pursuant thereto; (ii) all rules and regulations of the Oregon State Board of Health; (iii) all rules and regulations of the Oregon Environmental Quality Commission relating to the protection of soil, air, and water resources, and (iv) compliance with updated Federal Law Worker Protection Standards and applicable federal regulations related to the protection of workers, handlers and other persons from agricultural pesticides, including all required training for workers on state forestland.

Regarding pesticide application, it is the responsibility of the PURCHASER to ensure sufficient actions are taken to prevent any and all individuals from entering an Application Exclusion Zone. This includes federal regulations that require handlers of pesticides to temporarily suspend applications of pesticides if any worker or any person is in the treated area or an Application Exclusion Zone (zone or area surrounding pesticide application equipment). And includes federal requirements to display, maintain, and provide access to pesticide safety information and pesticide application and hazard information in accordance with federal regulations if workers or handlers are on an application area and within the last 30 days a pesticide product has been used or a restricted-entry interval for such pesticide has been in effect on an application area. PURCHASER shall bear the burden/costs associated with any such pesticide related delays.

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.

PURCHASER shall take all necessary precautions for the safety of all personnel in the Areas of Operations, and shall comply with the Contract and all applicable provisions of State and Federal safety laws or regulations designed 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 PURCHASER's Operations, all necessary safeguards for protection of workers and the public against any hazards created by the Operations. The STATE's Authorized Representative has no responsibility for safety in the Areas of Operations. Safety in the Areas of Operations is the sole responsibility of PURCHASER.

Section 1630. Threatened and Endangered Species. PURCHASER shall at all times observe and comply with all State and Federal 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 relate to threatened or endangered plant or animal species while performing Operations under this Contract.

Section 1640. Protection Measures Needed for Plants, Animals, Cultural Resources, and Cave Resources.

(a) Areas, known by STATE prior to timber sale advertisement, needing special measures for the protection of plants, animals, cultural resources, and/or cave resources are shown on Sale Area Map and/or identified on the ground, and shall be treated as follows:

(i) Unless agreed otherwise, wheeled or track laying equipment shall not be operated in areas identified as needing special measures except on roads, landings, tractor roads, or skid trails approved by STATE. PURCHASER may be required to backblade skid trails and other ground disturbed by PURCHASER's Operations within such areas.

(ii) Unless agreed otherwise, trees will not be felled into areas identified as needing special measures.

(iii) PURCHASER shall conduct operations in a manner that does not damage or disturb identified areas. In the event that protective measures identified by the STATE are for any reason inadequate, STATE may delay or interrupt PURCHASER's operations, under this Contract, and/or modify this Contract pursuant to Section 1520.

(iv) PURCHASER shall immediately notify the STATE if its operations disturb or damage any area identified as needing special protection, and shall immediately halt its operations in the vicinity of such area until STATE authorizes continued operations. In the event that PURCHASER's operations disturb or damage an area identified as needing special protection, then PURCHASER shall reimburse the STATE for the full cost and expense of any evaluative and remedial measures undertaken by the STATE in connection with such disturbance or damage. Such payment shall not relieve PURCHASER from civil or criminal liability under applicable law.

(b) Nothing contained in this Subsection shall establish, or be deemed to establish any express or implied warranty on the part of STATE (i) that STATE has identified all areas within the Sale Area requiring special protection, or (ii) that measures prescribed by STATE for protection of such areas are adequate.

(c) Following sale advertisement, additional areas needing special measures for protection may be discovered or identified; protective measures may be revised or newly prescribed; and, additional species of plants and/or animals may be added to federal lists of protected species. In such event, STATE may delay or interrupt PURCHASER's operations, under this Contract, and/or modify this Contract pursuant to Section 1520. Cooperation With Resource Protection Efforts.

(d) Discovery, by either PURCHASER or STATE, of additional areas, resources, species, or members of species needing special protection shall be promptly reported to the other party.

Section 1650. Protection of Soil, Air, and Water Resources. PURCHASER shall comply with State and Federal law, including the Oregon Forest Practices Act and rules promulgated thereunder, and with rules and regulations of the, Oregon State Board of Health, the Environmental Quality Commission and other agencies relating to the protection of soil, air, and water resources.

Section 1660. Tax Liability. STATE makes no representations concerning tax liability or consequences arising from this sale of Federal timber. It is PURCHASER's sole responsibility to determine what tax liability may be incurred as a result of purchasing Federal timber, regardless of whether the Federal timber is growing or located on Federal land or elsewhere. PURCHASER shall be responsible for paying all applicable timber harvest or severance taxes and shall indemnify and hold harmless the U.S. Forest Service and STATE against any tax claims arising from the purchase of Federal timber.

Section 1670. Compliance with Tax Laws. By execution of this Contract, the person signing this Contract on behalf of PURCHASER certifies, under penalty of perjury, that to the best of his or her knowledge, PURCHASER is not in violation of any Federal tax laws.

PAYMENTS

Section 1710. Purchase Price. Total Purchase Price for Designated Timber shall be \$_____.

PURCHASER shall pay the Total Purchase Price to STATE in accordance with the payment schedule in Section 1720, "Payment Schedule."

Contingent Price Adjustment. As provided in Section 1020, "Sale of Timber," it is the policy of the State of Oregon, in accordance with the terms of current Federal law and the Constitution and the laws of the State of Oregon, that unprocessed timber shall not be exported from Federal lands. PURCHASER specifically agrees that Section 1020, "Sale of Timber," 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, in addition to the Total Purchase Price, an incremental amount equal to the difference between the Total Purchase Price and any greater price obtained by PURCHASER for the exported unprocessed timber.

The default provisions of **[BOF: 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. In such event, STATE shall be entitled to cease performance of the Contract and bar PURCHASER from the Timber Sale Area, and to recover, in addition to the Total 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 U.S. Forest Service. In no case shall this additional amount be less than \$10,000 per incident.

Section 1720. Payment Schedule. The Total Purchase Price in Section 1710, "Purchase Price," of the Contract shall be paid in installments, as follows:

The first installment shall be paid within 30 days of the notice of intent to award or before beginning Operations, whichever occurs first. The first installment shall be 10 percent of the Total Purchase Price. Cash bid deposits shall be applied to this payment. The amount of subsequent installments shall be paid prior to start of operations in a Payment Unit. Value of each Payment Unit shall be the following percent of Total Purchase Price:
Payment Unit A, (Areas 3, 4, 5, 6, 7), forty percent (40%) of Total Purchase Price.
Payment Unit B, (Areas 9, 10), twenty eight percent (28%) of Total Purchase Price.
Payment Unit C, (Area 8), thirty two percent (32%) of Total Purchase Price.

In addition, and notwithstanding the above schedule, all installment payments up to and including the mid-point payment shall be paid on or before start of operations in each Payment Unit.

Second and subsequent installments must be received by STATE within the time period stated on the instrument requesting payment. PURCHASER's Deposit Account shall not accrue interest payable to PURCHASER.

Section 1730. Payments and Interest. PURCHASER shall make all payments required under this Contract or modifications of this Contract 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 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 9 percent. Interest shall be calculated from the date of the original billing to the date payment is received by the State Forester.

PART II: SPECIFICATIONS

ACCOUNTABILITY

Section 2010. Log Accountability and Log Load Receipts - Sawlogs.

Load Receipt Books. STATE shall issue to PURCHASER sufficient books of serially numbered pink 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 Receipt and Scaler Receipt tickets. PURCHASER shall retain all Woods Receipts in each book and return the book 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 periods of inactivity lasting over 30 days, and at the completion of timber removal from the Timber Sale Area.

Completion of Load Receipts. PURCHASER shall completely and accurately fill out all portions of the 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.

Delivery Destination and Transfer of Federal 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 Federal timber by adhering to the terms and conditions contained in the Forest Resources Conservation and Shortage Relief Act of 1990, as amended (16 USC 620, *et seq.*).

Section 2012. Log Accountability and Log Load Receipts – Pulp Logs.

Load Receipt Books. STATE shall issue to PURCHASER sufficient books of serially numbered yellow 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 Receipt and Scaler Receipt tickets. PURCHASER shall retain all Woods Receipts in each book and return the book 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 periods of inactivity lasting over 30 days, and at the completion of timber removal from the Timber Sale Area.

Completion of Load Receipts. PURCHASER shall completely and accurately fill out all portions of the 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.

Delivery Destination and Transfer of Federal 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 Federal timber by adhering to the terms and conditions contained in the Forest Resources Conservation and Shortage Relief Act of 1990, as amended (16 USC 620, *et seq.*)

Section 2030. Log Branding and Painting – Sawlogs. Unless approved in writing in advance by STATE, at least one end of every saw 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. 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 if it intends 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.

STATE may issue PURCHASER one or more branding hammers registered to STATE. PURCHASER shall sign a receipt for all branding hammers registered to STATE and issued to PURCHASER, and will return them in good condition within 14 calendar days following completion of log hauling. PURCHASER shall pay a fee of \$100 to STATE for each branding hammer returned to STATE in damaged and unusable condition, or \$200 for each branding hammer not returned within the time specified by STATE. PURCHASER may replace damaged branding hammer handles, but only with 24" wooden handles, or with handles approved 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 Federal timber and ineligible for export. Additional branding hammers registered to STATE, to be used for this purpose, may be obtained from STATE upon request, at cost.

Section 2031. Log Branding – Pulp Logs. At least 4 logs on each Pulp load removed from the Timber Sale Area shall be clearly hammer branded. 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.

Logs that do not meet the Contract definition for Pulp and do not meet the definition of a saw log in the Official Log Scaling and Grading Rules published by the Northwest Log Rules Advisory Group shall be decked separately from all other logs for inspection by STATE. Utility logs approved for removal as Pulp will be marked by STATE with blue paint. **PURCHASER shall not possess any blue paint on the Timber Sale Area.**

STATE may issue PURCHASER one or more branding hammers registered to STATE. PURCHASER shall sign a receipt for all branding hammers registered to STATE and issued to PURCHASER, and will return them in good condition within 14 calendar days following completion of log hauling. PURCHASER shall pay a fee of \$100 to STATE for each branding hammer returned to STATE in damaged and unusable condition, or \$200 for each branding hammer not returned within the time specified by STATE. PURCHASER may replace damaged branding hammer handles, but only with 24" wooden handles, or with handles approved by STATE.

Section 2035. Hauling and Operating Time Restrictions. PURCHASER shall not haul logs from the Timber Sale Area on weekends, the following State-observed holidays: New Year's Day, Independence Day, Thanksgiving Day, and Christmas Day, or outside the hours of 3:00 a.m. to 6:00 p.m. daily without notification to and prior approval by STATE.

- (a) Log hauling on unsurfaced roads shall not be allowed from November 1 through May 31 unless otherwise approved in writing by STATE.

Section 2040. Log Removal. All logs defined below, except those specified in Sections 2220 through 2250, "Reserved Timber," shall be removed as Designated Timber under this Contract:

- (a) Any conifer log (except ponderosa pine) 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 20 board feet (net).
- (b) Any ponderosa pine log that conforms with grading rules for peeler or sawmill grades and meets or exceeds both of the following minimum requirements: 8 inches in gross scaling diameter, containing 30 board feet (net).

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.

Section 2060. Special Products. "Special products" are any products not in log form manufactured from material having a price, or listed as "No Charge," under the Contract. 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.

ACCESS AND ROAD MAINTENANCE

Section 2120. Access. PURCHASER shall use the roads shown on Exhibit A for access to the Timber Sale Area and Project Locations. If gate keys are required to access the Timber Sale Area, they can be obtained at the ODF District Office by a designated PURCHASER's Authorized Representative. Any keys not returned at the completion of all operations under this Contract shall be subject to a fee of \$100 per key not returned. 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 timber or performing other Operations. PURCHASER, in so using, improving, or constructing roads, shall at no time have an interest in the land, other than the temporary right of access during the term of the Contract.

PURCHASER shall comply with all applicable terms and conditions, including payment of any fees, of any access documents set forth in the provisions of this Contract, which are by this reference made a part of this Contract. The following access documents pertain to this Contract.

Access Easement. PURCHASER's use of any road listed below is subject to an easement by and between the parties named below; which may include requirements to furnish evidence of insurance coverage, performance bond, entering into a third-party agreement, maintenance, or other actions. STATE shall provide copies of easements or agreements when this Contract is executed.

Pvt. 887 Road. Easement (#314.32015) dated August 1, 2020, by and between Dan Gover and the State of Oregon, requiring payment of \$500.00 and post haul road maintenance. Current landowner: Daniel Gover This temporary easement requires payment of \$500.00 by PURCHASER.

Section 2130. 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 until final acceptance of the maintenance is made by STATE. In addition, PURCHASER is responsible for normal road maintenance needs that are caused by public use of the roads.

If other parties are authorized under Section 1330, "Conditions of Areas of Operations," to use roads in the Timber Sale Area, PURCHASER and each party so authorized shall be responsible for a proportionate share of normal maintenance, based upon the ratio of each party's use to total road use, as determined by STATE.

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

"Normal road maintenance" shall include any action needed to prevent and protect the road from soil contamination, seasonal weather damage, protect water quality, 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.
- (4) All cut bank and fill slope maintenance work shall be performed in such a manner that soil and vegetative material does not contaminate the road surface.

(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.
- (5) Soil and vegetative material shall not be pulled across the road surface.

(c) Drainage Systems.

- (1) Clear all culverts, including inlets, outlets, half rounds, rock ditch filters, 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.

Damaged culvert inlets and/or outlets shall be repaired by opening them with a hydraulic jack, or cutting off the culvert end to allow for free passage of water at peak flow levels. Install a culvert marker at each newly installed culvert and at each existing culvert that is missing a marker that could be reached by a grader blade.

(d) Road Surfaces.

- (1) Grade, shape, crown, and/or outslope surface and shoulders at such time that the moisture content will bind the rock surfacing. Rip potholes prior to grading.
- (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.

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

"Adverse maintenance" is defined as repair work of damage resulting from PURCHASER's failure to comply with "normal road maintenance," as determined by STATE. STATE may require PURCHASER to perform "adverse maintenance." STATE will specify rock type needed for repairs. The required rock shall be from STATE approved, private rock sources, at PURCHASER's expense. "Adverse maintenance" is determined by STATE, and shall not be subject to Section 1550, "Adjustment of Contract."

"Extraordinary maintenance" is defined as major repair work and/or damage caused by acts of God or causes beyond the control of PURCHASER, as defined in Section 1550, "Adjustment of Contract." STATE may require PURCHASER to perform extraordinary maintenance in addition to normal road maintenance. STATE shall describe the amount and specifications of work to be done in writing, and make adjustments in the Contract in accordance with Section 1550, "Adjustment of Contract."

TIMBER SALE AREA

Section 2210. Designated Timber. The timber is located on the Timber Sale Area designated on Exhibit A.

In accordance with Section 1020, "Sale of Timber," the following is Designated Timber, except as excluded by Sections 2220 through 2250, "Reserved Timber," and may be removed by PURCHASER in accordance with the terms and conditions of this Contract:

- (a) All timber cut in accordance with the specifications in Section 2310, "Felling," and Section 2320, "Thinning Specifications," within the Timber Sale Area.
- (b) All blue marked trees and snags within the Timber Sale Area.

PURCHASER shall not use or possess any blue paint on the Timber Sale Area.

Section 2220. Reserved Timber. Reserved Timber is that timber, including trees, Snags, and logs, on the Timber Sale Area which is not sold to PURCHASER. Reserved Timber 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 in Section 2260, "Reserved Timber - Damages."

Section 2230. Reserved Timber - Down Material.

- (a) All down trees and logs within the Timber Sale Area.

Section 2240. Reserved Timber - Trees and Snags.

- (a) All trees 21 inches or more DBH.
- (b) All Snags unless determined to be a fire or safety hazard. Felled Snags shall not be yarded or removed.
- (c) Bearing (witness) trees.
- (d) As directed by STATE, PURCHASER shall leave acceptable substitute trees or Snags for trees or Snags which must be cut. Substitution of trees or Snags without approval by STATE is prohibited.
- (e) Trees required to meet the Residual Tree requirements in Section 2310, "Felling."

Section 2250. Reserved Timber - Boundary Trees and Markings.

- (1) Trees posted with "Timber Sale Boundary" signs are reserved from cutting.

Boundary markings are as follows:

- (a) The Timber Sale Areas are posted with "Timber Sale Boundary" signs, blue flagging, and orange paint.

Section 2260. Reserved Timber - 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) The Purchase Price 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 Purchase Price 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 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 Section 2310, "Felling."
 - (2) More than 50 percent of live crown is removed.
 - (3) Tree is knocked down, or leaning more than 10 degrees from vertical.
- (c) Triple the Purchase Price 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.

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

Payment for damage to or removal of Reserved Timber shall not release PURCHASER from liability for other damage to property of STATE.

If more than 2 reserved trees on any acre suffer "minor damage," or if any Reserved Timber suffers "major damage" as defined above, STATE reserves the right to Suspend felling and/or Yarding until corrective measures have been agreed upon by STATE and PURCHASER.

HARVESTING OPERATIONS

Section 2310. Felling. PURCHASER shall comply with the following requirements for felling, unless otherwise approved in writing by STATE:

- (a) Prior to the beginning of felling Operations, PURCHASER shall mark the locations on the ground of all skid roads, subject to STATE approval. Felling shall be "to lead" to those marked trails and those trail locations adhered to.
- (b) Felling Operations shall not be allowed from November 1 through May 31, unless otherwise approved by STATE.
- (c) Fell all trees and Snags marked with blue paint on the Timber Sale Area.
- (d) A feller-buncher with a lateral reaching boom is required for all mechanical felling.

Included timber is not marked with paint. This sale utilizes Designation by Prescription, requiring Purchaser to make harvest tree selection based on the following guidelines:

- (e) Reserve dominant ponderosa pine & western larch trees which are healthy, and free of damaging insect and diseases by felling any conifer trees $\leq 21"$ DBH within a 10 foot radius from edge of the crown's drip-line. Reserve trees shall have a minimum live crown ratio of 30%.
- (f) Fell all conifers $\leq 21"$ DBH within ten feet of either side of 3940 road prism.
- (g) Fell all danger trees within treatment units that have an imminent or likely failure potential. Refer to the "Field Guide for Danger-Tree Identification and Response along Forest Roads and Work Sites in Oregon and Washington" 2016. https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/fseprd512960.pdf
- (h) Reserve well-spaced dominant and co-dominant conifers exhibiting quality form, vigorous growth, balanced crowns, and generally a live crown ratio of greater than 30 percent. However, unique trees such as open-grown "wolf trees" with cavities, broken tops, and complex crowns will occasionally be reserved. Spacing will vary as needed to provide sufficient space for the expansion of reserve tree crowns.

- (i) Generally select for removal Douglas-fir and western larch trees with a Hawksworth Dwarf Mistletoe ratings greater than 3. Refer to Exhibit F. Some western larch with ratings greater than 3 may be retained which are isolated from other host species, and also exhibits high vigor that could produce viable cone crops.
- (j) Remove host species within 50 feet of Douglas-fir or western larch over 21" DBH which are infected with Dwarf Mistletoe.
- (k) Select for removal any trees with indicators of pathogenic diseases or insect infestations. If any root rot pockets are identified ("Heterobasidion annosus", "Armillaria ostoyae" or "Phellinus weirii") designate the source tree for removal (if less than 21"DBH) and any other host trees less than 21"DBH within a tree length and a half from the infected tree. Do not retain any abies less than 21"DBH with top-kill or Echinodontium tinctorium.
- (l) Species retention will be prioritized in accordance with the following list. However, exceptions should be made based on an evaluation of the quality and health of the leave trees. For example, a western larch exhibiting low vigor or infected with dwarf mistletoe should not be selected over a high vigor tree of a subordinate species in this list
 - 1.) Ponderosa pine & Western larch
 - 2.) Douglas-fir
 - 3.) Engelmann spruce
 - 4.) Grand/white fir
 - 5.) Lodgepole pine
- (m) Vary retention and do not include snags, hardwoods or trees less than 7" DBH towards the residual basal area targets.

Unit	Basal Area (ft ²)
1, 4, 5	40-80
2, 3,	70-110
6, 7, 8, 9, 10	50-90

- (n) Prior to felling in the Timber Sale Area, PURCHASER shall arrange to have all the fallers who will work in the Timber Sale Area meet with STATE to review the requirements specified in Section 2310, "Felling," Section 2320, "Thinning Specifications," and Sections 2220 through 2250, "Reserved Timber." PURCHASER shall give STATE 48 hours' advance notice before starting a new faller on the Timber Sale Area to allow STATE the opportunity to brief the faller on these sections.

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 Area boundaries, unless authorized in writing by STATE. Any trees that fall across Timber Sale Area 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:

- (a) Trees shall be felled to the longest lay, using the necessary means (wedging, jacking, etc.), favoring a quartering uphill lead.
- (b) Trees shall not be felled across draws, over ridges, or across previously felled trees.

- (c) Maximum stump height shall be 12 inches. Heights shall be measured on the uphill side.

Section 2320. Thinning Specifications. PURCHASER shall comply with the following requirements for selecting Residual conifer trees on the Timber Sale Area, except for those specifications listed in Section 2310, "Felling":

- (a) Fell, lop and scatter all vegetation within 5 feet of roads which is less than 5 inches DBH and two feet or taller in height. Pull all slash from road prism. See Project 1 under Section 2610.
- (b) Fell all trees which are less than 9 inches DBH and 2 feet or taller in height which are within 1.5 times the dripline of a live western larch or ponderosa pine. Leave tree greater than or equal to 15 inches DBH and is 25 feet or more from a road.

Section 2325. 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 Section 2320, "Thinning Specifications," and Sections 2220 through 2250, "Reserved Timber."

Section 2345. Substitution of Trees. PURCHASER shall leave acceptable substitute trees as approved by STATE for any conifer Reserved Timber which must be cut to facilitate logging (i.e., cable corridors, Landings, or skid trails) or to resolve safety problems pursuant to Section 1610, "Permits; Licenses; Safety" (i.e., danger trees, Guyline trees, hang-ups).

STATE reserves the right to require PURCHASER to:

- (a) Leave substitute trees of a different species; and
- (b) Leave substitute trees for reserved Snags that must be cut.

Substitution of trees without approval of STATE is prohibited. Any Reserved Timber cut without approval by STATE shall be paid for in accordance with Sections 2220 through 2250, "Reserved Timber."

Section 2355. Ground-Based Operations. 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 shall limit skid roads and trails, and all other locations where soil is compacted or displaced, to less 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.
- (c) Operations shall not be conducted under conditions where soils are rutted or excavated to a depth of 12 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) Ground Yarding equipment shall not be operated within 30 feet of streams.
- (g) PURCHASER shall suspend ground Yarding during periods of high soil moisture as determined by STATE.
- (h) Operations shall be designed to minimize soil disturbance and damage to Reserved Timber.
- (i) PURCHASER shall restrict ground Yarding to those skid roads designated by STATE.
- (j) No logging or hauling operations shall be allowed from November 1 through May 31.

If the above conditions are not met by PURCHASER, STATE at its option, may require PURCHASER to suspend Yarding activities until corrective measures have been agreed upon by STATE and PURCHASER.

Time lost while STATE exercises any of the above options shall not constitute grounds for Contract extension.

Section 2365. Progressive Operations. PURCHASER shall complete the following requirements on each Timber Sale Area prior to moving to a new Timber Sale Area, unless otherwise approved in writing by STATE:

- (a) Remove all logs as described under Section 2045, "Log Removal."
- (b) Construct cross-drainage ditches or waterbars as specified in Exhibit E and as directed by STATE.
- (c) Block roads and skid trails to vehicular traffic as directed by STATE.
- (d) Within 30 days after completion of each Setting, pile all Slash within reach of the Landings by a log loader in the center of the Landing. Material suitable for firewood shall be separated into individual piles accessible for firewood cutting. Other Slash shall be piled to facilitate pile burning as directed by STATE.

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

- (e) Remove all trash from the Timber Sale Area within 30 calendar days after completion of log hauling activities.
- (f) Remove all equipment and materials from the Timber Sale Area, as required by Section 1430, "Removal of Equipment and Materials," within 30 calendar days after completion of log hauling activities.
- (g) Complete road maintenance requirements of Section 2120, "Access," and Section 2130, "Road Maintenance," within 30 calendar days after completion of log hauling activities.

PROTECTION DURING OPERATIONS

Section 2416. Protection from Invasive Plants and Noxious Weeds. PURCHASER shall ensure all ground-based yarding, earth disturbing, road constructing, and road maintenance equipment moved onto National Forest or between National Forest sites is free of soil, seeds, vegetative matter, or other debris that could contain, or hold, seeds. PURCHASER shall employ cleaning methods necessary to ensure compliance with the terms of this section. PURCHASER shall notify STATE's Authorized Representative at least 24 hours prior to moving each piece of equipment onto National Forest or between National Forest sites unless otherwise agreed in writing. Notification shall include identification of the equipment's most recent operation.

This section does not apply to log trucks, service trucks, water trucks, pickup trucks, cars, and other passenger vehicles, used in the daily transport of personnel.

Section 2420. 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 2430. 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 2435. Protection of Cultural Resources. PURCHASER shall not remove any historic artifact, including old logging equipment or camp refuse, or other Cultural Resources from the Timber Sale Area. If any such items are discovered, PURCHASER shall notify the STATE's Authorized Representative.

Section 2455. 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 May 31 (Section 2130), unless authorized by the STATE.
- (b) Felling Operations shall not be allowed from November 1 through May 31 (Section 2310), unless authorized by the STATE.
- (c) Ground-based Operations shall not be allowed from November 1 through May 31 (Section 2355), unless authorized by the STATE.

- (d) Road improvement and construction shall not be allowed from November 1 through May 31 (Section(s) 2360 and 2610), unless authorized by the STATE.
- (e) When approved by STATE, Ground-based Operations may be allowed in frozen conditions and/or on 12 inches compacted snow.

Section 2460. Repair of Injury or Damage. Prior to the completion and as a condition of final acceptance by STATE of PURCHASER's Operations, PURCHASER shall repair or correct any injury or damage to the Areas of Operations or any part of the Timber Sale Area arising from PURCHASER's Operations, unless adjustment is made pursuant to Section 1550, "Adjustment of Contract."

PROTECTION FROM FIRE

Section 2510. Precautions Against Fire. PURCHASER acknowledges that their Operations under this Contract may cause extraordinary fire risk in the Areas of Operations. PURCHASER covenants and agrees that it will use the highest degree of care to prevent forest fires from starting on or from spreading to or from the Areas of Operations. PURCHASER shall require its employees and Contractors and the employees of such Contractors to employ a similar degree of care. STATE may, at any time during the term of the Contract, require PURCHASER to prepare and submit to STATE for approval 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 in the Areas of Operations. The plan must meet with the approval of STATE and STATE reserves the right to require revisions to the plan as STATE, in its sole discretion, may determine to be necessary.

Section 2520. Efforts on Fire. If a fire occurs in any part of the Areas of Operations, notwithstanding the origin, PURCHASER shall require its employees and Contractors and the employees of such Contractors to immediately proceed to extinguish the fire. PURCHASER acknowledges and agrees that the provisions of this section may impose obligations on PURCHASER that are separate from or in addition to any duty or responsibility required by law. However, 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.

Section 2530. Indemnification. In addition to the general indemnification contained in Section 1355, "General Indemnification," PURCHASER shall indemnify, defend and hold STATE and the U.S. Forest Service harmless from any and all loss, costs, damage, and expense that STATE or the U.S. Forest Service may incur as a result of any fire caused by the Operations of PURCHASER, employees and Contractors of PURCHASER, and employees of such Contractors.

Section 2540. Fire Equipment. During Fire Season, PURCHASER shall provide an engine with at least a 300-gallon capacity, enough feet of hose to reach from the water supply to any location in the operation affected by power driven machinery or 500 feet, whichever is greater, one gated wye valve, and two adjustable nozzles in constant readiness in the Timber Sale Area. The engine must be self-filling and be able to travel fully loaded, under its own power, on all truck roads providing access to or within the Timber Sale Area. Such equipment shall be credited toward the requirements of OAR 629-043-0020 for water supply, hose, and nozzle, subject to STATE approval. . PURCHASER shall comply with the current IFPL requirements as established by the USFS District in which the Timber Sale Area is located.

Section 2560. Slash Disposal. All slash near openings and Landings shall be piled no closer than 25 feet to any Residual Trees.

PROJECTS

Section 2610. Project Work. PURCHASER shall complete the following Projects in accordance with the specifications provided in Exhibits and written instructions from STATE. Project locations are shown on Exhibit A unless otherwise described. PURCHASER shall furnish all material unless otherwise specified.

Project No. 1. Clear roadside vegetation along roads designated on Exhibit A according to the "Road Brushing Specifications" in Exhibit D.

Section 2620. Completion of Projects. PURCHASER shall complete the Project Work in the preceding section as follows:

Project 1: Concurrently with pre-haul road maintenance.

If the logging operation will cause damage to a project, STATE may waive the completion date requirement until logging in that area is completed.