

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

CONTRACT FOR THE SALE OF TIMBER AND OTHER WOOD PRODUCTS - SCALE

THIS CONTRACT is made and entered into the _____ day of _____, 20____, under the authority of the Act of August 28, 1937, (50 Stat. 874), as amended, (43 U.S.C. 2601-2606), relating to the revested Oregon and California Railroad and reconveyed Coos Bay Wagon Road grant lands, or under the Act of July 31, 1947, (61 Stat. 681), as amended, (30 U.S.C. Secs. 601-604), relating to other lands under the jurisdiction of the Bureau of Land Management (BLM), and the regulations as set forth in 43 CFR Group 5400, between the UNITED STATES OF AMERICA, hereinafter called the Government, acting through the BLM, and _____ of _____ hereinafter called the Purchaser.

WITNESSETH, That the parties hereto do mutually agree as follows:

Sec. 1. Wood Products Sold – The Government hereby sells to the Purchaser and the Purchaser hereby buys from the Government, under the terms and conditions of this contract, all wood products included in *Exhibit B*, which is attached hereto and made a part hereof, except that wood products reserved to the Government under Sec. 43 of this contract, within the area designated by the Government, comprising contract area as shown on map marked *Exhibit A*, which is attached hereto and made a part hereof, and situated in the County of _____, State of _____, and described as follows:

[illegible]

Sec. 2. Total Purchase Price

(a) Purchaser agrees to pay the Government for the wood products sold under this contract, in accordance with Sec. 3 and the schedule set forth in *Exhibit B* of this contract, attached hereto and made a part hereof. The prices per measurement unit are subject to readjustment in accordance with Secs. 9 or 44 of this contract. The Purchaser shall be liable for the total actual purchase price of all wood products sold under this contract subject to adjustments under Secs. 6, 7, 8, 9, 19, 20, or 44 as determined in accordance with Sec. 3(h) even though all of such wood products are not actually cut and removed prior to the expiration of the time for cutting and removal specified in this contract.

(b) The measurement standards, requirements, and definitions of wood products to be used in determining the volume sold under this contract are set forth in *Exhibit B*.

Sec. 3. Payment

(a) Payment shall be made in installments of not less than \$() as follows: (1) The first installment shall be paid on or before the date this contract is signed by the Contracting Officer, one-half of this first installment may be applied as payment on the total actual purchase price when (i) no less than 60 percent of the total estimated purchase price as shown on *Exhibit B* has been paid or (ii) road construction required under the contract has been completed the value of which when combined with contract payments is equal to no less than 60 percent of the total estimated purchase price as shown on *Exhibit B*, one-half of this first installment shall be held to satisfy the final payment due under this contract; (2) except as provided by subsections (d) and (e) of this section, a second installment shall be paid prior to cutting or removal of any wood products sold under this contract. Each subsequent installment shall be due and payable without notice when the value of the wood products cut, measured or removed equals the sum of all payments not including the first installment or one-half of the first installment after one-half of the first installment has been released as provided in subsection (a)(1) of this section; (3) *Provided, however*, that in the case of all contracts with a nineteen (19) month or longer term, the Purchaser shall be required by the first anniversary date to either (i) pay no less than 40 percent of the total estimated purchase price shown on *Exhibit B* or (ii) complete road construction required under the contract the value of which when combined with contract payments is equal to no less than 20 percent of the total estimated purchase price shown on *Exhibit B*; (4) *Provided further*, that in the case of contracts with a twenty-seven (27) month or longer term, the Purchaser shall also be required by the second anniversary date to either (i) pay no less than 40 percent of the total estimated purchase price shown on *Exhibit B* or (ii) complete road construction required under the contract the value of which when combined with contract payments is equal to no less than 40 percent of the total estimated purchase price shown on *Exhibit B*; (5) *Provided further*, that in the case of contracts with a thirty-nine (39) month or longer term, the Purchaser shall also be required by the third anniversary date to either (i) pay no less than 60 percent of the total purchase price or (ii) complete road construction required under the contract the value of which when combined with contract payments is equal to no less than 60 percent of the total purchase price shown on *Exhibit B*.

(b) Notwithstanding the provisions of subsection (a)(1) of this section, the amount of the first installment may be reduced by the Government when the Contracting Officer requests the Purchaser to interrupt or delay operations for a period expected to last more than thirty (30) days during the operating season. Such interruption or delay must be beyond the Purchaser's control. The first installment may be reduced to 5 percent of the installment amount specified in subsection (a) of this section, during the delay period. The Purchaser must request such a reduction in writing. When the Contracting Officer notifies the Purchaser that operations may proceed, the Purchaser shall have fifteen (15) days after such notification to restore the first installment to the value specified in subsection (a) of this section. Failure to restore the first installment within the allotted time will be considered a material breach of contract. No wood products shall be cut or removed from the contract area until the first installment is restored.

(c) Notwithstanding the provisions of subsections (a)(3), (a)(4), and (a)(5) of this section, adjustments in the due dates for anniversary payments may be made by the Government if the Contracting Officer interrupts or delays contract operations for a period expected to last at least thirty (30) days, and the interruption or delay is beyond the Purchaser's control. Any adjustment made to the due dates for anniversary payments will be commensurate with the extension of operating time granted in accordance with Sec. 9. The

Purchaser shall request such adjustment in writing before the due date for an anniversary payment contained in subsections (a)(3), (a)(4), and (a)(5) of this section.

(d) If Purchaser increases the performance bond as permitted by Sec. 39(b), cutting of wood products of a value not in excess of the increase in value of such bond may be permitted prior to the payment of the second installment or subsequent installments; *Provided, however*, that no wood products may be skidded, yarded, or otherwise transported to a loading point or removed from the contract area prior to payment of any installment which, but for provisions of this subsection, would otherwise be due under the provisions of Sec. 3(a).

(e) If Purchaser provides a payment bond, as permitted by Sec. 39(d), cutting and/or removal of wood products of a value not in excess of the penal sum of such bond may be permitted prior to the payment of the second installment or subsequent installments. Unless a shorter period is agreed to by Purchaser and Government, Government shall bill Purchaser monthly for wood products skidded, yarded, or otherwise transported to a loading point or removed from the contract area. Such billing shall include any amount due for related road maintenance fees and other charges required under this contract. Purchaser shall make payment within fifteen (15) days of the billing date shown on the billing form.

(f) For the purpose of determining (1) when payments are due or (2) the value of wood products subject to any special bonding provisions, Government shall calculate the value of wood products in accordance with the provisions of *Exhibit B*.

(g) All merchantable and other wood products sold under this contract which is felled or wasted in high stumps, tops, chunks, long butts, logs, or broken by careless falling, bucking or logging, or allowed to deteriorate due to abnormal delay in scaling caused by the Purchaser shall be scaled as provided herein, and all merchantable and other wood products sold which is not removed from or left standing on the contract area at the expiration of the time for cutting and removal shall be tree cruised or otherwise measured by the Authorized Officer. The sum of the above volumes shall constitute the remaining volume of wood products on the contract area for which the Contracting Officer shall determine the value as provided in *Exhibit B* of this contract.

(h) Notwithstanding any other provision of this contract; upon expiration of Purchaser's time for cutting and removal; or, upon notification by the Purchaser of completion of logging; or, upon cancellation of the contract prior to completion of cutting or removal, the Contracting Officer shall compute the final amount due and owing by the Purchaser as follows: the Contracting Officer shall determine the total actual purchase price of the wood products sold under the contract by adding the value of merchantable and other wood products remaining on the contract area as determined under Sec. 3(g) and the total amount paid by the Purchaser, accounting for any adjustments under Secs. 6, 7, 8, 9, 19, 20, or 44. From the total actual purchase price shall be deducted the credit value as determined under Sec. 11 and the total amount paid. The value remaining after these deductions is the final amount due and owing by the Purchaser and shall be paid within fifteen (15) days of the date of billing. In the event the total amount paid and the credit allowed under Sec. 11 exceeds the total actual purchase price, the Purchaser shall be refunded the difference.

(i) For any payments or other charges not paid when due, interest shall accrue on the amount due at the Department of Treasury's Current Value of Funds rate published in the Federal Register, beginning thirty (30) calendar days after the billing date shown on the billing form. For every demand letter issued, an administrative charge will be assessed. If payment has not been received within ninety (90) calendar days after the billing date shown on the billing form, administrative penalties will be assessed at a rate of 6 percent per annum on any outstanding principal balance. All fees are assessed in accordance with the Debt Collection Improvement Act of 1996 (110 Stat 1321) or any amendment thereof.

(j) No wood products may be cut or removed until the required payments have been made. Purchaser shall make all payments at a depository as designated by the Contracting Officer in cash, or by money order, check, credit card, or electronic transfer made payable to the Department of the Interior, Bureau of Land Management.

Sec. 4. Time for Cutting and Removal – Except as otherwise provided in this contract, Purchaser may begin cutting and removing wood products sold under this contract on the date this contract is signed by the Contracting

Officer. Purchaser's right to cut and remove such wood products shall expire () months after such date; *Provided, however*, extensions of time may be granted as provided in Sec. 9.

Sec. 5. Definitions

(a) *Contracting Officer* - the Bureau of Land Management official who would have authority to execute this contract and delegate authority to take action in connection with this contract.

(b) *Authorized Officer* - any employee of the Bureau of Land Management who has been delegated, by the Contracting Officer, the authority to take action in connection with this contract.

(c) *Timber* - standing trees, downed trees or logs, or portions thereof, which are capable of being measured in board feet.

(d) *Wood Products* - includes *timber* and other woody material not normally measured in board feet.

(e) *Loading Point* - any landing or other area in which logs are capable of being loaded for transportation out of the contract area; *Provided, however*, that right-of-way wood products which have been cut shall not be considered to be at a loading point until such time as the logs from any source are actually transported from that portion of the right-of-way.

(f) *Operating Season* - the time of year in which operations of the type allowed or required are normally conducted and not specifically restricted under this contract.

Sec. 6. Inspection of Wood Products and Disclaimer of Warranty

(a) Purchaser warrants that this contract is accepted and executed on the basis of its examination and inspection of the wood products sold under this contract and its opinion of the value thereof.

(b) Government expressly disclaims any warranty of fitness of the wood products for any purpose; all wood products sold hereunder are accepted As Is without any warranty of merchantability by Government. Any warranty as to the quantity or quality of the wood products sold hereunder is expressly disclaimed by Government. Refund to or recovery by Purchaser for failure of title to any wood products sold hereunder shall not exceed the value of such wood product computed at unit prices for species or for all species included as set forth in *Exhibit B*.

Sec. 7. Passage of Title and Risk of Loss - Title to wood products sold under this contract shall remain in Government and shall not pass to Purchaser until such wood product has been paid for, measured, and removed from the contract area. Unless cut wood products are sold under this contract, risk of loss shall be borne by Purchaser after the wood product is cut; *Provided, however*, that if loss results from a fire which was not caused by Purchaser, Purchaser's contractors, subcontractors, or the employees of any of them, the risk of loss shall be borne by the party holding title. If cut wood product is sold under this contract, risk of loss shall be borne by the party holding title. Risk of loss to Government shall not exceed the value of such wood product computed at the unit prices per species or for all species included as set forth in *Exhibit B*. Nothing herein shall be construed to relieve either party from liability for any breach of contract or any wrongful or negligent act. As used in this section, the term *cut* wood product refers only to wood product which has been felled, bucked, piled at a loading point, or otherwise severed by direct human activity prior to the date this contract was entered into.

Sec. 8. Sales of Additional Wood Products - If the Authorized Officer and Purchaser agree that additional wood product should be removed and the Contracting Officer determines that the sale will not be detrimental to the interests of Government and is within the provisions of 43 CFR 5402.0-6, the Contracting Officer, or Authorized Officer if designated, shall grant written permission to Purchaser to cut and remove such wood products. If permission is granted, Purchaser shall pay for such wood products at a price determined by the Authorized Officer in accordance with BLM-prescribed procedures. Payment for such wood product shall be made in accordance with Sec. 3(a) or 3(e), *except that*, if all contract payments required by Sec. 3(a) or 3(e) have been made, payment for such wood product shall be made in advance as a condition of granting such permission. The advance payment may be adjusted after the additional wood product has been measured and removed.

Sec. 9. Extension of Time and Reappraisal - If Purchaser shows that delay in cutting and removal was due to causes beyond their control and without their fault or negligence, the Contracting Officer may grant an extension of time, not to exceed one (1) year, upon written request of Purchaser. Any such

extension shall provide the Purchaser with an equal amount of operating time as would have been available without the delay. Such written request shall be filed with the Contracting Officer prior to the expiration of the time for cutting and removal expressed in Sec. 4. If an extension of time is granted, except as provided by 43 CFR 5473.4, the Authorized Officer will determine the market value of each species by using BLM-prescribed procedures for wood products remaining on the contract area. The Contracting Officer may require the payment of an estimated total purchase price in advance, using the reappraised unit prices and volumes shown in the *Exhibit B*. The total actual purchase price may be adjusted after the reappraised wood products have been measured and removed. No adjustment shall be made by reason of wood products being enhanced in value by Purchaser, nor shall the reappraised unit prices by species be less than those prices in effect during the original time for cutting and removal or the last extension. Market fluctuations shall not be cause for consideration of contract extensions.

Sec. 10. Violations, Suspension, and Cancellation

(a) If Purchaser violates any provision of this contract, the Contracting Officer may, by written notice, suspend any further operations of Purchaser under this contract, except such operations as may be necessary to remedy the violation. If Purchaser fails to remedy the violation within thirty (30) days after receipt of a suspension notice, the Contracting Officer may, by written notice, cancel the rights of the Purchaser under this contract and take appropriate action to recover all damages suffered by Government by reason of such violation, including application toward payment of such damages of any advance payments and any performance bonds or, where applicable, any payment bonds; *Provided, however*, that if the violation involves nonpayment of amounts due for wood products cut and/or removed under a payment bond of a corporate surety, the Contracting Officer must, in addition to the above requirements, allow sixty (60) days after making demand upon surety for any payment due before cancelling the rights of Purchaser.

(b) If Purchaser cuts or removes any wood products sold under this contract during any period of suspension, such cutting or removal shall be considered a willful trespass and render Purchaser liable for damages under applicable law. For purposes of determining damages under this section, the value of the trespass wood products shall be based upon the fair market value of the particular wood products cut or removed at the time of trespass. Any payment made for purchase price of wood products cut or removed in trespass shall be deducted to the extent of single damages or the value of wood products under this contract, whichever is lesser, from amount due because of trespass.

(c) If Purchaser's operations are suspended because of Purchaser's failure to make an installment payment when due, the Contracting Officer may require Purchaser to *pay the entire remaining balance* of the total purchase price or any portion thereof as a condition of terminating the suspension.

(d) In the event wood products are entirely removed or the time for cutting and removal has passed, the suspension notice that would otherwise be required in this section need not be issued prior to the notice of cancellation.

(e) If Purchaser, Purchaser's contractors, subcontractors, or the employees of any of them, cuts, injures, or removes any Government wood product reserved under this contract, they shall fully cooperate, upon request of the Authorized Officer, in the investigation of such acts. If in the opinion of the Contracting Officer, full cooperation is not received or will not be forthcoming, said official may suspend that portion of Purchaser's operations necessary to preserve evidence pending investigation or permit safe investigation of such acts.

Sec. 11. Credit Against Purchase Price - If the time specified for cutting and removal of wood products has expired or the rights of Purchaser have been cancelled, or the Purchaser has notified the Authorized Officer that cutting and removal has been completed, Purchaser shall be entitled to a credit against any amount which is due and owing Government for wood products remaining on the contract area. The Contracting Officer shall determine the credit value of the remaining wood products as soon as possible after the date of expiration or cancellation. Credit value of the remaining wood products shall be total market value as established by the Contracting Officer by reappraisal or resale, or total value based upon contract unit prices as shown on *Exhibit B*, whichever is less. There shall be deducted from credit value such amounts as the Contracting Officer determines adequate to cover costs to Government resulting from Purchaser's failure to perform, including but not limited to costs of appraising and administering any resale of wood products.

Sec. 12. Hold Harmless and Responsibility for Damages to the Government

– Purchaser agrees to hold the Government harmless from any claim for damage or loss of property, personal injury, or death and to be liable for any damage suffered, cost or expense incurred by the Government which claim, damage, cost, or expense arise out of any operations under this contract and result from any breach of contract or wrongful or negligent act or omission of Purchaser, Purchaser's contractors, subcontractors, or employees of any of them. Purchaser shall pay Government for such damages after written demand therefore by the Contracting Officer.

Sec. 13. Trespass – If in connection with operations hereunder Purchaser, Purchaser's contractors, subcontractors, or the employees of any of them, cuts, injures, or removes any Government wood products, other than wood products sold under this contract, Purchaser shall be liable for damages under applicable law. Purchaser shall pay Government for such damages after written demand therefore by the Contracting Officer.

Sec. 14. Protection of Roads, Utilities, and Improvements – Existing telephone lines, transmission lines, fences, ditches, roads, trails, and other improvements shall be protected as far as practicable in all phases of Purchaser's operations. All such roads and ditches shall be kept free of logs, slash, and debris resulting from Purchaser's operations. Damage to roads, utilities, and improvements shall be promptly paid for or repaired to a condition which, in the opinion of the Authorized Officer, is at least as good as the condition just prior to such damage.

Sec. 15. Fire Prevention and Slash Disposal – Purchaser shall take such measures for prevention and suppression of fire on the contract area and other adjacent Government lands used or traversed by Purchaser in connection with operations as are required by applicable laws and regulations. *However*, when in the opinion of the Authorized Officer, weather and other conditions affecting fire incidence and control make special precautions necessary to protect the contract area and said Government lands, Purchaser shall take such additional or other fire prevention and control measures as may be required by the Authorized Officer. Disposal of slash shall be done in accordance with a plan approved by the Authorized Officer or as provided in Sec. 44.

Sec. 16. Construction, Use, and Maintenance of Roads and Facilities

(a) Subject to the written approval and regulation by the Contracting Officer, Purchaser may: (1) construct and use any new roads and facilities not otherwise provided for in this contract, and (2) use any existing roads and facilities not otherwise provided for in this contract.

(b) Except as provided in Sec. 12, Purchaser shall perform or pay for repair and maintenance of any road or facility used under the terms of this contract in accordance with the requirements of Sec. 44; *Provided, however*, that Purchaser shall not be responsible for maintenance or repair of wear or damage caused by third parties, or maintenance or repair which exceeds the standards of required maintenance shown in Sec. 44; and *Provided further*, that Purchaser's responsibility under this provision shall not commence prior to the date on which Purchaser first begins operations and shall cease upon completion and written acceptance of all contract requirements other than slash disposal, except for maintenance and repair of damages resulting from Purchaser's slash disposal activities.

Sec. 17. Limitations of Road Use

(a) The Purchaser shall be required to secure written approval from the Authorized Officer to use vehicles for the haul of wood products and equipment over Government owned or controlled roads when such vehicles or equipment exceed the maximum allowable weights or dimensions established by the State for vehicles operating without a permit, or when vehicles meet allowable non-permitted State vehicle weights but the haul route crosses a structure or segment of road that is posted for reduced weights. The Purchaser agrees to abide by any special requirements included in said written approval.

(b) Purchaser's right under this contract to use existing Government roads described herein, or roads to be constructed, is limited to removal of wood products sold and the transport of mineral materials under this contract; *Provided, however*, that this provision shall not limit any right to use Government roads or rights-of-way which have been granted to Purchaser pursuant to 43 CFR Group 2800.

(c) For the purpose of protecting roads described herein, Purchaser shall immediately discontinue use of said roads upon receipt of written notice that the Authorized Officer has determined that continued use will cause excessive damage to said roads.

Sec. 18. Acceptance of Road Construction

(a) Whenever Purchaser shall deliver to the Contracting Officer a written statement that the road construction is complete, pursuant to the contract terms, the Authorized Officer shall promptly inspect such road. If the contract road construction requirements have been completed to the satisfaction of the Contracting Officer, Purchaser will be given written notice of acceptance, and, except as provided in Sec. 12, be released from further liability or duty for construction or reconstruction of such road.

(b) Notwithstanding acceptance of any road under this section, Purchaser shall remain liable for maintenance and repair of any such road in accordance with the provisions of Sec. 16.

Sec. 19. Cost Adjustment for Physical Changes – If, prior to acceptance of a road under Sec. 18, a major physical change, caused by a single event, and not due to negligence of Purchaser, Purchaser's contractors, subcontractors, or the employees of any of them, results in additional construction work by Purchaser involving an additional estimated cost of more than: (1) \$1,000 for sales under one million board feet; (2) \$1.00 per thousand board feet for sale of one to three million board feet; or (3) \$3,000 for sales over three million board feet, Government shall become responsible for any estimated cost which exceeds the above amounts. Government may elect to meet its share by reducing the actual purchase price or by payment of such cost to Purchaser or by performing the Purchaser's share of the necessary work. Where the Contracting Officer determines that the damages caused by such major physical change are so great that restoration, reconstruction, or construction is not practical under the cost-sharing arrangement, the Contracting Officer may cancel the wood product sale contract notwithstanding any provisions thereof. The estimated cost of additional work shall be calculated by the Authorized Officer using BLM-prescribed appraisal procedures. Such cost shall include the cumulative estimated costs of repairing damage from slides, washouts, landslips, fire, etc., caused by said event. If necessary, plans and contract specifications shall be revised, and the contract modified, to meet the new conditions. Purchaser must obtain advance approval from the Contracting Officer for such additional work in order for Purchaser to be eligible for cost adjustment under this section. The payment for physical changes shall be made by crediting against the total actual purchase price and may be accomplished by applying the credit to future installments owed by the Purchaser.

Sec. 20. Design Change – If the Purchaser requests and the Contracting Officer agrees to a design change of a substantial nature to any road, road structure, or bridge required to be constructed or improved under the terms of this contract, or, in the absence of such a request, the Contracting Officer determines that a design change of a substantial nature is needed, the total actual purchase price shall be revised to reflect the estimated increase or decrease in cost from such design change. A design change of a substantial nature is one that would result in a cost adjustment of \$2,000 or more.

Sec. 21. Rights and Obligations After Time for Removal of Personal Property or Cancellation of the Rights of the Purchaser – If any of Purchaser's obligations remain unperformed after expiration of the time for removal of personal property, as set forth in Sec. 40, or if the rights of Purchaser under this contract have been cancelled by Government, all provisions of this contract for the benefit and protection of Government or third parties shall remain in effect until this contract is terminated in its entirety by Government.

Sec. 22. Protection of Survey Monuments, Witness Corners, Reference Monuments, and Bearing Trees – Purchaser shall protect all survey monuments, witness corners, reference monuments, and bearing trees against destruction, obliteration, or damage during operations on the contract area. If any monuments, corners, or accessories are destroyed, obliterated, or damaged by such operations, Purchaser shall hire an appropriate county surveyor or registered land surveyor to reestablish or restore the monuments, corners, or accessories, at the same location, using surveying procedures in accordance with the *Manual of Instructions for the Survey of the Public Lands of the United States*, and shall record such survey in appropriate

county records. The Authorized Officer may prescribe in writing additional requirements for protection of monuments, corners, and bearing trees.

Sec. 23. Protection of Cultural Resources – If in connection with operations under this contract the Purchaser, Purchaser's contractors, subcontractors, or the employees of any of them, discovers, encounters, or becomes aware of any cultural or paleontological item or location on the contract area, such as historical or prehistoric ruins, sites, graves, grave markers, artifacts, fossils (including tracks or other trace fossils), the Purchaser shall immediately suspend all operations in the vicinity of the cultural or paleontological resource and shall immediately notify the Authorized Officer of the findings. Operations may resume at the discovery site upon receipt of written instructions and authorization by the Contracting Officer.

Sec. 24. Purchaser's Representative – At all times when operations are in progress under this contract, Purchaser shall have an authorized representative, whom shall be designated in writing by Purchaser, readily available on the contract area who shall be authorized to receive, on behalf of Purchaser, any notices or instructions from the Authorized Officer in regard to performance under this contract. Purchaser shall take such action as required by the terms of this contract.

Sec. 25. Simultaneous Use of Contract Area by Others – The simultaneous use of the contract area by others may be authorized by the Government through issuance of permits, leases, or contracts, provided that the Contracting Officer first determines that such use of the contract area will not seriously interfere with the operations of the Purchaser.

Sec. 26. Watershed Protection: Water Quality, Erosion Control, and Soil Damage

(a) Purchaser shall comply with all applicable State and Federal laws and regulations pertaining to water quality in connection with any operations under this contract.

(b) Purchaser shall take every reasonable precaution not to pollute or obstruct any stream, lake, or reservoir on or near the contract area in connection with any operations under this contract. If Purchaser's operations cause pollution or obstruction of any stream, lake, or reservoir on or near the contract area, Purchaser shall correct the condition to the satisfaction of the Authorized Officer.

(c) Purchaser shall undertake every reasonable measure to minimize erosion and soil damage in connection with any operations under this contract, including but not limited to construction of water bars, yarding and spur roads as designated by the Authorized Officer. Purchaser shall immediately discontinue any construction, wood product harvesting, or hauling operations under this contract, upon receipt of written notice from the Contracting Officer that due to weather or soil moisture conditions such operations will cause excessive damage to the soil. The Contracting Officer shall notify Purchaser, in writing, when such operations may be resumed.

Sec. 27. Refuse Control and Disposition of Waste Materials

(a) Purchaser shall comply with all applicable State and Federal laws and regulations pertaining to refuse control and disposition of waste materials in connection with any operations under this contract.

(b) Purchaser shall, to the satisfaction of the Authorized Officer, remove, or otherwise dispose of all garbage, temporary buildings, trash, litter, discarded equipment or parts, waste materials, or other refuse resulting from Purchaser's operations. Areas for disposal of waste material shall be subject to approval of the Authorized Officer.

(c) Waste materials, such as garbage, trash, oil, grease, chemicals, and similar substances shall be disposed of in a manner that will prevent their entry by drainage, high water, or other means into any river, watercourse, lake, or reservoir in or near Purchaser's operations. Water used to wash down equipment used for petroleum products, industrial chemicals, cement, or other toxic materials shall be disposed of in a manner that will prevent their entry into any watercourse or waterway.

Sec. 28. Storage and Handling of Hazardous Materials

(a) Purchaser shall comply with all applicable State and Federal laws and regulations pertaining to storage, handling, use, and disposal of industrial chemicals, pesticides, herbicides, and other hazardous materials in connection with any operations under this contract.

(b) All petroleum products, industrial chemicals, and similar toxic or volatile materials stored by Purchaser on or near the contract area, in

connection with operations under this contract, shall be stored in durable containers and shall be stored in areas, as determined by the Authorized Officer, which are either located so that any accidental spillage will not drain into any watercourses, lakes, or reservoirs or, when such areas are not available, shall be stored in an area surrounded by impermeable containment dikes of sufficient capacity to contain the aggregate capacity of all tanks.

Sec. 29. Safety and Health

(a) Purchaser shall conduct all operations in connection with this contract in compliance with the applicable provisions of Federal, State, and local safety, health, and sanitation laws, codes, and regulations.

(b) Purchaser's operations shall facilitate the Government's safe and practical inspection of Purchaser's operations and the Government's conduct of other official duties on contract area. Purchaser has all responsibility for compliance with safety requirements for Purchaser's employees, contractors and subcontractors, and the employees of any of them. Upon written notice from the Contracting Officer, the Contracting Officer may unilaterally modify the contract to be consistent with State or Federal safety requirements.

(c) Unless otherwise specified in writing, when operations are in progress adjacent to or on roads or specifically identified trails in the harvest unit area, Purchaser shall furnish, install, and maintain all temporary traffic controls that provide the road or trail user with adequate warning of and protection from hazardous or potentially hazardous conditions associated with its operations. Purchaser shall prepare a Traffic Control Plan, which the Purchaser has determined is compliant with state and local safety and transportation standards no later than the pre-work meeting and prior to commencing operations. Traffic control devices shall be appropriate to current operating and/or weather conditions and shall be covered or removed when not needed. Flagmen and devices shall be as specified in state safety and transportation standards for logging roads, or the "Manual on Uniform Traffic Control Devices for Streets and Highways" published by the U.S. Department of Transportation – Federal Highway Administration. Included in the Traffic Control Plan, Purchaser shall note traffic control device locations on a Purchaser produced copy of the contract *Exhibit A Map*.

(d) Notwithstanding other provisions in the contract regarding wood product reserved from cutting, the Government authorizes the Purchaser, their contractors, sub-contractors, or the employees of any of them, to fell any trees that they determine pose an imminent danger or imminent safety concern to its employees, the public, or Government employees, in accordance with applicable provisions of Federal, State, and local safety laws, codes, and regulations. If the Contracting Officer determines that the Purchaser, their contractors, subcontractors, or employees of any of them, have used this authorization to fell trees that did not pose a legitimate imminent danger or imminent safety concern, this will be considered trespass, and the Purchaser shall be liable for damages in accordance with Sec. 13.

Sec. 30. [RESERVED]

Sec. 31. Records and Reports – Upon request of the Authorized Officer, Purchaser shall furnish the following records and reports: (1) volume or quantity of wood products cut and removed from the contract area; (2) road costs including road use fees paid in connection with removing wood product from the contract area; and (3) prices received for lumber and other wood products.

Sec. 32. Unsatisfactory Bond – Whenever any performance or payment bond furnished under this contract becomes unsatisfactory to the Contracting Officer, said official may require a new bond.

Sec. 33. Assignments

(a) Purchaser may not assign this contract or any interest therein without written approval of the Contracting Officer. An assignment shall contain all the terms and conditions agreed upon by the parties thereto.

(b) The Contracting Officer will not approve any assignment involving contract performance unless assignee: (1) is authorized to transact business in the State indicated in Sec. 1; (2) submits such information as is necessary to assure the Contracting Officer of their ability to fulfill the contract; and (3) furnishes a performance bond as required by Sec. 39 or obtains a commitment from the previous surety to be bound by the assignment when approved.

Sec. 34. Contingent Fees – The Purchaser warrants that no person or agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee excepting bona fide employees or bona fide established commercial agencies maintained by Purchaser for the purpose of securing business. For breach or violation of this warranty, Government shall have the right to cancel this contract without liability or, in its discretion, to require Purchaser to pay, in addition to the contract price or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

Sec. 35. Successors in Interest – Every obligation hereunder shall extend to and be binding upon the successors in interest of the parties hereto and every benefit hereunder shall inure to such successors.

Sec. 36. Exercise of Rights or Duties of the Authorized Officer – The rights or duties of the Authorized Officer may be exercised by the Contracting Officer or said official's designated representative.

Sec. 37. Officials Not to Benefit – No Member of, or Delegate to Congress, or Resident Commissioner, after said official's election or appointment, or either before or after said official has qualified and during said official's continuance in office, and no officer, agent, or employee of the Department of the Interior, except as provided in 43 CFR Part 20 shall be admitted to any share or part in this contract or derive any benefit that may arise therefrom; and the provisions of Section 3741 of the Revised Statutes of the United States, as amended (41 U.S.C. Sec. 6306), and Sections 431, 432, and 433, Title 18 U.S.C., relating to contracts, enter into and form a part of this contract so far as the same may be applicable.

Sec. 38. Disputes

(a) This contract is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 7101-7109).

(b) Except as provided in the Act, all disputes arising under or relating to this contract shall be resolved under this clause.

(c) "Claim," as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. However, a written demand or written assertion by the Purchaser seeking the payment of money exceeding \$100,000 is not a claim under the Act until certified. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the Act. The submission may be converted to a claim under the Act, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

(d) A claim by the Purchaser shall be made in writing and, unless otherwise stated in this contract, submitted within six (6) years after accrual of the claim to the Contracting Officer for a written decision. A claim by the Government against the Purchaser shall be subject to a written decision by the Contracting Officer.

(e) The Purchaser shall provide certification when submitting any claim exceeding \$100,000. The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim. The certification shall state as follows: "I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Purchaser believes the Government is liable; and that I am duly authorized to certify the claim in behalf of the Purchaser." The certification may be executed by any person duly authorized to bind the Purchaser with respect to the claim.

(f) For Purchaser claims of \$100,000 or less, the Contracting Officer must, if requested in writing by the Purchaser, render a decision within sixty (60) days of the request. For Purchaser-certified claims over \$100,000, the Contracting Officer must, within sixty (60) days, decide the claim or notify the Purchaser of the date by which the decision will be made.

(g) The Contracting Officer's decision shall be final unless the Purchaser appeals or files a suit as provided in the Act.

(h) If the claim by the Purchaser is submitted to the Contracting Officer or a claim by the Government is presented to the Purchaser, the parties, by mutual consent, may agree to use alternative dispute resolution (ADR). If the Purchaser refuses an offer for ADR, the Purchaser shall inform the Contracting Officer, in writing, of the Purchaser's specific reasons for rejecting the offer.

(i) The Government shall pay interest on the amount found due and unpaid from: (1) the date that the Contracting Officer receives the claim (certified, if required); or (2) the date that payment otherwise would be due, if that date is later, until the date of payment. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the Contracting Officer receives the claim and then at the rate applicable for each six (6) month period as fixed by the Treasury Secretary during the pendency of the claim.

(j) The Purchaser shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer.

Sec. 39. Bond

(a) A performance bond shall be filed by Purchaser on or before the date this contract is signed by the Contracting Officer in the amount of \$ ().

(b) If Purchaser elects to cut wood products before payment of the second installment or subsequent installments, Purchaser shall increase the amount of the required performance bond by an amount equal to the second installment and one or more additional installments as set forth in Sec. 3(a). The adjusted bond must be approved, in writing, by the Contracting Officer prior to cutting any wood products under the adjusted bond. The increased amount of bond shall be used to ensure payment for such wood products. Wood products cut pursuant to this subsection may be paid for in installments. Upon payment, the increased amount of bond may be applied to other wood products sold under this contract to permit its cutting in advance of payment.

(c) As contract provisions are completed to the satisfaction of the Contracting Officer, said official may, at their discretion, reduce the amount of the required performance bond; *Provided, however*, the performance bond may not be reduced below the amount of \$() until provision under Sec. 3(a)(1)(i) or 3(a)(1)(ii) have been completed. Further, the performance bond may not be reduced below the amount of \$() until the total actual purchase price has been paid. The performance bond shall be forfeited to the amount of damages, as determined by the Contracting Officer, if all contract provisions are not faithfully and fully performed by Purchaser. If the amount of damages exceeds the amount of the bond, Purchaser hereby agrees to pay the excess. Upon satisfactory performance of all provisions of this contract, the bond shall be cancelled or, if cash or negotiable securities are furnished in lieu of a performance bond, such cash or negotiable securities shall be returned to Purchaser. In event of litigation, any determination by the Contracting Officer as to the amount of damages will be subject to review by a court of competent jurisdiction.

(d) If Purchaser elects to: (1) cut and remove wood products; (2) remove wood products already cut which have been secured by an increased performance bond as provided in Sec. 39(b), before payment of the second installment or subsequent installments, Purchaser shall obtain a payment bond in an amount equal to the second installment and one or more additional installments as determined by the Authorized Officer. The payment bond must be approved, in writing, by the Contracting Officer prior to cutting or removing any wood products under the bond. The amount of the bond shall be used to ensure payment for such wood products; *Provided, however*, that such bond shall be considered as payment under Sec. 7, for the purpose of passing title and risk of loss to wood products sold. Wood products cut pursuant to this subsection shall be paid for as provided in Sec. 3(e). Upon payment, the amount of the bond may be applied to other wood products to permit its cutting and/or removal in advance of payment. If a bond of a corporate surety is used, it shall provide that if Purchaser fails to make payment as required by Sec. 3(e), the surety will make such payment including interest as specified in Sec. 3(i), to Government within sixty (60) days after demand by Government.

Sec. 40. Time for Removal of Personal Property – Purchaser shall have the right within () month(s) after expiration of time for cutting and removal to remove Purchaser's equipment, improvements, or other personal property from Government lands or rights-of-way; *Provided, however*, that any improvements such as road surfacing, culverts, and bridges which have become a permanent part of a Government road, shall not be removed. The Contracting Officer may, in said official's discretion, grant an extension of time, not to exceed three (3) months for removal of

personal property. Any improvements remaining on Government lands and rights-of-way at the end of the period for removal, or any extension, shall become the property of Government. Any equipment or other personal property remaining on Government lands and rights-of-way at the end of this period may be removed at the expense of Purchaser and disposed of in accordance with applicable law.

Sec 41. Log Export and Substitution – All timber sales in the contiguous 48 states west of the 100th meridian, including timber from Federal rights-of-ways, shall be subject to the restrictions relating to the export and substitution of unprocessed timber from the United States in accordance with 16 USC §620 *et seq* as amended and 43 CFR §5400 and §5424, unless otherwise specifically excepted.

(a) All timber sold to the Purchaser under the terms of the contract, except exempted species, is restricted from export from the United States in the form of unprocessed timber and is prohibited from being used as a substitute for exported private timber. For the purpose of this contract, unprocessed timber is defined as (1) any logs except those of utility grade or below, such as sawlogs, peeler logs, and pulp logs; (2) cants or squares to be subsequently remanufactured exceeding eight and three-quarters inches in thickness; (3) split or round bolts or other roundwood not processed to standards and specifications suitable for end-product uses; or (4) western redcedar lumber which does not meet lumber of American Lumber Standards Grades of Number 3 dimension or better, or Pacific Lumber Inspection Bureau R-List Grades of Number 3 Common or better.

(b) Thus, timber manufactured into the following will be considered processed: (1) Lumber or construction timbers, except western redcedar, meeting current American Lumber Standards Grades or Pacific Lumber Inspection Bureau Export R or N list grades, sawn on four sides, not intended for remanufacture; (2) Lumber, construction timbers, or cants for remanufacture, except western redcedar, meeting current American Lumber Standards Grades or Pacific Lumber Inspection Bureau Export R or N list clear grades, sawn on four sides, not to exceed twelve inches in thickness; (3) Lumber, construction timbers, or cants for remanufacture, except western redcedar, that do not meet the grades referred to in sub-clause 2 and are sawn on four sides, with wane less than ¼ of any face, not exceeding 8¾ inches in thickness; (4) Chips, pulp, or pulp products; (5) Veneer or plywood; (6) Poles, posts, or piling cut or treated with preservatives for use as such; (7) Shakes or shingles; (8) Aspen or other poplar wood bolts, not exceeding 100 inches in length, exported for processing into pulp; (9) Pulp logs, cull logs, and incidental volumes of grade 3 and 4 sawlogs processed at domestic pulp mills, domestic chip plants, or other domestic operations for the primary purpose of conversion of the logs into chips, or to the extent that a small quantity of such logs are processed, into other products at domestic processing facilities.

(c) No person or affiliates of such person who acquires unprocessed Federal timber may export such timber or sell, trade, exchange, or otherwise convey such timber to any other person for the purpose of exporting such timber from the United States; and no person may purchase from any other person unprocessed Federal timber if such person would be prohibited from purchasing such timber directly from a department or agency of the United States because such person has, during the preceding 24-month period, exported unprocessed timber originating from private lands in the contiguous 48 states west of the 100th meridian.

(d) In the event the Purchaser elects to sell any or all of the timber sold under this contract in the form of unprocessed timber, the Purchaser shall require each party buying, exchanging, or receiving such timber to execute an "Export Determination" (Form 5450-17). The original of such determination shall be filed with the Authorized Officer.

(e) Prior to the termination of this contract, the Purchaser shall submit to the Authorized Officer a "Log Scale and Disposition of Timber Removed Report" (Form 5460-15) which shall be executed by the Purchaser. In addition, the Purchaser is required under the terms of this contract to retain for a three-year period from the date of termination of the contract the records of all sales or transfer of logs involving wood products from the sale for inspection and use of the Government.

(f) In the event of the Purchaser's noncompliance with this subsection of the contract, the Authorized Officer may take appropriate action as set forth in Sec. 10. In addition, the Purchaser may be declared ineligible to receive future awards of Government wood product sales.

Sec 42. Species Protection, Stays, and Injunctions

(a) Purchaser shall immediately discontinue specified construction or wood products harvesting operations upon written notice from the Contracting Officer that: (1) threatened or endangered plants or animals, protected under the Endangered Species Act of 1973 as amended, may be affected by the operation, and a determination is made that consultation or reinitiation of consultation is required concerning the species prior to continuing operation; (2) federal proposed, federal candidate, Bureau sensitive or State listed species protected under BLM Manual 6840 - Special Status Species Management - have been identified, and a determination is made that continued operations would affect the species or its habitat; (3) when, in order to comply with an Interior Board of Land Appeals (IBLA) or court order which enjoins operations on the sale or otherwise requires the Government to suspend operations; (4) when, in order to comply with an IBLA or court order, the Contracting Officer determines it may be necessary to modify or terminate the contract; or (5) species have been discovered which were identified for protection and/or in order to protect such species or habitat in accordance with management direction established in the Record of Decision (ROD) and Resource Management Plan (RMP), and the Contracting Officer determines that continued operations would affect the species or its habitat, the Contracting Officer determines it may be necessary to modify or terminate the contract. Those operations necessary for a safe removal of personnel and equipment from the contract area and those directed by the Contracting Officer which are required to leave the contract area in an acceptable condition will be permitted. Discontinued operations may be resumed upon receipt of written instructions and authorization by the Contracting Officer.

(b) During any period of suspension, the Purchaser may withdraw performance and payment bond coverage aside from that deemed necessary by the Authorized Officer to secure cut and/or removed wood products for which the Government has not received payment, and/or unfulfilled contract requirements associated with harvest operations that have already occurred and associated post-harvest requirements.

(c) In the event of a suspension period or a combination of suspension periods that exceed a total of 30 days, the first installment held on deposit may be temporarily reduced upon the written request of the Purchaser. For the period of suspension extending beyond 30 days, the first installment on deposit may be reduced to five percent of the first installment amount listed in Sec. 3. Any first installment amount temporarily reduced may be refunded or transferred to another BLM contract at the request of the Purchaser. However, if the Purchaser has outstanding debt owing the Government, the Contracting Officer must first apply the amount of first installment that could be refunded to the debt owed in accordance with the Debt Collection Improvement Act, as amended (31 USC 3710, *et seq.*).

(d) Upon Purchaser's receipt of a bill for collection and written notice from the Contracting Officer lifting the suspension, the Purchaser shall restore the first installment to the full amount shown in Sec. 3 within fifteen days after the bill for collection is issued, subject to Sec. 3. The Purchaser shall not resume contract operations until the first installment amount is fully restored.

(e) In the event of a suspension period or a combination of suspension periods that exceed a total of 30 days, the unamortized out-of-pocket expenses for road or other construction required pursuant to the contract shall be refunded or transferred to another BLM contract at the request of the Purchaser. Upon written notice from the Contracting Officer lifting the suspension, the Purchaser shall reimburse the Government the amounts refunded or transferred. The Purchaser may choose to pay this reimbursement at once or in installments payable at the same time as payments are due for the wood products under the contract and in amounts approximately equal to the expenses associated with the wood products for which payment is due.

(f) In the event that operating time is lost as a result of the incorporation of additional contract requirements, or delays due to Endangered Species Act consultation with the U.S. Fish and Wildlife Service or U.S. National Marine Fisheries Service, court-ordered injunctions, or an IBLA issued stay or remedy, the Purchaser agrees that an extension of time, without reappraisal, will constitute a full and complete remedy for any claim that delays due to the suspension hindered performance of the contract or resulted in damages of any kind to the Purchaser.

(g) The Contracting Officer may determine that it is necessary to modify or terminate the cutting and removal rights under the contract to comply with the Endangered Species Act, to protect species in accordance with RMP/ROD guidelines, or comply with an IBLA or court order. Following the issuance of a written notice that cutting and removal rights will be modified or terminated, the Purchaser will be permitted to remove wood products cut under the contract, if allowed by the Endangered Species Act, RMP/ROD, or IBLA or court order requirements necessitating the modification or termination.

(h) In the event cutting and removal rights are modified or terminated under this subsection, the Purchaser agrees that the liability of the United States shall be limited to the actual costs incurred by the Purchaser which have not been amortized by wood products removed from the contract area. This calculation of liability shall utilize actual Purchaser costs and Government estimates of wood products volumes. At the Authorized Officer's request, the Purchaser agrees to provide documentation of the actual costs incurred in

the performance of the contract. In addition, the Purchaser shall be released from the obligation to pay the contract price for any wood products which are not authorized to be removed from the contract area.

(i) The Purchaser specifically and expressly waives any right to claim damages, other than those described in the preceding paragraphs, based on an alleged breach of any duty to the Purchaser, whether express or implied, regarding the manner in which the Government defended the litigation which resulted in the IBLA or court order affecting the operation of the contract. This waiver also extends to any claims based on effects on the operation of the contract that arise from litigation against another agency. Furthermore, the Purchaser specifically acknowledges and agrees that an IBLA order issuing a stay or remedy adverse to the Government or a court ruling that the Government violated the Administrative Procedure Act cannot be interpreted, in itself, to mean that the Government had not acted reasonably in regard to its duties to the Purchaser under this contract.

Sec. 43. Wood Products Reserved from Cutting – The following wood products on this contract area are hereby reserved from cutting and removal under the terms of this contract and are retained as the property of Government.

Sec. 44. Special Provisions – Purchaser shall comply with the special provisions which are attached hereto and made a part hereof unless otherwise authorized, in writing, by the Contracting Officer.

IN WITNESS WHEREOF, the parties hereto have executed this contract as of the day first above written.

If Individual or Partnership, sign here:

If Corporation, sign here:

(Name of Firm)

(Name of Corporation)

(Signature)

(Signature)

(Address)

(Title)

(Signature)

UNITED STATES OF AMERICA

(Address)

By (Signature)

(Signature)

(Title)

(Address)

(Date)

Title 18 U.S.C. Section 1001, makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious, or fraudulent statements or representations as to any matter within its jurisdiction.

(If Purchaser is a corporation, the following certificate must be executed by the Secretary or Assistant Secretary of the Corporation.)
I, _____, certify that I am the _____ Secretary of the corporation named as Purchaser herein; that _____, who signed the contract was then _____ of said corporation, that said contract was duly signed for and in behalf of said corporation by the authority of its governing body, and is within the scope of its corporate powers.

Signature: _____