

SECTION 44. Special Provisions

A. General

1. All timber sold to the Purchaser under the terms of this contract 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: (a) any logs, except those of utility grade or below, such as sawlogs, peeler logs, and pulp logs; (b) cants or squares to be subsequently remanufactured exceeding 8-3/4 inches in thickness; (c) split or round bolts or other roundwood not processed to standards or specifications suitable for end-product uses; or (d) western red cedar lumber which does not meet lumber of American Standards Grades of Number 3 dimension or better, or Pacific Lumber Inspection Bureau R-List Grades of Number 3 Common or better. Thus, timber manufactured into the following will be considered processed: (a) lumber and construction timbers regardless of size, manufactured to standards and specifications suitable for end-product uses; (b) chips, pulp, and pulp products; (c) green or dry veneer and plywood; (d) poles and piling cut or treated for use as such; e) cants, squares, and lumber cut for remanufacturing of 8-3/4 inches in thickness or less; (f) shakes or shingles.

Substitution will be determined under the definition found in 43 CFR 5400.0-5(n).

The Purchaser is required to maintain and upon request to furnish the following information:

- a. Date of last export sale.
- b. Volume of timber contained in last export sale.
- c. Volume of timber exported in the past 12 months from the date of last export sale.
- d. Volume of federal timber purchased in the past 12 months from the date of last export sale.
- e. Volume of timber exported in succeeding 12 months from date of last export sale.
- f. Volume of federal timber purchased in succeeding 12 months from date of last export sale.

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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 a "Certificate as to Non-substitution and the Domestic Processing of Timber". The original of such certification shall be filed with the Contracting Officer. Additionally, when the other party is an affiliate of the Purchaser, the Purchaser will be required to update information under Item (2) of form 5450-17 (Export Determination) and file the form with the Contracting Officer.

In the event an affiliate of the Purchaser has exported private timber within 12 months prior to purchasing or otherwise acquiring federal timber sold under this contract, the Purchaser shall, upon request, obtain from the affiliate information in the form specified by the Contracting Officer and furnish the information to the Contracting Officer.

Prior to the termination of this contract, the Purchaser shall submit to the Contracting Officer form 5460-15 (Log Scale and Disposition of Timber Removed Report) 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 timber from the sale for inspection and use of the Bureau of Land Management (BLM).

In the event of the Purchaser's noncompliance with this subsection of the contract, the Contracting Officer may take appropriate action as set forth in Section 10 of this contract. In addition, the Purchaser may be declared ineligible to receive future awards of government timber for a period of one year.

2. Prior to the commencement of operations the Purchaser shall obtain from the Contracting Officer approval of a written operations and logging plan commensurate with the terms and conditions of the contract which shall include measures needed to assure protection of the environment and watershed. A prework conference between the Purchaser's authorized representative and the Contracting Officer's representative must be held at a location designated by the Contracting Officer before the logging plan will be approved.
3. Before beginning operations on the contract area for the first time or after shutdown of three or more days, the Purchaser shall notify the Contracting Officer of the date he plans to begin operations. This notice shall be given at least three days prior to beginning any operation. He shall also notify the Contracting Officer if he intends to cease operations for any period of three or more days.

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B. Utilization Standards (see also exhibit B)

1. All merchantable Sawlogs shall be processed and shipped. Merchantable logs are all logs >7.9" on large diameter end, and >4.9" on small end, with a minimum length of 8'. Purchasers may process to smaller diameters if log length min is maintained. Any shorter log lengths and/or firewood will require a modification and separate sale mechanism between BLM and purchaser but is easily done.

This is a cut to prescription sale and the Purchaser is expected to meet the following prescription:

2. Units and prescriptions by units (see MAP Exhibit A for spatial)

- **Unit 1 (96 acres)- Overstory Removal>9" DBH**

Reduce average basal area of unit by harvesting all merchantable trees >9" DBH

- **Unit 2 (114 acres)- Random selection thinning down to an average of 30 BA**

Reduce average basal area of unit to an average of 30 basal area per acre. Trees selected for retention and to be counted as meeting 30 BA will be >5" dbh, should be healthy with no signs of insect infestation, no damage or chlorotic, of good form and full crowns greater than 35% crown ratio: green crown height/total tree height= crown ratio%. Retention trees preferred size is 8" to 20" dbh and purchaser is expected to variably select within these parameters for retention. Two trees per acre of poor form and that lack merchantability can be counted towards average 30 BA for wildlife trees.

- **Unit 3 (186 acres) Random selection thinning down to an average of 30 BA.**

Reduce average basal area of unit to an average of 30 basal area per acre. Trees selected for retention and to be counted as meeting 30 BA will be >5" dbh, should be healthy with no signs of insect infestation, no damage or chlorotic, of good form and full crowns greater than 35% crown ratio: green crown height/total tree height= crown ratio%. Retention trees preferred size is 8" to 20" dbh and purchaser is expected to variably select within these parameters for retention. Two trees per acre of poor form and that lack merchantability can be counted towards average 30 BA for wildlife trees.

- **Unit 4 (187 acres)- Overstory Removal>9" DBH**

Reduce average basal area of unit by harvesting all merchantable trees >9" DBH

- **Unit 5 (59 acres) Random selection thinning down to an average of 30 BA.**

Reduce average basal area of unit to an average of 30 basal area per acre.

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Trees selected for retention and to be counted as meeting 30 BA will be >5" dbh, should be healthy with no signs of insect infestation, no damage or chlorotic, of good form and full crowns greater than 35% crown ratio: green crown height/total tree height= crown ratio%. Retention trees preferred size is 8" to 20" dbh and purchaser is expected to variably select within these parameters for retention. Two trees per acre of poor form and that lack merchantability can be counted towards average 30 BA for wildlife trees.

Contract Administrator or Authorized Officer will conduct audits of meeting prescription throughout timber sale contract, poor performance or not meeting prescription could result in contract cancellation and/or retention of performance bond, or Purchaser having to paint leave trees to prescription at purchasers cost and labor and to no fault of the government.

C. Road work/Maintenance

On BLM surface all two-track roads, and improved roads must be maintained and be in same or better condition upon completion of project. Purchasers should include any associated road maintenance needs such as spot rock, shaping, temp spurs, or temporary road work and the closing of temp spurs and roads needed for operations based on site visit and intended harvest operations and engineering which facilitates road needs for efficient logging operations and trucking into bid.

On private surface inputs are dependent on right to access agreement with private landowner. With the intended overall mission of maintaining all non-BLM surface roads in same or better condition upon completion

D. Felling/Processing

1. All trees designated for cutting shall be cut so that the resulting stump height shall not exceed 12" measured on the uphill side for sawlog material, 6" for trees less than 8 inches DBH.
2. Whole tree yarding is permitted as well as processing in place, however slash cleanup must be accomplished to spec's given for chosen processing method.
3. All non-merchantable stems damaged from timber harvest operations within the harvest units shall be felled/slashed concurrently with all other trees designated for cutting. These trees will be treated as slash as defined in Section 44 (F) Slash Disposal.

E. Yarding

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1. Whole tree yarding and/or processing in place is permitted.
2. The cutting and removal of timber shall be completed when ground conditions are favorable to reducing compaction and erosion, i.e. avoid during heavy rainfall, thaw and/or super saturated soils, preference for yarding and hauling when dry and/or frozen conditions exist, wet weather shutdown guidelines for hauling and/or yarding as determined by the Authorized Officer.
3. Yarding shall be done with tracked equipment, rubber-tired skidders, or other logging system Approved by the Authorized Officer and in accordance with the following specifications:
 - a. Skid trail locations will avoid soils or conditions that are highly prone to compaction, displacement, or erosion. Favor soils with higher rock content, avoid skidding on saturated soils, favor skidding on frozen or snowed over soils or dry conditions.
 - b. Minimum spacing of skid trails is 100 feet, unless a reduced spacing is approved by contract administrator.
 - c. Priority shall be given to existing skid trails.
4. Purchaser shall adhere to all Wyoming state forestry BMP's and/or BLM contract administrator's corrections to meet state and federal BMP's.

F. Slash Disposal

1. Slash shall be disposed of in accordance with the following provisions. The term slash shall be defined as residual woody debris not reserved under Section 43, which remain after yarding, including treetops, limbs, unmerchantable portions of the bole, uprooted stumps, and trees damaged by logging.
 - a. If whole tree yarding; pile all slash generated from processing and slash located within 50 feet on each side of the landing. Slash shall be piled by a grapple loader to a minimum of 10 feet in height and shall be tight and free of dirt and located as far as reasonable from leave trees surrounding landing.
 - b. If processing in place within unit; slash is to be machine piled within unit 50' outside of the dripline of residuals trees. Machine piles should be concentrated to same specifications as slash piles made on log decks in above mentioned for whole tree yarding. Openings within unit should be utilized for slash pile construction or trees harvested to make small woods landing that accomplishes keeping slash pile 50 feet from leave trees. Landing areas will not be counted against residual Basal area.

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2. The government shall be responsible for the burning of slash.

G. Road Use

1. The BLM has verbal agreement for access through private lands for this timber sale and it is upon the purchaser to also secure permission to cross from Government RD across Pieloch ranch and maintain roads in current or better condition and/or any conditions of crossing determined between Purchaser and Pieloch ranch. Failure to secure permission to haul or losing ability to haul across private due to actions is no fault of the government and not an excuse in failure to fulfil this contract. The Purchaser is responsible for any delays in contract performance due to access into the contract area. The BLM assumes NO responsibility or authority for access across private lands and is not responsible to reimburse the Purchaser for any costs or extra work required by the private landowner for access privileges.

H. Fire Protection

1. **The following equipment will be provided and maintained by the Purchaser on the contract area year round:**
 - a. Firefighting tools maintained in serviceable condition shall be kept at each active landing and at such other places as the Contracting Officer shall designate whenever people are working on the contract areas. All firefighting tools shall be kept in a closed box marked "FOR FIRE USE ONLY". There shall not be less than four tools in each box or less than one tool for each person working on the contract area. Three-fourths of all fire tools shall be shovels or other scraping tools.
 - b. Each unit of mobile or stationary equipment, including trucks of 23,000 GVW or greater, engaged in commercial activities operating on the contract area or over roads leading to the contract area must be equipped with one operable fire extinguisher or a dry chemical type of not less than 2-1/2 pounds (1.125 kilogram) capacity with 4 BC or higher rating.
 - c. Power saw operators shall maintain in their immediate possession a fully charged operable fire extinguisher and a serviceable round pointed #0 shovel or larger. The extinguisher shall be a liquid chemical type of at least 8 ounces (224 grams) capacity or a dry chemical type of at least 1 pound (0.454 kilogram capacity). Fueling of saws shall be done in an area which has been cleared of all flammable organic material. Saws shall be moved at least

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10 feet from the place of fueling before engine is started.

- d. Power saws must be equipped with a muffler and screen type spark arrestor in accordance with the standards set forth in the U.S. Forest Service Spark Arrestor Guide. Power saws used in commercial activities and purchased after December 31, 1980, must also be equipped with a muffler system conforming to the Society of Automotive Engineers Standard J-335b, as set forth in the U.S. Forest Service Spark Arrestor Guide.
- e. Exhaust driven turbochargers qualify as efficient spark arresters provided all exhaust gases pass through the turbine impeller. The turbine impeller must always be turning and there may be no exhaust bypass. A straight-mechanical-driven supercharger does not qualify. (1) All internal combustion engines operated on forested lands must be equipped with an approved and effective spark arresting device. (2) Motorbikes, trail cycles, scooters, and other mobile vehicles of this type and all stationary internal combustion engine-driven equipment used on the contract area or over roads leading to the contract area, must be equipped with spark arresting devices listed as approved in the U.S. Forest Service Spark Arrestor Guide. Spark arresting devices must be plainly marked with the manufacturer's name and model number and must be properly installed and maintained in accordance with the guide. Heavy trucks may have a vertical stack exhaust system and muffler, provided the exhaust stack extends above the cab of the vehicle.

2. **Fire watch**

- a. From June 1st to October 15th a one-hour fire watch is required to be on duty for 1 hour after the last shutdown of power-driven equipment for the day, or during times when NFDR as displayed by Casper Interagency dispatch by zone in which work is conducted is moderate or above.
 - b. Fire watch must be physically capable and experienced in operating any firefighting tools, or equipment on-site.
 - c. Furnished with adequate transportation and communications to report a fire.
 - d. Must be able to visually inspect area work was done during the day.
- 3. The Purchaser shall attempt, to the best of its ability and training, to extinguish all fires started by Purchaser, its agents, or employees.
 - 4. The Purchaser shall promptly report any fires to Casper Interagency Dispatch 1-800-295-9952 or call 911
 - 5. The Purchaser is responsible for complying with all State, Local, county, and/or Federal fire restrictions, or emergency closures given by authorized officer in the interest of public safety.
 - 6. The Authorized Officer and his/her contract administrators or designated BLM employee shall regularly inspect all precautionary fire equipment and required fire

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protection practices contained within this fire protection section. Failure of Purchaser to follow guidelines and procedures contained within will result in an immediate stop work order until Fire protection guidelines and/or required equipment/actions are established onsite and in good working order. The government shall not be held responsible for any delays in contract performance period resulting from stop work orders from non-compliance with fire protection clauses.

****Fire Protection For heavy equipment and/or logging forest activities year according to Great plains dispatch fire danger daily rating at**

https://gacc.nifc.gov/rmcc/dispatch_centers/r2gpc/fuels.htm

Select current fire danger and reference Northern black hills danger rating for this project area.**

Low (L) - Green

Year-round fire precaution equipment required.

Moderate (M) - Blue

Fire watch required as well as year-round fire precaution equipment mentioned above.

High (H) - Yellow

Fire watch required as well as year-round fire precaution equipment mentioned above.

Very High (VH) - Orange

Fire watch required as well as year-round fire precaution equipment mentioned above and- In addition, a pump truck/trailer must be on site and within 5 minutes roundtrip of active felling and/or skidding operations, or road building activities. Operator is expected to move pump/truck trailer within 5 min personnel roundtrip of active operations daily.
Pump truck/trailer min. requirements.

1.500 gallon minimum Capacity

2. Minimum of 500 feet of 1" and/or 1 ½" inch cotton or synthetic jacket hose. (Required in definition of pump truck).
3. One variable stream nozzle with shut off.
4. Twenty feet of suction hose and a strainer suitable for pump to use to draft.
5. Fuel tank and hose line, if required for pump, with enough fuel to operate the pump for a period of four hours.
6. One grease gun, filled with grease, if the pump requires periodic lubrication.
7. Six extra hose washers for each hose/nozzle size.

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8. One or more spanner wrenches of sizes suitable to fit the hose.
9. One reducer, matching the thread type of the hose type referenced in #1, if both hose sizes are used
10. If the pump is operated by an engine other than the truck engine, it must be equipped so that it can be started with a starter rope and the following additional accessories are required:
 - a. Two quarts of crankcase oil, if required for pump engine.
 - b. Two starter ropes if pump is pull start
 - c. Sufficient extra spark plugs to replace all spark plugs in the pump engine.
 - d. One spark plug wrench unless crescent is suitable
 - e. One slip joint pliers, 6 inch
 - f. One screwdriver, 4 inch
 - g. One crescent wrench, 10 inch.

In combination with above Tractor, skidder, feller-buncher, forwarder or shovel logging operations where tractors, skidders, or other equipment with a blade capable of constructing Fireline are immediately available to quickly reach and effectively attack a fire start.

Extreme (E) - Red

All operations will cease.

Red flag

Purchaser must monitor National weather service fire weather forecasts. In the event a red flag is issued for the zone in which operations are conducted the following restrictions are added to the above requirements when in combination of Red flag-Danger rating is **Very High or Extreme**. During a red flag when FDR is at Very High or Extreme- no power saws shall be operated such as Feller bunchers, Processors, chainsaws, masticators, mowers or grinders. Logs maybe skidded and loaded on trucks and shipped as long as fire precaution equipment required by above danger ratings is met.

I. Miscellaneous

1. 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 Purchasers control. Operating Season shall be defined, for this purpose, as the time of year in which operations of the type required are normally conducted and not specifically restricted under the contract. The first installment may be reduced to five (5) percent of the installment amount listed in Section 3(b), 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

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- notification to return the first installment to the full value specified in Section 3(b). Failure to return the first installment to the full value within the allotted time will be considered a material breach of contract. No timber shall be cut or removed from the contract area until the first installment is restored to the full amount.
2. Notwithstanding the provisions of Section 3(b), adjustments in the due dates for periodic 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 shall provide the Purchaser with an equal amount of operating time as would have been available without the delay. The Purchaser shall request such adjustment in writing before the due date for a periodic payment contained in Section 3(b).
 3. If in connection with operations under this contract the Purchaser, his contractors, subcontractors, or the employees of any of them, discovers, encounters, or becomes aware of any objects or sites of cultural value on the contract area such as historical or prehistorical ruins, graves or grave markers, fossils, or artifacts, the Purchaser shall immediately suspend all operations in the vicinity of the cultural value and shall notify the Contracting Officer of the findings. Operations may resume at the discovery site upon receipt of written instructions and authorization by the Contracting Officer.
 4. The Purchaser shall immediately discontinue specified construction or timber harvesting operations upon written notice from the Contracting Officer that:
 - a. 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 reinitiating of consultation is required concerning the species prior to continuing operation, or;
 - b. When, in order to comply with the Endangered Species Act, the Contracting Officer determines it may be necessary to modify or terminate the contract, or;
 - c. Federal candidate, Bureau sensitive or State listed species protected under BLM Manual 6840 - Special Status Species Management - have been discovered, and a determination is made that continued operations would affect the species or its habitat, or;
 - d. Other active raptor or owl nests have been discovered, and a determination is made that continued operations would adversely affect the present use of the discovered nesting area by raptor or owl. Those operations necessary for safe removal of personnel and equipment from the contract area and those directed by the Contracting Officer which are required in order to leave the contract area in an acceptable condition will be permitted. Discontinued operations may be

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resumed upon receipt of written instructions and authorization by the Contracting Officer.

5. The Purchaser shall promptly notify the Authorized Officer of the occurrence of damage to utilities and improvements.
6. All heavy equipment, with the exception of log trucks, shall be power washed to reduce the potential for transporting noxious/invasive weeds. Purchaser shall notify the Authorized Officer three (3) days prior to inspection, which will then inspect said equipment prior to entering sale area. If equipment is being used on adjacent private ground, it can be inspected by the BLM before going to the private sale and can be moved onto BLM ground without being removed and re power washed.
7. All trash brought onto the contract area under the terms of this contract shall be removed from the contract area within 30 days of completion of contract requirements.
8. In addition to the requirements set forth in Section 25 of this contract, the Purchaser shall furnish and apply grass seed to all skid trails/landing areas where soil disturbance occurs. Grass seed shall be applied immediately upon completion and approval of post logging clean up/road work. The Purchaser shall apply the seed uniformly on the designated areas at a rate of 20 pounds per acre. Seed which has become wet or moldy or otherwise damaged will not be accepted.

<u>Species</u>	<u>Pounds per Acre</u>
Annual Ryegrass (<i>Lolium multiflorum</i>)	7.0
Slender Wheatgrass (<i>Elymus trachycalulus</i>)	5.0
Green Needlegrass (<i>Nassella viridula</i>)	3.0
American Vetch (<i>Vicia Americana</i>), or	1.0
Purple Prairie clover (<i>Dalea purpurea</i>)	
Warm Season combination (any of the following)	4.0
Blue grama (<i>Bouteloua gracilis</i>)	
Switchgrass (<i>Panicum virgatum</i>)	
Indiangrass (<i>Sorghastrum nutans</i>)	
Sideoats grama (<i>Bouteloua curtipendula</i>)	
Total	20.0 lbs. /acre

All seed used shall meet all requirements of the Federal Seed Act (7 U.S.C., Section 551-1610) and the seed laws and noxious weed laws of Wyoming. Evidence of the seed certification shall be furnished at the request of the Authorized Officer.

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J. Safety

Purchaser's operations shall facilitate BLM's safe and practical inspection of Purchaser's operations and BLM'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.

In the event that the Authorized Officer identifies a conflict between the requirements of this contract or agreed upon methods of proceeding hereunder and State or Federal safety requirements, the contract may be modified. If the cost of such contract modification is of a substantial nature (\$2,000.00 or more), the Purchaser may request, in writing, an adjustment in the total contract purchase price specified in Section 2 of the timber sale contract, as amended, to compensate for the changed conditions.

Unless otherwise specified in writing, when operations are in progress adjacent to or on roads and/or 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 OSHA 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 OSHA and Transportation standards for logging roads or the "Manual on Uniform Traffic Control Devices for Streets and Highways" (MUTCD) 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.

K. Weight Scaling Requirements

1. The Purchaser, unless otherwise agreed to in writing, shall:
 - a. Utilize scales that meet the standard for commercial vehicles defined in the National Bureau of Standards, Handbook 44, current edition.
 - b. Loads will be weighed individually.
 - c. Weigh all loads on scales currently certified by the State in which weighed. Scales must have a current inspection tag or seal posted which shows the date of

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the most current test by the State weights and measurements agency. No load shall be presented for weighing that weighs more than the certified capacity of the scales in use. Each load shall be weighed as a single unit with the gross and tare weights stamped and recorded by an automatic recording device on the scales. In addition to the gross weight and tare weight of the load, the contractor shall record the following on each weight slip:

- i. Contract Name
 - ii. Load removal receipt number
 - iii. Date and time weighed
- d. Maintain load accountability from the Contract Area to point of weighing. In doing so, the load of products shall remain intact while in transit. Products accidentally lost in transit shall be promptly identified by load removal receipt number and contract designation. Purchaser shall, within 24 hours, load out such lost products and present them for weighing or make other arrangements acceptable to the BLM. Load tickets or product lost by the purchaser will be charged to the purchaser at three (3) times the stumpage rate X the average tonnage of the weighed loads.
- e. Staple or otherwise attach the Bunk Ticket from the Truck Load Ticket Book to the front end, driver's side bunk log and clearly and legibly paint BLM on the back end of every load transported from the contract area.
- f. Unless otherwise approved in writing by the Contracting Officer, the Purchaser shall provide the Contracting Officer's Representative bimonthly [on the 15th and 30th (or 31st) of each month] scaling reports indicating the merchantable volume removed from the area. This will include the Scale House Tickets from the Truck Load Ticket Book as well as the automatic recording device printouts from the scales.
- g. All loads shall be hauled and weighed within 30 days of harvest. Loads weighed more than 30 days after harvest will be scaled to determine actual volume and establish new weight conversions for those loads only.
- h. When payments are made under Section 3, The Authorized Officer shall determine amounts due on the basis of Government's records of volumes of timber skidded or yarded monthly to loading points or removed monthly from the contract area.
- i. If the Purchaser elects to remove any logs which do not meet the minimum specifications in Exhibit B and which have not been reserved to Government in

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Section 43 of this contract, such logs shall be included in the weight sale and be paid for in accordance with Sections 2 and 3 of this contract. ***exception unless both parties negotiate and agree to modification to include a product other than log sort for maximizing utilization.***

L. Operation Timing Restriction

Logging operations are restricted to fall/winter/spring and will occur between the dates of October 15th and May 31st due to USFWS Northern Long Eared Bat restrictions.

The Purchaser shall immediately discontinue specified construction or timber harvesting operations upon written notice from the Authorized 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 reinitiating of consultation is required concerning the species prior to continuing operation, or;
- (2) when, in order to comply with the Endangered Species Act, or to prevent incidental take of a threatened or endangered species the Authorized Officer determines it may be necessary to modify or terminate the contract, or;
- (3) 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, or;
- (4) when, in order to comply with a court order, which enjoins operations on the sale or otherwise requires the Bureau of Land Management to suspend operations, or;
- (5) when, in order to comply with a court order, the Authorized Officer determines it may be necessary to modify or terminate the contract, or;
- (6) species have been discovered which were identified for protection in accordance with management direction established in the ROD and RMP, and the Authorized Officer determines that continued operations would affect the species or its habitat, or;
- (7) When, in order to protect species which were identified for protection in accordance with management direction established in the ROD and RMP, the Authorized 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 Authorized Officer, which are required in order to

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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 Authorized Officer.

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 timber for which the Bureau of Land Management has not received payment, and/or unfulfilled contract requirements associated with harvest operations that have already occurred and associated post-harvest requirements.

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 (5) percent of the First Installment amount listed in Section 3.b. of the contract. 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 United States, the Authorized 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.). Upon Purchaser's receipt of a bill for collection and written notice from the Authorized Officer lifting the suspension, the Purchaser shall restore the First Installment to the full amount shown in Section 3.b. of the contract within 15 days after the bill for collection is issued, subject to Section 3.j. of the contract. The Purchaser shall not resume contract operations until the First Installment amount is fully restored.

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 Exhibit C of the contract shall be refunded or transferred to another BLM contract at the request of the Purchaser. Upon written notice from the Authorized 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 timber under the contract and in amounts approximately equal to the expenses associated with the timber for which payment is due.

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, or court-ordered injunctions, 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.

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The Authorized Officer may determine that it is necessary to modify the contract or terminate the cutting and removal rights under the contract in order to comply with the Endangered Species Act, prevent incidental take of a protect species that have been discovered, or comply with a court order. Following the issuance of a written notice that cutting and removal rights will be terminated, the Purchaser will be permitted to remove timber cut under the contract, if allowed by the Endangered Species Act, if able to proceed without causing incidental take. or court order requirements necessitating the modification or termination.

In the event the contract is modified or cutting and removal rights are 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 timber removed from the contract area. This calculation of liability shall utilize actual Purchaser costs and Government estimates of timber 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 timber which is not authorized to be removed from the contract area.

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, in regard to the manner in which the Government defended the litigation which resulted in the 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 a court ruling that the Government violated the Administrative Procedures 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.

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