

**UNITED STATES DEPARTMENT OF AGRICULTURE  
Forest Service**

**INTEGRATED RESOURCE TIMBER CONTRACT**

(Sale of Property Contract, 36 CFR 223.301)

DIVISION B

October 2019

(Date of Issue)

**PROVISIONS FOR MEASUREMENT OF PRODUCTS AFTER HARVEST**

This contract is organized into Parts, Sections, Subsections, and Items. These are numbered in accordance with the following scheme: Part B1.0, Section B1.1, Subsection B1.11, and Item B1.111. References to a Part include all Sections, Subsections, and Items within that Part; references to a Section include all Subsections and Items within that Section; and references to a Subsection include all Items within that Subsection. Cross-references within this contract cite the reference number of the applicable Part, Section, Subsection, and Item. Descriptive headings used are not to be considered in determining the rights and obligations of the parties.

The Standard Provisions in this Division are subject to Specific Conditions Division A. Wherever appropriate, Specific Conditions established in Division A are cited by reference number. The listing of Sections, Subsections, or Items of this Division in A21 has the effect of striking or deleting them from Division B. A22 lists Special Provisions that comprise Division C. Where appropriate, references to Special Provisions are made by citing the applicable reference numbers.

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## **B1.0—CONTRACT AREA**

**B1.1 Contract Area Map.** The boundaries of “Contract Area” and any subdivision thereof, are as shown on the attached “Contract Area Map” that is made a part hereof, and were, before contract advertisement, designated on the ground by Forest Service to meet the anticipated needs of the parties. The location of Contract Area and its approximate acreage are stated in A1. Subdivisions may be revised and additional ones may be established only by written agreement. Subdivisions or cutting units and stewardship project areas may be eliminated from Contract Area under conditions described in B6.36. Catastrophically Damaged areas may be removed from Contract Area under B8.32.

Where applicable, the following are also identified on Contract Area Map:

- (a) Identified claims limiting Contractor’s rights under B1.2;
- (b) Subdivisions defined in B2.3 where timber is to be Marked after date of contract advertisement;
- (c) Boundaries of Clearcutting Units, Overstory Removal Units, and Understory Removal Units under B2.3;
- (d) Diameter limits for Overstory Removal Units and Understory Removal Units under B2.33 and B2.34;
- (e) Areas where leave trees are Marked to be left uncut under B2.35;
- (f) Specified Roads listed in A7;
- (g) Sources of base course, surface rock, and rock riprap listed in the Schedule of Items;
- (h) Roads where log hauling or use is prohibited or restricted under B5.12;
- (i) Roads and trails to be kept open under B6.22;
- (j) Improvements to be protected under B6.22;
- (k) Locations of known wildlife or plant habitat and cave resources to be protected under B6.24;
- (l) Locations of areas known to be infested with specific invasive species of concern under B6.35;
- (m) Maximum stump heights when more than one height is listed by areas in A6 under B6.412;
- (n) Skidding or yarding methods specified under B6.42;
- (o) Streamcourses to be protected under B6.5;
- (p) Locations of meadows requiring protection under B6.61;
- (q) Locations of wetlands requiring protection under B6.62;
- (r) Locations of temporary roads to be kept open under B6.631; and
- (s) Other features required by Division B or C.

**B1.2 Claims.** Valid claims are excluded from Contract Area, except those on which timber cutting is authorized in writing by the claimant and except mining claims on which cutting is authorized by the Act of July 23, 1955 (30 USC 614). Claims that limit Contractor’s

rights to operate under this contract and that Forest Service has been able to identify are shown on Contract Area Map. Contractor is not obligated to operate contrary to existing claim limitations. Forest Service shall designate boundaries of claims on the ground to the extent necessary to identify Included Timber.

## **B2.0—TIMBER SPECIFICATIONS**

**B2.1 Included Timber.** “Included Timber” consists of:

**B2.11 Standard Timber.** Live and dead trees and portions thereof that meet Utilization Standards under B2.2 and are designated for cutting under B2.3.

**B2.12 Substandard Timber.** Live and dead trees that:

- (a) Do not meet Utilization Standards and
- (b) Are located in Clearcutting Units or construction clearings or are otherwise designated for cutting.

### **B2.13 Damaged Timber.**

**B2.131 Damaged by Contractor.** Undesignated live trees meeting Utilization Standards:

- (a) Within 200 feet slope distance from centerline of roads constructed hereunder that are damaged by Contractor’s construction to the extent that considerable deterioration or mortality is imminent and are designated by Forest Service for felling before the nearest road segment is Substantially Completed or
- (b) That are damaged by Contractor in logging or stewardship project operations and are subsequently Marked before Contractor has completed work in the immediate area.

By agreement, such trees may be left without charge if their removal would cause undue damage or be grossly uneconomic.

**B2.132 Negligent or Willful Damage.** Undesignated timber meeting Utilization Standards and unnecessarily damaged or negligently or willfully cut by Contractor, if included by Contracting Officer.

**B2.133 Damage by Catastrophe.** As provided under B8.32, undesignated live and dead timber within Contract Area, meeting Utilization Standards, and affected by Catastrophic Damage. “Catastrophic Damage” as used hereunder is major change or damage to Included Timber on Contract Area, to Contract Area, to access to Contract Area, or a combination thereof:

(a) Caused by forces, or a combination of forces, beyond control of Contractor, occurring within a 12-month period, including, but not limited to, wind, flood, earthquake, landslide, fire, forest pest epidemic, or other major natural phenomenon and

(b) Affecting the value of any trees or products meeting Utilization Standards, within Contract Area and estimated to total either:

- (i) More than half of the estimated timber volume stated in A2 or

(ii) More than two hundred thousand cubic feet (2,000 CCF) or equivalent.

Catastrophic Damage does not include changes caused by forest pest epidemics or foreseeable deterioration if Included Timber was sold for salvage or pest control.

**B2.134 Minor Damage by Natural Causes.** Undesignated trees within Contract Area and meeting Utilization Standards, in amounts less than specified in B2.133, that become insect infested, wind-thrown, suffer serious damage, or die, as designated by agreement.

**B2.14 Unintentionally Cut Timber.** Trees, within or immediately adjacent to Contract Area or to road construction or other authorized clearing outside Contract Area, not designated for cutting under B2.3 but that are cut through mistake by Contractor, when included by Contracting Officer.

**B2.15 Construction Timber.** Trees to be used for construction under B5.1.

**B2.16 Other Material.** Species or products not listed in A2, upon written approval of Contracting Officer under B3.41.

**B2.2 Utilization and Removal of Included Timber.** "Utilization Standards" for trees and minimum pieces are stated in A2. To meet minimum tree specifications, trees must equal or exceed tree diameters listed in A2 and contain at least one minimum piece. Except for timber required or authorized to be left, Contractor shall fell and buck such trees and shall remove from Contract Area and present for Scaling all pieces that:

(a) Meet minimum piece standards in A2 or

(b) Do not meet such standards, but would have qualified as part of minimum pieces if bucking lengths were varied to include such material.

**B2.3 Timber Designations.** Timber designated for cutting shall be confined to Contract Area, except as provided in B2.131, B2.14, B2.15, B2.32, and B5.1. Contract Area Map indicates subdivisions, if any, where Marking under B2.35 is to be done after contract advertisement, except for construction clearing under B2.32, minor changes under B2.37, and damaged timber.

The boundaries of Clearcutting Units, Overstory Removal Units and Understory Removal Units were plainly Marked on ground before contract advertisement and are shown on Contract Area Map. Boundary trees shall not be cut. The number of units and approximate acreage of timber designations are stated in A3.

**B2.31 Clearcutting Units.** All trees that meet Utilization Standards within "Clearcutting Units" are designated for cutting.

**B2.32 Construction Clearing.** All timber is designated for cutting that is within the clearing limits of roads constructed hereunder or is in other authorized clearings. All dead or unstable live trees are designated for cutting that are sufficiently tall to reach Contractor's

landings, work areas, or the roadbed of Specified and Temporary Roads when Marked in advance of work in the immediate area. Pieces meeting Utilization Standards from such dead or unstable live trees shall be removed, unless there is agreement that to do so could damage the road. Such designation may be revised as part of agreed changes in road location under B5.2.

**B2.33 Overstory Removal Units.** All trees within "Overstory Removal Units" are designated for cutting when they meet Utilization Standards and equal or exceed the diameter limits shown on Contract Area Map.

**B2.34 Understory Removal Units.** All trees within "Understory Removal Units" are designated for cutting when they meet Utilization Standards and are smaller than the diameter limits shown on Contract Area Map.

**B2.35 Individual Trees.** All trees to be cut, other than in the units described in B2.31, B2.32, B2.33, and B2.34, are Marked or designated by description. Trees are "Marked" when individually designated by Forest Service with paint marks above and below stump height.

Contract Area Map indicates areas plainly identified on the ground where leave trees are Marked to be left uncut.

**B2.36 Incompletely Marked Timber.** Live trees within incompletely Marked subdivisions shown on Contract Area Map at time of contract advertisement shall be designated in accordance with C2.36. A representative sample of the timber to be designated has been Marked prior to contract advertisement in accordance with such rules. The approximate locations of the representative sample areas are shown on Contract Area Map.

**B2.37 Minor Changes.** Within Contract Area, minor adjustments may be made in boundaries of cutting units or in the timber individually Marked for cutting when acceptable to Contractor and Forest Service.

**B2.4 Volume Estimate.** The estimated volumes of timber by species designated for cutting under B2.3 and expected to be cut under Utilization Standards are listed in A2. If Contract Area Map indicates that there are incompletely Marked subdivisions, the objective of Forest Service shall be to designate for cutting in such subdivisions sufficient timber so that Contract Area shall yield the approximate estimated volume by species or species groups stated in A2. However, the estimated volumes stated in A2 are not to be construed as guarantees or limitations of the timber volumes to be designated for cutting under the terms of this contract.

Volume adjustments shall not be made under this Section after there is modification for Catastrophic Damage under B8.32.

**B2.41 Adjustment for Volume Deficit.** If Contract Area Map indicates that there are incompletely

Marked subdivisions and if Contracting Officer determines that a deficit in the estimated volume will cause the volume cut to be less than 90 percent of the total estimate shown in A2, Forest Service, upon request by Contractor, shall designate additional timber within Contract Area. Such additional timber shall be limited to that estimated to be necessary to reach approximately the estimated volumes by species listed in A2. Any such additional designation shall be consistent with land and resource management plans.

**B2.42 Adjustment for Excess Volume.** If Contract Area Map indicates that there are incompletely Marked subdivisions and if Contracting Officer determines that the volume cut will be more than 120 percent of the total estimated volume listed in A2, Forest Service, upon request by Contractor, shall make an adjustment in Marking or cutting unit boundaries with the objective of designating for cutting the approximate estimated volumes by species listed in A2. Such adjustments in volumes shall be confined to (a) Marking adjustments on Contract Area and (b) reduction in area to be cut over. Such adjustments or reductions shall not conflict with the silvicultural treatment being applied on Contract Area and shall not materially change the average value by species of the timber designated for cutting. Such adjustments may be made notwithstanding the provisions of B1.1 and B2.3.

If the timber designated for cutting is not reduced by such adjustments to less than 120 percent of the total estimated quantity listed in A2, Contractor, after cutting 120 percent of the total estimated volume listed in A2, may elect to have Contract Area reduced to eliminate the remaining Included Timber. However, where felling operations have been started, units of minimum practical size shall be retained in Contract Area.

### **B3.0—RATES OF PAYMENT**

**B3.1 Current Contract Rates.** Included Timber that is removed by Contractor and presented for Scaling in the product form stated in A2 shall be paid for at Current Contract Rates determined under this Section. "Current Contract Rates" shall be (a) Flat Rates and (b) Tentative Rates adjusted by the escalation procedures in B3.2. Flat Rates and Tentative Rates shall be those listed in A4, unless superseded by rates redetermined under B3.3 or established for Contract Term Extension. In addition, Required Deposits shall be made as listed in A4, C5.32#, and C6.816#, or established under B3.3 or B8.23.

In the event Termination Date is adjusted under B8.21 or B8.212, Current Contract Rates shall be continued in the same manner as immediately prior to the adjustment period.

Notwithstanding B8.23, Current Contract Rates for timber cut and removed from Contract Area that remains unscaled after Termination Date, as adjusted or

extended, shall be Current Contract Rates in effect on Termination Date.

"Current Contract Value" is the sum of the products of Current Contract Rates and estimated remaining unscaled volumes by species of Included Timber meeting Utilization Standards, less the bid rate for mandatory stewardship projects that have not been completed.

**B3.2 Escalation Procedure.** Tentative Rates for those species and products listed in A4a are subject to quarterly escalation in accordance with the following procedures: The calendar quarter index average for each price index described in A5 is the arithmetic average of the three such monthly price indices preceding January 1, April 1, July 1, and October 1. The difference between calendar quarter index average and Base Index listed in A4a shall be the basis for quarterly escalation. To arrive at Current Contract Rates for timber Scaled during the preceding calendar quarter, Tentative Rates for each species shall be reduced or increased by such difference, except when the calendar quarter index average is:

(a) Less than the Base Index, the reduction shall not result in a rate below Base Rate or

(b) Greater than the Base Index, the increase shall not exceed the difference between Tentative Rate and Base Rate.

In the event of Contract Term Extension, the escalation procedure will be used during the extension period, except that adjusted payment rates for any calendar quarter cannot be less than Tentative Rates, for each species and product group, established under B8.23 for the extension period.

**B3.21 Unavailable Index.** If an index described in A5 is no longer available, Contracting Officer may replace that index. If Contracting Officer determines that a replacement index does not exist, Current Contract Rates for the remainder of the contract shall be a Flat Rate. Flat Rates will be Tentative Rates adjusted by the arithmetic average of the index described in A5 for a 12-month period prior to its becoming unavailable using the quarterly adjustment procedure outlined in B3.2. Contracting Officer will determine availability and a beginning point to average the index for Flat Rates. Such Flat Rates are subject to rate redetermination as provided elsewhere under this contract.

**B3.3 Rate Redetermination.** Rates may be redetermined as set forth in this Section. Bid Premium Rates shall be added to all redetermined rates, except as provided in B3.31, B3.32, and B3.33.

Rate redeterminations shall be made in accordance with the standard Forest Service methods in effect 45 days prior to rate redetermination. Such methods shall take into consideration factors that may affect timber value at rate redetermination date.

Redetermined rates shall not be less than Base Rates listed in A4, except for reduction under B3.31,

B3.32, or B3.33. Required Deposits shall be redetermined. Redetermined Specified Road construction cost is subject to the limitations of B5.26.

**B3.31 Rate Redetermination for Environmental Modification.** In the event of a contract modification under B8.33 or partial termination under B8.34, Contracting Officer shall make an appraisal to determine for each species the difference between the appraised unit value of Included Timber remaining immediately prior to the revision and the appraised unit value of Included Timber to be cut under the modification. The appraisal shall consider the estimated cost of any construction work listed in the Schedule of Items that was performed and abandoned.

Tentative Rates and Flat Rates in effect at the time of the revision will be adjusted by said differences to become Current Contract Rates. Accordingly, Base Rates shall be adjusted to correspond to the redetermined rates if redetermined rates are less than the original Base Rates, subject to a new Base Rate limitation of the cost of essential reforestation or 25 cents per hundred cubic feet or equivalent, whichever is larger. However, existing Base Indices shall not be changed under this Subsection.

Redetermined rates, or differences for rates subject to B3.2, and Required Deposits shall be considered established under B3.1 for timber Scaled subsequent to the contract revision.

**B3.32 Rate Redetermination after Catastrophic Damage.** In event of Catastrophic Damage and adjustment, if any, of Included Timber, Contracting Officer shall make an appraisal to determine for each species the catastrophe-caused difference between the appraised unit value of Included Timber remaining immediately prior to the catastrophe and the appraised unit value of existing and potential Included Timber immediately after the catastrophe. Included Timber is any that would not be eliminated under B8.32. Potential Included Timber is any that would be added under B8.32.

Tentative Rates and Flat Rates in effect at the time of catastrophe shall be adjusted by said differences to become the redetermined rates for the purpose of a contract modification under B8.32. Accordingly, Base Rates shall be adjusted to correspond to the redetermined rates if redetermined rates are less than the original Base Rates, subject to new Base Rate limitations of 25 cents per hundred cubic feet or equivalent. However, existing Base Indices shall not be changed under this Subsection.

Upon agreement under B8.32, redetermined rates and Required Deposits shall be considered established under B3.1 for timber Scaled subsequent to Catastrophic Damage.

At time of such appraisal, Specified Road construction cost shall include the estimated cost of any construction work listed in the Schedule of Items performed and abandoned.

**B3.33 Rate Redetermination for Market Change.** In the event of delay or interruption, exceeding 90 days, under B8.33, Contracting Officer shall make an appraisal to determine for each species the difference between the appraised unit value of Included Timber immediately prior to the delay or interruption and the appraised unit value of Included Timber immediately after the delay or interruption. The appraisal shall be done after any rate redetermination done pursuant to B3.31, using remaining volumes.

Tentative Rates and Flat Rates in effect at the time of delay or interruption or established pursuant to B3.31 will be reduced, if appraised rates declined during the delay or interruption, to become Current Contract Rates. Increases in rates will not be considered. Accordingly, Base Rates shall be adjusted to correspond to the redetermined rates if redetermined rates are less than the original Base Rates, subject to a new Base Rate limitation of the cost of essential reforestation or 25 cents per hundred cubic feet or equivalent, whichever is larger. However, existing Base Indices shall not be changed under this Subsection.

Redetermined rates shall be considered established under B3.1 for timber Scaled subsequent to the delay or interruption.

**B3.34 Emergency Rate Redetermination.** Forest Service shall redetermine rates if, upon Contractor's application, Forest Service determines that, because of changes in the timber market since the award date or the last rate redetermination under this provision, the Producer Price Index identified in A20 has declined by 25 percent. Rates shall be redetermined under B3.3 and shall be considered established under B3.1 for timber Scaled subsequent to Contractor's application. This Subsection shall not apply during Contract Term Extension.

#### **B3.4 Other Payment Rates.**

**B3.41 Material Not in A2.** Incidental amounts of products or portions of trees of species listed in A2 that do not meet Utilization Standards may be removed without charge. Such material may be purposely removed in more than incidental amounts without charge upon written approval of Contracting Officer, and subject to agreement on deposits if needed for road maintenance and use.

Other species or products not listed in A2 may be cut and removed upon written approval of Contracting Officer and subject to agreement on rates of payment and deposits if needed for road maintenance and use.

When any material suitable for use in a product form included in A2 is removed in another product form, the rates of payment shall be not less than but approximately equivalent to Current Contract Rates and Required Deposits.

**B3.42 Timber Cut Through Mistake.** Undesignated timber meeting Utilization Standards, cut by



Contractor through mistake and included by Contracting Officer under B2.14, shall be removed and paid for at Current Contract Rates and Required Deposits, unless such material is not listed in A2. In such event, Contracting Officer, in accord with standard Forest Service methods, shall establish rates to be paid.

**B3.43 Designated Timber Cut But Not Removed.** Standard timber shall be removed, as provided in B2.2, prior to acceptance of subdivision for completion of logging and stewardship project operations under B6.36. There shall be no charge when:

- (a) The leaving of incidental material is justified under existing conditions, including those under B6.4 or
- (b) Cut timber is left by option or requirement, as under B2.31, B2.32, and B6.4.

**B3.44 Undesignated Timber Damaged Without Negligence.** Undesignated timber meeting Utilization Standards, damaged without negligence by Contractor and designated by Forest Service under B2.131, shall be cut, removed, and paid for at Current Contract Rates and Required Deposits.

**B3.45 Undesignated Timber Unnecessarily Damaged or Negligently or Willfully Cut.** Undesignated timber meeting Utilization Standards and unnecessarily damaged or negligently or willfully cut by Contractor, if included by Contracting Officer under B2.132, shall be cut, removed, and paid for at Current Contract Rates and Required Deposits that are in addition to liquidated damages under B3.46.

If such timber is of a species or size not listed in A2 or is of a quality different from designated timber, Contracting Officer shall establish payment rates in accord with standard Forest Service methods.

**B3.46 Liquidated Damages.** Unnecessary damage to or negligent or willful cutting of undesignated timber, as described in B3.45, on portions of Contract Area cut over under this contract is likely to cause substantial silvicultural or other damage to the National Forest. It will be difficult, if not impossible, to determine the amount of such damage. Therefore, Contractor shall pay as fixed, agreed, and liquidated damages an amount equivalent to the amount payable at Current Contract Rates. If designated by Contracting Officer, Contractor shall remove such damaged or cut timber and pay for it at Current Contract Rates.

**B3.47 Defect Caused by Abnormal Delay.** Scaling deductions made for rot, check, or other defect resulting from abnormal delay in Scaling caused by Contractor shall be recorded separately and charged to Integrated Resource Account at Current Contract Rates and applicable deposits.

## **B4.0—PAYMENTS**

**B4.1 Amount Payable for Timber.** Current Contract Rates and Required Deposits in effect when the timber is Scaled shall be applied to the Scaled volume to determine the amount Contractor shall pay.

**B4.2 Integrated Resource Account.** "Integrated Resource Account" is an account maintained by Forest Service of all Contractor's deposits, credits, payment guarantees, and the charges for:

- (a) Timber at Current Contract Rates;
- (b) Slash disposal, road maintenance, and contract scaling at Required Deposit rates;
- (c) Cooperative work at rates established by specific agreement under B4.218;
- (d) Stewardship Credits established; and
- (e) Other charges provided in this contract.

Cash deposits shall be recorded currently in such account.

Charges for timber cut shall be made when Forest Service prepares and furnishes to Contractor periodic statements of volume and value of such timber cut and Scaled. Charges subject to escalation under B3.2 shall be made initially on the basis stated in B4.214 and shall be adjusted at the end of each calendar quarter, as provided in B3.2.

**B4.21 Cash Deposits.** Within the limitations of this Subsection, Contractor shall make cash deposits to meet Contractor's obligations within 15 days of billing by Forest Service. Deposits shall be made to Forest Service, U.S.D.A., by mail or delivery to the address to be furnished by Forest Service. Forest Service shall explain the bill at the time it requests each deposit.

**B4.211 Downpayment.** The downpayment amount shown in A18 may not be applied toward any other payment required under the provisions of this contract, except damages determined pursuant to B9.4, transferred to other contracts, or refunded until stumpage value representing 25 percent of the total bid value of the contract has been charged and paid for or the estimated value of the unscaled timber is equal to or less than the amount of the downpayment.

**B4.212 Advance Deposits.** Contractor agrees to make cash deposits in advance of cutting to meet charges under B4.2.

Forest Service billings for advance cash deposits shall be in such amounts that Integrated Resource Account will maintain an unobligated balance equal to the applicable charges for timber that Forest Service estimates will be cut in not less than 30 days and not more than 60 days. This advance cash deposit may be reduced to a smaller amount by the terms of B4.211, B4.213, B4.215, and/or B4.217. Except for amounts required pursuant to B4.211, B4.213, and B4.217, Contractor shall not be required to make advance deposits above those required under this Item.

When the credit balance in Integrated Resource Account is less than the amount due for timber estimated to be cut in 10 days, Contracting Officer will suspend all or any part of Contractor's Operations until payment or acceptable payment guarantee is received.

#### **B4.213 Periodic Payment Schedule.**

Contractor shall make periodic payments for stumpage value, as shown in A19.

In the event Contractor has not paid the amount(s) stated in A19 as stumpage for volume removed by the periodic payment determination date(s), Forest Service shall issue a bill for collection for the difference between the required amount and payments made by Contractor. If payment(s) fall due on a date other than a normal billing date, the payment date shall be extended to coincide with the next Integrated Resource Account billing date.

The amount of the periodic payment(s) will be reduced if the payment(s) would result in Contractor's credit balance for timber charges exceeding the Current Contract Value.

Only cash may be used for this purpose. No other form of payment is acceptable. Forest Service will apply the payments to subsequent charges on this contract under the terms of B4.212.

Except for Contract Term Extensions under B8.23, periodic payment determination date(s) that have not been reached shall be adjusted one day for each additional day of contract time granted.

**B4.214 Deposits for Charges Subject to Escalation.** Deposits requested to cover estimated charges for timber subject to escalation under B3.2 shall be based upon Current Contract Rates and related deposits in effect during the previous calendar quarter.

**B4.215 Deposits When Payment Guaranteed.** To the extent payment guarantee is provided under B4.3, requirements for advance cash deposits under B4.212 shall be waived for the value of timber on Contract Area that is cut, but not removed, and for the value of products removed from Contract Area for not more than a monthly billing period, subject to the provisions of B4.4.

**B4.216 Blanket Cash Deposits.** Contractor may make cash deposits under a written agreement to cover charges made under this and other contracts within the same National Forest. Forest Service shall allocate such deposits to such contracts. When there is to be no timber cutting hereunder for 30 days or more and payment of current charges has been made, the allocation to this contract shall be reallocated to other contracts within the same National Forest at Contractor's request. Contractor shall not start cutting until allocation has again been made to this contract.

**B4.217 Extension Deposits.** In the event of Contract Term Extension, Forest Service shall divide the difference between Current Contract Value as of the start of any Contract Term Extension and the credit balance of any deposit made pursuant to B4.213 by the number of whole months remaining in Normal Operating Season(s) within the extension period to determine the amount of each "Extension Deposit."

Contractor shall make the initial Extension Deposit prior to Forest Service executing the contract modification. In response to Forest Service billing under B4.21, Contractor shall make advance cash deposits. Such deposits shall at least equal each Extension Deposit required for each whole month remaining in Normal Operating Season(s) during the extension period. Extension Deposits shall be due by the last day of each month during Normal Operating Season whether or not the volume that is covered by such deposits has been Scaled.

Due dates for Extension Deposits during the extension period may be delayed when Contractor earns Contract Term Adjustment if Termination Date, as adjusted, results in one or more additional complete months within Normal Operating Season(s).

**B4.218 Cooperative Deposits.** On a basis of cooperation or assistance (16 USC 572) and by a written agreement, Forest Service shall perform all or portions of the work that Contractor is obligated to perform under this contract, as well as furnish other Services in connection with activities under this contract. When Forest Service is to perform such work, Contractor shall make one or more deposits to cover the estimated cost of the work. On request of Contractor, Forest Service shall render monthly accounts, as may be specified in such agreement.

**B4.22 Temporary Reduction of Downpayment.** When, under B8.33, Contracting Officer requests Contractor to delay or interrupt Contractor's Operations for more than 90 days, the downpayment amount being held on deposit may be temporarily reduced upon the written request of Contractor or at the discretion of Contracting Officer. For the period of the delay or interruption, the downpayment on deposit may be reduced to \$1,000 or two (2) percent of the downpayment amount listed in A18, whichever is larger.

Any downpayment amount temporarily reduced pursuant to this Subsection may be refunded or transferred at the request of Contractor. However, if Contractor has outstanding debt owing the United States, Contracting Officer must apply the amount of downpayment that could be refunded to the debt owed in accordance with the Debt Collection Improvement Act, as amended (31 USC 3701, *et seq.*).

Upon Contractor's receipt of bill for collection and written notice from Contracting Officer that the basis for the delay or interruption no longer exists, Contractor shall restore the downpayment to the full amount shown in A18 within 15 days after the date the bill for collection is issued, subject to the provisions of B4.4. Contractor shall not resume contract operations until the downpayment amount is fully restored.

**B4.23 Refund of Excess Cash.** If at any time the credit balance of Integrated Resource Account exceeds the charges for timber that Forest Service estimates will be cut within the next 60 days, any portion of such excess that is due to cash in the account shall be

refunded, if requested by Contractor, unless deposited under B4.211, B4.213, B4.217, or B4.218. If Contractor plans no cutting within the next 60 days, Forest Service may refund the entire unencumbered cash balance, except as provided in this Subsection. After a refund for a shutdown, deposits shall be made to meet the requirements of B4.212 before additional timber may be cut.

**B4.24 Refund after Scaling Completed.** Any cash deposit, in excess of that required to meet charges under B4.2, shall be refunded or transferred within 15 days of Contractor's request after Scaling is completed, except for amounts estimated to be required under B9.5.

**B4.3 Payment Guaranteed by Bond or Deposited Securities.** To guarantee payment, Contractor may furnish and maintain an acceptable surety bond or deposit in a Federal Depository negotiable securities of the United States. The securities shall be deposited through the Regional Fiscal Agent accompanied by a power of attorney and agreement authorizing the bond-approving officer to sell or collect such securities if payment is not made within 15 days of billing by Forest Service. The penal sum of such surety bond or the market value at time of deposit of such negotiable securities shall be the maximum amount of the payment guaranteed.

For payment purposes, penal sum of the surety bond or market value at time of deposit of negotiable securities shall be in lieu of the performance bond furnished under B9.1.

**B4.31 Blanket Bond.** If Contractor furnishes an acceptable bond, or deposits securities, in accordance with B4.3, to guarantee payment for timber from this and other contracts within the same National Forest, the amount of such bond or deposited securities shall be allocated to such contracts by Forest Service. When there is to be no timber cutting hereunder for 30 days or more and payment of current charges has been made, the allocation to this contract shall be reallocated to other contracts at Contractor's request. Contractor shall not start cutting hereunder until this contract receives an allocation that will meet the obligation for payment guarantee.

**B4.32 Letters of Credit for Payment Bond.** Notwithstanding the provisions of B4.3, Contractor may use letters of credit in lieu of a surety bond for payment bond purposes when approved by Contracting Officer.

**B4.4 Payments Not Received.** (a) Payments are due and payable on the date of issue indicated on the bill for collection. When a payment for timber cut and other charges is not received at the location designated by Forest Service by the date allowed in the bill for collection for receipt of payment, Contracting Officer will suspend all or any part of Contractor's Operations until payment or acceptable payment guarantee is received. Other charges include, but are not limited to:

- (i) Slash disposal, road maintenance, and contract scaling deposits;
  - (ii) Cooperative work at rates established by specific agreement under B4.218;
  - (iii) Damages pursuant to B9.4;
  - (iv) Road use fees;
  - (v) Restoration of downpayment pursuant to B4.22;
  - (vi) Periodic payments pursuant to B4.213;
  - (vii) Extension Deposits pursuant to B4.217;
- and
- (viii) Other mandatory deposits.

(b) Failure to pay amounts due by the date allowed in the bill for collection for receipt of payment shall be considered a breach under B9.3. The 30-day notice period prescribed therein shall begin to run as of the end of business on the date allowed for receipt of payments. If the performance or payment is guaranteed by surety bond, the surety will receive a copy of the written notification of breach. Demand will be made on the surety or other institution providing the guarantee or bond instrument for immediate payment 10 days after issuance of written notification of the breach.

(c) Pursuant to the Debt Collection Improvement Act of 1996, as amended, if payment is not received by Forest Service within 15 days after the date of issue indicated on the bill for collection:

(i) Simple interest shall be assessed at the higher of the Current Value of Funds Rate or the Prompt Payment Rate as established by the Secretary of the Treasury. Interest shall begin to accrue as of the date of issue indicated on the initial bill for collection.

(ii) Debtors will be assessed administrative charges, in addition to the delinquent amount due. Administrative charges are those additional costs incurred by the Government in processing, handling, and collecting delinquent debts.

(iii) A penalty charge of six (6) percent per annum will be assessed on any portion of a debt delinquent more than 90 days. This penalty charge is in addition to interest and administrative charges under paragraphs (c)(i) and (c)(ii). The penalty charge shall accrue from the date of issue indicated on the bill for collection and shall be assessed on all outstanding amounts, including interest and administrative costs assessed under paragraphs (c)(i) and (c)(ii).

(iv) Payments will be credited on the date received by the Federal Depository or Collection Officer designated on the bill for collection.

(d) Forest Service remedies for Contractor's failure to make payment for timber cut and other charges when due, except for accrual of interest, suspension of all or any part of Contractor's Operations, and administrative offset, shall be stayed for so long as:

- (i) A bona fide dispute exists as to Contractor's obligation to make such payment and
- (ii) Contractor files and prosecutes a timely Claim.

**B4.5 Stewardship Credits.** "Stewardship Credits" are credits that are earned and established when work described in C6.9# has been performed and accepted. Stewardship Credits shall be earned at the rate as shown in A4c. Earned Stewardship Credits may be used to pay for Included Timber value in excess of Base Rates and Required Deposits. Base Rates and Required Deposits must be paid in cash.

**B4.51 Progress Estimates.** Forest Service shall make timely estimates of Contractor's progress on stewardship projects. On the basis of such progress estimates, Forest Service shall credit Integrated Resource Account each month as such work proceeds.

**B4.52 Excess Stewardship Credits.** In the event there are unused established Stewardship Credits when all Included Timber has been cut and removed, Forest Service, at its option, shall either add more timber or make cash payment for the unused Stewardship Credits.

**B4.53 Excess Timber Value.** In the event the value of all Included Timber exceeds the total value of all mandatory projects shown in A4c, plus the optional projects shown in A4c that Contractor has been authorized to perform:

(a) Contracting Officer may authorize additional optional projects shown in A4c if the excess timber value exceeds 10 percent of the total timber value, or

(b) Contracting Officer may authorize additional optional projects shown in A4c or require cash payment if the excess timber value is less than 10 percent of the total timber value, or

(c) Contractor shall make cash payment for the excess timber value if there are no remaining optional projects shown in A4c authorized by the Contracting Officer to be performed.

**B4.54 Cash Payment for Stewardship Projects.** In lieu of providing timber for established Stewardship Credits, Forest Service may elect to provide a cash payment to Contractor.

**B4.55 Refund of Unused Stewardship Credits.** When, under B8.33, Contracting Officer requests Contractor to delay or interrupt Contractor's operations for more than 60 days, unused Stewardship Credits may be refunded upon the request written of Contractor or at the discretion of Contracting Officer.

Contractor agrees that when unused Stewardship Credits are refunded that Contractor shall remit, release, and forever discharge the United States from any and all Claims arising from any delay in using Stewardship Credits under this contract, including, but not limited to, any Claims of interest or other costs.

If Contractor has outstanding debt owing the United States, Contracting Officer must apply the amount of

Stewardship Credit that could be refunded to the debt owed in accordance with the Debt Collection Improvement Act, as amended.

## **B5.0—TRANSPORTATION FACILITIES**

**B5.1 Authorization.** Contractor is authorized to construct and maintain roads, bridges, and other transportation facilities, as needed for harvesting Included Timber and completing stewardship projects on National Forest and other lands where Forest Service has such authority. As used in this contract "construct" includes "reconstruct."

Location and construction of Specified Roads shall be in accordance with B5.2. Unless otherwise provided herein, construction may be progressive during this contract. Maintenance shall be governed by B5.3. The location and clearing widths of all Temporary Roads or facilities shall be agreed to in writing before construction is started. "Temporary Roads" are roads other than Specified Roads that are constructed by Contractor for the purpose of harvesting Included Timber or completing stewardship projects.

Contractor is authorized to cut and use for construction, without charge, construction timber designated by agreement.

**B5.11 Requirements of Rights-of-Way.** Contractor's road construction and use of rights-of-way identified in attached list or C5.111# shall be confined to rights-of-way and limited by the related easements and stipulations, if any, unless Contractor makes other arrangements that will not infringe upon or adversely affect the grantee's rights. Easements or right-of-way documents are available in the offices of the Forest Supervisor and District Ranger.

**B5.12 Use of Roads by Contractor.** Except as provided herein, Contractor is authorized to use existing National Forest system roads and Specified Roads listed in A7, when Forest Service determines that such use will not cause damage to the roads or National Forest resources.

If Contractor's use of an existing temporary or National Forest system road, not listed in A7, cannot be satisfactorily accommodated without reconstruction, Contractor shall be authorized to use such road upon agreement as to the minimum reconstruction work that Contractor shall perform before hauling. When appropriate, such road shall be included in A7 as an alternate facility under B5.26.

C5.12# lists existing roads shown on Contract Area Map that for such reasons as limitations in structural capacity, safety, and protection of soil, water, and roads:

(a) Cannot be used for log hauling or

(b) May be used only under the restrictive limitations stated therein.

**B5.2 Specified Roads.** "Specified Roads" are roads, including related transportation facilities and appurtenances, shown on Contract Area Map and listed in

A7. Contractor shall construct Specified Roads used under this contract. Construction initiated by Contractor on any such Specified Road shall be completed to an agreed terminus that meets Contractor's needs and prevents unnecessary impact on National Forest resources. Construction to such terminus shall be in full accordance with Plans and specifications identified in A7 or specifications and the Schedule of Items attached hereto, except for agreed adjustments needed to accommodate such terminus. For each pay unit, the "Schedule of Items" itemizes quantity of work and materials and cost, with method of measurement and basis for payment. Forest Service shall revise the Schedule of Items to show the estimated cost for the portion constructed to the revised terminus as a separate segment.

A Temporary Road shall not be constructed substantially on the location for a Specified Road, except by agreement.

In event of agreed substitution or revision of construction design, specifications, or performance responsibility under B5.212, B5.25, B5.26, or C5.215#, A7 shall be modified. If Contractor does not need a Specified Road or a portion of a Specified Road for harvesting Included Timber or completing stewardship projects and the Specified Road is not constructed, the deletion of the road or road segment will be a mutually agreed Design Change and Integrated Resource Account will be adjusted for the reduction in cost, as provided in B5.25.

References in the contract to specifications, standards, or test methods adopted by the American Association of State Highway and Transportation Officials (AASHTO), American Society for Testing and Materials (ASTM), General Services Administration (GSA), or other recognized national technical associations shall mean specifications, standards, or test methods, including interim or tentative issues, that are in effect on the date of contract advertisement.

**B5.21 Engineering.** Forest Service completed survey and design for Specified Roads prior to contract advertisement, unless otherwise shown in A8 or Contractor survey and design are specified in A7. On those roads for which Forest Service completes the design during the contract, the design quantities shall be used as the basis for revising estimated costs stated in the Schedule of Items and adjusting Integrated Resource Account.

Forest Service engineering shall be completed according to the schedule in A8. Should Forest Service be unable to perform the designated survey and design by the completion date or other agreed to time, upon written agreement, Contractor shall assume responsibility for such work. In such event, Contracting Officer shall revise:

(a) A7 to show Contractor's performance responsibility.

(b) The Schedule of Items to include costs of survey and design, as provided under B5.24, and adjust Integrated Resource Account, as provided in B5.25. Forest Service shall calculate such costs, using unit rates comparable with those used in the Schedule of Items.

Contractor shall furnish a schedule to Forest Service of specific dates for the start of construction. The schedule of construction shall be submitted to Forest Service for approval within 60 days after contract award and prior to beginning work. Contractor's construction schedule shall reflect Forest Service survey and design completion dates. Forest Service may agree to Contractor's request for an alternate date for starting construction.

Contractor shall perform survey, design, and construction staking of Specified Roads to be engineered by Contractor in accordance with specifications attached hereto. Based upon the quantities developed by such design, as approved by Forest Service, Contracting Officer shall revise the estimated costs stated in the Schedule of Items and adjust Integrated Resource Account. The methods of computing such revised costs shall be consistent with the methods that would have been used had the engineering been performed prior to contract advertisement.

**B5.211 Contract Plans.** "Plans" are documents that show location, details, and dimensions of the work to be performed. On any of the contract Plans where a portion of the work is drawn out and the remainder is shown in outline, the parts drawn out shall apply to all other like portions of the work.

"Shop Drawings" include drawings, diagrams, layouts, schematics, descriptive literature, illustrations, lists or tables, performance and test data, and similar materials furnished by Contractor to explain in detail specific portions of the work required by the contract. Contractor shall submit a minimum of five (5) sets of required Shop Drawings to Forest Service, three (3) sets of which will be retained by Forest Service. Shop Drawings shall not exceed 24 inches by 36 inches in size. Approval or rejection and date will be noted or stamped on each set. Unless agreed otherwise, Forest Service shall approve or reject the Shop Drawings within 10 days of submission. Such approval of the Shop Drawings shall not be construed as a complete check, but will indicate only that the general method of construction and detailing is satisfactory. If the Shop Drawings are rejected, Contractor must make the noted revisions and resubmit the Shop Drawings.

A change in the amount of construction work that exceeds construction tolerances specified in the specifications identified in A7 caused by a Forest Service error in construction staking shall be treated as a Design Change. When incompatible situations arise between Plans, specifications, and actual conditions on the

ground, Contractor shall make corrections pursuant to B5.253.

**B5.212 Construction Staking.** Contractor shall avoid careless or negligent damage to construction stakes, flags, or marks. If such damage occurs, Contractor shall be required to replace stakes necessary to construction. Contractor's replacement staking shall be approved by Forest Service. Alternatively, upon Contractor's request, Contracting Officer may agree to perform such work under B4.218.

When A7 shows that construction stakes are to be set by Forest Service after clearing, Contractor shall submit to Forest Service a written schedule for clearing, construction staking, and construction that will provide Forest Service a reasonable period for setting construction stakes. Time for setting construction stakes may be modified by written agreement.

If Forest Service performs construction staking for Specified Roads, timing of such staking shall permit Contractor's clearing and other construction activity to proceed without hindrance or delay, provided Contractor's construction activity is reasonably consistent with needs identified in Contractor's Operating Schedule or amendments thereto.

Should Forest Service be unable to perform construction staking in such reasonable period, upon written agreement, Contractor shall assume the responsibility for construction staking for agreed upon portions of Specified Roads. In such event, Contracting Officer shall revise:

(a) A7 to show Contractor's performance responsibility.

(b) The Schedule of Items to include costs of construction staking, as provided under B5.24, and adjust Integrated Resource Account, as provided in B5.25. Forest Service shall calculate such costs, using unit rates comparable with those used in the Schedule of Items.

**B5.22 Material Delivery.** Within 60 days after award date, Contractor shall provide Forest Service a written schedule showing the desired delivery dates of any material to be supplied by Forest Service. With reasonable notice, schedule may be amended by agreement. Forest Service agrees to make delivery within 15 days after the scheduled delivery dates that are at least 60 days after the schedule is submitted, unless prevented by causes beyond control of Forest Service.

If Contractor does not provide Forest Service the written schedule within the period provided in this Sub-section, Forest Service agrees to make delivery within 90 days after a late schedule is submitted, unless prevented by causes beyond control of Forest Service. After delivery to and written receipt by Contractor, Contractor is responsible for installation of needed material and for any loss of or damage to such material due to Contractor's negligence prior to installation or return of unused material to Forest Service.

At Contractor's option, Forest Service deliveries shall be to Contractor's storage area, as agreed, or to the nearest practicable point to the job site along existing roads. Unused material shall be returned to Forest Service at location of delivery, unless agreed otherwise.

**B5.23 Use of Partially Constructed Roads.** Unless Contracting Officer determines that there is justification under existing conditions, and ground conditions permit hauling without undue damage, portions of Specified Roads shall be Substantially Completed prior to their use for hauling timber. When necessary to facilitate construction and protect bridges and roads from damage, timber felled in construction and timber logged directly to the road from areas immediately adjacent thereto may be hauled before road construction is Substantially Completed. Such hauling shall be confined to periods when abnormal soil erosion and damage to National Forest lands will not result.

"Substantially Completed" means:

(a) Completion of grading and installation of drainage structures so they will function effectively and

(b) Laying the specified depth of base course, if any, unless Contracting Officer determines that physical conditions make it impractical or ground conditions permit hauling without undue damage.

No more than half of Included Timber to be hauled over such portions of road shall be hauled until the base course has been applied.

Unless agreed otherwise, specified reconstruction shall be completed on any portion of road prior to hauling on that portion.

**B5.24 Estimated Cost.** Estimated costs by construction phases for Specified Roads listed in A7 are stated by segments in the Schedule of Items. Such estimated costs are subject to adjustment under B3.3, B5.2, B5.21, B5.212, B5.25, and B5.26. Appropriately adjusted costs shall be made a part of a revised Schedule of Items and shown as adjustments to Integrated Resource Account. The revised Schedule of Items shall supersede any prior Schedule of Items when it is dated and signed by Contracting Officer and a copy is furnished to Contractor.

**B5.25 Construction Cost Adjustment.** Contracting Officer, as provided in B5.21, B5.212, B5.251, B5.252, and B5.253, shall adjust Specified Road construction cost estimates in the Schedule of Items and show the adjustments as credits or debits to Integrated Resource Account in the month when the road segment is accepted.

**B5.251 Variation in Quantities.** (a) This Item applies only to differences between quantities shown in the Schedule of Items and measured quantities actually constructed and accepted that are not covered under B5.252 or B5.253. Only changes in quantities where other than contract quantities or lump sum is specified in the Schedule of Items are subject to this Item.

(b) Adjustments to the Specified Road construction cost for variation in quantities shall be computed at unit rates established in the Schedule of Items for units of work actually constructed and measured in accordance with specified method of measurement shown in the Schedule of Items and described in the specifications identified in A7, except that:

(i) When quantity of authorized work performed or material furnished by Contractor, under any item shown in the Schedule of Items and covered by this Item, is more than 115 percent of original quantity, use Current Unit Rates to calculate the adjustment for that portion of work above 115 percent of original quantity.

(ii) When quantity of authorized work performed or material furnished by Contractor, under any item shown in the Schedule of Items and covered by this Item, is less than 85 percent of original quantity, Forest Service shall make a revised estimate of cost for such work. Any revised estimate shall use the same procedures as those used in original estimates using rates comparable to those used in computing the most recent cost estimate for the contract. The revised cost estimate shall take into account any increase or decrease in unit rates that results from a reduction in quantity of work.

(c) "Current Unit Rates" are Forest Service estimates of the unit rates for doing the work at the time the adjustment is approved.

**B5.252 Physical Change.** (a) Forest Service shall adjust the Specified Road construction cost if, prior to acceptance under B6.36, a physical change, caused by a single event and not due to negligence of Contractor, results in an increase or decrease in work and/or materials furnished by Contractor involving additional estimated cost of:

(i) More than \$10,000 or

(ii) More than 10 percent of total Specified Road construction cost, whichever is less.

(b) Increases to the Specified Road construction cost shall include cumulative estimated costs of repairing damage from things such as slides, washouts, landslips, and fire. Plans and specifications shall be revised when necessary to meet new conditions. Quantities of work and/or materials determined from such revised Plans and specifications, together with estimated quantities of work and/or materials abandoned, shall be the basis for the revised Specified Road construction cost.

(c) Forest Service shall determine difference in quantities for portions of Specified Road affected by physical change by comparing most recent previous quantities with total of:

(i) Estimated quantities actually constructed prior to physical change, including work abandoned, and

(ii) Estimated quantities to be constructed following physical change.

(d) Forest Service shall calculate the amount of increase to the Specified Road construction cost by applying:

(i) Current Unit Rates to differences when quantities increase and

(ii) Unit rates comparable to those used in computing most recent cost estimate for the contract when quantities decrease.

(e) When quantity of authorized work to be performed or material furnished by Contractor, under any item shown in the Schedule of Items, is reduced to less than 85 percent of original quantity, Forest Service shall make a revised estimate of cost for such work and adjust the Specified Road construction cost. Any revised estimate shall use the same procedures as those used in the original estimates using rates comparable to those used in the most recent cost estimate for the contract. The revised estimate shall take into account any increase or decrease in unit rates that results from a reduction in quantity of work.

**B5.253 Design Change.** (a) "Design Change" is a change in work and/or materials shown in the Schedule of Items and described in Plans or specifications that has been mutually agreed to in writing or ordered by Contracting Officer. Changes of a minor nature (such as adjustment in horizontal and vertical alignment, that do not exceed specified tolerance, necessary to maintain or balance earthwork quantities substantially as designed) and variation in quantities, as described in B5.251, shall not be considered Design Changes.

(b) Additions, deletions, or changes in types or diameter of culverts shown in Plans and changes in designated water sources shown on Plans shall be considered Design Changes.

(c) Forest Service may, by written notice from Contracting Officer, order changes in work to be performed and/or materials to be furnished by Contractor within general scope of the contract. Such work shall:

(i) Be due to differences between anticipated and actual field conditions,

(ii) Be necessary to construct Specified Roads to design standards, or

(iii) Be necessary to assure stability of Specified Roads.

(d) In addition, Contracting Officer may include work to protect resource values in ordered Design Changes. Such work must be related to construction of Specified Roads and be necessary to prevent damage to soil and water values immediately tributary to Specified Roads. Other Design Changes may be made by mutual written agreement.

(e) Forest Service shall revise Plans and specifications as necessary to meet new conditions. Quantities of work and/or materials determined from such revised Plans and specifications, together with quantities of

work and/or materials abandoned, shall be the basis for adjusting the Specified Road construction cost.

(f) Forest Service shall determine the difference in quantities for the portion of Specified Road affected by Design Change by comparing the most recent previous quantities with the total of:

(i) Estimated quantities actually constructed prior to Design Change and

(ii) Estimated quantities to be constructed following Design Change.

(g) Calculate the amount of adjustment to the Specified Road construction cost by applying:

(i) Current Unit Rates to difference when quantities increase and

(ii) Unit rates comparable to those used in computing most recent cost estimates of the contract when quantities decrease.

(h) When quantity of authorized work to be performed or material furnished by Contractor, under any item shown in the Schedule of Items, is reduced to less than 85 percent of original quantity, Forest Service shall make a revised estimate of cost of such work and adjust the Specified Road construction cost. Any revised estimate shall use the same procedures as those used in original estimates using rates comparable to those used in the most recent cost estimate for the contract. The revised estimate shall take into account any increase or decrease in unit rates that results from a reduction in quantity of work.

**B5.26 Alternate Facilities.** If under Contractor's Operating Schedule, roads needed for the removal of Included Timber differ substantially from Specified Roads, other roads may be added to A7. Contracting Officer shall assure that road routing, location, design, and needed easements will make such other roads acceptable as parts of the National Forest transportation facilities. Contractor shall provide survey, design, and construction staking for such other roads.

Based on design quantities from such engineering, Forest Service shall estimate Specified Road construction costs of alternate facilities, using methods consistent with those used in the original computation of the Schedule of Items. If Specified Road construction costs for acceptable alternate facilities are less than the estimated costs of facilities listed in the original Schedule of Items that Contractor does not construct, Integrated Resource Account shall be adjusted by Forest Service to reflect the reduction in costs. In event of rate redetermination under B3.3, such allowed costs shall be the redetermined estimated costs of facilities listed in the original Schedule of Items that Contractor does not construct.

**B5.27 Temporary Credit for Unamortized Specified Road Construction Cost.** When, under B8.33, Contracting Officer requests Contractor to delay or interrupt Contractor's Operations for more than 90 days, the unamortized cost of Specified Roads shall be

credited to Contractor's Integrated Resource Account upon the written request of Contractor or at the discretion of Contracting Officer. The amount credited to Contractor shall be limited to stumpage paid above Base Rates.

Any Specified Road construction cost credited to Contractor pursuant to this Subsection may be refunded or transferred at the request of Contractor. However, if Contractor has outstanding debt owing the United States, Contracting Officer must apply the amount of credit that could be refunded to the debt owed in accordance with the Debt Collection Improvement Act, as amended.

Upon written notice from Contracting Officer that the basis for the delay or interruption no longer exists, Contractor shall pay for timber a per unit amount, in addition to Current Contract Rates, that is equal to the amount credited to Contractor's Integrated Resource Account divided by 80 percent of the estimated remaining volume of the contract, until the full amount credited to Contractor has been returned.

**B5.3 Road Maintenance.** Contractor shall maintain roads, commensurate with Contractor's use, in accordance with Road Maintenance Requirements in C5.31# and the Road Maintenance Specifications. Performance of road maintenance work by Contractor may be required prior to, during, or after each period of use. The timing of work accomplishment shall be based on Contractor's Operating Schedule under B6.31.

When two or more commercial users are simultaneously using the same road where Forest Service is not requiring maintenance deposits, the commercial users will develop maintenance responsibilities and arrangements for accomplishing the work. Forest Service must agree to this plan. If the commercial users cannot agree on maintenance responsibilities, Forest Service shall resolve the differences.

If Contractor elects to use different roads than those listed in C5.31#, Forest Service shall determine Contractor's commensurate share of road maintenance and revise road maintenance deposits in C5.32#.

If Forest Service cannot perform its full commensurate share of road maintenance, Forest Service shall make a cash payment to Contractor for performance of such work.

Unless agreed in writing, prehaul maintenance shall be completed on any portion of road prior to hauling on that portion. Maintenance, as used in this contract, does not include road reconstruction or repairs of an extraordinary nature.

**B5.4 Use by Others.** Forest Service shall have the right to use any road constructed by Contractor under this contract for any and all purposes in connection with the protection and administration of the National Forest. Other parties, in connection with the logging of tributary National Forest timber, may use roads constructed by



Contractor hereunder when Contracting Officer determines that such use will not materially interfere with Contractor's Operations. Third party use shall be contingent upon Contracting Officer determining, and third party agreeing to pay, a fair share of maintenance cost commensurate with such commercial use.

Unless otherwise provided in C5.4, Forest Service shall authorize other uses of roads constructed by Contractor hereunder only if:

(a) Contracting Officer makes appropriate arrangements to relieve Contractor of related maintenance costs commensurate with such other uses and

(b) Such other uses will not materially interfere with Contractor's Operations.

Where Contractor reconstructs a road having established use, Contractor's use during reconstruction and thereafter shall be such as to reasonably accommodate such established use. Contracting Officer shall ensure that other users do not materially interfere with Contractor's right to use such reconstructed road.

## **B6.0—OPERATIONS**

**B6.1 Representatives.** Unless otherwise agreed, Contractor shall designate, in writing, a representative who is authorized to receive notices in regard to performance under this contract and take related action. In no case shall Contractor designate any representative to this contract who is currently debarred, proposed for debarment, or suspended by the Federal Government. Contractor's representative shall provide a copy of the contract to Contractor's field supervisor and persons authorized to assume responsibilities in the field supervisor's absence. Prior to initial operations and after shutdowns of 10 days or more, Contractor's representative shall notify Forest Service 2 days, excluding weekends and Federal holidays, before any operations begin on Contract Area.

Contractor's representative shall designate, in writing, a field supervisor, one of whose responsibilities shall be on-the-ground direction and supervision of Contractor's Operations. The field supervisor shall be readily available to the area of operations when operations are in progress and shall be authorized to receive notices in regard to performance under this contract and take related action. The responsibilities of the field supervisor shall include the safeguarding of National Forest resources and performance within the terms of the contract. Contractor representative will furnish Forest Service with names of persons authorized to assume responsibilities in field supervisor's absence. Such delegations may be made a part of Contractor's annual Operating Schedule under B6.31.

Unless Contracting Officer designates another Forest Service representative and notifies Contractor in

writing, the District Ranger is the representative of Forest Service. Forest Service representative shall:

(a) Receive notice in regard to performance under this contract,

(b) Take action in relation to this contract, and

(c) Be readily available to the area of construction, stewardship project work, and logging operations.

Contracting Officer or Forest Service representative shall designate other on-the-ground representatives in writing along with their specific contractual responsibilities and authority. Representatives with authority delegated in writing are the only Forest Service personnel authorized to provide notice or take related actions under the contract. Such delegation shall be made within 60 days of contract award.

**B6.11 Notices.** Notices by either party as to action taken or to be taken by the other respecting this contract shall be made in writing to the other party's designated representative.

**B6.2 Improvements.** Contractor is authorized to construct on National Forest land, buildings, facilities, and other improvements needed to log Included Timber and complete stewardship projects. Such construction shall be located where approved in writing by Forest Service and shall be constructed and used in a manner that will protect National Forest values.

Contractor shall comply with the rules and regulations governing the operation of premises that are occupied and shall perform the contract in a manner that will not interrupt or interfere with the conduct of Forest Service business.

Forest Service shall grant written permission before any camp, quarry, borrow pit, storage, or service area, other than as shown on Plans, is opened or operated on National Forest land or administered lands. A camp is interpreted to include the campsite or trailer parking area of any employee, agent, Subcontractor, or their employees or agents working on the project for Contractor. Such permission, if granted, shall be without charge to Contractor.

**B6.21 Removal.** Unless Forest Service authorizes continued use, Contractor shall remove or dispose of all improvements when no longer needed. Should Contractor fail to remove or dispose of improvements within 6 months after Termination Date, Forest Service may dispose of improvements at Contractor's expense under B9.5 or may, upon written notice to Contractor, assume title to improvements in the name of the United States. In the latter event, Contractor shall not be required to remove such improvements.

**B6.22 Protection of Improvements.** So far as practicable, Contractor shall protect Specified Roads and other improvements (such as roads, trails, telephone lines, ditches, and fences):

(a) Existing in the operating area,

(b) Determined to have a continuing need or use, and

(c) Designated on Contract Area Map.

Contractor shall keep roads and trails needed for fire protection or other purposes and designated on Contract Area Map reasonably free of equipment and products, slash, and debris resulting from Contractor's Operations. Contractor shall make timely restoration of any such improvements damaged by Contractor's Operations and, when necessary because of such operations, shall move such improvements, as specified in C6.22#.

**B6.221 Protection of Improvements Not Owned by Forest Service.** Forest Service shall notify all utility companies, or other parties affected, and make arrangements for all necessary adjustments of the public utility fixtures, pipelines, and other appurtenances likely to be affected by Contractor's Operations.

When Contractor's Operations are adjacent to properties of railway, telephone, or power companies, or other property, work shall not begin until Contractor has identified actions necessary to prevent damage.

Contractor shall cooperate with the owners of any underground or overhead utility lines in their removal and/or rearrangement operations in order that these operations may progress in a reasonable manner, utility duplication or rearrangement work may be reduced to a minimum, and services shall not be unnecessarily interrupted.

In the event of interruption to utility services because of accidental breakage or as a result of lines being exposed or unsupported, Contractor shall promptly notify the proper authority and shall cooperate with that authority in the restoration of service until the service is restored.

When materials are to be hauled across the tracks of any railway, Forest Service will make arrangements with the railroad for the use of any existing crossing or for any new crossing required. Contractor shall make arrangements for use of alternate crossings. All construction work to be performed by Contractor on the railroad right-of-way shall not damage railroad company's property.

**B6.222 Protection of Property.** In construction and reconstruction of Specified Roads, Contractor shall not unnecessarily remove, deface, injure, or destroy trees, shrubs, or other natural features, unless specifically authorized. To the extent practicable, Contractor shall confine operations to within the clearing limit or other areas designated in the contract and prevent the depositing of rocks, excavated materials, stumps, or other debris outside these limits.

Material that falls outside these limits shall be retrieved, disposed of, or incorporated in the work to the extent practicable and necessary to protect adjacent resource values, unless otherwise agreed.

**B6.23 Protection of Land Survey Monuments.** Forest Service shall appropriately designate on

the ground all known survey monuments, section corners, and other corner accessories. Forest Service shall post identifying signs on two sides of each known bearing tree.

Forest Service shall arrange protective or perpetual action that does not cause unnecessary delay to Contractor in authorized clearings, such as Clearcutting Units and road construction, and in other instances where damage to monuments, section corners, and other corner accessories is unavoidable.

Contractor shall protect all known survey monuments, witness corners, reference monuments, and bearing trees against avoidable destruction, obliteration, or damage during Contractor's Operations. If any known monuments, corners, or accessories are destroyed, obliterated, or damaged by Contractor's Operations, Contractor shall hire the appropriate county surveyor or a registered land surveyor to reestablish or restore at the same location the monuments, corners, or accessories. Such surveyors shall use procedures in accordance with the Bureau of Land Management "Manual of Instructions for the Survey of the Public Lands of the United States" for General Land Office surveys and in accordance with State law for others. Contractor shall record such survey in appropriate county records.

**B6.24 Protection Measures Needed for Plants, Animals, Cultural Resources, and Cave Resources.** Locations of known areas needing special measures for the protection of plants, animals, cultural resources, and/or cave resources are shown on Contract Area Map and/or identified on the ground. Special protection measures needed to protect such known areas are identified in C6.24#.

In addition to any special protection measures noted, Contractor has a general duty to protect all known and identified resources referenced in this Subsection from damage or removal during Contractor's Operations. Discovery of additional areas, resources, or members of species needing special protection shall be promptly reported to the other party, and operations shall be delayed or interrupted at that location, under B8.33, if Contracting Officer determines there is risk of damage to such areas, resources, or species from continued operations.

Wheeled or track-laying equipment shall not be operated in areas identified as needing special measures for the protection of cultural resources, except on roads, landings, tractor roads, or skid trails approved under B5.1 or B6.422. Unless agreed otherwise, trees will not be felled into such areas. Contractor may be required to backblade skid trails and other ground disturbed by Contractor's Operations within such areas in lieu of cross ditching required under B6.6.

Contractor shall immediately notify Forest Service if disturbance occurs to any area identified as needing special protection measures and shall immediately halt

operations in the vicinity of the disturbance until Forest Service authorizes Contractor to proceed. Contractor shall bear costs of resource evaluation and restoration to identified sites. Such payment shall not relieve Contractor from civil or criminal liability otherwise provided by law.

Nothing in this Subsection shall be interpreted as creating any warranty that all locations and special measures for the protection of plants, animals, cultural resources, and cave resources have been described herein, elsewhere in the contract, or designated on the ground.

**B6.3 Control of Operations.** Under this contract, "Contractor's Operations" shall include activities of or use of equipment of Contractor, Contractor's employees, agents, Subcontractors, or their employees or agents, acting in the course of their employment in operations hereunder on National Forest lands or within Forest Service protection boundary (unless acting under the immediate supervision of Forest Service).

Contractor's Operations shall be conducted in a workmanlike and orderly manner. The timing of required Forest Service designation of work on the ground and the performance of other Forest Service work shall not be such as to cause unnecessary delay to Contractor.

**B6.31 Operating Schedule.** Contractor shall, before commencing operations, provide in writing an annual Operating Schedule of anticipated major activities and needs for logging Included Timber and completing stewardship projects, such as logging, road maintenance, Scaling, and road construction, including construction staking under B5.212 and material delivery under B5.22. Upon reasonable notice to Forest Service, such schedule shall be subject to modifications necessitated by weather, markets, or other unpredictable circumstances.

Subject to B6.6 and when the requirements of B6.66 are met, Contractor's Operations may be conducted outside Normal Operating Season. "Normal Operating Season" is the period(s) beginning and ending on the dates stated in A16 of any year.

**B6.311 Inclusion of Technical Proposal.** Upon execution of the contract, all elements of the Technical Proposal accepted by Forest Service become binding parts of the contract, including, but not limited to, planned periods for and methods of road construction, timber harvesting, performance of stewardship projects, slash disposal, erosion control measures, and other contractual requirements. In addition, Contractor may not substitute a Subcontractor that has been accepted in the Technical Proposal with an alternate Subcontractor, unless Contracting Officer agrees to substitution.

Contractor may revise this Technical Proposal when necessitated by weather, markets, or other un-

foreseen circumstances beyond the Contractor's control, subject to approval of Contracting Officer. In the event of delays beyond the control of Contractor that qualify for Contract Term Adjustment, the Technical Proposal shall be adjusted by mutual agreement to accommodate the adjusted contract period.

**B6.312 Plan of Operations for Road Construction.** Annually, prior to start of construction, Contractor shall submit a supplement to the Technical Proposal that shall include a schedule of proposed progress and a description of planned measures to be taken to provide erosion control for work in progress, including special measures to be taken on any segments of construction not Substantially Completed prior to periods of seasonal precipitation or runoff. Contractor shall submit a revised schedule when Contractor proposes a significant deviation from the progress schedule.

Prior to beginning construction on any portion of Specified Roads identified as sensitive on Plans, Contractor and Forest Service shall agree on proposed method of construction.

**B6.32 Protection of Residual Trees.** Contractor's Operations shall not unnecessarily damage young growth or other trees to be reserved.

**B6.33 Safety.** Contractor's Operations shall facilitate Forest Service's safe and practical inspection of Contractor's Operations and conduct of other official duties on Contract Area. Contractor has all responsibility for compliance with safety requirements for Contractor's employees.

In the event that Contracting 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 shall be modified and Contractor may request an adjustment in Current Contract Rates to compensate for the changed conditions.

Unless otherwise agreed in writing, when Contractor's Operations are in progress adjacent to or on Forest Service controlled roads and trails open to public travel, Contractor shall furnish, install, and maintain all temporary traffic controls that provide the user with adequate warning of hazardous or potentially hazardous conditions associated with Contractor's Operations. Contractor and Forest Service shall agree to a specific Traffic Control Plan for each individual project prior to commencing operations. Devices shall be appropriate to current conditions and shall be covered or removed when not needed. Except as otherwise agreed, flagmen and devices shall be as specified in the "Manual on Uniform Traffic Control Devices for Streets and Highways" (MUTCD) and as shown on Plans, Contract Area Map, Traffic Control Plan, or in specifications attached hereto.

**B6.34 Sanitation and Servicing.** Contractor shall take all reasonable precautions to prevent pollution of air, soil, and water by Contractor's Operations. If facilities for employees are established on Contract Area, they shall be operated in a sanitary manner. In the event that Contractor's Operations or servicing of equipment result in pollution to soil or water, Contractor shall conduct cleanup and restoration of the polluted site to the satisfaction of Forest Service.

Contractor shall maintain all equipment operating on Contract Area in good repair and free of abnormal leakage of lubricants, fuel, coolants, and hydraulic fluid. Contractor shall not service tractors, trucks, or other equipment on National Forest lands where servicing is likely to result in pollution to soil or water. Contractor shall furnish oil-absorbing mats for use under all stationary equipment or equipment being serviced to prevent leaking or spilled petroleum-based products from contaminating soil and water resources. Contractor shall remove from National Forest lands all contaminated soil, vegetation, debris, vehicle oil filters (drained of free-flowing oil), batteries, oily rags, and waste oil resulting from use, servicing, repair, or abandonment of equipment.

**B6.341 Prevention of Oil Spills.** If Contractor maintains storage facilities for oil or oil products on Contract Area, Contractor shall take appropriate preventive measures to ensure that any spill of such oil or oil products does not enter any stream or other waters of the United States or any of the individual States.

If the total oil or oil products storage exceeds 1,320 gallons in containers of 55 gallons or greater, Contractor shall prepare a Spill Prevention Control and Countermeasures Plan. Such plan shall meet applicable EPA requirements (40 CFR 112), including certification by a registered professional engineer.

Contractor shall notify Contracting Officer and appropriate agencies of all reportable (40 CFR 110) spills of oil or oil products on or in the vicinity of Contract Area that are caused by Contractor's employees, agents, Subcontractors or their employees or agents, directly or indirectly, as a result of Contractor's Operations. Contractor will take whatever initial action may be safely accomplished to contain all spills.

**B6.342 Hazardous Substances.** Contractor shall notify the National Response Center and Contracting Officer of all releases of reportable quantities of hazardous substances on or in the vicinity of Contract Area that are caused by Contractor's employees, agents, Subcontractors or their employees or agents, directly or indirectly, as a result of Contractor's Operations, in accordance with 40 CFR 302.

**B6.35 Equipment Cleaning.** (a) Areas, known by Forest Service prior to contract advertisement, that are infested with invasive species of concern are shown on Contract Area Map. A current list of invasive species

of concern and a map showing the extent of known infestations is available at the Forest Supervisor's Office.

(b) Contractor shall not move any Off-Road Equipment, which last operated in an area that is infested with one or more invasive species of concern onto Contract Area without having first taken reasonable measures to make each such piece of equipment free of soil, seeds, vegetative matter, or other debris that could contain or hold seeds. Contractor shall identify the location of the equipment's most recent operations. If the prior location of the Off-Road Equipment cannot be identified, Forest Service will assume that it is infested with seeds of invasive species of concern. In addition, prior to moving Off-Road Equipment from an area on this contract that is shown on Contract Area Map to be infested with invasive species of concern to any other area that is indicated on Contract Area Map as being free of invasive species of concern, Contractor shall again take reasonable measures to make each such piece of equipment free of soil, seeds, vegetative matter, or other debris that could contain or hold seeds.

(c) Contractor must advise Forest Service of measures taken to clean Off-Road Equipment and arrange for Forest Service inspection prior to such equipment being placed in service or moved from areas infested with invasive species of concern to areas that are free of such invasive species. Forest Service shall have 2 days, excluding weekends and Federal holidays, to inspect equipment after it has been made available for inspection. After inspection or after 2 days, Contractor may proceed with operations. Reasonable measures shall not require the disassembly of equipment components or use of any specialized inspection tools. Equipment shall be considered free of soil, seeds, and other such debris when a visual inspection does not disclose such material.

(d) "Off-Road Equipment" includes all logging and construction machinery, except for log trucks, chip vans, service vehicles, water trucks, pickup trucks, cars, and similar vehicles.

(e) If Contractor desires to clean Off-Road Equipment on National Forest land, such as at the end of a project or prior to moving to a new area that is free of invasive species of concern, Contractor and Forest Service shall agree on locations for the cleaning and control of off-site impacts, if any.

(f) New infestations of invasive species of concern to Forest Service, identified by either Contractor or Forest Service on Contract Area, shall be promptly reported to the other party and operations shall be delayed or interrupted at that location, under B8.33, until Contractor and Forest Service agree on treatment methods.

(g) Nothing in this Subsection shall be interpreted as creating any warranty that all locations of invasive species of concern have been described herein, elsewhere in the contract, or designated on the ground.

**B6.36 Acceptance of Work.** Upon Contractor's written request and assurance that work has been completed, Forest Service shall perform an inspection within 5 days, excluding weekends and Federal holidays, so as not to delay unnecessarily the progress of Contractor's Operations. Such a request may be for acceptance of:

- (a) Any reasonable portion of Specified Road listed in the Schedule of Items;
- (b) Specific requirements on a subdivision of Contract Area (such as logging, stewardship project operations, slash disposal, erosion control, or snag felling); or
- (c) All contract requirements on a subdivision of Contract Area.

Forest Service may perform such inspections without request from Contractor.

Within 2 days of inspection, excluding weekends and Federal holidays, Forest Service shall furnish Contractor with written notice either of acceptance or of work remaining to be done.

In the event that Forest Service is unable to make such inspection within 5 days of Contractor's request, Contractor shall be notified in writing of necessity for postponement and time when inspection can be made. The same final approval procedure shall be used at the end of Contractor's construction period on any completed portion of road.

When all contractual work of Contractor has been accepted for any subdivision of Contract Area or cutting unit or stewardship project area identified on Contract Area Map, such area shall be eliminated from Contract Area on written notice of either party to this contract, unless such area is a portion of a larger work area. In the latter circumstance, such area may be eliminated only by agreement.

**B6.361 Acceptance of Specified Roads.**

Specified Road work may be accepted subject to completion of clearing work that does not affect the road structure when completion is delayed for reasons beyond control of Contractor, such as adverse weather.

Specified Road work may be accepted subject to completion of planting and seeding for soil stabilization when completion is delayed for reasons beyond control of Contractor, such as seasonal limitations. Contractor shall complete planting or seeding on such road during the next suitable planting season.

Specified Road work may be conditionally accepted prior to the application of dust palliatives when application is not necessary to prevent dusting of the road surface due to climatic conditions. Contractor shall apply dust palliative on such roads prior to use during periods when dusting may occur.

Prior to request for final inspection, Specified Road work, roadways, borrow pits, and quarries, occupied and no longer needed by Contractor in connection with Contractor's Operations, shall be cleared of all rubbish, excess materials, and temporary structures.

**B6.4 Conduct of Logging.** Unless otherwise specifically provided herein, Contractor shall fell trees designated for cutting and shall remove the portions that meet Utilization Standards, as provided in B2.2, prior to acceptance of subdivision for completion of logging and stewardship projects under B6.36. Forest Service may make exceptions for occasional trees inadvertently not cut or trees or pieces not removed for good reason, including possible damage to forest resources or gross economic impracticability at the time of removal of other timber. Logging shall be conducted in accordance with the following, unless C6.4# provisions set forth requirements to meet special or unusual logging conditions:

**B6.41 Felling and Bucking.** Felling shall be done to minimize breakage of Included Timber and damage to residual timber. Unless agreed otherwise, felling shall be done by saws or shears. Bucking shall be done to permit removal of all minimum pieces set forth in A2. Contractor may buck out cull material when necessary to produce pieces meeting Utilization Standards. Such bucked out material shall contain a minimum amount of sound wood, not in excess of the net scale in percentage of gross scale, or based on the merchantability factor, whichever is stated in A2. If necessary to assess extent of defect, Contractor shall make sample saw cuts or wedges.

**B6.411 Felling in Clearings.** Insofar as ground conditions, tree lean, and shape of clearings permit, trees shall be felled so that their tops do not extend outside Clearcutting Units, construction clearings, and areas of regeneration cutting.

**B6.412 Stump Heights.** Stumps shall not exceed, on the side adjacent to the highest ground, the maximum heights set forth in A6, except that occasional stumps of greater heights are acceptable when Contractor determines that they are necessary for safe and efficient conduct of logging. Unless otherwise agreed, Contractor shall re-cut high stumps so they will not exceed heights specified in A6 and shall dispose of severed portions in the same manner as other logging debris. The stump heights shown in A6 were selected with the objective of maximum reasonable utilization of the timber, unless Contract Area Map shows special areas where stump heights are lower for aesthetic, land treatment, or silvicultural reasons.

**B6.413 Bucking Lengths.** Trees shall be bucked in various lengths to obtain the greatest utilization of material meeting Utilization Standards.

**B6.414 Limbing.** When Forest Service determines it is necessary to minimize damage to the residual stand during skidding, Contractor shall cut exposed limbs from products prior to skidding. Contractor may leave uncut those limbs that cannot be cut with reasonable safety.

**B6.42 Skidding and Yarding.** Methods of skidding or yarding specified for particular areas, if any, are indicated on Contract Area Map. Outside Clearcutting

Units and construction clearings, insofar as ground conditions permit, products shall not be skidded against reserve trees or groups of reproduction and tractors shall be equipped with a winch to facilitate skidding.

**B6.421 Rigging.** Insofar as practicable, needed rigging shall be slung on stumps or trees designated for cutting.

**B6.422 Landings and Skid Trails.** Location of all landings, tractor roads, and skid trails shall be agreed upon prior to their construction. The cleared or excavated size of landings shall not exceed that needed for efficient skidding and loading operations.

**B6.423 Skidding on Roads.** Products may be skidded on permanent roads authorized for hauling under B5.12 only by prior written agreement.

**B6.424 Arches and Dozer Blades.** Unless otherwise specified in C6.424#, skidding tractors equipped with pull-type arches or dozer blades wider than tractor width or C-frame width, whichever is greater, shall not be used in residual timber outside Clearcutting Units and other authorized clearings, except on constructed tractor roads or landings, unless there is written agreement that residual timber will not be damaged materially by such use.

**B6.5 Streamcourse Protection.** "Streamcourses" that are subject to provisions of this Section are shown on Contract Area Map. Unless otherwise agreed, the following measures shall be observed to protect Streamcourses:

(a) Contractor's Operations shall be conducted to prevent debris from entering Streamcourses, except as may be authorized under paragraph (d). In event Contractor causes debris to enter Streamcourses in amounts that may adversely affect the natural flow of the stream, water quality, or fishery resource, Contractor shall remove such debris as soon as practicable, but not to exceed 2 days, and in an agreed manner that will cause the least disturbance to Streamcourses.

(b) Culverts or bridges shall be required on Temporary Roads at all points where it is necessary to cross Streamcourses. Such facilities shall be of sufficient size and design and installed in a manner to provide unobstructed flow of water and to minimize damage to Streamcourses. Trees or products shall not be otherwise hauled or yarded across Streamcourses unless fully suspended.

(c) Wheeled or track-laying equipment shall not be operated in Streamcourses, except at crossings designated by Forest Service or as essential to construction or removal of culverts and bridges.

(d) Flow in Streamcourses may be temporarily diverted only if such diversion is necessary for Contractor's planned construction and Forest Service gives written authorization. Such flow shall be restored to the natural course as soon as practicable and, in any event, prior to a major storm runoff period or runoff season.

**B6.6 Erosion Prevention and Control.** Contractor's Operations shall be conducted reasonably to minimize soil erosion. Equipment shall not be operated when ground conditions are such that excessive damage will result. Contractor shall adjust the kinds and intensity of erosion control work done to ground and weather conditions and the need for controlling runoff. Erosion control work shall be kept current immediately preceding expected seasonal periods of precipitation or runoff.

If Contractor fails to do seasonal erosion control work prior to any seasonal period of precipitation or runoff, Forest Service may temporarily assume responsibility for the work and any unencumbered deposits hereunder may be used by Forest Service to do the work. If needed for such work, Contractor shall make additional deposits on request by Forest Service. Any money deposited or used for this purpose shall be treated as cooperative deposits under B4.218.

**B6.61 Meadow Protection.** Reasonable care shall be taken to avoid damage to the cover, soil, and water in meadows shown on Contract Area Map. Vehicular or skidding equipment shall not be used on meadows, except where roads, landings, and tractor roads are approved under B5.1 or B6.422. Unless otherwise agreed, trees felled into meadows shall be removed by endlining. Resulting logging slash shall be removed where necessary to protect cover, soil, and water.

**B6.62 Wetlands Protection.** Wetlands requiring protection under Executive Order 11990 are shown on Contract Area Map. Vehicular or skidding equipment shall not be used in such wetlands, except where roads, landings, and tractor roads are approved under B5.1 or B6.422. Additional measures needed to protect such areas are provided in C6.62#.

**B6.63 Temporary Roads.** As necessary to attain stabilization of roadbed and fill slopes of Temporary Roads, Contractor shall employ such measures as out-sloping, drainage dips, and water-spreading ditches.

After a Temporary Road has served Contractor's purpose, Contractor shall give notice to Forest Service and shall remove bridges and culverts, eliminate ditches, outslope roadbed, remove ruts and berms, effectively block the road to normal vehicular traffic where feasible under existing terrain conditions, and build cross ditches and water bars, as staked or otherwise marked on the ground by Forest Service. When bridges and culverts are removed, associated fills shall also be removed to the extent necessary to permit normal maximum flow of water.

**B6.631 Temporary Roads to Remain Open.** To maintain short term access to portions of Contract Area for post-contract treatments and other purposes after a Temporary Road has served Contractor's purpose, pursuant to B6.63, Contractor agrees, that on Temporary Roads designated on Contract Area Map as "Remain Open," to construct cross ditches and

water bars, as designated, staked, or otherwise directed by Forest Service, that can be traversed by a normal two-wheel drive pickup truck. On "Remain Open" Temporary Roads, all bridges and culverts shall remain in place and ditches shall not be eliminated. All drainage structures shall be left in functional condition.

**B6.64 Landings.** After landings have served Contractor's purpose, Contractor shall ditch and slope them to permit water to drain or spread. Unless agreed otherwise, cut and fill banks around landings shall be sloped to remove overhangs and otherwise minimize erosion.

**B6.65 Skid Trails and Fire Lines.** Contractor shall construct cross ditches and water-spreading ditches on tractor roads and skid trails, where staked or otherwise marked on the ground by Forest Service. Forest Service shall designate cross ditching on Contractor-built fire lines prior to or during construction. By agreement, Contractor may use other comparable erosion control measures, such as backblading skid trails, in lieu of cross ditching.

**B6.66 Current Operating Areas.** Where logging, road construction, or other stewardship project work is in progress but not completed, unless agreed otherwise, Contractor shall, before operations cease annually, remove all temporary log culverts and construct temporary cross drains, drainage ditches, dips, berms, culverts, or other facilities needed to control erosion.

Such protection shall be provided, prior to end of a Normal Operating Season, for all disturbed, unprotected ground that is not to be disturbed further prior to end of operations each year, including roads and associated fills, tractor roads, skid trails, and fire lines. When weather permits operations after Normal Operating Season, Contractor shall keep such work on any additional disturbed areas as up to date as practicable.

**B6.67 Erosion Control Structure Maintenance.** During the period of this contract, Contractor shall provide maintenance of soil erosion control structures constructed by Contractor until they become stabilized, but not for more than 1 year after their construction. Contracting Officer may agree to perform such structure maintenance under B4.218, if requested by Contractor, subject to agreement on rates. Contractor shall not be responsible for repair of such structures damaged by other National Forest users whose activities are not a part of Contractor's Operations.

**B6.7 Slash Disposal.** Contractor's timing of product removal and preparatory work shall not unnecessarily delay slash disposal. Specific slash disposal measures to be employed by Contractor are stated in C6.7# and are in addition to Required Deposits for slash disposal.

**B6.8 Scaling.** "Scaling," as used herein, involves:

(a) Various volume determination methods, such as log rule, sampling, measuring, linear measuring,

counting, weighing, or another method or combination of methods;

(b) Various sites, such as truck Scaling stations, rollways, weighing stations, woods landings, water Scaling stations, or other sites; and

(c) Various geographic locations.

**B6.81 Scaling Services.** Scaling services shall be performed by Forest Service personnel or parties under contract to Forest Service, except that weighing services may be performed by personnel or parties approved by Forest Service. Scaling shall be provided in accordance with the instructions and specifications in A9. Scalers shall be currently certified to perform accurate Scaling services. The Scaling services provided shall be selected exclusively by Forest Service.

Scaling services may be Continuous, Intermittent, or Extended. "Continuous Scaling Services" is Scaling at one site five (5) 8-hour shifts a week, exclusive of Sundays and Federal holidays. "Intermittent Scaling Services" are non-continuous Scaling services. "Extended Scaling Services" are Scaling services exceeding Continuous Scaling Services and may include Sundays and designated Federal holidays.

Upon written request of Contractor and approval of Contracting Officer, Forest Service may provide other services, such as but not limited to grading, tagging, or marking of Scaled logs.

**B6.811 Scaling Location.** Forest Service shall provide Scaling services at the Scaling site(s) shown in A10. The Scaling site(s) shown in A10 normally will be a non-exclusive site where more than one National Forest contractor may be served.

Contractor may request, in writing, an alternate Scaling site, such as at a private mill yard, private truck ramp, or a privately operated log transfer facility. Contracting Officer may approve an alternate Scaling site, when Contracting Officer determines that Scaling conditions at an alternate site are acceptable. Such conditions shall include at a minimum:

- (a) Scaler safety and comfort,
- (b) Product accountability and security,
- (c) Facilities and practices conducive to accurate and independent Scaling, and
- (d) The ability to provide for remote check Scaling.

Upon approval of an alternate Scaling site, Forest Service and Contractor shall enter into a written memorandum of agreement governing Scaling at that alternate location. Contractor agrees that Forest Service personnel or persons under contract with Forest Service shall perform Scaling services at an alternative Scaling site. In no instance shall Contractor or employees of Contractor perform Scaling services.

**B6.812 Scaling Adjustments.** Forest Service shall check the accuracy of the Scaling performed on National Forest logs. Scaling will be satisfactory if performed within the accuracy standards stated in governing instructions identified in A9. In the event Forest

Service check Scale(s) shows a variance in net Scale in excess of the allowable variance, an adjustment to volume reported Scaled may be made by Forest Service.

Such adjustment will be based on the difference between Forest Service check Scale(s) and original Scale for contract volume Scaled within the adjustment period. The volume to which this difference will be applied will be:

(a) One-half of the volume Scaled between the last satisfactory check Scale and the first unsatisfactory check Scale or, if a period of 120 days or more occurs without Scaling National Forest timber for stumpage, the adjustment will be applied to 100 percent of the volume Scaled after this period and

(b) 100 percent of the volume Scaled between unsatisfactory check Scales and

(c) One-half of the volume Scaled between the last unsatisfactory check Scale and the next satisfactory check Scale, or if no satisfactory check Scale is completed and a period of 120 days or more occurs without Scaling of National Forest timber for stumpage, the adjustment will be applied to 100 percent of the volume Scaled since the last unsatisfactory check Scale.

Adjustments may increase or decrease the original Scaled volume. Adjustments will be applied to Integrated Resource Account to correct charges for Included Timber, plus deposits, Scaled during the adjustment period.

**B6.813 Delayed or Interrupted Scaling Services.** In the event Scaling services are delayed or interrupted, Contractor shall discontinue hauling. Contractor agrees that in the event such a delay or interruption occurs for reasons not caused by Contractor, its sole and exclusive remedy shall be:

(a) Contract Term Adjustment and

(b) Out-of-Pocket Expenses incurred as a direct result of the delay or interruption of Scaling services under this Item.

Contractor further agrees that no logs will be presented for Scaling outside agreed upon Scaling services schedule.

**B6.814 Weighing Services.** Weighing services for stumpage payment purposes may be provided by either public or privately owned and operated weighing facilities. A "Weighing Services Agreement," approved by the Forest Supervisor, must be executed at each weighing facility providing weighing services.

Scales used to weigh National Forest products for payment purposes must be a currently certified scale in accordance with State law and be capable of weighing the entire load of logs in a single operation. The weighing of less than the entire load or weighing two loads at once is prohibited. Unless otherwise agreed, the minimum sized weighing facility shall be a 60-ton capacity scale with a 10 foot by 70 foot platform or larger. The

weighmaster must work in a position where it is possible to verify that the truck wheels are on or off the scales.

Weighing facilities shall meet the following minimum requirements:

(a) Be an electronic design,

(b) Use electronic load cells or have a fully enclosed and sealed weigh-beam,

(c) Have digital weight meters sealed with a seal approved by the State,

(d) Have a zero interlocking device on the printer,

(e) Have an automatic zero-setting mechanism,

(f) Have an automatic motion-detecting device,

(g) Be shielded against radio or electromagnetic interference, and

(h) Have a date and time stamp and gross and tare weights that print electronically with each weighing. Contracting Officer may waive electronic printing for public or third party weighing facilities.

Contractor shall bear all charges or fees for weighing services.

**B6.82 Presentation for Scaling.** Contractor shall present products so that they may be Scaled in an economical and safe manner. If prior to Scaling, Included Timber is to be mixed with other timber, Contractor shall, prior to mixing, provide for distinguishing, by means approved by Forest Service, each product included in this contract.

Trees or pieces presented for Scaling that have not been bucked to separate material meeting minimum piece standards from material not meeting minimum piece standards due to diameter, shall be Scaled as though such bucking had been done.

Deductions made for rot, check, or other defects resulting from abnormal delay in Scaling caused by Contractor shall be recorded separately and charged to Integrated Resource Account under B3.47.

Any timber that has been removed from Contract Area during the period of this contract, but remains unscaled after Termination Date, shall be Scaled at the earliest reasonable date.

**B6.83 Scaling Other Products.** The Scaled volume of material presented for Scaling in forms other than those stated in A2, when appropriate, shall be converted to the A2 unit of measure by the application of standard converting factors and procedures in effect at the time the contract was sold. Other converting factors may be used by written agreement.

**B6.84 Accountability.** When Scaling is performed away from Contract Area, products shall be accounted for in accordance with Forest Service written instructions or an Accountability Agreement between Forest Service and Contractor and as follows:

(a) Contractor shall plainly mark or otherwise identify products prior to hauling in accordance with B6.842;

(b) Forest Service shall issue removal receipts to Contractor;



(c) Contractor shall assign a competent individual at the landing to complete removal receipts and attach them to each load of products removed from Contract Area;

(d) Removal receipts shall be returned to Forest Service at periodic intervals;

(e) When products are in transit, the truck driver shall possess or display removal receipt and show it upon request as evidence of authority to move products;

(f) The scaler's portion of removal receipt shall be surrendered at point of Scaling, the unloading point, or as requested by Forest Service; and

(g) Contractor shall notify Forest Service of lost or off-loaded logs and their location within 12 hours of such loss.

Contractor shall not place products in storage for deferred Scaling until an accountability system has been agreed to in writing for a stated period.

**B6.841 Route of Haul.** As part of the annual Operating Schedule, Contractor shall furnish a map showing the route of haul over which unscaled products will be transported from Contract Area to the approved Scaling location. Such route of haul shall be the shortest, most economical haul route available between the points.

Upon advance written agreement, other routes may be approved. All unscaled products removed from Contract Area shall be transported over the designated routes of haul. Contractor shall notify Forest Service when a load of products, after leaving Contract Area, will be delayed for more than 12 hours in reaching Scaling location.

Contractor shall require truck drivers to stop, if requested by Forest Service, for the following reasons:

(a) For accountability checks when products are in transit from Contract Area to the designated Scaling location or

(b) For a remote check Scale when products are in transit after being truck Scaled at the designated Scaling location.

Contractor and Forest Service shall agree to locations for accountability checks and remote check Scales in advance of haul. Such locations shall be established only in areas where it is safe to stop trucks.

Forest Service shall notify Contractor of the methods to be used to alert truck drivers of an impending stop.

**B6.842 Product Identification.** Before removal from Contract Area, unless Contracting Officer determines that circumstances warrant a written waiver or adjustment, Contractor shall:

(a) Hammer brand all products that are eight (8) feet or more in length and one-third (1/3) or more sound, on each end that is seven (7) inches or more in diameter.

(b) West of the 100th meridian, paint with a spot of highway-yellow paint all domestic processing products that are eight (8) feet or more in length and one-third (1/3) or more sound, on each end that is seven (7) inches or more in diameter. Each paint spot must be not less than three (3) square inches in size.

Contracting Officer shall assign brands and, if Contract Area is within a State that maintains a log brand register, brands shall be registered with the State. Contractor shall use assigned brand exclusively on logs from this contract until Contracting Officer releases brand. Contractor will furnish and apply highway-yellow paint of a lasting quality (oil-base or equivalent).

All hammer brands and/or highway-yellow paint must remain on logs until they are domestically processed. Contractor shall replace identifying marks if they are lost, removed, or become unreadable. Contractor may remanufacture products into different log lengths. Except for logs remanufactured as part of the mill in-feed process immediately before processing, remanufactured products must be rebranded with the assigned contract brand and repainted with highway-yellow paint, unless otherwise agreed to in writing by Contracting Officer. For such remanufactured products, Contracting Officer may approve use of a brand to be used exclusively as a catch brand, in lieu of the assigned contract brand.

**B6.85 Scaling Lost Products.** The volume of lost products shall be determined by the best methods currently available, using data from the records for the period in which the loss occurred or the most applicable period if loss should occur substantially after cutting. In the absence of specific information indicating size or species of lost products, species distribution and volume for entire truckloads shall be assumed to be the same as the average volume Scaled per truck during the report period, and for individual products it shall be assumed that the volume and species were the average volume of the highest priced species Scaled during the report period.

**B6.851 Scaling Lost Sample Loads.** If Scaling is being done by sampling loads of logs, Contractor shall present such sample loads for Scaling by Forest Service. If loads of logs selected to be sample Scaled are placed in the decks before they are Scaled, they will be considered as lost sample loads. It will be difficult, if not impossible, to determine the volume and species contained in such loads for payment purposes. Therefore, lost sample loads will be deemed to have a Scale volume and species composition equal to that of the highest value load Scaled during the sampling period, as established by Forest Service. If no sample loads were Scaled during the period, the Scale data for the high valued load will be taken from the most current preceding sampling period with Scale. Sample loads lost as a result of Forest Service actions shall be treated as non-Scaled loads.

**B6.86 Scale Reports.** Forest Service shall provide Contractor a copy of Forest Service scaler's record, if requested in writing.

**B6.9 Stewardship Projects.** Performance of stewardship projects shall be in accordance with the specifications in C6.9#.

All of the mandatory stewardship projects, as shown in A4c, shall be performed. Optional stewardship projects, as shown in A4c, shall be performed when authorized in writing by Contracting Officer. Such authorization may be for all or a portion of the quantity shown. Optional stewardship projects may be selected and authorized in any order by the Contracting Officer. Upon written request of Contractor, additional optional stewardship projects shall be authorized; however, Contracting Officer shall not be obligated to authorize additional stewardship projects if three or more authorized optional stewardship projects or any of the mandatory stewardship projects remain uncompleted. Contracting Officer shall not be obligated to authorize additional optional stewardship projects at any time if Contracting Officer determines that there is insufficient value of remaining designated timber to cover the value of additional stewardship projects.

#### **B7.0—FIRE PRECAUTIONS AND CONTROL**

**B7.1 Plans.** Prior to initiating Contractor's Operations during Fire Precautionary Period, Contractor shall file with Forest Service a Fire Prevention and Control Plan providing for the prevention and control of fires on Contract Area and other areas of Contractor's Operations. Such plan shall include a detailed list of personnel and equipment at Contractor's disposal for implementing the plan. This requirement may be met by preparing a single plan for more than one contract.

**B7.2 Fire Precautions.** Specific fire precautionary measures listed in C7.2# shall be applicable during Contractor's Operations in "Fire Precautionary Period" described in A12. Contracting Officer may change the dates of Fire Precautionary Period by advance written notice, if justified by unusual weather or other conditions. Required tools and equipment shall be kept in serviceable condition and immediately available for fire fighting at all times during Contractor's Operations in Fire Precautionary Period.

**B7.21 Substitute Precautions.** Forest Service may authorize substitute measures or equipment, or waive specific requirements by written notice, if substitute measures or equipment will afford equal protection or some of the required measures and equipment are unnecessary.

**B7.22 Emergency Precautions.** Forest Service may require the necessary shutting down of equipment on portions of Contractor's Operations, as specified by the emergency fire precautions schedule of C7.22#. Under such conditions, after Contractor ceases active operations, Contractor shall release for hire by

Forest Service, if needed, Contractor's shutdown equipment for fire standby on Contract Area or other areas of Contractor's Operations and personnel for fire standby or fire patrol, when such personnel and equipment are not needed by Contractor for other fire fighting or protection from fire. Equipment shall be paid for at fire fighting equipment rates common in the area or at prior agreed rates and, if Contractor requests, shall be operated only by personnel approved by Contractor. Personnel so hired shall be subject to direction and control by Forest Service and shall be paid by Forest Service at fire fighting rates common in the area or at prior agreed rates.

**B7.3 Fire Control.** Contractor shall, both independently and in cooperation with Forest Service, take all reasonable and practicable action to prevent and suppress fires resulting from Contractor's Operations and to suppress any forest fire on Contract Area. Contractor's independent initial fire suppression action on such fires shall be immediate and shall include the use of all necessary personnel and equipment at Contractor's disposal on Contract Area or within the distance of Contract Area stated in A13.

**B7.31 Contractor's Reinforcement Obligations.** Whenever an Operations Fire or Negligent Fire, whether on or off Contract Area, or any other forest fire on Contract Area, has not been suppressed by initial action and appreciable reinforcement strength is required, Forest Service may require further actions by Contractor until such fire is controlled and mopped up to a point of safety. Such actions may include any or all of the following as necessary to fight such fire:

**B7.311 Suspend Operations.** To suspend any or all of Contractor's Operations.

**B7.312 Personnel.** To release for employment by Forest Service any or all of Contractor's personnel engaged in Contractor's Operations or timber processing within the distance of Contract Area stated in A13. Any organized crew so hired shall include Contractor's supervisor, if any. Personnel so employed shall be paid at Forest Service standard emergency fire fighting rates.

**B7.313 Equipment.** To make available for Forest Service rental at fire fighting equipment rates common in the area or at prior agreed rates any or all of Contractor's equipment suitable for fire fighting and currently engaged in Contractor's Operations within the distance of Contract Area stated in A13. Equipment shall be operated only by personnel approved by Contractor, if so requested by Contractor.

**B7.4 Fire Suppression Costs.** Contractor's obligations for cost of fire suppression vary according to three classifications of fires as follows:

**B7.41 Operations Fire.** An "Operations Fire" is a fire caused by Contractor's Operations other than a Negligent Fire.

Forest Service, except as provided in B7.3, shall use cooperative deposits under B4.218 to perform fire suppression activities on Operations Fires. Contractor agrees to reimburse Forest Service for such cost for each Operations Fire, subject to a maximum of the dollar amount stated in A14. The cost of Contractor's actions, supplies, and equipment on any such fire provided pursuant to B7.3, or otherwise at the request of Forest Service, shall be credited toward such maximum. If Contractor's actual cost exceeds Contractor's obligation stated in A14, Forest Service shall reimburse Contractor for the excess.

**B7.42 Negligent Fire.** A "Negligent Fire" is a fire caused by negligence or fault of Contractor's Operations, including, but not limited to, one caused by smoking by persons engaged in Contractor's Operations during the course of their employment, or during rest or lunch periods; or if Contractor's failure to comply with the requirements of B7.2 and B7.3 results in a fire starting or permits a fire to spread. Damages and the cost of suppressing Negligent Fires shall be borne by Contractor.

**B7.43 Other Fires on Contract Area.** Forest Service shall pay Contractor, at fire fighting rates common in the area or at prior agreed rates, for equipment or personnel furnished by Contractor pursuant to B7.3, or otherwise at the request of Forest Service, on any fire on Contract Area other than an Operations Fire or a Negligent Fire.

**B7.5 State Law.** Contractor shall not be relieved by the terms of this contract of any liability to the United States for fire suppression costs recoverable in an action based on State law, except for such costs resulting from Operations Fires. Amounts due Contractor for fire fighting expenditures in accordance with B7.41 shall not be withheld pending settlement of any such claim or action based on State law.

**B7.6 Performance by Contractor.** Where Contractor's employees, agents, contractors, Subcontractors, or their employees or agents perform Contractor's Operations in connection with fire responsibilities, Contractor's obligations shall be the same as if performance was by Contractor.

## **B8.0—OTHER CONDITIONS**

### **B8.1 Title and Liability.**

**B8.11 Title Passage.** All right, title, and interest in and to any Included Timber shall remain in Forest Service until it has been cut, Scaled, removed from Contract Area or other authorized cutting area, and paid for, at which time title shall vest in Contractor. For purposes of this Subsection, timber cut under cash deposit or payment guarantee under B4.3 shall be considered to have been paid for. Title to any Included Timber that has been cut, Scaled, and paid for, but not removed from Contract Area or other authorized cutting area by

Contractor on or prior to Termination Date, shall remain in Forest Service.

**B8.12 Liability for Loss.** If Included Timber is destroyed or damaged by an unexpected event that significantly changes the nature of Included Timber, such as fire, wind, flood, insects, disease, or similar cause, the party holding title shall bear the timber value loss resulting from such destruction or damage; except that such losses after removal of timber from Contract Area, but before Scaling, shall be borne by Contractor at Current Contract Rates and Required Deposits. Deterioration or loss of value of salvage timber is not an unexpected event, except for deterioration due to delay or interruption that qualifies for Contract Term Adjustment or under B8.33.

In the event Included Timber to which Forest Service holds title is destroyed, Contractor will not be obligated to remove and pay for such timber. In the event Included Timber to which Forest Service holds title is damaged, Contracting Officer shall make an appraisal to determine for each species the difference between the appraised unit value of Included Timber immediately prior to the value loss and the appraised unit value of timber after the loss. Current Contract Rates in effect at the time of the value loss shall be adjusted by differences to become the redetermined rates.

There shall be no obligation for Forest Service to supply, or for Contractor to accept and pay for, other timber in lieu of that destroyed or damaged. This Subsection shall not be construed to relieve either party of liability for negligence.

**B8.2 Period of Contract.** All obligations of Contractor shall be discharged not later than "Termination Date" stated in A15, unless it is adjusted pursuant to B8.21 or B8.212 or extended pursuant to B8.23 or B8.32, excepting only those obligations for which Forest Service has given written permission to delay performance. Such written permission shall be considered a Contract Term Adjustment for the purpose of Contractor completing performance of obligations covered by such permission.

**B8.21 Contract Term Adjustment.** "Contract Term Adjustment" means adjustment only as provided for in the three circumstances described in this Subsection. Under these circumstances, the contract term shall be adjusted in writing to include additional calendar days in one or more Normal Operating Seasons equal to the actual time lost, except as limited by paragraph (b) in this Subsection.

To qualify for such adjustment, Contractor shall give written notice of the lost time not later than 30 days after end of Normal Operating Season in which time was lost and at least 10 days before Termination Date. Contracting Officer shall make prompt written acknowledgment of such notice, indicating concurrence with the number of days in the notice or the number of days Forest Service considers as qualifying for the adjustment.

Lost portions of days shall be disregarded in computing time lost. The three circumstances qualifying for a Contract Term Adjustment are:

(a) Contractor experiences delay in starting scheduled operations or interruptions in active operations, either of which stops removal of Included Timber from Contract Area through curtailment in felling and bucking, yarding, skidding and loading, hauling, or road construction, as scheduled under B6.31, for 10 or more consecutive days during a Normal Operating Season due to causes beyond Contractor's control, including, but not limited to, acts of God, acts of the public enemy, acts of the Government, labor disputes, fires, insurrections, or floods.

(b) Causes described in paragraph (a) substantially affect the disposition or processing of Included Timber during Normal Operating Season through their effects on primary timber processing facilities, with a resulting delay of 60 days or more in use of such facilities. In such event, Contract Term Adjustment shall not extend for more than 12 consecutive months.

(c) (i) Contracting Officer requests Contractor, in writing, to delay or interrupt operations during the normal operating season for any purpose other than suspension under B4.4 or B9.3 or

(ii) Contractor suffers a delay or interruption of Contractor's Operations affecting skidding, yarding, and loading because of fire emergency closure ordered by Forest Service (or another agency in its behalf), and the total of such lost time is 10 or more days during any Normal Operating Season.

If Termination Date is adjusted, as described in this Subsection, and later extended under B8.23, the appraisal for the extension shall be made as of the unadjusted Termination Date, but the date on which the new rates become effective, if higher than Current Contract Rates immediately prior to Termination Date, shall be the adjusted Termination Date.

**B8.211 Delay in Reconstruction of Processing Facilities.** Notwithstanding the 12-month limitation in B8.21, if Contractor demonstrates a diligent effort has been made to replace primary timber processing facilities and that delays in doing so have been beyond Contractor's control, Contracting Officer may authorize Contract Term Adjustment up to a total of 24 months.

**B8.212 Market-Related Contract Term Addition.** The term of this contract may be adjusted when a drastic reduction in wood product prices has occurred in accordance with 36 CFR 223.52. The Producer Price Index used to determine when a drastic reduction in price has occurred is stated in A20. Contractor will be notified whenever the Chief determines that a drastic reduction in wood product prices has occurred. If the drastic reduction criteria specified in 36 CFR 223.52 are met for 2 consecutive calendar quarters, after contract award date, Contracting Officer will add 1

year to the contract term, upon Contractor's written request. For each additional consecutive quarter such a drastic reduction occurs, Contracting Officer will, upon written request, add an additional 3 months to the term during Normal Operating Season. Contracting Officer must receive Contractor's written request for a market-related contract term addition before the expiration of this contract.

The total amount of contract term addition is limited to the lesser of twice the length of the original contract or 3 years. The revised contract term may not exceed 10 years as a result of market-related contract term addition. Additional contract time may not be granted for those portions of the contract that have a required completion date or for those portions of the contract where Contracting Officer determines that the timber is in need of urgent removal or that timber deterioration or resource damage will result from delay.

**B8.22 Termination for Catastrophe.** In event of Catastrophic Damage, this contract may be modified under B8.32, following rate redetermination under B3.32, or terminated under this Subsection. Such termination shall not be considered a termination under B8.34.

**B8.221 Termination by Contractor.** This contract shall be terminated, upon election and written notice by Contractor, if Catastrophic Damage rate redetermination under B3.32 shows that the appraised weighted average Indicated Advertised Rate of all Included Timber remaining immediately prior to the catastrophe has been reduced through Catastrophic Damage by an amount equal to or more than the weighted average Current Contract Rate.

"Indicated Advertised Rates" are Forest Service estimates of fair market value of the timber.

**B8.222 Termination by Forest Service.** This contract may be terminated by written notice from Contracting Officer, if there is Catastrophic Damage and Contractor does not agree, under B8.32, within 30 days of receipt from Contracting Officer of contract modifications proposed to permit the harvest of the catastrophe-affected timber.

**B8.23 Contract Term Extension.** "Contract Term Extension" means an extension of the term of this contract, at the request of Contractor, under this Subsection. This Subsection does not obligate Contracting Officer to grant Contract Term Extension. An extension can only be granted when Contracting Officer has determined that Contractor has diligently performed under the terms of this contract and when such extension is determined to be in the best interest of Forest Service.

Contracting Officer may not grant Contractor's written request for Contract Term Extension, unless Contractor's Operations to date have been in reasonable compliance with contract terms and the approved Technical Proposal under B6.311 and all contractual requirements have been met by Contractor and accepted by

Forest Service in active stewardship project areas and on areas cut over at time of Contractor's request, except for areas where work is in progress at time of Contractor's request. Contractor's burning of current slash or seeding or planting for erosion control may be temporarily waived, if weather or other considerations make such work impractical.

Contract Term Extension shall not become effective unless the initial Extension Deposit required by B4.217 has been made by the effective date of any extension.

When such extension is made, Forest Service shall make an appraisal using standard Forest Service methods and appraisal data in effect 45 days prior to the original Termination Date. Bid Premium Rates shall be added to such appraised rates to establish Flat Rates or Tentative Rates for the extension period. In event rates so established would develop Current Contract Value immediately prior to such an extension that is less than Current Contract Value at that time, Flat Rates and Tentative Rates in effect immediately prior to extension shall be retained for the extension period.

**B8.3 Contract Modification.** The conditions of this contract are completely set forth in this contract. Except as provided in B8.32 and B8.33, this contract can be modified only by written agreement between the parties. Only Contracting Officer may make contract modifications, with compensating adjustments to Current Contract Rates where appropriate, on behalf of Forest Service.

**B8.31 Changed Conditions.** When it is agreed that the completion of certain work or other requirements hereunder would no longer serve the purpose intended because of substantial change in the physical conditions of Contract Area or Included Timber since the date of this contract, the requirements shall be waived in writing. The estimated cost of such waived work or other requirement shall be charged to Integrated Resource Account.

**B8.32 Modification for Catastrophe.** In event of Catastrophic Damage, Forest Service, in consultation with Contractor, shall outline on Contract Area Map:

(a) Any areas of catastrophe-affected live and dead timber meeting Utilization Standards and having undesignated timber so situated that it should be logged with the designated timber;

(b) If needed, any such areas where the damaged undesignated timber can reasonably be logged separately; and

(c) Areas of affected or unaffected timber that are to be eliminated from Contract Area.

Forest Service shall locate and post the boundaries of all such areas, as needed.

After Contract Area Map has been outlined under this Subsection, Forest Service may propose contract modification to permit the harvest of catastrophe-affected timber. If Contractor accepts Forest Service proposed modifications, this contract shall be modified to

include rates redetermined under B3.32 and other related revisions as necessary, such as revision of Operating Schedule to ensure prompt removal of affected timber when necessary to avoid further loss and provision for additional contract time, if needed.

**B8.33 Contract Suspension and Modification.** (a) Contracting Officer may, by written order, delay or interrupt authorized operations under this contract or modify this contract, in whole or in part:

(i) To prevent environmental degradation or resource damage, including, but not limited to, harm to habitat, plants, animals, cultural resources, or cave resources;

(ii) To ensure consistency with land and resource management plans or other documents prepared pursuant to the National Environmental Policy Act of 1969, 42 USC 4321-4347;

(iii) To conduct environmental analysis, including, but not limited to, engaging in consultation pursuant to the Endangered Species Act of 1973, 16 USC 1531, *et seq.*; or

(iv) Upon agreement of the Regional Forester, due to administrative appeal or litigation, regardless of whether Contracting Officer's request is required by a court order or this contract is named in such a proceeding.

(v) Upon a change in law if performance of the contract, as determined by the Forest Service, would not be in compliance, in whole or in part, with such law.

(b) In the event of a request delaying or interrupting Contractor's Operations under this Subsection, Contractor's remedy shall be:

(i) Contract Term Adjustment,

(ii) reimbursement for Out-of-Pocket Expenses,

(iii) rate redetermination to measure any decline in the market pursuant to B3.33,

(iv) temporary reduction of downpayment pursuant to B4.22,

(v) temporary credit for unamortized Specified Road construction cost pursuant to B5.27, and

(vi) temporary bond reduction pursuant to B9.13.

(c) In addition to the compensation scheme set forth in subparagraph (b), Contractor may seek termination pursuant to B8.36 or, at any time prior to authorization to resume work suspended under this Subsection, demand termination under B8.34. If Contractor elects termination under B8.34 or B8.36, Contractor is nonetheless required, prior to contract termination, to fulfill all contract obligations for areas not affected by the delay or interruption under this Subsection and all compliance obligations for areas affected by the delay or interruption, including, but not limited to, erosion control, brush disposal, and road maintenance. To the extent Contractor is unable to fulfill such obligations, any

compensation due to Contractor will be reduced by the cost of completing the unfulfilled obligations, as determined by Contracting Officer. If Contractor seeks damages pursuant to subparagraph (b) and termination pursuant to this subparagraph, Contractor is not entitled to duplicative recovery of any damages.

(d) In cases of modification under this Subsection, Contractor shall receive a rate redetermination pursuant to B3.31.

(e) Contractor will only be eligible for the remedies listed in this Subsection if the delay or interruption occurs when operations were in progress or would have been proceeding, had there been no delay or interruption under this Subsection

(f) The applicability of this Subsection shall be unaffected by a finding during administrative appeal or litigation that this sale or a similarly situated sale was awarded or operated without properly complying with any statute, regulation, or policy.

**B8.34 Contract Termination.** (a) The Chief or the Chief's designee may unilaterally terminate this contract, in whole or in part, for any of the reasons set forth in paragraph (a) of B8.33.

(b) Contractor agrees that compensation for termination of this contract, in whole or in part, under this Subsection shall be: (i) refund or release of advanced deposits under B4.212 for timber cut but not removed, (ii) reimbursement for Out-of-Pocket Expenses, and (iii) one of the following, except when termination, pursuant to B8.33(v), is based upon a change of law which is public and general in nature: replacement volume under subparagraph (c) or liquidated damages under subparagraph (d).

(c) Forest Service and Contractor shall make good faith efforts to identify within Contract Area replacement timber of similar volume, quality, access, and topography. Stumpage price shall be adjusted under B3.31 to account for differences between replacement timber and timber deleted. If Forest Service and Contractor cannot reach agreement on satisfactory replacement volume or the proper stumpage of such timber, either party may opt to end the search and Contractor shall be compensated under paragraph (d) of this Subsection.

(d) Forest Service shall pay as fixed, agreed, and liquidated damages an amount equivalent to 15 percent of the estimated delivered log value of the volume of timber not harvested due to the termination or partial termination. Estimated delivered log value and volume of timber not harvested shall be determined by Contracting Officer as of Termination Date, using Forest Service methods in use as of Termination Date.

(e) When Contractor elects termination under this Subsection as a remedy for a delay or interruption pursuant to B8.33, Contractor shall only be entitled to damages pursuant to subparagraph (d) if the B8.33 delay or interruption is greater than one year, and the delay or

interruption was not initially caused by wind, flood, earthquake, landslide, fire, forest pest epidemic, or other major natural phenomenon.

(f) In cases of partial termination under this Subsection, Contractor's sole and exclusive remedy for the remaining volume shall be a rate redetermination pursuant to B3.31.

(g) The applicability of this Subsection shall be unaffected by a finding during administrative appeal or litigation that this sale, or a similarly situated sale, was awarded or operated without properly complying with any statute, regulation, or policy.

(h) Contractor is required to fulfill all contract obligations not affected by a termination or partial termination under this Subsection. To the extent Contractor is unable to fulfill such obligations, any compensation due to Contractor will be reduced by the cost of completing the unfulfilled obligations, as determined by Contracting Officer.

**B8.35 Out-of-Pocket Expenses.** "Out-of-Pocket Expenses" are unrecovered expenditures arising directly from performing the contract that were rendered unrecovered due to delay, interruption, or termination pursuant to B8.33 or B8.34. An expenditure is unrecovered within the meaning of this Subsection where Contractor was precluded from gaining the benefit of the expenditure during a given period because operations were not permitted. Forest Service will reimburse Contractor only for the following Out-of-Pocket Expenses:

(a) Out-of-Pocket Expenses for maintenance of the contract performance and payment bonds during the period when operations were delayed or interrupted or, if terminated, from the date operations were halted until the expiration of the bonds;

(b) Out-of-Pocket Expenses for maintenance of the downpayment or other cash deposits during the period when operations were delayed or interrupted or, if terminated, from the date operations were halted until the cash is returned to Contractor;

(c) Out-of-Pocket Expenses for move-in and move-out;

(d) Out-of-Pocket Expenses for felling, bucking, lopping, skidding, yarding, and decking any products so processed, but not removed from Contract Area because: (i) the contract was terminated or (ii) the products no longer meet Utilization Standards because of delay or interruption;

(e) If terminated in whole or in part, Out-of-Pocket Expenses for unused Temporary Roads;

(f) Out-of-Pocket Expenses for the investment in Specified Roads during the period when operations were delayed or interrupted or, if terminated, in whole or in part, Out-of-Pocket Expenses for unamortized Specified Road construction and reconstruction; and

(g) If the contract is terminated, in whole or in part, Out-of-Pocket Expenses for bid preparation, including review of contract offering.

Contractor shall submit documentation of claimed expenditures and supporting analysis to Contracting Officer to assist in Contracting Officer's calculation of reimbursement. Expenses related to paragraphs (a), (b), and (g) may be based on interest at the Prompt Payment Rate established by the Secretary of the Treasury. Contracting Officer shall determine the amount of reimbursement under this Subsection using information from Contractor and/or Forest Service methods in use on the date that operations were delayed, interrupted, or terminated at Contracting Officer's sole discretion.

Contractor shall make all reasonable efforts to minimize Out-of-Pocket Expenses.

**B8.36 Termination for Market Change.** In the event of delay or interruption under B8.33 exceeding 90 days, this contract may be:

(a) Modified to include rates redetermined under B3.33 or

(b) Terminated upon election and written notice by Contractor, if a rate redetermination for market change under B3.33 shows that the appraised weighted average Indicated Advertised Rate of all Included Timber remaining immediately prior to the delay or interruption has been reduced through a market change by an amount equal to or more than the weighted average Current Contract Rate.

Contractor agrees that damages caused by termination of contract by either party will be limited to Out-of-Pocket Expenses.

**B8.4 Performance by Other than Contractor.** The acquisition or assumption by another party, under an agreement with Contractor, of any right or obligation of Contractor under this contract shall be ineffective as to Forest Service, until Forest Service has been notified of such agreement and Contracting Officer has given written approval. In no case shall such recognition or approval:

(a) Operate to relieve Contractor of the responsibilities or liabilities Contractor has assumed hereunder or

(b) Be given unless such other party:

(i) Is acceptable to Forest Service as a contractor of timber and assumes in writing all of the obligations to Forest Service under the terms of this contract as to the uncompleted portion thereof or

(ii) Acquires the rights in trust as security and subject to such conditions as may be necessary for the protection of the public interests.

**B8.5 Sale of Other Materials.** Forest Service reserves the right to sell from Contract Area during the period of this contract any materials or products not subject to its terms, but shall not permit removal, possession, or use thereof that will materially interfere with Contractor's Operations. Contractor shall not be obligated to do any work made necessary by the action of others.

**B8.6 Provisions Required by Statute.**

**B8.61 Covenant against Contingent Fees.**

Contractor 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 Contractor for the purpose of securing business. For breach or violation of this warranty, Forest Service shall have the right to annul this contract without liability or to require Contractor to pay, in addition to the contract price or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

**B8.62 Officials Not to Benefit.** No member of Congress or Resident Commissioner shall be admitted to any share or part of this contract or to any benefit that may arise there from, unless it is made with a corporation for its general benefit (18 USC 431, 433).

**B8.63 Nondiscrimination in Employment.** If the total value of this contract is in excess of \$10,000, Contractor agrees during its performance as follows:

(a) Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by Forest Service setting forth the provisions of this Subsection.

(b) Contractor will, in all solicitations or advertisements for employees placed by or on behalf of Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(c) Contractor will send to each labor union or representative of workers with which Contractor has a collective bargaining agreement or other contract or understanding, a notice to be provided by Forest Service, advising the labor union or worker's representative of Contractor's commitments under this Subsection, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) Contractor shall comply with all provisions of Executive Order No. 11246, as amended by Executive Order No. 11375 and Executive Order No. 12086, and the rules, regulations, and relevant orders of the Secretary of Labor.

(e) Contractor will furnish all information and reports required by Executive Order No. 11246, as amended, and by the rules, regulations, and orders of

the Secretary of Labor, or pursuant thereto, and will permit access to books, records, and accounts by Forest Service and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(f) In event of Contractor's noncompliance with this Subsection or with any of such rules, regulations, or orders, this contract may be terminated or suspended, in whole or in part, and Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246, as amended, and such other sanctions may be imposed and remedies invoked, as provided in Executive Order or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(g) Contractor will include the provisions of paragraphs (a) through (f) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246, as amended, so that such provisions will be binding upon each Subcontractor or vendor. Contractor will take such action with respect to any subcontract or purchase order as Forest Service may direct as a means of enforcing such provisions, including sanctions for noncompliance. Provided, however, that in the event Contractor becomes involved in, or is threatened with, litigation with a Subcontractor or vendor as a result of such direction by Forest Service, Contractor may request the United States to enter into such litigation to protect the interests of the United States.

**B8.64 Debarment and Suspension Certification.** Pursuant to 2 CFR Part 180 and 2 CFR 417, Contractor shall obtain certifications from its Subcontractors regarding debarment, suspension, ineligibility, and voluntary exclusion, including additional Subcontractors obtained after award of this contract. "Subcontractors" are participants in lower tier covered transactions.

Contractor may rely upon a certification of a prospective Subcontractor that it is not proposed for debarment under 2 CFR Part 180 and 2 CFR 417, debarred, suspended, ineligible, or voluntarily excluded from participating in covered transactions or contracts, unless Contractor knows that the certification is erroneous.

Contractor shall keep the certifications of its Subcontractors on file until contract Termination Date and any extensions thereof, and will provide a copy at the written request of Contracting Officer. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this Subsection. The knowledge and information of Contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

If Contractor knowingly enters into a contract transaction with a person who is proposed for debarment under 2 CFR Part 180 and 2 CFR 417, suspended, debarred, ineligible, or voluntarily excluded from participation in covered transactions or contracts, in addition to other remedies available to the Government, Forest Service may pursue available remedies, including suspension and/or debarment.

The Subcontractor for a contract shall complete a "Subcontractor Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion." An example of this certification is shown following the instructions for page 2 of this contract.

**B8.65 Contract Consistency With Other Laws.** The contract shall govern if State and local environmental quality laws conflict with or preclude performance of contractual requirements.

## **B9.0—PERFORMANCE AND SETTLEMENT**

**B9.1 Performance Bond.** As a further guarantee of the faithful performance of the provisions of this contract, Contractor delivers herewith and agrees to maintain a surety bond in the dollar amount stated in A17, unless the amount is adjusted as provided in B9.11 or B9.13. In lieu of surety bond, Contractor may deposit into a Federal Depository, as directed by Forest Service under B4.21, and maintain therein, cash in the dollar amount stated in A17 or negotiable securities of the United States having market value at time of deposit of not less than the dollar amount stated in A17.

Any adjustment or extension of time for completion of this contract beyond 1 year may be granted only with the consent of surety on bond or delivery of a new bond. Should the sureties on the bond delivered herewith, or any bond delivered hereafter in connection with this contract, become unsatisfactory to Forest Service, Contractor shall, within 30 days of receipt of demand, furnish a new bond with surety satisfactory to Forest Service.

**B9.11 Bond Reduction.** Upon Contractor's written request, Contracting Officer shall redetermine the amount of Contractor's performance bond to an amount not less than Contractor's remaining obligations, including the value of Included Timber remaining on Contract Area, plus the estimated cost of uncompleted work required of Contractor and any unpaid billings due on the contract. Contracting Officer shall provide written notice of the redetermined amount to Contractor and to Contractor's surety. Similarly, Contracting Officer shall report to Contractor in writing the amount of deposited cash or deposited securities required thereafter, if such deposits exist in lieu of a surety bond.

As soon as security for the performance of this contract or the settlement of Claims incident thereto is no longer necessary, appropriate notice shall be given to surety or deposits that may have been made in lieu of



surety bond shall be returned to Contractor, subject to the conditions in B9.5.

**B9.12 Letters of Credit.** Notwithstanding the provisions of B9.1, approved letters of credit may be used in lieu of a surety bond for performance bond purposes. Such letters of credit shall be subject to approval by Contracting Officer.

**B9.13 Temporary Bond Reduction.** When, under B8.33, Contracting Officer requests Contractor to delay or interrupt Contractor's Operations for more than 90 days, the performance bond amount required may be temporarily reduced upon the written request of Contractor or at the discretion of Contracting Officer. For the period of the delay or interruption, the performance bond may be reduced to an amount not less than the estimated cost of uncompleted work required of Contractor and any unpaid billings due on the contract.

Upon Contractor's receipt of written notice from Contracting Officer that the basis for the delay or interruption no longer exists, Contractor shall restore the performance bond to the full amount shown in A17 within 15 days. Contractor shall not resume contract operations until the performance bond amount is fully restored.

**B9.2 Disputes.** This contract is subject to the Contract Disputes Act of 1978 (41 USC 601, *et seq.*). Except as provided in the Contract Disputes Act of 1978, all disputes arising under or relating to this contract shall be resolved in accordance with this Section.

As used herein, "Claim" means a written demand or assertion by one of the parties seeking, as a legal right, the payment of money, adjustment or interpretation of contract terms, or other relief, arising under or relating to this contract. A voucher, invoice, or request for payment that is not in dispute when submitted is not a Claim. However, where such submission is subsequently not acted upon in a reasonable time, or disputed either as to liability or amount, it may be converted to a Claim. A Claim by Contractor shall be made in writing and submitted to Contracting Officer for decision. A Claim by the Government against Contractor shall be subject to a decision by Contracting Officer.

For Contractor Claims of more than \$100,000, Contractor shall submit with the Claim a certification that the Claim is made in good faith; the supporting data are accurate and complete to the best of Contractor's knowledge and belief; and the amount requested accurately reflects the contract adjustment for which Contractor believes the Government is liable. Contractor, if an individual, shall execute the certification. When Contractor is not an individual, the certification shall be executed by a senior company official in charge at Contractor's plant or location involved or by an officer or general partner of Contractor having overall responsibility for the conduct of Contractor's affairs.

For Contractor Claims of \$100,000 or less, Contracting Officer must render a decision within 60 days.

For Contractor Claims in excess of \$100,000, Contracting Officer must decide the Claim within 60 days or notify Contractor of the date when the decision will be made.

Contracting Officer's decision shall be final unless Contractor appeals or files a suit.

The authority of Contracting Officer does not extend to Claims or disputes that by statute or regulation other agencies are expressly authorized to decide.

Interest, at the Prompt Payment Rate established by the Secretary of the Treasury, on the amount found due on Contractor's Claim shall be paid from the date the Claim is received by Contracting Officer until the date of the payment.

Except as the parties may otherwise agree, pending final resolution of a Claim of Contractor arising under the contract, Contractor shall proceed diligently with the performance of the contract in accordance with Contracting Officer's decision.

**B9.21 Time Limits for Submission of Claim.** Failure by Contractor to submit a Claim within established time limits shall relinquish the United States from any and all obligations whatsoever arising under the contract or portions thereof. Contractor shall file such Claim within the following time limits:

(a) When Contractor constructs Specified Road, Contractor must file any Claim not later than 60 days after receipt of Forest Service written notification of acceptance;

(b) When Forest Service constructs Specified Road, Contractor must file any Claim not later than 60 days after receipt of Forest Service written notification authorizing use of road;

(c) For subdivisions or cutting units and stewardship project areas, Contractor must file any Claim not later than 60 days after receipt of Forest Service written notification that such area has been accepted; and

(d) In all other cases, Contractor must file any Claim not later than 60 days after receipt of Contracting Officer written notification that contract is closed.

**B9.22 Contract Documents.** All contract documents are intended to be consistent with each other. In case of discrepancy, the following is the order of precedence:

- (a) Special Provisions in Division C
- (b) Contract Area Map
- (c) Specific Conditions in Division A and Schedule of Items
- (d) Standard Provisions in Division B
- (e) Special project specifications
- (f) Plans, such as slash, erosion control, and dust abatement
- (g) Agreements between Contractor and Forest Service, as authorized under the contract
- (h) Plans:
  - (i) Figured dimensions over scaled dimensions

- (ii) Large scale Plans over small scale Plans
- (i) Standard specifications
- (j) Lists and/or tables in Plans over any conflicting notations on Plans
- (k) Shop Drawings

**B9.3 Breach.** In event Contractor breaches any of the material provisions of this contract, Forest Service shall give Contractor notice of such breach and, allowing reasonable time for remedy of such breach and of Forest Service's election to suspend, may give notice to suspend all or any part of Contractor's Operations. Such notice of breach and notice to suspend Contractor's Operations shall be written, except oral notices may be given if such breach constitutes an immediate threat to human life or a threat of immediate and irreparable damage to National Forest resources. Notwithstanding Section B6.1, such oral suspension notice may be given to Contractor's work supervisor or, in work supervisor's absence, to those performing the operation. An oral suspension notice shall be promptly followed by telephone notice and a written explanation from Forest Service to Contractor.

Suspension under this Section shall not entitle Contractor to any remedies arising under B8.33.

Immediately upon oral or written suspension, Forest Service representative shall notify Contracting Officer of the suspension and related circumstances. Contracting Officer shall promptly review the suspension to determine if the suspension should be continued or lifted. Such suspension shall be lifted as early as conditions permit.

Upon receipt of oral or written notice of such breach, Contractor shall remedy the breach as follows:

(a) If remedying such breach requires on-the-ground action by Contractor, Contractor shall have 30 practicable operating days during Normal Operating Season to remedy the breach, except under emergency conditions when action should not be delayed to prevent major damage or

(b) If such breach does not require on-the-ground action by Contractor, such breach shall be remedied within 30 days.

**B9.31 Termination for Breach.** Contracting Officer, with the concurrence of the Regional Forester, may terminate this contract for breach in the event Contractor:

(a) Is convicted for violation of criminal statutes, civil standards, or any other offense indicating a lack of business integrity or honesty that seriously and directly affects the responsibility of Contractor; including, but not limited to:

- (i) Theft, forgery, bribery, embezzlement, falsification or destruction of records, making false statements, or receiving stolen property, any of which occurred in connection with obtaining, attempting to obtain, selling, trading, or processing public timber;

(ii) Fraud, criminal offenses, or violation of Federal or State antitrust laws, any of which occurred in connection with obtaining, attempting to obtain, or performing a public contract or subcontract; or

(iii) Threatening, resisting, intimidating, or interfering with Forest Officers engaged in, or on account of, the performance of their official duties involving the protection, improvement, or administration of National Forest lands;

(b) Is convicted for violation of criminal statutes or civil standards, orders, permits, or other regulations for environmental protection issued by a Federal agency, State agency, or political subdivision thereof in the conduct of operations hereunder on National Forest lands, pursuant to 36 CFR 223.116;

(c) Has engaged in a pattern of activity that demonstrates flagrant disregard for the terms of this contract, such as, but not limited to, repeated suspensions for breach pursuant to B9.3, causing undesignated timber meeting Utilization Standards to be unnecessarily damaged or negligently or willfully cut, or causing other serious environmental degradation or resource damage;

(d) Fails to comply with contract provisions related to nondiscrimination in employment; or

(e) Fails to remedy a breach of contract within time limits stated in B9.3.

Damages due the United States for termination under this Subsection shall be determined pursuant to B9.4.

**B9.4 – Damages for Failure to Complete Contract or Termination for Breach.** (a) In event of Contractor's failure to cut designated timber on portions of Contract Area by Termination Date; Contractor's failure to complete required stewardship projects by Termination Date; or termination for breach under B9.31; Forest Service shall appraise remaining Included Timber and stewardship projects, unless termination is under B8.22 or B8.34. Such appraisal shall be made with the standard Forest Service method in use at time of termination.

(b) If the contract is reoffered and awarded, damages due shall be the amount by which Current Contract Value decreases at new Bid Rates, plus costs described in paragraph (d) of this Section, less any unused established Stewardship Credits.

(c) If the contract is not reoffered or there are no responsive bids on the reoffered contract, damages due shall be the amount by which Current Contract Value decreases, based on the value determined by appraisal, plus costs described in paragraph (d) of this Section, less any unused established Stewardship Credits.

(d) If applicable, the following costs shall be included in damages:

- (i) The cost of reoffering, including, but not limited to, salary costs, document preparation and

duplication costs, mailing costs, and contract advertisement costs.

(ii) If Contractor has failed to cut individual trees in the portions of Contract Area cut over and there is no resale of such individual trees, Contractor shall pay Forest Service for cost of felling and removal or otherwise eliminating such uncut trees, except for occasional trees not cut for reasons stated in B6.4.

(iii) The Government's loss caused by the delay in receipt of stumpage payments. Such loss will be measured by interest at the Current Value of Funds Rate established by the Secretary of the Treasury, on the unpaid contract value at Termination Date. Interest will be charged for the total number of months, or portions thereof, from Termination Date until midpoint of the contract resale period, less any time in excess of 1 year needed to make the resale.

(iv) Any increase in reforestation costs, including site preparation, seeding, and planting caused by Contractor's failure to harvest Included Timber by Termination Date.

**B9.5 Settlement.** If obligations of Contractor have not been fully discharged by Termination Date, any money advanced or deposited hereunder

shall be retained and applied toward unfulfilled obligations of Contractor without prejudice to any other rights or remedies of Forest Service. Such funds may be treated as cooperative deposits under B4.218 for uncompleted work 30 days after receipt of written notice from Contracting Officer to Contractor of work to be done and Contractor's failure to deny the obligation or to do the work.

**B9.6 Contract Closure.** Contracting Officer shall give appropriate written notice to Contractor when Contractor has complied with the terms of this contract. Contractor shall be paid refunds due from Integrated Resource Account under B4.24 and excess cooperative deposits under B4.218.

## **DIVISION C**

### **Special Provisions**

In accordance with A22, the Sections, Subsections, and Items therein listed are attached and made a part hereof. The material is indexed by the numbering system used in Division B. The numbers after the C (that identifies material in this Division) indicates the Part, Section, Subsection, or Item of Division B that is being supplemented or modified by each particular provision.