Region: Pacific N-West
National Forest: Deschutes
Ranger District: Crescent

U.S. DEPARTMENT OF AGRICULTURE - FOREST SERVICE
FOREST PRODUCTS CONTRACT
(Ref. FSM 2430, FSH 2409.18)

FS-2400-3P (6/06)

Sale Name: *Highway Cones 2012*	Contract Number	Award Date	Termination Date (BP8.2)
Purchaser's Name and Complete Address:			*09/30/2012*
	Total Sale Acres	Acres to Harvest	Type of Sale
	17314	*6679*	**Forest Products**
	Legal Description of Sale Area (BP1.1): T25S, R08E, sec. 29, 30, 31,32, 33, 36; T26S, R07E, Sec. 12, 13, 14, 23, 24, 25, 26, 36; T26S, R08E, Sec. 4, 5, 6, 7, 8, 9, 10, 15, 16, 17, 18, 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, 33. w.m.Surveyed, Klamath County, OR.		

The parties to this contract are the United States of America, acting through the Forest Service, United States Department of Agriculture, hereinafter called Forest Service, and _____, hereinafter called Purchaser. Standard Provisions of this contract begin on page 2. Specific Conditions are given below. Numbers in parentheses refer to Standard and Special Provisions. Forest Service address to receive payments (BP4.0): USDA Forest Service, (at address on Bill For Collection). Measurement will be done before harvest (BP6.8).

Included Products (BP2.1, BP2.2, BP2.4, BP3.1, BP4.0, and BP6.4)

Species	Product	Estimated Quantity	Unit of Measure	Bid Rate per Unit of Measure for Products $	Total Products $
Ponderosa Dry Cones	Cones-Dry	1,800.00	Bshls		
Total Quantity		1,800.00	Bshls	**Total Sale Value $**	

Schedule of Payment Units

Payment Unit Number	Approximate Acres	Species	Product	Quantity	Unit of Measure	Total Payment $ 1/	Total Associated Charges $ 2/
001	6679	Ponderosa Dry Cones	Cones-Dry	1,800.00	Bshls		.00
		Total PU Quantity And Value		1,800.00	Bshls		

Inapplicable Standard Provisions:

B4.211

List of Special Provisions:

CP2.133, CP2.3#, CP4.211, CP4.212, CP6.41#, CP6.81 (Option 2), CP7.1, CP7.2, CP7.22, CP8.13

Purchaser's Operations Fire Suppression Liability (BP7.41) is: *$300,000.00* per Fire.	**UNITED STATES OF AMERICA**
Fire Precautionary Period (BP7.2): From: *April 01* To: *October 31*	
Responsibility to Furnish Crews & Equipment (BP7.3): Initial Suppression: *5* road miles	_____ *By (Signature)*
Fire Suppression Reinforcement: *100* road miles	Contracting Officer
Normal Operating Season (BP6.31): First Period: From: *May 01* To: *November 30* Second Period: From: To:	_____ *(Title)*
Performance Bond Amount (BP9.1):	**PURCHASER**
Downpayment Amount (BP4.211):	
Periodic Payment Amount (BP4.213): Date:	_____ *By (Signature)*
WITNESSES	
In witness hereof, the parties hereto have executed this contract as of the award date.	_____ *(Title)*
_____ (Witness Signature)	
_____ (Witness Signature)	

CERTIFICATION

I, _____ , certify that I am the _____ Secretary of the corporation named as Purchaser herein; that _____ who signed this contract on behalf of the Purchaser, was then _____ of said corporation; that said contract was duly signed for and on behalf of said corporation by authority of its governing body, and is within the scope of its corporate powers.

_____ CORPORATE SEAL

FOREST PRODUCT SALE CONTRACT

BP1.0-SALE AREA

BP1.1 Sale Area Map. The boundaries of "Sale Area" and any Payment Unit thereof, are as shown on the attached "Sale Area Map" that is made a part hereof, and were, before sale advertisement, Designated on the ground by Forest Service to meet the anticipated needs of the parties. The location of Sale Area and its approximate acreage are stated on Page 1. Payment Units may be revised and additional ones may be established only by written agreement. Upon Purchaser's request, Forest Service shall subdivide Payment Units to reduce them to a size that can be harvested within 60 days at Purchaser's normal rate of harvesting. However, the rate of harvesting used in such adjustment of Payment Unit size shall not be less than a rate necessary for removal of all Included Products during Normal Operating Seasons prior to Termination Date. Payment Units or harvest units may be eliminated from Sale Area under conditions described in BP6.36.

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

(a) Roads where hauling or use is prohibited or restricted under BP5.12;
(b) Roads and trails to be kept open under BP6.22;
(c) Improvements to be protected under BP6.22;
(d) Locations of known wildlife, plant habitat, and cave resources to be protected under BP6.24;
(e) Locations of areas known to be infested with specific invasive species of concern under BP6.35;
(f) Removal methods specified under BP6.42;
(g) Streamcourses to be protected under BP6.5;
(h) Locations of meadows requiring protection under BP6.61;
(i) Locations of wetlands requiring protection under BP6.62;
(j) Locations of temporary roads to be kept open under BP6.631; and
(k) Other features required by standard or special provisions.

BP1.2 Claims. Valid mining claims are excluded from Sale Area.

BP2.0-FOREST PRODUCT SPECIFICATIONS

BP2.1 Included Products. "Included Products" consists of forest products that are Designated for harvesting under BP2.3.

BP2.13 Damaged Forest Products.

BP2.131 Damaged by Purchaser. Undesignated forest products that are damaged by Purchaser in harvesting and are subsequently Designated before Purchaser has completed removal operations in the immediate area.

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

BP2.132 Negligent or Willful Damage. Undesignated forest products unnecessarily damaged or negligently or willfully harvested by Purchaser, if included by Contracting Officer.

BP2.14 Unintentionally Harvested Forest Products. Forest products, within or immediately adjacent to Sale Area, not Designated for harvesting under BP2.3 but that are harvested through mistake by Purchaser, when included by Contracting Officer.

BP2.16 Other Material. Species or forest products not listed on Page 1, upon written approval of Contracting Officer.

BP2.2 Removal of Included Products. Except for forest products required or authorized to be left, Purchaser shall remove all Included Products from Sale Area.

BP2.3 Forest Product Designations. Forest products Designated for harvesting shall be confined to Sale Area, except as provided in BP2.131, BP2.14, and BP5.1.

Forest Products are "Designated" when individually marked or designated by description by Forest Service or when the boundaries of "Harvesting Units" are plainly marked on ground before sale advertisement and shown on Sale Area Map. The approximate acreage of forest products Designations is stated on Page 1.

BP2.37 Designation Changes. Within Sale Area, minor adjustments may be made in boundaries of harvesting units when acceptable to Purchaser and Forest Service.

BP2.4 Quantity Estimate. The estimated quantities of forest products by species Designated for harvesting under BP2.3 and expected to be harvested are listed on Page 1. Estimated quantity on Page 1 does not include the following:

(a) Damaged forest products under BP2.13, or
(b) Unintentionally harvested forest products under BP2.14.

Estimated quantities for such forest products not included on Page 1 shall be determined as stated in CP6.8.

BP2.43 Adjustment for Quantity Errors. An estimated quantity shown on Page 1 shall be revised by correcting

identified errors made in determining estimated quantity that result in a change in total sale quantity of at least 10 percent or $1,000 in value, whichever is less, when an incorrect estimated quantity is caused by computer malfunction or an error in calculations, area determination, or computer input.

No adjustments in quantity shall be made for variations in accuracy resulting from planned sampling and Measuring methods or judgments of forest products quality or defect.

For payment purposes, corresponding revisions in quantity and total payment shall be shown on Page 1 for each Payment Unit involved. Adjustment in rates will not be made. Adjustment in quantities shall not obligate Forest Service to Designate additional quantities when the original quantity estimate is overstated.

BP3.0-RATES OF PAYMENT

BP3.1 Current Contract Rates. Included Products that are Released for Harvesting shall be paid for at Current Contract Rates determined under this Section. "Current Contract Rates" are listed on Page 1, unless superseded by rates redetermined under BP3.3. In addition, "Required Deposits" shall be made as listed in CP5.32 or established under BP3.3.

In the event Termination Date is adjusted under BP8.21, Current Contract Rates shall be continued in the same manner as immediately prior to the adjustment period.

Current Contract Rates, based on rates redetermined under BP3.3, shall apply to all Payment Units from which removal of products from Sale Area has not been completed on the effective date of the revised rates, except Current Contract Rates in effect at the time of Release for Harvest shall be applicable for not more than two other Payment Units from which removal from Sale Area has begun.

Notwithstanding the exceptions provided in this Section, rates redetermined under BP3.31 shall apply to all forest products removed subsequent to the rate redetermination.

In event there are more than two Payment Units from which product removal has not been completed on the effective date, the rates in effect at the time of Release for Harvest shall apply to the two units from which the greatest estimated proportions of Payment Unit quantities have been removed. Otherwise, in released Payment Units, redetermined rates shall apply to the entire quantity shown on Page 1 for those units. In addition, Required Deposits shall be made as listed on Page 1 and CP5.32, or established under BP3.3.

"Current Contract Value" is the sum of the products of Current Contract Rates and estimated remaining quantities by species of Included Products. "Bid Premium Rates" are the amounts by which Purchaser's bid is in excess of Advertised Rates. "Advertised Rates" are the minimum acceptable Bid Rates for forest products. "Bid Rates" are the rates bid by Purchaser.

BP3.3 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 BP3.31.

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 forest product value at said rate redetermination date.

Required Deposits shall be redetermined.

BP3.31 Rate Redetermination for Environmental Modification. In the event of a contract modification under BP8.33 or partial termination under BP8.34, Contracting Officer shall make an appraisal to determine for each forest product the difference between the appraised unit value of Included Products remaining immediately prior to the revision and the appraised unit value of forest products to be harvested under the modification.

Current Contract Rates in effect at the time of the revision will be adjusted by said differences to become the redetermined rates.

Redetermined rates and Required Deposits shall be considered established under BP3.1 for forest products removed subsequent to the contract revision.

BP3.4 Other Payment Rates.

BP3.42 Forest Products Harvested Through Mistake. Undesignated forest products harvested by Purchaser through mistake and included by Contracting Officer under BP2.14, shall be removed and paid for at Current Contract Rates and Required Deposits, unless such material is not listed on Page 1. In such event, Contracting Officer, in accord with standard Forest Service methods, shall establish rates to be paid.

BP3.43 Undesignated Forest Products Damaged Without Negligence. Undesignated forest products damaged without negligence by Purchaser and Designated by Forest Service under BP2.131, shall be harvested, removed, and paid for at Current Contract Rates and Required Deposits.

BP3.44 Undesignated Forest Products Unnecessarily Damaged or Negligently or Willfully Harvested. Undesignated forest products unnecessarily damaged or negligently or willfully harvested by Purchaser, if included by Contracting

Officer under BP2.132, shall be harvested, removed, and paid for at Current Contract Rates and Required Deposits that are in addition to liquidated damages under BP3.45.

If such forest products are of a species not listed on Page 1 or are of a quality different from Designated forest products, Contracting Officer shall establish payment rates in accord with standard Forest Service methods.

BP3.45 Liquidated Damages. Unnecessary damage to or negligent or willful harvesting of undesignated forest products, as described in BP3.44, on portions of Sale Area harvested under this contract is likely to cause substantial resource damage to the National Forest. It will be difficult, if not impossible, to determine the amount of such damage. Therefore, Purchaser shall pay as fixed, agreed, and liquidated damages an amount equivalent to the amount payable at Current Contract Rates for such forest products. If designated by Contracting Officer, Purchaser shall remove such damaged or harvested forest products and pay for them at Current Contract Rates.

BP4.0-PAYMENTS

BP4.1 Amount Payable for Forest Products. Except as provided in BP3.1, Current Contract Rates and Required Deposits in effect when a Payment Unit is Released for Harvesting shall be applied to the forest product quantities to determine the amount Purchaser shall pay. A "Payment Unit" is a portion of Sale Area established for payment purposes.

BP4.2 Forest Products Sale Account. The "Forest Products Sale Account" is an account maintained by Forest Service of all Purchaser's deposits, credits, payment guarantees, and the charges for:

(a) Forest products at Current Contract Rates,
(b) Road maintenance at Required Deposit rates,
(c) Cooperative work at rates established by specific agreement under BP4.218, and
(d) Other charges provided in this contract.

Cash deposits shall be recorded currently in such account.

Charges for Payment Units Released for Harvesting shall be made when Forest Service prepares and furnishes to Purchaser periodic statements of quantity and value of such forest products.

Charges shall be made according to BP3.4 when forest products are subsequently Designated for harvesting.

BP4.21 Cash Deposits. Within the limitations of this Subsection, Purchaser shall make cash deposits to meet Purchaser's obligations within 15 days of billing by Forest Service. Deposits shall be made to the address on Page 1. Forest Service shall explain the bill at the time it requests each deposit.

BP4.211 Downpayment. The downpayment amount shown on Page 1 may not be applied toward any other payment required under the provisions of this contract, except damages determined pursuant to BP9.4, transferred to other sales, or refunded until harvest value representing 25 percent of the total bid value of the sale is shown on the Forest Products Sale Account to have been harvested, removed, and paid for, or if 36 CFR 223.49(e) is applicable, the estimated value remaining to be harvested and removed, as shown on the Forest Products Sale Account, is equal to or less than the amount of the downpayment. For lump sum sales, the downpayment may be applied to payment for release of the single payment unit.

If Forest Service makes a determination that this contract should not have been included under increased downpayment requirements (36 CFR 223.49(e)), the downpayment shall be revised and applied in accordance with 36 CFR 223.49(f).

BP4.212 Advance Deposits. Purchaser agrees to make cash deposits in advance of harvesting to meet charges under BP4.2.

Forest Service billings for advance cash deposits shall be in such amounts that the Forest Products Sale Account will maintain an unobligated balance that covers the applicable charges for Payment Units Released for Harvesting and Designated material not included on Page 1 expected to be harvested within the next 60 days. This advance cash deposit may be reduced to a smaller amount by the terms of BP4.211, BP4.213, and/or BP4.215. Except for amounts required pursuant to BP4.211 and BP4.213, Purchaser shall not be required to make advance deposits above those required under this Item.

When the credit balance in the Forest Products Sale Account is exceeded by the charges for forest products within Payment Units Released for Harvesting and for the estimated quantity to be harvested in 10 days of harvesting Designated material not included on Page 1, Contracting Officer will suspend all or any part of Purchaser's Operations until payment or acceptable payment guarantee is received.

BP4.213 Periodic Payment Schedule. Purchaser shall make periodic payment, as shown on Page 1.

In the event Purchaser has not paid the amount stated on Page 1 for quantities removed by the periodic payment determination date, Forest Service shall issue a bill for collection for the difference between the required amount and payments made by Purchaser. If payment falls due on a date other than a normal billing date, the payment date shall be

extended to coincide with the next Forest Products Sale Account billing date.

The amount of the periodic payment will be reduced if the payment would result in Purchaser's credit balance for forest products 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 payment to subsequent charges on this contract under the terms of BP4.212.

A periodic payment determination date that has not been reached shall be adjusted one day for each additional day of contract time granted.

BP4.215 Deposits When Payment Guaranteed. To the extent payment guarantee is provided under BP4.3, requirements for advance cash deposits under BP4.212 shall be waived for the value of forest products on Sale Area that have been Released for Harvesting, but not removed, and for the estimated value of forest products removed from Sale Area for not more than a monthly billing period, subject to the provisions of BP4.4.

BP4.216 Blanket Cash Deposits. Purchaser 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 forest products harvesting 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 Purchaser's request. Purchaser shall not start harvesting until allocation has again been made to this contract.

BP4.218 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 Purchaser 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, Purchaser shall make one or more deposits to cover the estimated cost of said work. On request of Purchaser, Forest Service shall render monthly accounts, as may be specified in such agreement.

BP4.22 Temporary Reduction of Downpayment. When, under BP8.33, Contracting Officer orders a delay or interruption of Purchaser's Operations for more than 30 days when scheduled operations would be occurring but for the order, the downpayment amount required shall be temporarily reduced upon the written request of Purchaser or at the discretion of the 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 on Page 1, whichever is larger.

Any downpayment amount temporarily reduced pursuant to this Subsection may be refunded or transferred at the request of Purchaser. However, if Purchaser has outstanding debt owed to 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 Purchaser's receipt of bill for collection and written notice from Contracting Officer that the basis for the delay or interruption no longer exists, Purchaser shall restore the downpayment to the full amount shown on Page 1 within 15 days after the date the bill for collection is issued, subject to the provisions of BP4.4. Purchaser shall not resume contract operations until the downpayment amount is fully restored.

BP4.23 Refund of Excess Cash. If at any time the credit balance of the Forest Products Sale Account exceeds the charges for forest products within Payment Units Released for Harvesting and for Designated material not included on Page 1 that Forest Service estimates will be harvested within the next 60 days, any portion of such excess that is due to cash in the account shall be refunded, if requested by Purchaser, unless deposited under BP4.211 or BP4.213. If Purchaser plans no harvesting within the next 60 days, Forest Service may refund the entire unencumbered cash balance, except as provided in this Subsection. However, Forest Service shall not reduce the credit balance below the total value of partially harvested Payment Units and Designated material not included on Page 1 that is harvested before operations cease. After a refund for a shutdown, deposits shall be made to meet the requirements of BP4.212 before additional forest products may be harvested.

BP4.24 Refund after Final Charges for Released Forest Products. Any cash deposit, in excess of that required to meet charges under BP4.2, shall be refunded or transferred within 15 days of Purchaser's request after final charges for Included Products have been made, except for amounts estimated to be required under BP9.5.

BP4.3 Payment Guaranteed by Bond or Deposited Securities. To guarantee payment, Purchaser 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, said 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 BP9.1.

BP4.31 Blanket Bond. If Purchaser furnishes an acceptable bond, or deposits securities, in accordance with BP4.3, to guarantee payment for forest products 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 forest product harvesting 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 Purchaser's request. Purchaser shall not start harvesting hereunder until this contract receives an allocation that will meet the obligation for payment guarantee.

BP4.32 Letters of Credit for Payment Bond. Notwithstanding the provisions of BP4.3, Purchaser may use letters of credit in lieu of a surety bond for payment bond purposes when approved by Contracting Officer.

BP4.4 Payments Not Received. (a) Payments are due and payable on the date of issue indicated on the bill for collection. When a payment for forest products harvested 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 Purchaser's Operations until payment or acceptable payment guarantee is received. Other charges include, but are not limited to:

(i) Road maintenance deposits,
(ii) Cooperative work at rates established by specific agreement under BP4.218,
(iii) Damages pursuant to BP9.4,
(iv) Road use fees,
(v) Restoration of downpayment pursuant to BP4.22,
(vi) Periodic payment pursuant to BP4.213, and
(vii) 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 BP9.3. The 30-day notice period prescribed therein shall begin to run as of the end of business on the date allowed for receipt of payment. 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 Interest Rate as established by the Secretary of the Treasury. Interest will 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 Purchaser's failure to make payment for forest products harvested and other charges when due, except for accrual of interest, suspension of all or any part of Purchaser's Operations, and administrative offset, shall be stayed for so long as:

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

BP5.0-TRANSPORTATION FACILITIES

BP5.1 Authorization. Purchaser is authorized to construct and maintain roads, bridges, and other transportation facilities, as needed for harvesting Included Products on National Forest lands.

Maintenance shall be governed by BP5.3. The location and clearing widths of all roads or facilities shall be agreed to before construction is started.

BP5.11 Requirements of Rights-of-Way. Purchaser's use on rights-of-way identified in attached list or CP5.11 shall be confined to rights-of-way and limited by the related easements and stipulations, if any, unless Purchaser 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.

BP5.12 Use of Roads by Purchaser. Except as provided herein, Purchaser is authorized to use existing National

Forest system roads, when Forest Service determines that such use will not cause damage to the roads or National Forest resources.

CP5.12 lists existing roads shown on Sale Area Map that for such reasons as limitations in structural capacity, safety, and protection of soil, water, and roads:

(a) Cannot be used or

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

BP5.3 Road Maintenance. Purchaser shall maintain roads, commensurate with Purchaser's use, in accordance with Road Maintenance Requirements in CP5.31 and the Road Maintenance Specifications. Performance of road maintenance work by Purchaser may be required prior to, during, or after each period of use. The timing of work accomplishment shall be based on Purchaser's Operating Schedule under BP6.31.

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 Purchaser elects to use different roads than those listed in CP5.31, Forest Service shall determine Purchaser's commensurate share of road maintenance and revise road maintenance deposits in CP5.32.

If Forest Service cannot perform its full commensurate share of road maintenance, Forest Service shall make a cash payment to Purchaser 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.

BP6.0-OPERATIONS

BP6.1 Representatives. Unless otherwise agreed, Purchaser 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 Purchaser designate any representative to this contract who is currently debarred, proposed for debarment, or suspended by the Federal Government. Purchaser's representative shall provide a copy of the contract to Purchaser'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, Purchaser's representative shall notify Forest Service 2 days, excluding weekends and Federal holidays before any operations begin on Sale Area.

Purchaser's representative shall designate, in writing, a field supervisor, one of whose responsibilities shall be on-the-ground direction and supervision of Purchaser'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. Purchaser 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 Purchaser's annual Operating Schedule under BP6.31.

Unless Contracting Officer designates another Forest Service representative and notifies Purchaser 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 harvesting 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.

BP6.11 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.

BP6.2 Improvements. Purchaser 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, storage, or service area is opened or operated on National Forest land or administered land. A camp is interpreted to include the campsite or trailer parking area of any employee, agent, contractor, Subcontractor, or their employees or agents working on the project for Purchaser. Such permission, if granted, shall be without charge to Purchaser.

BP6.22 Protection of Improvements. So far as practicable, Purchaser shall protect 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 Sale Area Map.

Purchaser shall keep roads and trails needed for fire protection or other purposes and designated on Sale Area Map reasonably free of equipment and forest products, and debris resulting from Purchaser's Operations. Purchaser shall make timely restoration of any such improvements damaged by Purchaser's Operations and, when necessary because of such operations, shall move such improvements, as specified in CP6.22.

BP6.221 Protection of Improvements Not Owned by Forest Service. Forest Service will 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 Purchaser's Operations.

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

Purchaser 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, Purchaser 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. Purchaser shall make arrangements for use of alternate crossings. All work to be performed by Purchaser on the railroad right-of-way shall not damage railroad company's property.

BP6.222 Protection of Property. Purchaser shall not unnecessarily remove, deface, injure, or destroy trees, shrubs, or other natural features, unless specifically authorized. To the extent practicable, Purchaser 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.

BP6.23 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 perpetuate action that does not cause unnecessary delay to Purchaser in instances where damage to monuments, section corners, and other corner accessories is unavoidable.

Purchaser shall protect all known survey monuments, witness corners, reference monuments, and bearing trees against avoidable destruction, obliteration, or damage during Purchaser's Operations. If any known monuments, corners, or accessories are destroyed, obliterated, or damaged by Purchaser's Operations, Purchaser 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. Purchaser shall record such survey in appropriate county records.

BP6.24 Protection Measures Needed for Plants, Animals, Cultural Resources, and Cave Resources.

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

(i) Unless agreed otherwise, wheeled or track laying equipment shall not be operated in areas identified as needing special measures except on roads, approved under BP5.1 and approved tractor roads, landings and skid trails. Purchaser may be required to backblade skid trails and other ground disturbed by Purchaser's Operations within such areas in lieu of cross ditching required under BP6.6. Additional special protection measures needed to protect such known areas are identified in CP6.24.

(ii) Unless agreed otherwise, forest products harvested will not entered into or be transported across areas identified as needing special measures.

(iii) Purchaser shall conduct operations in a manner that does not damage or disturb identified areas. In the event that

protective measures identified by the Forest Service are for any reason inadequate, Contracting Officer may delay or interrupt Purchaser's operations, under this Contract, and/or modify this Contract pursuant to BP8.33.

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

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

(c) Following sale advertisement, additional areas needing special measures for protection may be discovered or identified; protective measures may be revised or newly prescribed; and, additional species of plants and/or animals may be added to federal lists of protected species. In such event, Contracting Officer may delay or interrupt Purchaser's operations, under this Contract, and/or modify this Contract pursuant to BP8.33.

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

BP6.3 Control of Operations. Under this contract, "Purchaser's Operations" shall include activities of or use of equipment of Purchaser, Purchaser's employees, agents, contractors, 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).

Purchaser'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 Purchaser.

"Release for Harvesting" is written authorization to Purchaser to begin harvesting in a Payment Unit. Upon Purchaser's request for release of a Payment Unit, Forest Service shall either:

(a) Give tentative approval and bill Purchaser as necessary under BP4.21 or

(b) Reject the request, stating reasons for rejection.

When payment or payment guarantee has been confirmed, Forest Service shall issue Release for Harvesting within 10 days. Purchaser shall not harvest forest products in any Payment Unit until it is Released for Harvesting.

BP6.31 Operating Schedule. Purchaser shall, before commencing operations, provide in writing an annual Operating Schedule of anticipated major activities and needs for harvesting Included Products, such as harvesting and road maintenance. Upon reasonable notice to Forest Service, such schedule shall be subject to modifications necessitated by weather, markets, or other unpredictable circumstances.

Subject to BP6.6 and when the requirements of BP6.66 are met, Purchaser's Operations may be conducted outside Normal Operating Season. "Normal Operating Season" is the period(s) beginning and ending on the dates stated on Page 1 of any year.

BP6.32 Protection of Residual Trees. Purchaser's Operations shall not unnecessarily damage young growth or other trees to be reserved.

BP6.33 Safety. Purchaser's Operations shall facilitate Forest Service's safe and practical inspection of Purchaser's Operations and conduct of other official duties on Sale Area. Purchaser has all responsibility for compliance with safety requirements for Purchaser'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 Purchaser may request an adjustment in Current Contract Rates to compensate for the changed conditions.

Unless otherwise agreed in writing, when Purchaser's Operations are in progress adjacent to or on Forest Service controlled roads and trails open to public travel, Purchaser shall furnish, install, and maintain all temporary traffic controls that provide the user with adequate warning of hazardous or potentially hazardous conditions associated with Purchaser's Operations. Purchaser 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 Sale Area Map, Traffic Control Plan, or in specifications attached hereto.

BP6.34 Sanitation and Servicing. Purchaser shall take all reasonable precautions to prevent pollution of air, soil, and

water by Purchaser's Operations. If facilities for employees are established on Sale Area, they shall be operated in a sanitary manner. In the event that Purchaser's Operations or servicing of equipment result in pollution to soil or water, Purchaser shall conduct cleanup and restoration of the polluted site to the satisfaction of Forest Service.

Purchaser shall maintain all equipment operating on Sale Area in good repair and free of abnormal leakage of lubricants, fuel, coolants, and hydraulic fluid. Purchaser shall not service tractors, trucks, or other equipment on National Forest lands where servicing is likely to result in pollution to soil or water. Purchaser 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. Purchaser 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.

BP6.341 Prevention of Oil Spills. If Purchaser maintains storage facilities for oil or oil products on Sale Area, Purchaser 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, Purchaser 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.

Purchaser 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 Sale Area that are caused by Purchaser's employees, agents, contractors, Subcontractors, or their employees or agents directly or indirectly, as a result of Purchaser's Operations. Purchaser will take whatever initial action may be safely accomplished to contain all spills.

BP6.342 Hazardous Substances. Purchaser shall notify the National Response Center and Contracting Officer of all releases of reportable quantities of hazardous substances on or in the vicinity of Sale Area that are caused by Purchaser's employees, agents, contractors, Subcontractors, or their employees or agents directly or indirectly, as a result of Purchaser's Operations, in accordance with 40 CFR 302.

BP6.35 Equipment Cleaning. (a) Areas, known by Forest Service prior to contract advertisement, that are infested with invasive species of concern are shown on Sale 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. For purposes of this provision, "Off Road Equipment" includes all self-propelled equipment used off the main traveled roads to harvest the Included Products, except for log trucks, chip vans, service vehicles, water trucks, pickup trucks, cars, and similar vehicles.

(b) Purchaser shall adhere to the following requirements with regard to cleaning "Off-Road Equipment":

(i) Prior to moving Off Road Equipment onto the Sale Area, Purchaser shall identify the location of the equipment's most recent operation. Purchaser shall not move any Off Road Equipment that last operated in an area infested with one or more invasive species of concern onto Sale Area without having cleaned such equipment of seeds, soil, vegetative matter, and other debris that could contain or hold seeds, and having notified Forest Service, as provided in (iii). If the location of prior operation cannot be identified, then Purchaser shall assume that the location is infested with invasive species of concern.

(ii) Prior to moving Off Road Equipment from a harvest unit that is shown on Sale Area Map to be infested with invasive species of concern to, or through any other area that is shown as being free of invasive species of concern, or infested with a different invasive species, Purchaser shall clean such equipment of seeds, soil, vegetative matter, and other debris that could contain or hold seeds, and shall notify the Forest Service, as provided in (iii).

(iii) Prior to moving any Off-Road Equipment subject to the cleaning requirements set forth above, Purchaser shall advise Forest Service of its cleaning measures and make the equipment available for inspection. Forest Service shall have 2 days, excluding weekends and Federal holidays, to inspect equipment after it has been made available. After satisfactory inspection or after such 2 day period, Purchaser may move the equipment as planned. Equipment shall be considered clean when a visual inspection does not disclose seeds, soil, vegetative matter, and other debris that could contain or hold seeds. Purchaser shall not be required to disassemble equipment unless so directed by the Forest Service after inspection.

(iv) If Purchaser desires to clean Off Road Equipment on National Forest land, such as at the end of a project or prior to moving to, or through an area that is free of invasive species of concern, Purchaser shall obtain prior approval from Contracting Officer as to the location for such cleaning and measures, if any, for controlling impacts.

(v) Contracting Officer may order delay, interruption, or modification of this Contract pursuant to BP8.33.

(c) Nothing contained in this Section shall be interpreted as creating any warranty on the part of the Forest Service that all locations of invasive species of concern have been described herein, elsewhere in this Contract, or designated on the ground. Following contract advertisement, additional locations may be described or designated, and other species may be added to the list of invasive species of concern. In such event, Contracting Officer may order delay, interruption, or modification of this Contract pursuant to BP8.33.

(d) The parties shall promptly communicate with one another with respect to description or designation of additional locations; discovery of locations of new species or new infestation; and, addition of species to the list of invasive species of concern.

BP6.36 Acceptance of Work. Upon Purchaser'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 Purchaser's Operations. Such a request may be for acceptance of:

(a) Specific requirements on a Payment Unit (such as harvesting, erosion control) or

(b) All contract requirements on a Payment Unit.

Forest Service may perform such inspections without request from Purchaser.

Within 2 days of inspection, excluding weekends and Federal holidays, Forest Service shall furnish Purchaser 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 Purchaser's request, Purchaser shall be notified in writing of necessity for postponement and time when inspection can be made.

When all contractual work of Purchaser has been accepted for any Payment Unit or harvest unit identified on Sale Area Map, Payment Unit or harvest unit shall be eliminated from Sale Area on written notice of either party to this contract.

BP6.4 Conduct of Harvesting. Unless otherwise specifically provided herein, Purchaser shall harvest and remove Included Products, as provided in BP2.2, prior to acceptance of Payment Unit for completion of harvesting under BP6.36. Forest Service may make exceptions for occasional forest products inadvertently not harvested or not removed for good reason, including possible damage to forest resources or gross economic impracticability at the time of removal of other forest products. Harvesting shall be conducted in accordance with the following, unless CP6.4 provisions set forth requirements to meet special or unusual harvesting conditions:

BP6.42 Removal. Methods of removal specified for particular areas, if any, are indicated on Sale Area Map.

BP6.5 Streamcourse Protection. "Streamcourses" that are subject to provisions of this Section are shown on Sale Area Map. Unless otherwise agreed, the following measures shall be observed to protect Streamcourses:

(a) Purchaser's Operations shall be conducted to prevent debris from entering Streamcourses, except as may be authorized under paragraph (d). In event Purchaser causes debris to enter Streamcourses in amounts that may adversely affect the natural flow of the stream, water quality, or fishery resource, Purchaser 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 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. Forest products shall not be hauled 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 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.

BP6.6 Erosion Prevention and Control. Purchaser'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. Purchaser 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 Purchaser 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, Purchaser shall make additional deposits on request by Forest Service. Any money deposited or used for this purpose shall be treated as cooperative deposits under BP4.218.

BP6.61 Meadow Protection. Reasonable care shall be taken to avoid damage to the cover, soil, and water in meadows shown on Sale Area Map. Vehicular equipment shall not be used on meadows, except where roads and tractor roads are approved under BP5.1. Unless otherwise agreed, trees felled into meadows shall be removed by endlining. Resulting slash shall be removed where necessary to protect cover, soil, and water.

BP6.62 Wetlands Protection. Wetlands requiring protection under Executive Order 11990 are shown on Sale Area Map. Vehicular equipment shall not be used in such wetlands, except where roads and tractor roads are approved under BP5.1. Additional measures needed to protect such areas are provided in CP6.62.

BP6.63 Temporary Roads. As necessary to attain stabilization of roadbed and fill slopes of temporary roads, Purchaser shall employ such measures as outsloping, drainage dips, and water-spreading ditches.

After a temporary road has served Purchaser's purpose, Purchaser 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.

BP6.631 Temporary Roads to Remain Open. To maintain short term access to portions of Sale Area for post-sale treatments and other purposes after a temporary road has served Purchaser's purpose, pursuant to BP6.63, Purchaser agrees, that on temporary roads designated on Sale 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-wheeled drive pickup truck. On "Remain Open" roads, all bridges and culverts shall remain in place and ditches shall not be eliminated. All drainage structures shall be left in functional condition.

BP6.65 Harvesting Trails. Purchaser shall construct cross ditches and water-spreading ditches on tractor roads and harvesting trails, where staked or otherwise marked on the ground by Forest Service. By agreement, Purchaser may use other comparable erosion control measures, such as backblading harvesting trails, in lieu of cross ditching.

BP6.66 Current Operating Areas. Where harvesting is in progress but not completed, unless agreed otherwise, Purchaser 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, and harvesting trails. When weather permits operations after Normal Operating Season, Purchaser shall keep such work on any additional disturbed areas as up to date as practicable.

BP6.67 Erosion Control Structure Maintenance. During the period of this contract, Purchaser shall provide maintenance of soil erosion control structures constructed by Purchaser until they become stabilized, but not for more than 1 year after their construction. Contracting Officer may agree to perform such structure maintenance under BP4.218, if requested by Purchaser, subject to agreement on rates. Purchaser shall not be responsible for repair of such structures damaged by other National Forest users whose activities are not a part of Purchaser's Operations.

BP6.8 Measuring. "Measuring" is the estimation of forest product quantities using certain dimensions and applicable tables or formulae to determine the contents of forest products in a standard manner. Sampling may be on an individual forest product or area basis. Examples of standard procedures are forest product measurement, sample forest product measurement, and area estimate. The quantity of forest products Designated or to be Designated for harvesting has been or shall be Measured, as specified in CP6.8.

BP6.9 Records. Upon request, Purchaser shall provide access to appropriate annual records in Purchaser's books and accounts to enable Forest Service to obtain and analyze accurate operating costs and selling price data for appropriate use in appraising Federal forest products. Operating cost and selling price data shall include that applicable for appraising forest products obtained from Federal sources in or processed in the Region. Purchaser shall provide access to such data on behalf of subsidiary entities owned or controlled by Purchaser to the extent they participate in harvesting, manufacturing, or marketing said forest products. To a like extent, Purchaser shall request in writing Purchaser's contractors and Subcontractors to make such data available to Forest Service.

Information so obtained shall be treated as confidential, as provided in regulations issued by the Secretary of Agriculture (7 CFR 1.12), and shall be available for review by parties from whom such data are obtained.

BP7.0-FIRE PRECAUTIONS AND CONTROL

BP7.1 Plans. Prior to initiating Purchaser's Operations during Fire Precautionary Period, Purchaser shall file with Forest Service a Fire Prevention and Control Plan providing for the prevention and control of fires on Sale Area. Such Plan shall include a detailed list of personnel and equipment at Purchaser's disposal for implementing the Plan. This requirement may be met by preparing a single Plan for more than one contract.

BP7.2 Fire Precautions. Specific fire precautionary measures listed in CP7.2 shall be applicable during Purchaser's Operations in "Fire Precautionary Period" described on Page 1. 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 Purchaser's Operations in Fire Precautionary Period.

BP7.21 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.

BP7.22 Emergency Precautions. Forest Service may require the necessary shutting down of equipment on portions of

Purchaser's Operations, as specified by the emergency fire precautions schedule of CP7.22. Under such conditions, after Purchaser ceases active operations, Purchaser shall release for hire by Forest Service, if needed, Purchaser's shutdown equipment for fire standby on Sale Area and personnel for fire standby or fire patrol, when such personnel and equipment are not needed by Purchaser 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 Purchaser requests, shall be operated only by personnel approved by Purchaser. 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.

BP7.3 Fire Control. Purchaser shall, both independently and in cooperation with Forest Service, take all reasonable and practicable action to prevent and suppress fires resulting from Purchaser's Operations and to suppress any forest fire on Sale Area. Purchaser's independent initial fire suppression action on such fires shall be immediate and shall include the use of all necessary personnel and equipment at Purchaser's disposal on Sale Area or within the distance of Sale Area stated on Page 1.

BP7.31 Purchaser's Reinforcement Obligations. Whenever an Operations Fire or Negligent Fire, whether on or off Sale Area, or any other forest fire on Sale Area, has not been suppressed by initial action and appreciable reinforcement strength is required, Forest Service may require further actions by Purchaser 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:

BP7.311 Suspend Operations. To suspend any or all of Purchaser's Operations.

BP7.312 Personnel. To release for employment by Forest Service any or all of Purchaser's personnel engaged in Purchaser's Operations or forest products processing within the distance of Sale Area stated on Page 1. Any organized crew so hired shall include Purchaser's supervisor, if any. Personnel so employed shall be paid at Forest Service standard emergency fire fighting rates.

BP7.313 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 Purchaser's equipment suitable for fire fighting and currently engaged in Purchaser's Operations within the distance of Sale Area stated on Page 1. Equipment shall be operated only by personnel approved by Purchaser, if so requested by Purchaser.

BP7.4 Fire Suppression Costs. Purchaser's obligations for cost of fire suppression vary according to three classifications of fires as follows:

BP7.41 Operations Fire. An "Operations Fire" is a fire caused by Purchaser's Operations other than a Negligent Fire.

Forest Service, except as provided in BP7.3, shall use cooperative deposits under BP4.218 to perform fire suppression activities on Operations Fires. Purchaser agrees to reimburse Forest Service for such cost for each Operations Fire, subject to a maximum of the dollar amount stated on Page 1. The cost of Purchaser's actions, supplies, and equipment on any such fire provided pursuant to BP7.3, or otherwise at the request of Forest Service, shall be credited toward such maximum. If Purchaser's actual cost exceeds Purchaser's obligation stated on Page 1, Forest Service shall reimburse Purchaser for the excess.

BP7.42 Negligent Fire. A "Negligent Fire" is a fire caused by negligence or fault of Purchaser's Operations, including, but not limited to, one caused by smoking by persons engaged in Purchaser's Operations during the course of their employment, or during rest or lunch periods; or if Purchaser's failure to comply with the requirements of BP7.2 and BP7.3 results in a fire starting or permits a fire to spread. Damages and the cost of suppressing Negligent Fires shall be borne by Purchaser.

BP7.43 Other Fires on Sale Area. Forest Service shall pay Purchaser, at fire fighting rates common in the area or at prior agreed rates, for equipment or personnel furnished by Purchaser pursuant to BP7.3, or otherwise at the request of Forest Service, on any fire on Sale Area other than an Operations Fire or a Negligent Fire.

BP7.5 State Law. Purchaser 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 Purchaser for fire fighting expenditures in accordance with BP7.41 shall not be withheld pending settlement of any such claim or action based on State law.

BP7.6 Performance by Contractor. Where Purchaser's employees, agents, contractors, Subcontractors, or their employees or agents perform Purchaser's Operations in connection with fire responsibilities, Purchaser's obligations shall be the same as if performance was by Purchaser.

BP8.0-OTHER CONDITIONS

BP8.1 Title and Liability.

BP8.11 Title Passage. All right, title, and interest in and to any Included Products shall remain in Forest Service until it has been Measured, removed from Sale Area, and paid for, at which time title shall vest in Purchaser. For purposes of

this Subsection, forest products in Payment Units Released for Harvesting covered by cash deposit or payment guarantee under BP4.3 shall be considered to have been paid for. Title to any Included Products that has been Measured and paid for, but not removed from Sale Area by Purchaser on or prior to Termination Date, shall remain in Forest Service.

BP8.12 Liability for Loss. If Included Products are destroyed or damaged by an unexpected event that significantly changes the nature of Included Products, such as fire, wind, flood, insects, disease, or similar cause, the party holding title shall bear the value loss resulting from such destruction or damage. Deterioration or loss of value of perishable Included Products, such as mushrooms or greenery, is not an unexpected event, except for deterioration due to delay or interruption that qualifies for Contract Term Adjustment or under BP8.33.

In the event Included Products to which Forest Service holds title are destroyed, Purchaser will not be obligated to remove and pay for such products. In the event Included Products to which Forest Service holds title are damaged, Contracting Officer shall make an appraisal to determine the difference between the appraised unit value of Included Products immediately prior to the value loss and the appraised unit value of products 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 Purchaser to accept and pay for, other products in lieu of those destroyed or damaged. This Subsection shall not be construed to relieve either party of liability for negligence.

BP8.2 Period of Contract. All obligations of Purchaser shall be discharged not later than "Termination Date" stated on Page 1, unless it is adjusted pursuant to BP8.21, 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 Purchaser completing performance of obligations covered by such permission.

BP8.21 Contract Term Adjustment. "Contract Term Adjustment" means adjustment only as provided in BP8.2 and for the three circumstances described in this Subsection. Under said 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, Purchaser 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) Purchaser experiences delay in starting scheduled operations or interruptions in active operations, either of which stops removal of Included Products from Sale Area through curtailment in processing, as scheduled under BP6.31, for 10 or more consecutive days during a Normal Operating Season due to causes beyond Purchaser's control, including, but not limited to, acts of God, acts of the public enemy, acts of Government, labor disputes, fires, insurrections, or floods.

(b) Causes described in paragraph (a) substantially affect the disposition or processing of Included Products during Normal Operating Season through their effects on primary forest product 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 Purchaser in writing to delay or interrupt operations for any purpose during the normal operating season other than suspension under BP4.4 or BP9.3 or

(ii) Purchaser suffers a delay or interruption of Purchaser's Operations affecting removal 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.

BP8.22 Termination for Catastrophe. In event of Catastrophic Damage, this contract shall be terminated without liability to either party due to the termination. "Catastrophic Damage" is major change or damage to Included Products on Sale Area, to Sale Area, to access to Sale Area, or a combination thereof:

(a) Caused by forces, or a combination of forces, beyond control of Purchaser, 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 forest products within Sale Area and estimated to total more than half of the estimated forest product quantity stated on Page 1.

BP8.3 Contract Modification. The conditions of this forest products sale are completely set forth in this contract. Except as provided in BP8.33, 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.

BP8.31 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 Sale Area or Included Products 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 the Forest Products Sale Account.

BP8.33 Contract Suspension and Modification. (a) Contracting Officer may, by written order, delay or interrupt authorized operations under this contract or, notwithstanding BP8.3, 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 order is required by a court order or this contract is named in such a proceeding.

(b) In the event of an order delaying or interrupting Purchaser's Operations under this Subsection, Purchaser's remedy shall be:

(i) Contract Term Adjustment,
(ii) reimbursement for Out of Pocket Expenses,
(iii) temporary reduction of downpayment,
(iv) temporary bond reduction. However, the foregoing remedies shall be available only to the extent that the Contracting Officer's order was the sole and exclusive cause of the delay or interruption of Purchaser's operations.

(c) In cases of modification under this Subsection, Purchaser shall only receive a rate redetermination pursuant to BP3.31. However, if there is an order delaying or suspending operations in addition to a modification, then Purchaser shall also be entitled to the remedies provided under BP8.33(b) for such delay or suspension.

(d) Remedies awarded to the Purchaser shall not be duplicative, and Contracting Officer shall have the right to structure remedies provided herein to avoid duplicative compensation.

(e) Purchaser agrees that this Subsection, and the remedies provided herein shall apply regardless of any finding by any court or administrative body that the Forest Service failed to comply with any statute, regulation and/or policy in connection with awarding, advertising, or authorizing this sale, or a similar sale. However, nothing in this Subsection precludes Purchaser from exercising rights under the Contract Disputes Act.

BP8.34 Contract Termination This contract may be terminated, in whole or in part, by Forest Service or Purchaser, as provided in Items BP8.341 and BP8.342, respectively. In the event of any such termination, Purchaser shall be entitled to the applicable remedies, subject to the limitation upon duplicative compensation set forth in BP8.33(d). Purchaser agrees that this Subsection and the remedies contained in the following Items shall apply regardless of any finding by any court or administrative body that the Forest Service failed to comply with any statute, regulation and/or policy in connection with awarding, advertising, or authorizing this sale, or a similar sale. However, nothing in this Subsection precludes Purchaser from exercising rights under the Contract Disputes Act.

BP8.341 Termination by Forest Service. (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 BP8.33.

(b) Purchaser's compensation for termination of this contract under this Item shall be:
(i) refund or release of advanced deposits for products harvested but not removed,
(ii) reimbursement for Out-of-Pocket Expenses, and
(iii) replacement products under subparagraph (c), and/or liquidated damages under subparagraph (d); provided that liquidated damages shall be available if, and only if, after good faith efforts, the Parties (1) cannot locate replacement products or agree upon the applicable value of the product, or (2) the quantity of deleted products exceeds the quantity of any replacement products .

(c) Subject to applicable laws, regulations and policies, Forest Service and Purchaser shall make good faith efforts to identify replacement products of similar quantity, quality, access, and topography within Sale Area. If suitable replacement products cannot be located within Sale Area, the parties shall expand the search to the National Forest in which the Sale Area is located. Product price shall be adjusted under BP3.31 to account for differences between replacement products and deleted products. If Forest Service and Purchaser agree upon suitable replacement products and the applicable unit price, then this contract shall not terminate and instead shall be modified pursuant to 36 CFR 223.85(c) and shall remain in force with respect to such replacement products and, in the case of partial termination, any remaining Included Products. If the parties cannot agree on suitable replacement products or the applicable unit price of such products, either party may end the search and Purchaser shall be compensated under subparagraph (d).

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

(e) In any instance of partial termination, in which the Forest Service deletes one or more harvest units from the Sale Area, Purchaser's sole and exclusive remedy with regard to remaining units shall be a rate redetermination pursuant to BP3.31. Purchaser shall be required to complete Contract Operations with regard to remaining units and any obligations pertaining to cessation of operations on deleted units, including without limit erosion control, brush disposal, and road maintenance. If Purchaser fails to fulfill any such duty or obligation, then Contracting Officer may make deductions from compensation due Purchaser, including without limit costs and expenses of completing such work.

BP8.342 Termination by Purchaser. (a) Purchaser may, by written notice, terminate this Contract, in whole or in part, as described herein,

(i) in the event of an order delaying or interrupting its operations pursuant to BP8.33, or

(ii) in the event of an order modifying this Contract pursuant to BP8.33, if Purchaser decides to reject the terms of the modification prior to its acceptance. Purchaser shall have the right to terminate this Contract in whole only when the Contracting Officer's order under BP8.33 applies to all harvest units within the Sale Area. When the order affects only a portion of the harvest units, Purchaser shall have the right to terminate this Contract in part, by deleting one or more of the units covered by the Contracting Officer's order. The foregoing right of termination, in whole or in part, shall not exist when the delay, interruption, or modification arises from wind, flood, landslide, fire, forest pest epidemic, or other major natural phenomenon.

(b) Purchaser's compensation for termination of this Contract, in whole or in part, under this Item shall be:
(i) refund or release of advanced deposits for products harvested but not removed,
(ii) reimbursement for Out of Pocket Expenses, and
(iii) if the duration of the delay or interruption exceeds either six months of Normal Operating Season time, or one calendar year from the date of the order, then: replacement products provided under (c) and/or liquidated damages under (d); provided that liquidated damages shall be available if, and only if, after good faith efforts, the Parties (1) cannot locate replacement products or agree upon the applicable value of the product, or (2) the quantity of deleted products exceeds the quantity of any replacement product.

(c) Subject to applicable laws, regulations and policies, Forest Service and Purchaser shall make good faith efforts to identify replacement products of similar quantity, quality, access, and topography within Sale Area. If suitable replacement products cannot be located within Sale Area, the parties shall expand the search to the National Forest in which the Sale Area is located. Product price shall be adjusted under BP3.31 to account for differences between replacement products and deleted products. If Forest Service and Purchaser agree upon suitable replacement products and the applicable unit price, then this contract shall not terminate and instead shall be modified pursuant to 36 CFR 223.85(c) and shall remain in force with respect to such replacement products and, in the case of partial termination, any remaining Included Products. If the parties cannot agree on suitable replacement products or the applicable unit price of such products, either party may end the search and Purchaser shall be compensated under subparagraph (d).

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

(e) In any instance of partial termination, in which Purchaser deletes one or more harvest units from Sale Area, Purchaser's sole and exclusive remedy with regard to remaining units shall be a rate redetermination pursuant to BP3.31. Purchaser shall be required to complete Contract Operations with regard to remaining units and any obligations pertaining to cessation of operations on deleted units, including without limit, erosion control, brush disposal, and road maintenance. If Purchaser fails to fulfill any such duty or obligation, then Contracting Officer may make deductions from compensation due Purchaser, including without limit costs and expenses of completing such work.

BP8.35 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 BP8.33 or BP8.34. An expenditure is "Unrecovered" within the meaning of this Subsection when Purchaser did not gain the benefit of its expenditure because Contract operations were not permitted. In determining whether an expenditure is "Unrecovered," Contracting Officer shall not conclude that an award of liquidated damages constitutes the benefit of that expenditure. (a) Out of Pocket Expenses shall not include, in particular and without limitation, any of the following:

(i) attorneys fees;

(ii) costs and expenses of operating a processing facility;
(iii) expectancy damages; and,
(iv) anticipatory profits

(b) Forest Service shall reimburse Purchaser for only the following Out of Pocket Expenses:
(i) Out of Pocket Expenses for maintenance of the sale 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;
(ii) 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 Purchaser;
(iii) Out of Pocket Expenses for the lesser of move out and move in or leaving equipment and/or camps on site, if the Purchaser and Contracting Officer have agreed to leave equipment and/or camps on site in lieu of move out and move in;
(iv) Out of Pocket Expenses for any products so processed, but not removed from Sale Area because: (1) the sale was terminated, or (2) the products no longer meet Utilization Standards because of delay or interruption;
(v) If terminated, in whole or in part, Out of Pocket Expenses for unamortized Temporary Roads, road maintenance, dust abatement and improvements authorized under BP6.2;
(vi) If terminated, in whole or in part, Out of Pocket Expenses for bid preparation, including review of sale offering.

(c) Purchaser shall submit documentation of claimed expenditures, including those actually paid and those for which the Purchaser has a legal obligation to pay but has not yet paid, and supporting analysis to Contracting Officer to assist in Contracting Officer's calculation of reimbursement. Contracting Officer shall determine the amount of reimbursement under this Subsection using information from Purchaser and/or Forest Service methods in use on the date that operations were delayed, interrupted, or terminated. Purchaser's failure to substantiate any claimed Out of Pocket Expense may constitute grounds for Contracting Officer's denial of reimbursement.

(d) Purchaser shall make reasonable efforts to minimize its Out of Pocket Expenses.

BP8.5 Sale of Other Materials. Forest Service reserves the right to sell from Sale Area during the period of this contract any materials or forest products not subject to its terms, but shall not permit removal, possession, or use thereof that will materially interfere with Purchaser's Operations. Purchaser shall not be obligated to do any work made necessary by the action of others.

BP8.6 Provisions Required by Statute.

BP8.61 Covenant against Contingent Fees. Purchaser warrants that no person or agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial agencies maintained by Purchaser for the purpose of securing business. For breach or violation of this warranty, Forest Service shall have the right to annul this contract without liability or to require Purchaser to pay, in addition to the contract price or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

BP8.62 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).

BP8.63 Nondiscrimination in Employment. If the total value of this contract is in excess of $10,000, Purchaser agrees during its performance as follows:

(a) Purchaser will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. Purchaser 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. Purchaser 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) Purchaser will, in all solicitations or advertisements for employees placed by or on behalf of Purchaser, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(c) Purchaser will send to each labor union or representative of workers with which Purchaser 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 Purchaser's commitments under this Subsection, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) Purchaser 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) Purchaser 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 Purchaser'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 Purchaser 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) Purchaser 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. Purchaser 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 Purchaser becomes involved in, or is threatened with, litigation with a Subcontractor or vendor as a result of such direction by Forest Service, Purchaser may request the United States to enter into such litigation to protect the interests of the United States.

BP8.64 Debarment and Suspension Certification. Pursuant to 7 CFR 3017, Purchaser 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.

Purchaser may rely upon a certification of a prospective Subcontractor that it is not proposed for debarment under 48 CFR 9.4, debarred, suspended, ineligible, or voluntarily excluded from participating in covered transactions or contracts, unless Purchaser knows that the certification is erroneous.

Purchaser shall keep the certifications of its Subcontractors on file until contract Termination Date and any adjustments 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 Purchaser is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

If Purchaser knowingly enters into a sale transaction with a person who is proposed for debarment under 48 CFR 9.4, 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."

BP8.65 Contract Consistency With Other Laws. The contract shall govern if State and local environmental quality laws conflict with or preclude performance of contractual requirements.

BP9.0-PERFORMANCE AND SETTLEMENT

BP9.1 Performance Bond. As a further guarantee of the faithful performance of the provisions of this contract, Purchaser delivers herewith and agrees to maintain a surety bond in the dollar amount stated on Page 1, unless the amount is adjusted as provided in BP9.11 or BP9.13. In lieu of surety bond, Purchaser may deposit into a Federal Depository, as directed by Forest Service under BP4.21, and maintain therein, cash in the dollar amount stated on Page 1 or negotiable securities of the United States having market value at time of deposit of not less than the dollar amount stated on Page 1.

Any adjustment 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, Purchaser shall, within 30 days of receipt of demand, furnish a new bond with surety satisfactory to Forest Service.

BP9.11 Bond Reduction. Upon Purchaser's written request, Contracting Officer shall redetermine the amount of Purchaser's performance bond to an amount not less than Purchaser's remaining obligations, including the value of Included Products remaining on Sale Area, plus the estimated cost of uncompleted work required of Purchaser and any unpaid billings due on the contract. Contracting Officer shall provide written notice of the redetermined amount to Purchaser and to Purchaser's surety. Similarly, Contracting Officer shall report to Purchaser 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 Purchaser, subject to the conditions in BP9.5.

BP9.12 Letters of Credit. Notwithstanding the provisions of BP9.1, 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.

BT9.13 Temporary Bond Reduction. When, under BT8.33, Contracting Officer orders a delay or interruption of Purchaser's Operations for more than 30 days when scheduled operations would be occurring but for the order, the performance bond amount required shall be temporarily reduced upon the written request of Purchaser 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 Purchaser and any unpaid billings due on the sale.

Upon Purchaser's receipt of written notice from Contracting Officer that the basis for the delay or interruption no longer exists, Purchaser shall restore the performance bond to the full amount shown on Page 1 within 15 days. Purchaser shall not resume contract operations until the performance bond amount is fully restored.

BP9.2 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 Purchaser shall be made in writing and submitted to Contracting Officer for decision. A Claim by the Government against Purchaser shall be subject to a decision by Contracting Officer.

For Purchaser Claims of more than $100,000, Purchaser 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 Purchaser's knowledge and belief; and the amount requested accurately reflects the contract adjustment for which Purchaser believes the Government is liable. Purchaser, if an individual, shall execute the certification. When Purchaser is not an individual, the certification shall be executed by a senior company official in charge at Purchaser's plant or location involved or by an officer or general partner of Purchaser having overall responsibility for the conduct of Purchaser's affairs.

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

Contracting Officer's decision shall be final unless Purchaser 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 Purchaser'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 Purchaser arising under the contract, Purchaser shall proceed diligently with the performance of the contract in accordance with Contracting Officer's decision.

BP9.21 Time Limits for Submission of Claim. Failure by Purchaser to submit a Claim within established time limits shall relinquish the United States from any and all obligations whatsoever arising under said contract or portions thereof. Purchaser shall file such Claim within the following time limits:

(a) For Payment Units or harvest units, Purchaser must file any Claim not later than 60 days after receipt of Forest Service written notification that Payment Unit or harvest unit has been accepted and

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

BP9.22 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 (CP)
(b) Sale Area Map
(c) Specific Conditions on Page 1
(d) Standard Provisions (BP)
(e) Special project specifications
(f) Plans, such as erosion control, dust abatement, etc.
(g) Agreements between Purchaser and Forest Service, as authorized under the contract
(h) Standard specifications

BP9.3 Breach. In event Purchaser breaches any of the material provisions of this contract, Forest Service shall give

Purchaser 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 Purchaser's Operations. Such notice of breach and notice to suspend Purchaser'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 BP6.1, such oral suspension notice may be given to Purchaser'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 Purchaser.

Suspension under this section shall not entitle Purchaser to any remedies arising under BP8.33.

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, Purchaser shall remedy the breach as follows:

(a) If remedying such breach requires on-the-ground action by Purchaser, Purchaser 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 Purchaser, such breach shall be remedied within 30 days.

BP9.31 Termination for Breach. Contracting Officer, with the concurrence of the Regional Forester, may terminate this contract for breach in the event Purchaser:

(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 Purchaser; 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 forest products;

(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 a 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 BP6.01;

(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 BP9.3, causing undesignated forest products to be unnecessarily damaged or negligently or willfully harvested, 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 BP9.3.

Damages due the United States for termination under this Subsection shall be determined pursuant to BP9.4.

BP9.4 Damages for Failure to Harvest or Termination for Breach. (a) In event of Purchaser's failure to harvest Designated forest products on portions of Sale Area by Termination Date or termination for breach under BP9.31, Forest Service shall appraise remaining Included Products, unless termination is under BP8.22 or BP8.34. Such appraisal shall be made with the standard Forest Service method in use at time of termination.

(b) If the sale is resold, damages due shall be the amount by which Current Contract Value, plus costs described in paragraph (d) of this Section, exceeds the resale value at new Bid Rates.

(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 exceeds the value determined by appraisal, plus costs described in paragraph (d) of this Section.

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

(i) The cost of resale or reoffering, including, but not limited to, salary costs, document preparation and duplication costs, mailing costs, and sale advertisement costs.

(ii) The Government's loss caused by the delay in receipt of 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.

BP9.5 Settlement. If obligations of Purchaser have not been fully discharged by Termination Date, any money advanced or deposited hereunder shall be retained and applied toward unfulfilled obligations of Purchaser without prejudice to any

other rights or remedies of Forest Service. Such funds may be treated as cooperative deposits under BP4.218 for uncompleted work 30 days after receipt of written notice from Forest Service to Purchaser of work to be done and Purchaser's failure to deny the obligation or to do the work.

BP9.6 Contract Closure. Contracting Officer shall give appropriate written notice to Purchaser when Purchaser has complied with the terms of this contract. Purchaser shall be paid refunds due from the Forest Products Sale Account under BP4.24 and excess cooperative deposits under BP4.218.