

**Attachment C to IFP**

**MENTAL HEALTH TRUST LAND OFFICE**

**TIMBER SALE CONTRACT**

**CONTROL LAKE TIMBER SALE**

**MHT 9100774**

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STATE OF ALASKA  
DEPARTMENT OF NATURAL RESOURCES  
MENTAL HEALTH TRUST LAND OFFICE

2600 Cordova Street, Suite 100  
Anchorage, Alaska 99503

**TIMBER SALE CONTRACT**

**Control Lake Timber Sale  
MHT No. 9100774**

THIS TIMBER SALE CONTRACT (“Contract”) is made by and between the State of Alaska, Department of Natural Resources (“DNR”), Mental Health Trust Land Office (“TLO”) as agent for and on behalf of the Alaska Mental Health Trust Authority (“Trust Authority”) and \_\_\_\_\_, , (“Purchaser”). This Contract is effective as of the \_\_\_ day of \_\_\_\_\_ (“Effective Date”).

In consideration of the mutual covenants, terms and conditions herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, TLO and PURCHASER hereby agree as follows:

1. **DEFINITIONS**

- A. “Construction Materials” includes rock, sand, gravel and other construction materials naturally occurring and located in the Timber Sale Area.
- B. “Environmental Contamination” means pollution resulting from the “release” [as that term is defined in AS 46.03.826(9)] of a “Hazardous Material.”
- C. “Hazardous Material” means hazardous substances or materials as defined in Alaska Statutes 46.03.826 and 46.08.900, 42 U.S.C. § 9601-9657 (CERCLA), 42 U.S.C. § 9601 (RCRA) and 40 C.F.R. U.S.C. § 302, as such statutes and regulations may be amended from time to time, and any hazardous and toxic substance, material or waste which is or becomes regulated by any governmental authority. Without limiting the forgoing, “Hazardous Material” includes all hydrocarbon products and fuels such as diesel oil and gasoline, and lubricating oil.
- D. “Laws” means all federal, state or local statutes, regulations, rules, ordinances or permits, orders, directives, and amendments thereto, in effect during the Term of this Contract and as they legally change over time.

E. “MBF” means one thousand board feet, Scribner Decimal C Long Log Scale Rule.

F. “Merchantable Sawlog,” means a No. 4 or better sawlog which is at least 16 feet long plus trim, at least 5 inches in diameter inside the bark at the small end according to the Official Rules of the Log Scaling & Grading Bureaus developed and authored by The Northwest Log Rules Advisory Group and Purchaser has deemed marketable.

G. “Merchantable Timber” means all timber, harvested or unharvested, which contains at least one Merchantable Sawlog and all Utility Logs harvested or unharvested, located within the Timber Sale Area depicted on Exhibit A, to be harvested in accordance with the approved Operating Plan: excluding timber for which a permit cannot be obtained from the Division of Forestry or other agency, and other areas as mutually agreed upon by the TLO and Purchaser.

H. “Operating Plans” means the Overall and Annual operating plans to be prepared by Purchaser and approved by TLO as required by Paragraph 10 (Timber Operations) herein.

I. “Purchaser” means the Purchaser of the Timber and Purchaser’s agent, employees, representatives, contractors, subcontractors or other individuals or entities operating on behalf of Purchaser.

J. “Road Standards” means road and bridge construction, maintenance, and closeout standards required by this Contract and applicable Law.

K. “Roads and Related Transportation Facilities” means all roads, bridges, landings, culverts, and any other transportation facilities Purchaser is authorized to use or to construct pursuant to this Contract.

L. “Slash” means all woody debris resulting from Purchaser’s Timber Operations or from construction of Roads and Related Transportation Facilities or other improvements.

M. “Timber” means all trees, living or dead, standing or down, located within the Timber Sale Area.

N. “Timber Harvest Units” is the units of Merchantable Timber located within the Timber Sale Area, as designated by Purchaser in the approved Operating Plans (Exhibit C).

O. “Timber Operations” means all activities necessary to cut, remove, process, scale and transport Merchantable Timber from the Timber Sale Area.

P. “Timber Sale Area” means the real property, which is reasonably necessary for Purchaser to conduct Timber Operations under this Contract as depicted on Exhibit A.

Q. “Trust Land” means land, and interests and resources in the land, including improvements to the land, referred to in sec. 40(a)(1) and (2), ch. 5, FSSLA 1994, as amended by sec. 4, ch. 1, SSSLA 1994; the term also includes land, and interests and resources in land, including improvements to the land, acquired by or on behalf of the Alaska Mental Health Trust Authority by any other means after June 24, 1994.

R. “Utility Logs” means logs that do not meet the minimum requirements of No. 4 or better sawlogs, but are suitable for the production of firm useable pulp chips to an amount of not less than fifty percent (50%) of the gross scale with a minimum gross diameter of 6 inches on the small end, minimum gross length of 12 feet, plus trim.

S. “Young Growth” means logs that are less than 12 inches in diameter on the scaling end, or have a ring count of less than 8 inches per inch in the outer one-half of the scaling end.

2. SALE OF MERCHANTABLE TIMBER

TLO shall sell to Purchaser, and Purchase shall purchase from TLO, all of the Merchantable Timber, whether standing or down, within the Timber Sale Area as depicted on Exhibit A and described in Exhibit B, at the price and upon the terms set forth herein, subject to the provisions of Paragraph 11.C. (Risk of Loss).

3. RESERVATIONS

TLO reserves to itself, and to others (“Authorized Users”) through written authorization, the right to use, explore and develop the Timber Sale Area or other Trust lands in the area, provided such use will not materially interfere with the Timber Operations of Purchaser. Except for valid existing rights, TLO shall obtain Purchaser’s consent for significant concurrent uses. Purchaser shall not unreasonably withhold its consent to such other uses or insist on unreasonable terms for concurrent use. TLO shall dictate the final terms for concurrent use if Purchaser and a concurrent user cannot agree upon terms for the significant concurrent use. Non-significant concurrent uses shall be subject to reasonable notice to Purchaser and the Authorized User’s written contract to use the Timber Sale Area at such user’s own risk. Purchaser shall refer all public use requests, including those relating to hunting and fishing, to TLO. Unauthorized use of Trust land within the Timber Sale Area, including the roads, shall be considered trespass. If Purchaser becomes aware of such unauthorized use, Purchaser shall report it to TLO in a timely manner.

#### **4. RIGHTS OF ENTRY AND USE**

During the Term of this Contract and to the extent it is legally authorized to do so, TLO hereby grants to PURCHASER the non-exclusive right to enter upon and use the Timber Sale Area and associated access routes across Trust Land solely in accordance with the terms of the approved Operating Plans and other applicable provisions of this Contract.

The granted rights include the right to construct Roads and Related Transportation Facilities to and within the Timber Sale Area and to use Construction Materials within the Timber Sale Area. Mainline road construction shall be along the road locations depicted on Exhibits A, unless otherwise specifically approved in writing by TLO. Said rights shall be exercised as reasonably necessary and at Purchaser's sole cost in strict accordance with the approved Overall and Annual Operating Plans, applicable provisions of Law, and this Contract. Construction Material rights granted hereunder shall not provide benefits to parties other than Purchaser. Purchaser shall compensate the Trust Authority for any value lost through unauthorized use of Construction Materials.

Purchaser shall fell, yard, remove, scale, and pay the applicable stumpage fee for all Merchantable Timber harvested in association with the rights of entry and use granted herein; provided, however, that removal of Utility Logs shall be optional.

#### **5. TERM OF CONTRACT**

The Term of this Contract ("Term") shall commence upon the Effective Date and terminate on the earlier of: (i) December 31, 2015, (ii) the date that all obligations under this Contract have been completed, or (iii) \_\_\_\_\_ in the event that an extension/s are requested by Purchaser and granted by TLO. Notwithstanding the above, Timber Operations shall cease on or before December 31, 2015, except as provided otherwise herein.

If Purchaser shall be prevented or delayed from performing any of its obligations under this Contract by reason of fire, strikes, riots, war, storms, floods, and other unusual climatic conditions, including droughts, and acts of God, and any other such cause which is similar in nature to the foregoing and which is beyond the control of Purchaser ("Force Majeure") the Term shall be automatically extended for the period that such Force Majeure continues in effect plus an additional reasonable period thereafter, to be mutually agreed upon in writing by TLO and Purchaser, to allow for harvest and removal of the Merchantable Timber within the Timber Sale Area; provided, however, that in no event shall the Term be extended for more than one (1) year as a result of Force Majeure. All other terms and conditions of this Contract shall remain in

effect during periods of Force Majeure. At a minimum, lack of funds on the part of Purchaser, adverse market conditions and/or TLO approval or assistance delays shall not constitute Force Majeure.

In the event that Purchaser desires to extend the Term for reasons other than Force Majeure, beyond December 31, 2015, such extension may be granted by the TLO upon the Purchaser's written request and payment of a \$50,000 lease extension fee. The request shall not be unreasonably denied. Any request for an extension shall be made at least Ninety (90) days prior to contract termination date.

## 6. PAYMENTS

A. Stumpage Fees. Purchaser shall pay stumpage fees to TLO at the rates set forth below or other applicable exhibits of this contract. Stumpage fees are due without regard to whether the harvesting and marketing of sawlogs and Utility Logs is profitable for PURCHASER.

<u>Species</u>	<u>Rate</u>	<u>Scale Unit</u>
Old Gr. Sitka spruce	\$ ____/mbf	net Scribner
Y Gr. Sitka spruce	\$ ____/mbf	net Scribner
Old Gr. Western hemlock	\$ ____/mbf	net Scribner
Y Gr. Western hemlock	\$ ____/mbf	net Scribner
Alaska yellow cedar	\$ ____/mbf	net Scribner
Lodgepole pine	\$1.00/mbf	net Scribner
All species Utility Logs	\$1.00/mbf	net utility

### B. Stumpage Fee Payments.

(1) Advance Stumpage Fee Payments. Purchaser shall make the first minimum advance stumpage fee payment ("Advance Stumpage Fee") of \$100,000.00. The Advanced Stumpage deposit will exceed the highest monthly stumpage payment for any 4 week period during the contract period. This payment shall be held in trust by the TLO until the contract has been completed to the satisfaction of the TLO.

If an approved Plan of Operations indicates proposed harvesting at volumes in excess of what would be covered by the above 'Advance Stumpage Fee Payments' for the period, then the required Advance Stumpage Fee payment held in trust shall be

increased to equal the projected Pay-As-Cut Stumpage Fees for any 4 week period of the accepted Plan of Operations.

(2) Monthly Stumpage Report: The Purchaser will prepare and submit to the TLO by the 10<sup>th</sup> day of each month, a report which provides volume produced in the previous month, from log scale, by species. Report will show volumes produced by species and total of monthly payments and total to date of volumes and stumpage paid.

(3) Credit for Stumpage Fees Paid. Pay-as-cut stumpage fees (“Pay-As-Cut Stumpage Fees”) shall be paid for the previous month by the 15<sup>th</sup> day of the month. Purchaser shall pay Stumpage Fees to the TLO on or before the tenth (15th) business day following the end of the previous four week period as invoiced by the TLO. Stumpage Fees shall be calculated on the basis of timber volume from certified scale receipts pursuant to (Scaling and Log Accountability) and at the rates contained in purchase contract. The monthly stumpage report will be due by the 10<sup>th</sup> of each month. No interest shall be due from TLO on Advance Stumpage Fee balances.

C. Delivery of Payments. All payments shall be delivered to TLO at the address set forth in the Paragraph 16 (Notices and Parties’ Representatives). Purchaser shall not be entitled to any abatements, deductions or offsets of any amount due to TLO. All past due amounts owed to TLO shall accrue interest at the rate of 10.5 percent a year or as outlined in AS 45.45.010 from the date of delinquency until payment is received by TLO.

## 7. PASSAGE OF TITLE

Subject to Paragraph 11 herein, title to the Merchantable Timber within the Timber Sale Area shall pass from the Trust Authority to Purchaser upon scaling and payment for logs as documented on Certified Scaling Certificates produced by the Scaling Bureau approved by TLO. The risk of loss or damage to the Merchantable Timber shall be allocated as provided in Paragraph 11 (Risk Management) herein.

## 8. COMPLIANCE WITH LAWS AND OTHER REQUIREMENTS

A. Compliance with Laws. Purchaser shall carry out all Timber Operations, in compliance with all applicable Laws, provided that Purchaser shall have the right to contest each or all in good faith. Responsibility for operating in compliance with applicable Laws and rectifying any instances of non-compliance rests solely with Purchaser. Where approval of both (i) governmental agencies, and (ii) TLO are required under this Contract, Purchaser shall not proceed until approval from both has been obtained.

**B. Responsibility for Acquisition of Permits, Authorizations and Approvals.** Purchaser is responsible for the acquisition of all necessary permits, licenses, and other regulatory approvals at its sole cost.

**C. Notification of Violations.** Within twenty four (24) hours of Purchaser's knowledge, Purchaser shall notify TLO and applicable regulatory agencies of any regulatory or permit violations that have occurred as a result of actions by Purchaser, or Purchaser's agents, representatives, contractors, subcontractors, or other individuals or entities operating on behalf of Purchaser.

## **9. SCALING AND LOG ACCOUNTABILITY**

### **A. Scaling.**

(1) **Scaling Point.** All logs produced from the Timber Sale Area shall, unless otherwise agreed in writing, be scaled at a site designated in the approved Operating Plans. Purchaser shall use its best efforts to ensure that logs are scaled within thirty (30) days of harvest. If deductions are made for rot, check or other defects resulting from Purchaser delays in scaling exceeding ninety (90) days, Stumpage Fees shall be paid to TLO as if the rot, check or other defect was not present.

(2) **Scaling Rules.** Scaling will be performed: (i) using the Scribner Decimal C Long Log Rule; or a method acceptable method accepted by Purchaser and TLO; ii) in accordance with the "Official Log Scaling and Grading Rules" of the Log Scaling and Grading Bureaus as developed and authored by the Northwest Log Rules Advisory Group; or methodology accepted by Purchaser and TLO; and (iii) by a recognized third party scaling and grading bureau, or methodology agreed to by the Purchaser and TLO. Purchaser shall contract for and provide TLO with written evidence of such scaling arrangements before any Merchantable Timber is felled within the Timber Sale Area and a copy of the contract shall be provided to TLO prior to commencement of Timber Operations.

(3) **Cost of Scaling and Delivery of Scale Documents.** Purchaser shall pay the cost of scaling, and instruct the third-party scaler to provide copies of the daily scale tickets that identify individual loads of logs and weekly scale summary sheets to TLO and Purchaser within one (1) week after scaling. Purchaser shall also instruct the third party scaler to provide copies of scale summary sheets for every four (4) week period to TLO and Purchaser within ten (10) business days of the end of each four week period. Summary scale sheets shall include gross and net volumes by species, sort and grade, subtotalled for each Timber Harvest Unit within the

Timber Sale Area. Within thirty (30) days of completion of scaling for a calendar year, Purchaser shall deliver to TLO a certified annual scaling summary of the total gross and net Sawlog and Utility Log volumes by species, sort and grade, by Timber Harvest Unit.

B. Check Scale. Upon the request of TLO or Purchaser, a check scale may be made to determine the accuracy of the original scale. Purchaser agrees to make logs available for check scaling at reasonable locations designated by TLO. TLO agrees to carry out check scaling promptly so as not to unreasonably delay log transfer, rafting, towing, and loading operations. If the difference in scale is less than five percent (5%), then the cost of rescale shall be paid TLO. If the check scale exceeds the original scale by five percent (5%), the original scaled volume shall be adjusted by the difference between the check scale and original scale, and the cost of the check scale shall be paid by Purchaser.

C. Branding and Painting Logs. Before being removed from the Timber Sale Area, all logs shall be hammer branded on one end with a log brand registered with the State of Alaska Department of Natural Resources, Division of Forestry and approved by TLO. Purchaser is responsible for registering such brands with the Division of Forestry. Purchaser shall also paint one end of each log with a color designated by TLO, if there are logs being scaled at the same location from property not owned by the Trust.

D. Truck Trip Tickets. Each load of logs shall be identified by a unique three (3) part truck trip ticket, one part affixed to the load, one part to TLO (to be attached to the scale ticket and delivered to TLO on a weekly basis), and one remaining in the book. Unless requested by TLO, truck trip ticket books shall be retained by Purchaser for the Term of this Contract. Truck trip tickets shall include date, logger's name, truck driver's name, Timber Harvest Unit, brand, destination and log or piece count by species. Truck trip tickets shall be numbered sequentially and numbers shall not be duplicated. Purchaser shall provide TLO with the series of book and ticket numbers assigned to this Contract, and shall account for any gaps in the series of numbers when the truck trip tickets are provided to TLO.

## 10. TIMBER OPERATIONS

A. Operating Plan Requirements. Unless otherwise provided for, Purchaser shall be responsible for performing all timber sale layout work, including road location and design work and shall do so in strict compliance with applicable Laws and the approved Timber Sale Operating Plans. Timber Operations shall not commence until: (i) the Operating Plan and has been completed by Purchaser and approved in writing by TLO; and (ii) Purchaser has obtained all necessary permits and approvals and provided copies to TLO. Division of Forestry approvals will be sought after TLO has approved the Operating Plans. The Operating Plans shall address operating considerations including but not limited to those contained in Exhibit D (Operating Plan Requirements). Reasonable delays in obtaining TLO approval of the Operating Plans shall not constitute a Force Majeure under this Contract.

(1) Submission of the Operating Plans. Purchaser shall submit the Operating Plans at least thirty (30) days prior to the time Purchaser plans to commence Timber Operations. The “detailed operating plan” submitted with Purchaser’s bid for this timber sale as required in the timber sale RFP may at Purchaser’s request and with TLO approval be substituted for the Operating Plan as required herein. Purchaser may modify the Operating Plans from time to time, subject to TLO’s approval in writing and receipt of any necessary regulatory approvals.

(2) Fish and Wildlife Considerations. Purchaser’s Operating Plans shall include measures to minimize fish and wildlife impacts within the Timber Sale Area as required by Law, and, where reasonable and practical, shall include additional measures recommended by the Alaska Department of Fish and Game and TLO with the understanding that said recommendations will not result in an overall economic loss to Purchaser.

B. Timber Utilization Standards. Unless otherwise mutually agreed by TLO and PURCHASER, Purchaser shall conduct its Timber Operations in accordance with the following utilization standards:

- (1) Purchaser shall harvest Timber in such a manner as will ensure that all the Merchantable Timber in the Timber Sale Area is utilized;
- (2) Purchaser shall be obligated to pay the stumpage rates set forth for damage to Merchantable Timber left standing resulting from Purchaser’s Timber Operations;
- (3) Purchaser shall ensure that stumps left after logging are cut as low to the ground as practicable (in order to minimize waste), and in any event are not higher than eighteen (18) inches above the ground on the side of the stump where the elevation of the ground is the highest;

(4) Purchaser shall vary log lengths to provide for as complete a utilization of all the Merchantable Timber in the Timber Sale Area as is practicable; and

(5) TLO shall have the right to require Purchaser to remove Merchantable Timber from the Timber Sale Area that has been otherwise left unyarded on the ground.

C. Use of Logs For Other Purposes. Logs used by Purchaser for operational purposes, including but not limited to culverts, bridge stringers, and bridge abutments during the course of Timber Operations shall be provided free of charge, if approved in advance by TLO. In the event that logs are used for purposes other than Timber Operations or the use of such logs will provide benefits to parties other than Purchaser, TLO shall be compensated in accordance with a joint use contract between Purchaser and the other party, with applicable provisions of said contract being provided to and approved by TLO. Logs used for other purposes subject to TLO-approved joint use contracts shall be taken from the sort yard after scaling and Purchaser shall pay TLO the applicable Stumpage Fee, minus the proportionate amount, if any, that is attributable to the Timber Operations hereunder. If logs used for bridges are subsequently pulled such logs shall be scaled and paid for as provided herein.

D. Slash Disposal. Purchaser shall comply with all applicable Laws relating to the disposal or accumulation of Slash.

E. Reforestation. It is anticipated that applicable reforestation obligations will be met through natural regeneration. Except as provided below, TLO shall be responsible for all reforestation obligations required under applicable Laws. Purchaser shall take reasonable actions to facilitate natural regeneration, as described in the approved Operating Plans. Notwithstanding any of the above, Purchaser shall be responsible for reforestation of areas where Purchaser's Timber Operations have materially damaged or impeded the area's ability to naturally regenerate.

F. Roads. Purchaser shall, at its cost, construct, reconstruct, and improve roads in accordance with applicable Laws, the approved Operating Plans and the Road Construction and maintenance requirements in Exhibit E. It is the responsibility of the Purchaser to enter into contracts with adjoining land owners as to any shared use or maintenance requirements on roads owned or maintained by other entities, including, but not limited to private, federal, state and local landowners or administrators. TLO reserves the right to approve all such contracts which approval shall not be unreasonably withheld.

**G. Maintenance.** During the Term of this Contract, Purchaser, at its cost, shall maintain the Timber Sale Area, Roads and Related Transportation Facilities, and all other improvements used by Purchaser in connection with this Contract, in a clean, sanitary and safe condition and in accordance with applicable Laws, the approved Operating Plans, and other provisions of this Contract. Purchaser may share maintenance obligations with other Authorized Users of the Timber Sale Area, subject to the terms and conditions of joint use contracts that are approved in writing by the TLO. Cleanup measures and other maintenance shall be kept reasonably current with timber harvest operations.

**H. Removal of Refuse.** Purchaser shall at its expense dispose of all refuse resulting from its use of the Timber Sale Area, including garbage, wood waste, Hazardous Materials and debris of any kind, in a manner consistent with applicable Laws. No landfills or solid waste disposal sites shall be allowed to exist within the Timber Sale Area without the express written permission of the TLO.

**I. Fire Control**

(1) **Prevention and Suppression.** During the Term of this Contract, Purchaser shall make every effort to prevent and suppress fires within the Timber Sale Area. Unless otherwise required herein, or prevented by circumstances over which Purchaser has no control, Purchaser shall place its equipment, employees, contractors, and employees of contractors at the disposal of any authorized government employee for the purpose of fighting forest fires within or near the Timber Sale Area.

(2) **Presence of Fire Equipment.** Purchaser shall ensure that both the road building crews and logging crews have adequate firefighting equipment and training for use on site when operating in the Timber Sale Area, pursuant to the approved Operating Plans. In the event of “extreme fire danger,” a fire watch shall remain in all active Timber Operations areas for a minimum of one hour after work has stopped for the day, or at its election, TLO may suspend Timber Operations until the fire danger is reduced. Purchaser shall report all fires to the Alaska Division of Forestry in Ketchikan at (907) 225-3070, and to the TLO Contract Administrator at (907) -225-6618 immediately after becoming aware of a fire or imminent threat of fire.

**J. Notification to TLO.** In addition to notifying TLO of its intentions to commence or complete seasonal Timber Operations, Purchaser shall notify TLO of Purchaser’s intention to begin Timber Operations in each new Timber Harvest Unit at least fourteen (14) days in advance

of commencing work in the new Timber Harvest Unit. TLO shall then have fourteen (14) days from receipt of said notice to inspect the current Timber Operations and advise Purchaser of any obligations that Purchaser has failed to perform. If after fourteen (14) days of receipt of notice TLO has not informed Purchaser of any obligations that it has failed to perform, Purchaser may commence Timber Operations in the new Timber Harvest Unit. Failure of TLO to inform Purchaser of any obligations that it has failed to perform shall not be construed to be a waiver or affect the right of TLO to thereafter strictly enforce Purchaser's performance obligations.

K. Timber Trespass. Unless otherwise agreed, Purchaser shall not fell or damage any tree not within the boundary of the Timber Sale Area. Purchaser shall be liable for all trespass damages and is responsible for properly locating itself in the Timber Sale Area. In the event of trespass damage to timber outside of the Timber Sale Area but owned by the Trust Authority, TLO will appraise the damage and assess Purchaser the cost of such appraisal plus treble damages (triple stumpage), at the sole discretion of TLO. Purchaser shall be responsible for the location or re-survey of exterior property lines where the timber sale abuts other ownership.

L. TLO Inspections. TLO and its Representatives, shall at all times have access to observe and inspect the Timber Operations of Purchaser and shall be furnished such information, documentation and assistance by Purchaser as may be reasonably requested by TLO for the purpose of ensuring compliance with this Contract and applicable Laws. Purchaser shall complete additional work as requested by TLO, consistent with the approved Operating Plans and requirements of this Contract.

M. Emergency Repairs by TLO. In the event Purchaser refuses to make a repair, of an emergency nature to improvements or structures in the Timber Sale Area, after being requested to do so by TLO or a regulatory agency, then except for situations where the necessity for these emergency repairs results from the sole gross negligence or willful misconduct of TLO, TLO shall be entitled to make such repairs and Purchaser shall be responsible for reimbursing TLO for the actual cost of such repairs.

N. Facilities Construction. Nothing herein shall be construed to grant Purchaser or Purchaser's contractors or subcontractors the right to construct any facilities such as barge ramps, camps, buildings, sawmills, shake mills, fuel storage facilities, or to locate trailers on the Timber Sale Area or other Trust Land unless such facilities have been included as part of an approved Operating Plan.

O. Use of Timber Sale Area. Purchaser may only use the Timber Sale Area for actions related to the harvest of Merchantable Timber from Trust lands. The Timber Sale Area and

related facilities may not be used for any other purpose, including hunting and other recreational activity.

P. Sortyard and Log Transfer Facility. Purchaser must provide facilities for Scaling and processing logs after they have been hauled from the Timber Sale Area.

Q. Protection of Water Quality and Adjacent Property. Purchaser shall apply and comply with all provisions of Exhibit F in all road construction and timber harvest activities.

R. Silvicultural Activities The TLO may request the Purchaser to perform silvicultural activities such as tree planting and precommercial thinning. Upon mutual agreement the Purchaser or its contractor will perform the requested actions to TLO specifications. Cost for silvicultural expenses will be reimbursed as direct expenses to Contractor by the Trust Land Office. Copies of invoices for supplies and labor will be submitted to the TLO Project Manager for reimbursement and will not include a mark-up percentage. Labor costs will be paid on a per project basis.

Following TLO acceptance of the requested silvicultural work and completion of accepted work to the satisfaction of the TLO Project Manager, the Purchaser will be reimbursed by the TLO for the work performed. The TLO will only reimburse those activities that have been agreed to in writing and for which copies of paid invoices have been submitted to the TLO for reimbursement. Upon mutual agreement silvicultural activities may be incorporated within the timber sale contract.

## 11. RISK MANAGEMENT

A. Indemnification. Purchaser, its officers, agents, contractors and employees shall perform all of their obligations and carry on all of their operations and activities entirely at their own risk and responsibility. Purchaser shall indemnify, defend and hold TLO and the Trust Authority, their officers, agents and employees harmless from and against any and all loss, damage (including property and personal injury), claim, demand, action or proceeding of any kind, judgment, settlement, fee, charge, lien, liability, or expense (including attorneys' fees, costs of litigation, and costs of appeal) and costs of investigation and remediation (if required by any federal, state or local government agency or political subdivision) which they shall suffer or incur, including, but not limited to, those arising out of or in any way connected with the presence, disposal, release, spill or discharge of any Hazardous Material on the Timber Sale Area, whether arising on account of damage to or loss of property, or personal injury, emotional distress or death or for any other cause, arising in any manner directly or indirectly in connection with the performance, activities or operations of Purchaser, its officers, agents, employees, invitees, contractors, subcontractors or anyone directly or indirectly employed by them under this Contract whether the same arises before or after completion of Purchaser's activities or

expiration of the Term of this Contract. Nothing herein shall relieve TLO, or the Trust Authority and their officers, agents, employees, permittees, invitees and Authorized Users, from liability as a result of their sole gross negligence or willful misconduct. Liabilities associated with significant concurrent uses will be addressed as provided for in TLO-approved joint use contracts between Purchaser and other Authorized Users of the Timber Sale Area or associated facilities.

**B. Insurance Requirements.** Purchaser, its contractors and subcontractors shall purchase, at their own expense, and maintain in force at all times during the Term of this Contract the policies of insurance specified in Exhibit G from an insurer qualified to do business in the state of Alaska. The policies shall name TLO and the Trust Authority as additional insureds on all policies. TLO shall be provided with certificates of insurance and copies of all insurance policies, a minimum of fifteen (15) days prior to commencing Timber Operations. The policies shall provide that coverage shall not be canceled, limited, or allowed to expire until after thirty (30) days written notice has been given to TLO. TLO shall have the right, at its option, to pay any delinquent premium on any of the policies if necessary to prevent a cancellation, non-renewal or material alteration thereof, and Purchaser shall within five (5) business days, reimburse TLO. In the event that any insurance policy is canceled or the policy is materially changed, Purchaser shall immediately notify TLO and cease Timber Operations until new certificates of insurance and copies of new insurance policies are delivered to and approved in writing by TLO. TLO reserves the right to reasonably increase the required insurance coverage limits to be in accordance with the current industry standards.

**C. Risk of Loss.** Except for loss caused by Purchaser's acts or omissions, including, but not limited to, unreasonable delays in removing logs from the Timber Sale Area, the risk of loss by fire, windstorm, or other cause of any standing Merchantable Timber and windfalls which have not been bucked shall be borne by the parties as follows: in the event such Merchantable Timber or windfalls are damaged or destroyed by fire, windstorm, or other cause, so as not to be merchantable, TLO shall be under no obligation to Purchaser to replace such Merchantable Timber or reimburse for costs related to such Merchantable Timber by reason of the fact that it has been lost to Purchaser, and Purchaser's obligation to purchase Merchantable Timber shall be reduced by the amount of board feet of Timber so damaged or destroyed with an appropriate pro rata reduction in the remaining required Minimum Advance Stumpage Fee payments.

**D. Performance Deposit.** At the time this Contract is signed by TLO, Purchaser shall deposit with TLO One Hundred Thousand Dollars (\$100,000.00) (“Performance Deposit”) in the form of cash, certified check, cashiers check, money order or a time certificate of deposit made payable to TLO. If the Performance Deposit is in the form of cash, certified check, cashiers check or money order, TLO shall place the Performance Deposit in a separate state account and all interest on the Performance Deposit shall accrue to the benefit of TLO. If the Performance Deposit is in the form of a time certificate of deposit, TLO shall place the Performance Deposit in the state safe and all interest on the Performance Deposit shall accrue to the benefit of Purchaser. If Purchaser is in default under this Contract and has received notice of such default from TLO, but has failed to cure such default, TLO may apply said Performance Deposit to pay for the performance of the default obligation and to any of TLO’s expenses or damages incurred as a result of Purchaser’s default. Purchaser shall remain liable for any deficiency which remains after application of the Performance Deposit to any amount owed, and within ten (10) days of TLO’s said application, Purchaser shall deposit that sum of money necessary to maintain a Performance Deposit of One Hundred Thousand Dollars (\$100,000.00).

**12. ENVIRONMENTAL COMPLIANCE, PROTECTION AND SAFETY**

**A. No Hazardous Materials.** Purchaser shall not cause or permit to be brought upon, stored or used in or about the Timber Sale Area, or the Roads and Related Transportation Facilities by Purchaser, its agents, employees, contractors, or invitees, any Hazardous Materials without the prior written consent of TLO, which will not be unreasonably withheld by TLO so long as Purchaser demonstrates to TLO’s satisfaction that such Hazardous Materials are reasonably necessary to Purchaser’s Timber Operations and will be used, kept, stored and disposed of in a manner that complies with all applicable Laws regulating any such Hazardous Materials.

**B. Fuel Storage, Fueling, Maintenance and Spill Prevention.** TLO hereby consents that Purchaser may bring upon, and use necessary fuel, lubricating oil, hydraulic fluids, explosives and anti-freeze substances in the Timber Sale Area, during the Term of this Contract only to the extent such items are transported, used, and disposed of in a manner that complies with all applicable Laws and the terms of this Contract. Purchaser shall maintain and use centralized fuel storage, refueling and maintenance facilities (including facilities for the collection of waste oil) and shall do so in accordance with all applicable Laws. Purchaser shall have adequate absorbent materials on site and in all vehicles and machinery used in the Timber Sale Area.

C. Immediate Cleanup of Environmental Contamination. In the event Purchaser becomes aware of any Environmental Contamination within the Timber Sale Area, Purchaser shall immediately notify TLO and the Alaska Department of Environmental Conservation of any such Environmental Contamination and (unless provided for otherwise in a TLO-approved joint use contract between Purchaser and other Authorized Users of the Timber Sale Area) shall immediately take all actions at its sole expense as are necessary to contain and cleanup Environmental Contamination in a manner consistent with the requirements of applicable Laws. Without limiting Purchaser's containment and cleanup obligations herein, to the extent that it is economically reasonable (as determined by the TLO) to do so, Purchaser shall return the affected area to the condition existing prior to the introduction of any such Hazardous Materials.

### 13. DEFAULT BY PURCHASER

A. Events of Default by Purchaser. Any of the following shall be deemed an event of default by Purchaser ("Event of Default"):

- (1) If any representation or warranty made by Purchaser proves to be false in any material respect;
- (2) If Purchaser fails or refuses to perform, fulfill, or observe any provision in this Contract, or breaches any covenant in this Contract; or
- (3) If Purchaser has a receiver appointed for all or any significant part of its assets, becomes insolvent, files a petition-in-bankruptcy or for reorganization, liquidation, or relief under any bankruptcy, insolvency, or debtor laws, or makes an assignment for the benefit of creditors, or if a petition is filed against it in bankruptcy or under insolvency or debtor laws.
- (4) The inability to perform this Contract due to loss of financing, key management, contractor, subcontractor, or similar, and failure, within 30 days of written notice from TLO of such inability, to provide reasonable written assurances of Purchaser's ability to perform this Contract.

B. Notice of Default/Cure/Termination. In the event of default under paragraph 13(A) (Events of Default by Purchaser) above, TLO will serve written notice on Purchaser that shall state the ground or grounds upon which default is alleged and demand a cure. In the event of a default by Purchaser for failure to make payments of Stumpage Fees, or the Performance Deposit, or for failure to obtain or maintain insurance as required herein, Timber Operations shall cease immediately upon Purchaser's knowledge of the default or upon notice from TLO, whichever is earlier. If the default is not cured within ten (10) business days of written notice to

Purchaser, TLO may suspend or terminate this Contract by serving written notice on the Purchaser that states that this Contract is suspended or terminated. If an Event of Default is of any nature other than the defaults identified in the previous diligently execute a cure within thirty (30) business days of notice, or within 48 hours in the case of obligations which TLO or an authorized regulatory agency has declared to be of an emergency nature, TLO may suspend or terminate this Contract by serving written notice on Purchaser that states this Contract is suspended or terminated. Failure of TLO to strictly enforce at any time any of the provisions of this Contract shall not be construed to be a waiver or affect the right of TLO to thereafter strictly enforce such provision.

C. Remedies. In addition to the above, if an Event of Default by Purchaser occurs under this Contract, TLO, at its election, shall be entitled, after written notice to Purchaser and the cure periods set forth above have expired: (i) to suspend the operations under this Contract until the breach is cured; (ii) to terminate this Contract and recover any and all damages including incidental and consequential damages; (iii) to terminate this Contract and retain the Bid Deposit, any Stumpage Payments, the Performance Deposit and all other fees and deposits paid by Purchaser, plus all interest accrued thereon, as liquidated damages and not as a penalty; (iv) to seek specific performance of this Contract; and (v) to pursue any and all remedies in addition to or by way of alternatives to the foregoing available at law or in equity.

#### **14. FINAL ACCOUNTINGS**

Upon the expiration of the Term of this Contract including any extensions thereof, or within thirty (30) business days of the completion of all remaining obligations of Purchaser, whichever is earlier, there shall be a final accounting between the parties. The following amounts shall be computed: (i) any unpaid completion costs; (ii) amounts due to TLO under Paragraph 10 L (Emergency Repairs) of this Contract; and (iii) any other amount due TLO or Purchaser pursuant to this Contract. Within thirty (30) days after all calculations have been made and approved by both parties, and final inspections have been completed by TLO and applicable regulatory agencies, the party indebted to the other shall pay the outstanding balance owed to the other party, at which time the Performance Deposit or remaining portion thereof shall be released or refunded.

**15. RIGHTS AND OBLIGATIONS UPON EXPIRATION OR TERMINATION OF CONTRACT**

**A. Rights in Timber Sale Area.** Upon the termination or expiration of this Contract, any claim or right Purchaser may have in and to the Timber Sale Area, to any Merchantable Timber or logs remaining in the Timber Sale Area or to the Roads shall terminate.

**B. Obligation to Remove.** Within thirty (30) days of completion of Purchaser's Timber Operations or termination of this Contract, whichever is earlier, Purchaser shall remove from the Timber Sale Area and the Roads, all equipment, materials, chemicals, goods, supplies, machinery, cable, wastes, buildings, structures, and any other items or improvements placed thereon by Purchaser. The Timber Sale Area and the Roads shall be left free of all litter, debris, and all foreign materials generated by Purchaser's Timber Operations. Purchaser's removal thereof shall be made in a manner that does not leave the Timber Sale Area in a dangerous or unsafe condition and allows for reasonable concurrent uses during the removal period. If the above items are not so removed, they shall either be removed from the Timber Sale Area at Purchaser's expense or shall become property of the Trust Authority if TLO so elects.

**16. NOTICES AND PARTIES' REPRESENTATIVES**

All notices, requests, elections, consents or other communications that may be or are required to be given pursuant to this Contract to either of the Parties shall be effective only if given in writing and sent by certified mail, return receipt requested, or by confirmed facsimile copy, and shall be deemed received on the earlier of actual receipt or five (5) days after being deposited in the mail, postage prepaid, addressed to TLO or Purchaser at the following addresses:

To TLO:

Mental Health Trust Land Office  
2600 Cordova St. Suite 100  
Anchorage, Alaska 99503  
Phone No.: (907) 269-8658  
Fax No.: (907) 269-8905  
Attention: Executive Director

To TLO's Field Representative:

Phone No.:  
Fax No.:  
Attention:

To: PURCHASER:

\_\_\_\_\_, Inc.

Phone No.:  
Fax No.:  
Attention:

To Purchaser's Field Rep.:

Name:  
Address: Same  
City, State, Zip  
Phone No.:  
Fax No.:  
Attention:

Either party may change its representative or its field representative and its address for the purposes of this Paragraph 16 (Notices and Parties' Representatives) by giving notice of such change to the other party in the manner provided in this Paragraph 16.

#### **17. ASSIGNMENT OF CONTRACT**

Purchaser may not assign this Contract, or any part hereof, or otherwise convey or dispose of this Contract, or of its right, title, or interest herein, or its power to execute this Contract, to any other person, firm, or corporation without the prior written consent of TLO, which may be withheld for any reason. Furthermore, Purchaser's interests and rights in and to this Contract shall not be transferred by operation of law through any execution or judicial sale or insolvency or bankruptcy proceeding. Any assignment or transfer without TLO's approval shall be void and not merely voidable. Assignment for purposes of this Paragraph 17 (Assignment of Contract) shall include, but not be limited to, any change in the structure of or the ownership of shares or stock or other interests in Purchaser such that control of the affairs of Purchaser is transferred to persons other than those exercising such control or management on the date of execution of this Contract or on the date of TLO's approval of the immediately prior assignment (but shall not include a change in the directors or officers of Purchaser or changes in ownership directly resulting from the death of a shareholder or owner of other interests, where the shares or interest is transferred pursuant to a Will or the Laws of Intestacy, and where TLO determines in its sole discretion that said transferee or manager is capable of assuming all obligations under this Contract). TLO may, at its discretion, and without Purchaser's consent, assign its rights hereunder.

#### **18. LIENS**

Purchaser shall pay or cause to be paid promptly when due any claim, debt or charge against Purchaser, which might become a lien against any of the Trust Authority's assets associated with this Contract. Purchaser shall not suffer or permit any such lien or encumbrance of any kind to be filed against or upon any equipment, improvements, logs, the Timber or the property from which the same are cut, or from the proceeds thereof, regardless of whether the basis of such lien is a claim against Purchaser or against an employee, agent, supplier, contractor or subcontractor of Purchaser. Purchaser shall keep the Timber Sale Area and Timber free and clear of any and all mechanics, loggers, labor or materialmens liens arising from the performance of labor upon or the furnishing of materials to the Timber Sale Area. Purchaser may contest the

validity of any such lien that may be filed by providing reasonable security to TLO. Purchaser shall post notices of TLO's non-responsibility pursuant to AS 34.35.065 and AS 34.35.150.

#### **19. REPRESENTATIONS AND WARRANTIES**

**A. TLO.** As additional consideration for this sale, TLO hereby represents and warrants that it is duly authorized to enter into this Contract as agent of the Trust Authority;

**B. PURCHASER.** As additional consideration for this purchase, Purchaser hereby represents and warrants as follows, which representations and warranties shall survive the expiration of this Contract:

(1) It has read this Contract with care and in its entirety and understands it completely;

(2) It has had an unrestricted opportunity to review documents received from the TLO related to this timber sale which are not subject to the attorney-client privilege and has carefully inspected the Timber Sale Area and all Timber on the Timber Sale Area, and is purchasing the Merchantable Timber and accepting the Timber Sale Area "AS IS;"

(3) It has independently considered and made its own determination concerning the physical, legal and economic facts related to the access to and operations within the Timber Sale Area, barging and towing, log transport, log storage and transfer, raft delivery conditions, fuel transport and storage, availability of camps and sort yards, matters of title, present and future government regulations, the construction of the required Roads and Related Transportation Facilities, the harvest of the Merchantable Timber (and the ease or difficulty in harvesting it), the value, volume, grade, species distribution, type, quality and merchantability of the Timber and the economic feasibility and operability of the Timber and Purchaser's ability to harvest the Timber, and all other matters related to the harvest and sale of the Timber. Purchaser assumes each, every and all risks related to Timber Operations, the Merchantable Timber and the Timber Sale Area;

(4) It further assumes all risks related to the quantity or quality of rock, sand, gravel, stone or other Construction Materials in the Timber Sale Area;

(5) It is duly incorporated in accordance with the laws of the State of Alaska and in good standing in accordance with the Laws of the State of Alaska and is fully qualified to do business in the State of Alaska;

(6) It has the ability in terms of experience, expertise and financial capability to perform this Contract in a timely manner and further agrees to provide to TLO such financial information as may reasonably be requested from time to time by TLO to confirm Purchaser's

continuing ability to perform this Contract; provided that TLO agrees (1) to keep confidential such financial information submitted to it by Purchaser, (2) that said financial information will be used only for purposes directly related to this Contract, and will not be disclosed to any person other than authorized representatives of TLO; the Alaska Mental Health Trust Authority; and any professional persons engaged by TLO relative to Purchaser's performance of this Contract, except information that is in the public domain or that lawfully enters the public domain through no violation of this Contract, provided that any such professional person agrees, beforehand, in writing, to abide by the terms of this confidentiality contract, (3) to provide to Purchaser in writing the identity of the professional parties to whom the additional financial information is disclosed and the purpose of such disclosure, within ten (10) days of making said disclosure, (4) that if at some point a dispute arises and TLO concludes that it needs to submit to a court or other similar tribunal any document covered by this confidentiality contract or the contents of any such document, then such submission will be made under seal; and (5) upon Purchaser's completion of its performance of this Contract, TLO shall return to Purchaser all such financial documents or place them in storage under proper security, at the TLO's option. Purchaser acknowledges that, pursuant to 11 AAC 99.120, all financial information submitted to the TLO is required to be available to the Alaska Mental Health Trust Authority upon request, subject to the requirement that the material will remain confidential after receipt.

(7) It is duly authorized to enter into this Contract and all contracts and documents contemplated hereby, and to make the representations and warranties set forth herein; that when executed and delivered by Purchaser, this Contract shall constitute a legal, valid and binding obligation of Purchaser; that the person executing this Contract for and on behalf of Purchaser is duly authorized to do so; and, that neither the execution of this Contract nor its performance by Purchaser will conflict with or result in the breach of any other instrument, covenant or undertaking of Purchaser;

(8) All submissions to TLO made in relation to this Contract are true and correct;

(9) It is entering into this Contract based upon its own knowledge and information of the Timber, of the Timber Sale Area and of the timber business, and not because of any inducement or representation of TLO, the Trust Authority, or any representative of TLO or the Trust Authority;

(10) It is experienced in the logging industry, has independently reviewed all applicable Laws and has a sufficient working familiarity with such Laws to enable it to obtain necessary permits and comply with same;

(11) It has had the opportunity to consult with an attorney of Purchaser's own choosing concerning the contents of this Contract; and

(12) PURCHASER acknowledges and agrees that:

- (a) TLO has made no representations or warranties, express or implied, as to the access, availability, operability, value, total volume that may be cut in the Timber Sale Area, type, species distribution, grade, quantity, quality, merchantability or fitness for a particular use concerning the Timber and the Timber Sale Area;
- (b) TLO's approval of the Operating Plans shall not be a warranty that the Operating Plans are economic, safe, or meet the requirements of applicable Law;
- (c) TLO does not warrant the fitness or suitability of the Roads and Related Transportation Facilities (or lack thereof) and the Timber Sale Area and makes no representations concerning them;
- (d) TLO does not warrant the accuracy of any title, appraisals, timber cruises, investigations or other presale documents or evaluation TLO has prepared;
- (e) TLO does not warrant the Timber Sale Area to be free of risks associated with previous activity in the area; and
- (f) TLO does not warrant any other item that extends beyond the express written contents of this Contract.

## **20. TAXES, FEES AND ASSESSMENTS**

Purchaser shall file timely reports and make timely payment of any and all taxes, including deposits for withholding taxes, and fees and assessments due the United States, the State of Alaska, and any local governing body, and any and all payments for unemployment compensation and Workers Compensation Insurance, and other taxes and contributions required by Law, which become due and payable on account of Purchaser's operations carried out under this Contract. Should Purchaser fail to make any such payments, TLO shall have the right, at its option, to make such payment for Purchaser's account, and Purchaser agrees that it will, within five (5) days, reimburse TLO therefore.

## **21. VALID EXISTING RIGHTS**

The rights granted to Purchaser under this Contract are subject to all valid existing rights in existence on the Effective Date whether or not made of record, including without limitation, easements, rights-of-way, reservations or other interests in land.

## **22. OFFER FOR IN-STATE USE**

When reasonable to do so, Purchaser, at no cost to TLO or the Trust Authority, is encouraged to consider the sale of the Merchantable Timber to in-state manufacturers.

## **23. GENERAL PROVISIONS**

A. Remedies. Except as otherwise expressly provided in this Contract, the parties shall be entitled to any and all remedies provided by Law and all such remedies shall be cumulative.

B. Counterparts. This Contract may be executed in any number of counterparts, each of which shall be deemed an original, and all of which, taken together, shall constitute a single contract. This Contract shall not be become binding upon any party unless and until both parties have executed at least one counterpart of this Contract.

C. Further Actions. The parties hereby agree to take any and all actions and execute, acknowledge and deliver any and all documents reasonably necessary to effect the purposes of this Contract.

D. Modification of Contract. Only an instrument in writing duly executed by and delivered to all of the parties hereto may modify this Contract.

E. Entire Contract. This Contract, the Exhibits attached hereto including the Operating Plans, and all other documents necessary to effect the purposes of this Agreement embody the entire Contract and understanding between the parties and supersede all prior contracts and understandings, whether written or oral, relating to the subject matter hereof. In case of a conflict between this Contract and any other document necessary to effect the purposes of this Contract, the terms of this Contract shall control.

F. Interpretation. This Contract shall be governed and construed in accordance with the Laws of the State of Alaska. This Contract shall be interpreted so as to carry forward the intent of the Alaska Mental Health Enabling Act of 1956, (P.L. 84-830, 70 Stat. 709) and AS 38.05.801 et seq. and regulations promulgated thereunder with maximum force and effectiveness. All words and phrases used in this Contract are to be interpreted in conformance with AS 01.10.040.

The descriptive paragraph headings throughout this Agreement are for convenience and reference only, and the words contained therein shall not be held to expand, modify, amplify or aid in the interpretation or construction of this Agreement.

**G. Venue.** Venue for any legal action shall be in the Alaska Superior Court at Anchorage, Alaska.

**H. Dispute Resolution.** The parties agree to use their best efforts to resolve any disputes under this Agreement fairly, efficiently and promptly. Potential methods for achieving such dispute resolution may include (but shall not require) mediation, arbitration, and other approaches that may be appropriate under the circumstances.

**I. Severability.** If any provision of this Agreement or any application thereof shall be invalid or unenforceable, the remainder of this Agreement and any other application of such provision shall remain valid and enforceable so long as the provision determined to be invalid or unenforceable is not material to the rights of either party hereto.

**J. Binding Effect.** The rights, obligations, and liabilities set forth in or arising under this Agreement shall extend to, be binding upon, and inure to the benefit of the parties and their respective successors and permitted assigns.

**K. TLO as Agent for the Trust Authority.** The Mental Health Trust Land Office, is executing this Agreement as agent for the Trust Authority, a public corporation within the Alaska Department of Revenue under AS 47.30.011 et seq., in order to implement the State's obligation as trustee of the Trust established by the Alaska Mental Health Enabling Act of 1956 (P.L. 84-830, 70 Stat. 709), in accordance with State v. Weiss, 706 P.2d 681 (Alaska 1985).

**L. Relationship of the Parties.** Nothing in this Agreement shall be construed to make the TLO an agent, a partner, or a joint venture with Purchaser.

**M. Exhibits.** All Exhibits to this Contract are adopted by reference and incorporated herein as if fully set forth in this Contract.

**N. Contractors.** All Contractors and subcontractors engaged by Purchaser to perform Timber Operations relating to this Contract, shall be approved in advance by TLO; however, TLO shall not unreasonably withhold its approval. All such contractors and subcontractors shall be required by contract to abide by the terms and conditions of this Contract, and Purchaser shall provide them with relevant provisions of this Contract.

**O. Covenant to Act in Good Faith.** In order to permit this Contract, throughout its Term, to be fully effective in accordance with the original intent of the parties, each party agrees that it shall at all times act in good faith in performing its obligations and in exercising its rights under

this Contract.

ALASKA MENTAL HEALTH  
TRUST LAND OFFICE  
Department of Natural Resources  
2600 Cordova Street, Suite 100  
Anchorage, AK 99503

**PURCHASER:**

By: \_\_\_\_\_  
Executive Director  
Mental Health Trust Land Off

By: \_\_\_\_\_  
President

STATE OF ALASKA  
THIRD JUDICIAL DISTRICT

)  
)  
)

The Foregoing Instrument was acknowledged before me by \_\_\_\_\_, Executive Director of and on behalf of the State of Alaska, Department of Natural Resources Mental Health Trust Land Office as agent for the Alaska Mental Health Trust Authority on this \_\_\_\_ day of \_\_\_\_\_, 2015.

Notary Public for the State of Alaska  
My Commission expires: With Office

STATE OF \_\_\_\_\_

)

The Foregoing Instrument was acknowledged before me by \_\_\_\_\_ the  
\_\_\_\_\_ of \_\_\_\_\_ on behalf of the corporation on  
this      day of      , 2001.

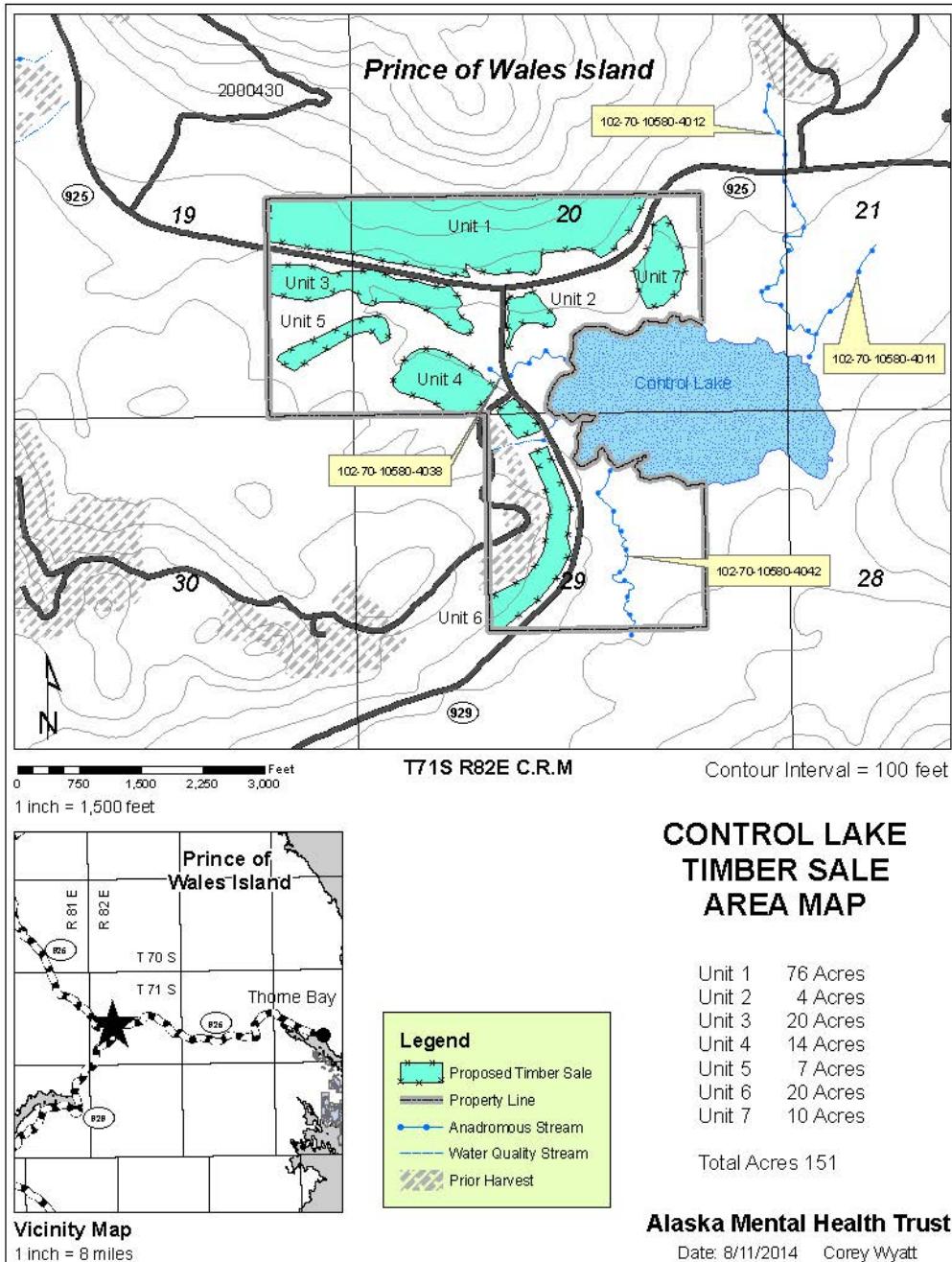
Notary Public for the State of \_\_\_\_\_  
My Commission expires: \_\_\_\_\_

DRAFT

# EXHIBIT A

## TIMBER SALE AREA MAP

Control Lake Timber Sale



## **EXHIBIT B**

### **TIMBER SALE AREA LEGAL DESCRIPTION**

#### **Control Lake Timber Sale**

**Property Description: Portions of Township 71S, Range 82E, Sections 19, 20, & 29 Copper River Meridian.**

**See Exhibit A, Timber Sale area Map.**

**DRAFT**

**EXHIBIT C**

**APPROVED OPERATING PLAN**

Control Lake Timber Sale

To be submitted by Purchaser, approved by TLO and attached hereto.

DRAFT

## **EXHIBIT D**

### **OPERATING PLAN REQUIREMENTS**

The Annual Operating Plan shall comply with the requirements of the Alaska Forest Resources and Practices Act (FR&PA) under AS 41.17 and 11 AAC 95.220. The Overall Operating Plan shall provide TLO with sufficient information to allow TLO to understand the Timber Operations planned for the entire area, as they will occur in the field. The Overall Operating Plan shall include identification of any areas of concern that Purchaser may have relating to any potential problems, including any potential conflicts with AS 41.17. The Annual Operating Plan is to be submitted to the TLO on the state Division of Forestry “Detailed Plan of Operations” form so as to comply with the FR&PA. In addition to the information required in the “Detailed Plan of Operations” under 11 AAC 95.220, Purchaser shall provide TLO with the following information, attached to the state form:

**A. Description of Overall Operating Plan.**

- (1) Timber Harvest schedules, to include specific scheduling for the operation of Timber Harvest Units within the Timber Sale Area and associated access development by year;
- (2) Description of silvicultural prescription for each harvest unit, including a seed dispersal evaluation showing that natural reseeding meets the intent of the Alaska Forest Resources and Practices Act;
- (3) Description of actions that will be taken to minimize seasonal and long-term impacts to fish and wildlife populations within the Timber Sale Area.
- (4) Fire prevention and suppression planning, including an area wide action plan and list of adequate equipment maintained in the Timber Sale Area to suppress fires;
- (5) Hazardous Substance, an area wide control plan;
- (6) Natural Disasters, an area wide plan for response to natural disasters such as earthquake and related tidal waves.

**B. Details of Annual Operating Plan.**

- (1) Method and schedule of timber harvest by unit within the Timber Sale Area, for the plan year, including a complete timber harvest unit layout for that portion of the Timber Sale Area to be logged for the year, tentative layout plans for the following year, and the estimated volume by month to be harvested during the plan year;

(2) Details of road construction and layout, to include a summary for areas of concern due to slope or other considerations.

(3) Details of the portions of the timber harvest unit layout designed to minimize damage to other resources, including fish and wildlife habitat, soils in areas of steep slope and water quality on each of the units planned for harvest;

(4) Details of seasonal closeout plans, including Roads and Related Transportation Facilities and other pertinent information. Purchaser should plan on operating only two Timber Harvest Units at a time, and plan for orderly close-out of each Timber Harvest Unit as it is completed. The annual plan for the last year of this Contract shall provide for closeout activities, including putting roads to bed and full clean-up;

(5) Location of log scaling area, log transfer facilities, camp facilities or local operations office; and

(6) Names, addresses and contact persons for all contractors.

C. Training. Purchaser shall include in any Operating Plans a training program for all personnel, including contractors and subcontractors, involved in the Timber Operations. The program shall be designed to inform each person working in the Timber Sale Area of environmental concerns associated with Timber Operations in the Timber Sale Area. The program shall specifically address the following Timber Operation elements: (i) safety, (ii) prevention of hazardous material contamination, (iii) prevention of fire, (iv) compliance with fish and wildlife protection Laws, (v) other fish and wildlife protection measures addressed in the Operating Plan, (vi) contract compliance, (vii) water quality laws and (viii) prevention of unauthorized uses of the Timber Sale Area.

## EXHIBIT E

### ROAD CONSTRUCTION AND MAINTENANCE REQUIREMENTS

1. Road and Landing Construction. The Purchaser shall take all measures that TLO determines necessary to protect stream banks and stream courses during road and landing construction and to prevent erosion of exposed soil and fill material including but not limited to the following:

A. Road Specifications. The following road segments, must be built to the specifications described below, and in the location marked on the ground with Orange centerline ribbon (also shown on timber sale layout map).

B. Ballast. Ballast shall be obtained from an approved borrow pit. The above roads shall be rocked and shaped according to the specifications as shown below.

C. Road Fill. Unless otherwise approved in writing and staked on the ground by TLO, road fill placed by the Purchaser shall not cover, encroach on, or alter permanent or intermittent water channels.

D. Culverts. Culverts will be as needed or as prescribed by the State of Alaska Forest Practices Act and Regulations. Purchaser should be prepared to:

- (1) Increase structure size as required if conditions warrant, i.e. debris problems or drainage modification due to logging or road construction and
- (2) Install relief culverts every 1000 feet, or less to relieve ditch-line catchment.

2. Road Maintenance.

A. On-going Maintenance. Once initial operations involving road use under this contract commence by the Purchaser, maintenance shall be an on-going function throughout the duration of the contract. The Purchaser may cease maintenance operations during prolonged shut-down periods providing all roads are stabilized according to the standards specified in (E) below with prior written approval by TLO.

B. Existing Road Cross Sections. Purchaser shall maintain existing road cross sections by blading and shaping the surface and shoulders or replacing surfacing as required by TLO.

C. Avoid Fouling Surface. While performing ordinary road maintenance work

Purchaser shall avoid permanently fouling gravel or rock surfaces through covering them with earth or debris from side ditches, slides or other sources. Purchaser shall avoid blading surface material off the road surface.

D. Minimize Damage. Purchaser shall minimize damage to ditches, drainage structures, slopes and road surfaces. Where damage does occur, Purchaser shall restore the road and structures to their prior condition within a two-week period, unless TLO requires a shorter or longer period of time under the circumstances.

E. Preventative Maintenance. Purchaser shall perform preventative maintenance at the end of each operating season to minimize weather damage during the non-hauling period. This may include cross-ditching, post-haul blading to remove berms, ruts or other surface irregularities that would interfere with normal runoff of water and cleaning ditches and culverts.

F. Seasonal Work. Purchaser shall perform all seasonal weather clean-up, removal of bank slough, minor slides and fallen timber, brush road, replace material eroded from slopes, and clean out drainage ditches and culverts at the beginning of each operating season. In removing material from slides or other sources, Purchaser shall deposit the material in a location where it will not erode into streams, lakes or reservoirs. Cut slopes, slumps, or other areas of exposed soil that are at risk for producing sedimentation of surface waters will be grass seeded or otherwise stabilized to reduce sediment transport.

G. Work Upon Termination. Upon termination of use, all roads shall be either put to bed, in compliance with the Alaska Forest Practices Act and Regulations or at the option of TLO, they may be maintained as specified in (E) and (F) above.

5. Road Maintenance Contracts. If Purchaser jointly uses the Roads and Related Transportation Facilities with other authorized parties under this, or a subsequent contract, each party shall be required to enter into a joint use road maintenance contract prior to hauling logs on the jointly used roads, see Contract Paragraph 10.

6. Road Standards.

A. General Conditions.

1. Road Width. Roads shall be 20 feet, including ditch (see typical roadbed section) and 35 feet where designated turnouts are built.
2. Surfacing Width. 14-16 feet.
3. Surfacing. The minimum necessary to allow log trucking without surface deformation.

4. Turnouts. Will be inter-visible, with a surfaced length of 50 feet at full width.
5. Grade. The maximum grade on the “mainline” segments listed in (A) above, is 12%. The maximum grade on all spurs is 16% unless otherwise approved in writing by TLO representative.
6. Degree of Curvature. The absolute maximum permitted is 100 degrees. The ordinary designed maximum shall be 90 degrees.

B. Road Signage.

1. Signs. A “stop sign” and “trucks entering roadway” signs will be erected at any intersection of logging roads and a publicly traveled road.
2. Milepost signs will be maintained along the mainline road for communication of location between vehicles traveling in opposite directions.

C. Clearing and Grubbing

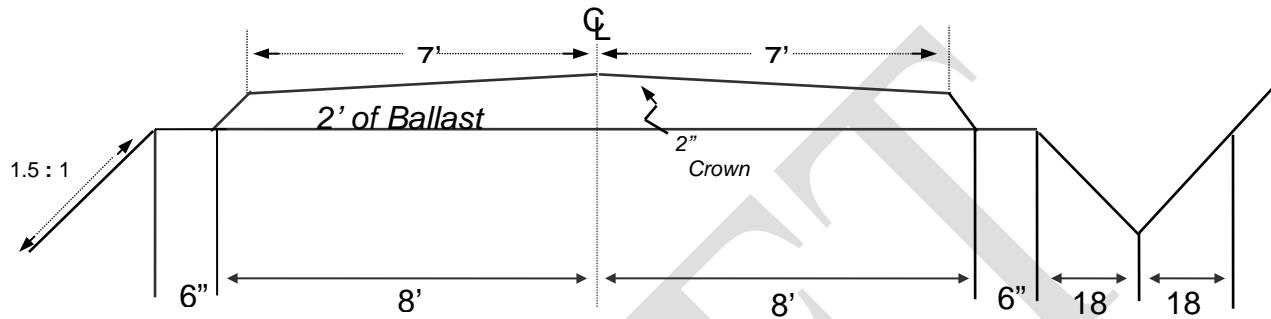
1. The clearing boundary limits outside of the sale area will be 75' on either side of the centerline. Within the sale area, Purchaser may determine the clearing limits.
2. Snags and trees leaning heavily over the roadway that are outside the clearing limits shall be felled. Snags will be felled in conjunction with cutting the regular right-of-way.
3. All stumps, any portions of which fall within the cut slopes, shall be removed.
4. Debris will not be piled or pushed against existing trees.

D. Grading.

1. All fills 6 feet deep and over shall be widened 2 feet for each 6 feet of centerline depth to a maximum width of 36 feet. Embankment slopes shall not be steeper than 1 1/4:1 for common and 1:1 for rock. Fills shall be compacted in 2-foot layers.
2. Cut slopes will generally be 3/4:1 below 70%, 1/2:1 above 70%, and vertical in rock.

9. Typical Roadbed Section, Single Lane - With Turnouts.

<u>Cut Slopes</u>	<u>Extra Widening</u>	<u>Inside of Curves</u>
1:1 common	Fills under 6' add 1'	10' - 1 foot
1/2:1 soft rock	Fills over 6' add 2'	30' - 2 feet
1/4:1 solid rock		50' - 3 feet
11/2:1 fill slopes		60' - 4 feet



The grade and alignment can be changed only with permission of TLO representative when conditions encountered during construction make this advisable.

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## EXHIBIT F

### SLOPE STABILITY AND WATER QUALITY PROTECTION MEASURES

1. **Slope stability and water quality.** The Purchaser shall take all reasonable and prudent measures, including but not limited to those prescribed in the Alaska Forest Resources & Practices Regulations (June 2004) and the additional measures listed below, to minimize the potential for mass soil movement and property damage or the impairment of the water quality in streams used for domestic water sources on property adjacent to the timber sale area.

**Mass Soil Movements** In order to better protect against mass soil movements, additional measures to minimize the potential for mass soil movement will be followed. These include:

- a. Where possible, unstable soil conditions will be avoided with road construction or soil disturbing harvest activity.
- b. During periods of extreme wet weather and saturated soil conditions, road construction will be limited to areas with side slopes less than 40%, and blasting will be suspended.
- c. On slopes over 67%, end hauling will be utilized to minimize sidecasting of material.
- d. Downhill cable yarding will not occur during extremely wet weather or saturated soil conditions. Measures will be taken to insure that as much deflection as is available is used during downhill yarding.
- e. Landings will be full benched and constructed so as to not overweight steep slopes with sidecast material or a logging slash accumulation.
- f. Road ditches and culverts will be patrolled and kept free of debris, to promote the flow of water into natural channels rather than down the road or onto unstable slopes. Surface water will be diverted away from un-consolidated fill or sidecast material.
- g. Timber along watercourses will be felled and yarded away from the stream. Yarding will utilize suspension adequate to prevent the disturbance of soil on slopes adjacent to watercourses. Where possible, undamaged, wind firm non-merchantable trees will be left standing.
- h. Particular attention will be made to avoiding disturbance of slopes in excess of 72%. Appropriate precautions include: (1) avoid undercutting the toe of these slopes, (2) surface water will be diverted away from these slopes, (3) side cast material, slash accumulations, and overburden will not be deposited on these areas, (4) road construction will occur above or below slope pitches of 72% or greater, not across the middle, (5) yarding across these areas will achieve full suspension.

## **EXHIBIT G**

### **INSURANCE POLICIES**

All of the insurance policies required by this Contract shall be endorsed to provide that such insurance shall apply as primary insurance and that any insurance or self-insurance carried by TLO or permitting agencies will be excess only and will not contribute to the insurance required by this Contract; shall be endorsed to name TLO and the Trust Authority as additional insureds; and shall provide for a waiver of subrogation in favor of TLO and the Trust Authority. All endorsements shall refer to this Contract. Insurance coverage amounts will be reviewed every 5 years and may be adjusted by the TLO. All insurance shall be on an occurrence and not a "claims made" basis. At a minimum Purchaser shall provide and maintain the following:

A. Workers' compensation, industrial accident and/or USL&H insurance for all its employees engaged in work under this Contract, including subcontractors Workers' Compensation Insurance, Industrial Accident and/or USL&H, including Employer's Liability Insurance in accordance with the Laws of the State of Alaska. If there is exposure to injury under the U.S. Longshoremen's and Harbor Workers' Compensation Act, the Jones Act, or under Laws applicable to maritime employees, or any other federal act, coverage shall be included for such injuries or claims. Such policies shall be endorsed with a waiver of subrogation in favor of TLO and the Trust Authority.

B. Commercial general liability insurance, including contractual coverage with coverage limits not less than Two Million Dollars (\$2,000,000) combined single limit per occurrence and annual aggregate coverage of Two Million Dollars (\$2,000,000) including premises-operations, independent contractors, product/completed operations, broad form property damage, blanket contractual, and personal injury endorsements.

C. Comprehensive automobile and aircraft liability insurance, covering all owned, hired, and non-owned vehicles and aircraft with coverage limits not less than Two Million Dollars (\$2,000,000) combined single limit per occurrence bodily injury and property damage.

D. Logger's property damage liability, broad form with a limit per occurrence of at least One Million Dollars (\$1,000,000).

E. Pollution liability coverage with coverage limits not less than One Million Dollars (\$1,000,000.00) per occurrence combined single limit for bodily injury, property damage and cleanup expense.