

Sample Draft Contract



WASHINGTON STATE DEPARTMENT OF
Natural Resources
Peter Goldmark - Commissioner of Public Lands

BILL OF SALE AND CONTRACT FOR FOREST PRODUCTS

EVERGREEN BOUGH LUMP SUM CONTRACT NO.: 35-076652

BOUGH SALE NAME:

The Washington State Department of Natural Resources, hereinafter acting solely in its proprietary capacity, "State", and ENTER PURCHASER NAME, ALL CAPS, "Purchaser", agree as follows:

SECTION A: GENERAL TERMS

A-10 Products Sold and Sale Area

Purchaser was the successful bidder on September 28, 2009 for the right to harvest evergreen boughs from forested state trust lands. The State agrees to sell to Purchaser and Purchaser agrees to purchase the following forest products:

Noble fir boughs, bounded by natural barriers and forest stand types, located in parts of Section _____, in Jefferson County, containing approximately XX acres, as shown on the bough sale map.

A-20 Inspection by Purchaser

Purchaser has had the opportunity to inspect the forest products and sale area, and enters into this contract in reliance on Purchaser's own examination and not by reason of any representation by the State.

A-30 Contract Period

Purchaser shall remove the forest products conveyed and complete all contract required work prior to December 31, 2010, unless a contract term adjustment has been granted by the State.

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A-40 Contract Term Adjustment

Purchaser may request an adjustment in the contract term. Claim must be submitted in writing, must be received by the State within 30 days after the start of interruption or delay, and must indicate the actual or anticipated length of interruption or delay. The State may grant the adjustment only if the cause for contract term adjustment is beyond Purchaser's control. The cause must be one of the following and the adjustment may be granted only if operations or planned operations under this contract are actually interrupted or delayed:

- a) Road and bridge failures, which deny access;
- b) Access road closures imposed by road owner;
- c) Excessive suspensions as provided in Clause A-210;
- d) Regulatory actions not arising from Purchaser's failure to comply with this contract;
- e) Access due to fire closure or snow;
- f) Non-harvestable boughs due to naturally occurring damage or disease.

A-50 State Does Not Warrant

The State does not warrant any of the following:

- a) The merchantability of the forest products. The use of the term "merchantable" elsewhere in this contract is not intended to vary the foregoing.
- b) The condition of the forest products. The forest products are conveyed "as is".
- c) The tonnage, quality, or grade of the forest products. The descriptions of the forest products conveyed in this agreement are estimates only, made for the sole purpose of identification.
- d) All pre-bid documents prepared by or for the State. These documents were prepared for appraisal purposes only.
- e) Items which extend beyond the description of the face of this contract.
- f) The presence or absence of any threatened or endangered species listed by the U.S. Fish and Wildlife Service that may affect the operability of the sale.

A-60 Regulatory Disclaimer

The State disclaims any responsibility for, or liability relating to, regulatory actions by any government agency, including actions pursuant to the Forest Practices Act, Ch. 76.09 RCW that may affect the operability of the sale.

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A-70 Limitation on Damages

In the event of a breach of any warranty by the State, the liability of the State shall be limited to a return of the initial deposit, unapplied payments, and credit for unamortized improvements made by Purchaser. The State shall not be liable for any damages, whether direct or consequential.

A-80 Scope of State Advice

No advice by the State regarding the method or manner of performing shall constitute a representation or warranty that the result of such method or manner will conform to the contract, relieve Purchaser of any risk or obligation under the contract, or create any liability to the State because of such advice.

A-90 Forest Products Not Designated

Added forest products become a part of this contract and shall be paid for at the same rate and manner as other forest products under this contract.

A-100 Title and Risk of Loss

Title to the forest products conveyed passes on day of sale. Purchaser bears the risk of loss of or damage to and has an insurable interest in the forest products in this contract from the time of confirmation of the sale of forest products. In the event any such forest products are destroyed or stolen after passage of title, whether the cause is foreseeable or unforeseeable the forest products shall be paid for by Purchaser. Breach of this contract shall have no effect on this provision. Title to the forest products not removed from the sale area within the period specified in this contract shall revert to the State as provided in RCW 79.15.100.

A-110 Responsibility for Work

All work, equipment and materials necessary to perform this contract shall be the responsibility of Purchaser. Any damage to improvements, except as provided in Clause A-120, shall be repaired promptly to the satisfaction of the State at Purchaser's expense during the contract period unless an operating release has been issued.

A-120 Exceptions

Exceptions to Purchaser's responsibility in Clause A-110 shall be limited exclusively to the following. These exceptions shall not apply should damages occur because of Purchaser's failure to take reasonable precautions or to exercise sound forest engineering and construction practices.

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- a) The State shall bear the cost to repair any third party damage involving any existing roadway or section of required road completed to the point that an authorization to haul has been issued. Purchaser shall accomplish repairs promptly as required by the State at an agreed price. The State may elect to accomplish repairs by means of State provided resources.

A-130 Responsibility for Damage

Purchaser shall defend, indemnify, and save harmless the State and its authorized agents, from all claims, actions, costs and damages of any nature arising out of any act or omission by Purchaser or Purchaser's delegate in the performance of this contract. This obligation shall not include damages caused by the sole negligence of the State and its authorized agents. In the case of negligence by both Parties, Purchaser shall be responsible for damage in proportion to the percentage of negligence attributable to Purchaser.

In addition to any other remedy authorized by law, the State may retain as much of the initial deposit, performance security or any money or credits due Purchaser necessary to assure indemnification until disposition has been made of any such actions or claims.

A-140 General Insurance Requirements

Purchaser shall, at all times during the term of this contract at its cost and expense, buy and maintain insurance of the types and amounts listed below. Failure to buy and maintain the required insurance may result in the termination of the contract at DNR's option.

All insurance shall be issued by companies admitted to do business in the State of Washington and have a rating of A-, Class VII or better in the most recently published edition of Best's Reports unless otherwise approved by DNR. Any exception must be reviewed and approved by the DNR Risk Manager before the lease is accepted. If an insurer is not admitted, all insurance policies and procedures for issuing the insurance policies must comply with Chapter 48.15 RCW and 284-15 WAC.

Within fifteen (15) days of the start of the Sale, Purchaser shall furnish DNR, with a certificate of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements specified in the bid/proposal, if applicable, and Contract. Said certificate shall contain the above Contract number, name of DNR Sale Administrator/Manager, his or her mailing address, a description, and include the State of Washington, DNR, its elected and appointed officials' agents, and employees as additional insured on all general liability, excess, umbrella and property insurance policies.

Purchaser shall include all subcontractors as insureds under all required insurance policies, or shall furnish separate certificates of insurance and endorsements for each subcontractor.

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Subcontractor(s) must comply fully with all insurance requirements stated herein. Failure of subcontractor(s) to comply with insurance requirements does not limit Purchaser's liability or responsibility.

All insurance provided in compliance with this contract shall be primary as to any other insurance or self-insurance programs afforded to or maintained by DNR. Purchaser waives all rights against the DNR for recovery of damages to the extent these damages are covered by general liability or umbrella insurance maintained pursuant to this Contract.

DNR shall be provided written notice before cancellation or non-renewal of any insurance referred to therein, in accord with the following specifications:

Insurers subject to Chapter 48.18 RCW (Admitted and Regulated by the Insurance Commissioner): The insurer shall give the DNR forty-five (45) days advance notice of cancellation or non-renewal. If cancellation is due to nonpayment of premium, the DNR shall be given ten (10) days advance notice of cancellation.

Insurers subject to Chapter 48.15 RCW (Surplus lines): The DNR shall be given twenty (20) days advance notice of cancellation. If cancellation is due to nonpayment of premium, the DNR shall be given ten (10) days advance notice of cancellation.

Liability Insurance

During the term of the Contract, Purchaser must purchase and maintain the insurance coverages and limits specified below:

- a) **Commercial General Liability (CGL) Insurance.** Purchaser must purchase and maintain CGL on an Insurance Services Office (ISO) form CG 00 01 or equivalent form, covering liability arising from premises, operations, independent contractors, personal injury, products completed operations, and liability assumed under an insured contract. Such insurance must be provided on an occurrence basis. Insurance must include liability coverage with limits not less than those specified below:

Description

General Aggregate Limit	\$500,000
Each Occurrence Limit	\$500,000

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- b) **Worker's Compensation Coverage.** Purchaser must comply at all times with applicable workers' compensation, occupational disease, and occupational health and safety laws, statutes and regulations (and, if applicable the Federal Longshoremen's and Harbor Workers' Act and the Jones Act).

Such coverage must be afforded for all employees of Purchaser, and for all employees of any subcontractor retained by Purchaser. Coverage must apply to bodily injury (including resulting death) by accident or disease, which arises out of or in connection with the performance of the Contract. Satisfaction of these requirements shall include, but not be limited to:

- i. Full participation in any required governmental occupational injury and/or disease insurance program, to the extent participation in such program is mandatory in any jurisdiction;
- ii. Purchase of workers' compensation and occupational disease insurance, to the extent such coverage is not provided under a mandatory government program as in paragraph i., above.
- iii. Maintenance of a legally permitted and governmentally approved program of self-insurance.

Except where prohibited by law, Workers Compensation Coverage shall provide for a waiver of rights of subrogation against DNR, its directors, officers and employees.

If DNR incurs fines or is required by law to provide coverage or benefits due to failure by Purchaser, or any subcontractor retained by Purchaser, to effect or maintain a program of compliance with all applicable workers' compensation, occupational disease, and occupational health and safety laws, statutes and regulations, Purchaser must indemnify DNR for all benefits, costs and fines. Amounts owed to DNR by Purchaser pursuant to any such indemnity may not be deducted for any payments owed by DNR to Purchaser for performance of this Contract.

- c) **Employers Liability ("Stop Gap") Insurance.** Purchaser must purchase and maintain Employers Liability or "Stop Gap" Insurance to include liability coverage with limits not less than those specified below. Purchaser waives immunity under Title 51 RCW to the extent required by this clause. Insurance must include liability coverage with limits not less than those specified below:

Each Employee Description	By Accident	Policy By Disease	Limit By Disease
Bodily Injury	\$500,000	\$500,000	\$500,000

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- d) **Business Auto Policy (BAP) Insurance.** If services delivered pursuant to this Contract involve the use of vehicles or the transportation of clients, Purchaser must purchase and maintain a BAP on an Insurance Services Office (ISO) form CA 00 01 or equivalent form. The Description of Covered Autos must include one or more of the following:

"Any Auto" (Symbol 1), or one or more of the following alternatives, as applicable:

If Purchaser-owned personal vehicles are used, the BAP must cover "Owned Autos Only".

If Purchaser hires autos, the BAP must cover "Hired Autos Only" (Symbol 8).

If Purchaser's employee's vehicles are used, the BAP must cover "Non-owned Autos Only".

Such insurance must be provided on an occurrence basis. The BAP insurance must include liability coverage with limits not less than those specified.

Description	Each Accident
Bodily Injury and Property Damage	\$500,000

Purchaser shall obtain and keep in force, and shall require all independent contractors to maintain while conducting operations under this Contract liability insurance from insurers with a certificate of authority issued pursuant to Chapter 48.05 RCW or surplus line insurers if procured through a licensed surplus line broker pursuant to Chapter 48.15 RCW. The policy or endorsement shall insure against contractual liability, liability for bodily injury and liability for property damage arising out of this Contract. This insurance shall cover such claims as may be caused by any act, omission, or negligence of Purchaser, its agents, contractors, employees, or representatives. The State of Washington, Department of Natural Resources shall be added as additional insured on all such insurance policies. The limits of liability insurance, which may be increased as deemed necessary by State with approval of Purchaser (which shall not be unreasonably withheld), shall be as follows:

General Liability. The amount of coverage shall not be less than \$100,000.00 for bodily injury, including death, to any one person, not less than \$300,000.00 for each occurrence, and not less than \$100,000.00 for property damage in any one occurrence.

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Automobile Liability. In the event that services delivered pursuant to this Contract involve the use of vehicles or the transportation of clients, automobile liability insurance shall be required. If Purchaser-owned personal vehicles are used, a Business Automobile Policy covering at a minimum Code 2 "owned autos only" must be secured. If Purchaser's employee's vehicles are used, the Purchaser must also include under the Business Automobile Policy Code 9, coverage for "non-owned autos." The minimum limits for automobile liability is:

\$100,000.00 Per Occurrence, using a Combined Single Limit for bodily injury and property damage.

Certification. Purchaser shall certify to the State that a policy or endorsement to an existing policy has been obtained satisfying the above requirements. Such certification must be received by the State before Purchaser may operate. Purchaser must give the State forty-five (45) days prior notice of any change or cancellation of this insurance. Coverage in the minimum amount set forth herein shall not be construed to relieve Purchaser from liability in excess of such coverage.

A-150 Agents

The State's rights and duties will be exercised by DNR's Region Manager at Forks, Washington. The Region Manager will notify Purchaser in writing who is responsible for administering the contract. Only the Regional Manager has the authority to waive, modify, or amend the terms of this contract. No agent, employee, or representative of the State has any authority to bind the State to any affirmation, representation or warranty concerning the forest products conveyed beyond the terms of this contract.

Purchaser is required to have a person on site during all operations who is authorized to receive instructions and notices from the State. The foreman shall speak and understand English at a level that allows for easy communication with the DNR representative.

A-160 Assignment and Delegation

No rights or interest in this contract shall be assigned by Purchaser without prior written permission of the State. Any attempted assignment shall be void and ineffective for all purposes unless made in conformity with this paragraph. Purchaser may perform any duty through a delegate, but Purchaser is not thereby relieved of any duty to perform or any liability for breach. Any assignee or delegate shall be bound by the terms of this contract.

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A-170 Modifications

Waivers, modifications or amendments of the terms of this contract must be in writing signed by Purchaser and the State.

A-180 Contract Complete

This contract is the final expression of the Parties' agreement. There are no understandings, agreements, or representations expressed or implied, which are not specified in this contract.

A-190 Notice

Notices required to be given under the following clauses shall be in writing and shall be delivered to the Party's authorized agent or sent by certified mail to the Party's post office address:

A-200 Violation of Contract

A-210 State Suspends Operations

All other notices required to be given under this contract shall be in writing and delivered to the authorized agent or mailed to the Party's post office address. Purchaser agrees to notify the State of any change of address.

A-200 Violation of Contract

- a) If Purchaser violates any provision of this contract, the Contract Administrator, by written notice, may suspend those operations in violation. If the violation is capable of being remedied, Purchaser has 30 days after receipt of a suspension notice to remedy the violation. If the violation cannot be remedied or Purchaser fails to remedy the violation within 30 days after receipt of a suspension notice, the State may terminate the rights of Purchaser under this contract.
- b) If the contract expires pursuant to Clause A-30 without Purchaser having performed all its duties under this contract, Purchaser's right to operate is terminated and Purchaser shall not have the right to remedy the breach. This provision shall not relieve Purchaser of any payment obligations.
- c) The State has the right to remedy the breach in the absence of any indicated attempt by Purchaser or if Purchaser is unable, as determined by the State, to remedy the breach. Any expense incurred by the State shall be charged to Purchaser and shall be paid within 30 days of receipt of the billing.
- d) If Purchaser's violation is a result of a failure to make a payment when due, in addition to a. and b. above, interest shall accrue on the unpaid balance at the current interest rate as established by WAC 332-100-030 computed daily beginning the date payment was due.

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A-210 State Suspends Operation

The Contract Administrator may suspend any operation of Purchaser under this contract when the State is suffering or there is a reasonable expectation that the State will suffer damage if the operation is allowed to continue.

Purchaser shall be in breach of this contract if the operation continues after the suspension notice or if the operation resumes without prior approval and notice from the Contract Administrator.

Purchaser may request a modification of a suspension within 30 days of the start of suspension through the dispute resolution process in Clause A-230. If this process results in a finding that the suspension exceeded the time reasonably necessary to stop or prevent damage to the State, Purchaser is entitled to a contract term adjustment under Clause A-40 for the actual interruption or delay in operations caused by the excessive suspension.

A-220 Unauthorized Activity

Any cutting, removal, or damage of forest products by Purchaser or Purchaser's delegate or agent, in a manner inconsistent with the terms of this contract or State law, is unauthorized. Such activity may subject Purchaser to liability for triple the value of said forest products under RCW 79.02.320 and may result in prosecution under RCW 79.02.330 or other applicable statutes.

A-230 Dispute Resolution

The following procedures apply in the event of a dispute regarding interpretation or administration of this contract and the parties agree that these procedures must be followed before a lawsuit can be initiated.

- a) In the event of a dispute, Purchaser must make a written request to the Regional Manager for resolution prior to seeking other relief.
- b) The Regional Manager will issue a written decision on Purchaser's request within ten working days.
- c) Within ten (10) working days of receipt of the Regional Manager's decision, Purchaser may make a written request for resolution to the Division Manager of the Product Sales and Leasing Division of the Department of Natural Resources.
- d) Unless otherwise agreed, a conference will be held within ten (10) working days of the receipt of Purchaser's request. Purchaser and the Regional Manager will have an opportunity to present their positions. The Division Manager will issue a resolution within five (5) working days of the conference.
- e) Within ten (10) working days of the receipt of the Division Manager's resolution, Purchaser may make a written request for review to the Department Supervisor of the Department of Natural Resources.

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- f) The Department Supervisor shall review all the materials regarding the dispute and shall make the final resolution of the dispute.

A-240 Compliance With All Laws

Purchaser shall comply with all statutes, regulations and laws, which apply to this contract. Per the Forest Practices Act, Ch. 76.09 RCW, this activity is classified as a Class I operation. No Forest Practices Application is required for this activity, however, all rules must be followed for a Class I activity.

A-250 Venue

This contract shall be governed by the laws of the State of Washington. In the event of a lawsuit involving this contract, venue shall be proper only in Thurston County Superior Court, unless otherwise agreed by the Parties.

A-260 Equipment Left on State Land

All equipment owned or in the possession of Purchaser or its delegates shall be removed from the sale area and other State land by the termination of this contract. Equipment remaining unclaimed on State land 60 days after the expiration of the contract period is subject to disposition as provided by law. Purchaser shall pay to the State all costs of moving, storing and disposing of such equipment. The State shall not be responsible for any damages to or loss of the equipment or damage caused by the moving, storing or disposal of the equipment.

A-270 Operating Release

Purchaser and Contract Administrator may agree to an operating release for this sale, or portion of this sale prior to the contract expiration, when all contract requirements pertaining to the release area, except slash disposal and payments, have been satisfactorily completed. Upon issuance of a release, Purchaser's right to cut and remove forest products on the released area will terminate.

A-280 Road Use Authorization

Purchaser is authorized to use the following State roads and those roads on which the State has acquired easements and road use permits: All roads as shown on the bough sale map and vicinity map. The State may authorize in writing the use of other roads subject to fees, restrictions and prior rights.

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A-290 Pre-work Conference

Purchaser shall arrange with the Contract Administrator to review this contract and to examine the sale area before beginning any operations. A plan of operations shall be developed and agreed upon by the Contract Administrator and Purchaser before beginning any operations.

A-300 Preservation of Markers

Any legal land subdivision survey corners and witness objects are to be preserved. If such are destroyed or disturbed, Purchaser shall have a licensed land surveyor re-establish them.

A-310 Road Use Reservation

The State shall have the right to use, without charge, all existing roads and any road constructed or reconstructed on State lands by Purchaser under this contract. The State may extend such rights to others. If the State grants such rights to others, the State shall require performance or payment, as directed by the State, for their proportionate share of maintenance based on their use.

A-320 Blocking Roads

Purchaser shall not block any roads unless authority is granted in writing by the Contract Administrator.

A-330 Road Easement and Road Use Permit Requirements

Purchaser agrees to comply with the attached terms and conditions of the judgment/easement entered into between the State and Bert and Norma Cole dated October 3 1966 Dixmont Land Company, R.D. Merrill Company, Ring Company, and Rayonier Incorporated dated September 2, 1964 and with Rayonier Incorporated dated June 15, 1964.

A-340 Open Fires

Purchaser shall not set or allow to be set by Purchaser's employees or subcontractors any open fire at any time of the year without first obtaining permission in writing from the Contract Administrator.

A350 Encumbrances

Subject to the following:

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SECTION B: PAYMENTS AND SECURITY

B-10 Initial Deposit

Purchaser paid \$Amt initial deposit which will be maintained pursuant to RCW 79.15.100.

B-20 Payment for Forest Products

Purchaser agrees to pay the following rate for forest products conveyed.

Products are sold on a lump sum basis. Minimum bid is \$XXXXXX. Value bid on day of sale is amount due for products sold.

B-30 Guarantee of Payment

Purchaser will pay for forest products prior to cutting. The amount of cash or payment security shall be determined by the State and shall equal or exceed the value of the cutting proposed by Purchaser.

B-40 Payment Procedure

Purchaser shall pay for forest products to be removed prior to cutting. Total bid amount shall be submitted to the Olympic Region office in Forks by 4:00 a.m., day of sale, September 28, 2009.

B-50 Payment for Forest Products Destroyed, Damaged, Stolen, Lost, or Mis-manufactured

Forest products included in this agreement which are destroyed, damaged, stolen, lost, or mismanufactured shall be paid for by Purchaser on demand of the State. The rates contained in Clause B-20 shall apply or, if no rate is fixed for a particular forest product, at appraised value as determined by the State.

B-60 Payment Account Refund

Advance payments remaining on account above the value for the charges shall be returned to Purchaser within 30 days following the final report of charges. Refunds not made within the 30-day period will accrue interest at the current interest rate as established by WAC 332-100-030 computed on a daily basis until paid.

B-70 Performance Security

Purchaser agrees to furnish, within 30 days of the auction date, security acceptable to the State in the amount of \$1,000.00 that guarantees performance of all provisions of this contract and

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payment of any damages caused by operations under this contract or resulting from Purchaser's noncompliance with any rule or law. Purchaser shall not operate unless performance security has been accepted by the State. If at any time the State decides that this security has become unsatisfactory, Purchaser agrees to suspend operations and, within 30 days of notification, to replace the security with one acceptable to the State.

B-80 Performance Security Reduction

The State may reduce the performance security after an operating release has been issued if the State determines that adequate security exists for any remaining obligations of Purchaser.

SECTION C: HARVESTING OPERATIONS

C-10 Leave Tree Damage Definition

Leave tree damage exists when one of more of the following criteria is satisfied as a result of the Purchaser's operation:

- a) A leave tree that has had boughs removed in excess of, or inconsistent with, Clause C-30 and Schedule A.
- b) A leave tree where its trunk has been marred, gouged, cut, or opened to expose the cambium layer.
- c) A leave tree that has more than $\frac{1}{4}$ of the circumference of its root system injured such that the cambium layer is exposed.

Damage is established when five (5) percent or more of the leave trees are damaged in any portion of the sale area (see Clause E-20, Leave Tree Damage). The portion of the sale area and damaged trees will be identified by the Contract Administrator.

C-20 Harvesting Equipment

Forest products sold under this contract shall be harvested by hand clippers, loppers or pole pruners. No saws are allowed except to clear roads or trails of brush or as granted in writing by the State.

C-30 Special Harvest Requirements

- a) Climbing trees is permitted, provided that no damage to the trunk of the tree or branches will occur. Spikes or spurs are not permitted.
- b) No wheeled or tracked vehicles may be operated off existing roads without prior written approval from the Contract Administrator.

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- c) No camping is allowed unless authorized in writing by the Contract Administrator.
- d) Cutting trails for the purpose of removing boughs from the sale unit may be authorized with prior written approval by the Contract Administrator.
- e) Gates must be kept locked at all times, unless authorized in advance in writing by the Contract Administrator.
- f) No bough harvest is allowed within 50 feet of any stream.
- g) Schedule A.
- h) The following schedules are attached and are hereby incorporated by reference: A, H, and HCP Clause Language.

C-40 Protection of Residual or Adjacent Trees

Purchaser shall take necessary care to avoid damage to residual or adjacent trees. Unless otherwise specified by this contract, the Contract Administrator shall identify damaged adjacent or leave trees that shall be paid for according to Clause A-220.

SECTION D: SITE PREPARATION AND PROTECTION

D-10 Fire Hazardous Conditions

Purchaser agrees to conduct operations including maintenance and operation of equipment in a manner to minimize the risk of fire.

D-20 Cessation of Operations for Low Humidity

During the "closed season" when the humidity is 30 percent or lower on the sale area, all operations must cease unless authority to continue is granted by the State in writing.

D-30 Refuse Disposal

All refuse, including petroleum products, resulting from this operation shall be removed from the sale area concurrently with the completion of each setting and shall be deposited in a disposal area approved by the Contract Administrator. "Refuse" as referred to in this clause does not include harvesting slash. All approved campsites shall be returned to an equal or better condition as prior to occupancy.

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SECTION E: DAMAGES

E-10 Liquidated Damages

The following clauses provide for payments by Purchaser to the State for certain breaches of the terms of this contract. These payments are agreed to as liquidated damages and not as penalties. They are reasonable estimates of anticipated harm to the State caused by Purchaser's breach due to the difficulty of proving loss and the inconvenience or non-feasibility of obtaining an adequate remedy. They also recognize Purchaser's need for more certainty in assessing its responsibilities under this contract.

E-20 Leave Tree Damage

When Purchaser's operations exceed the damage limits set forth in Clause C-10, the tree damage results in substantial injury to the State. The value of the damaged trees at the time of the breach is not readily ascertainable. Therefore, Purchaser agrees to pay the State liquidated damages at a rate of \$25.00 per tree for all damaged trees in the portion of the sale area.

IN WITNESS WHEREOF, the Parties hereto have entered into this contract.

STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES

Purchaser

Susan Trettevik
Acting Olympic Region Manager

Date

Date

Address: _____

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CORPORATE ACKNOWLEDGMENT

STATE OF _____)
) ss
COUNTY OF _____)

On this _____ day of _____, 2009, before me personally appeared

_____ to me known to be the _____

of the corporation that executed the within and foregoing instrument and acknowledged said instrument to be the free and voluntary act and deed of the corporation, for the uses and purposes therein mentioned, and on oath stated that (he/she was) (they were) authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Notary Public in and for the State of

My appointment expires _____

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WASHINGTON STATE DEPARTMENT OF
Natural Resources
Peter Goldmark - Commissioner of Public Lands

SALE NAME:

BOUGH SALE AGREEMENT NO.:

SCHEDULE A

1. Trees less than ten (10) feet tall are not harvestable. No boughs shall be cut from trees less than ten (10) feet tall.
2. No cutting is allowed from the top four (4) whorls of any tree.
4. On each limb cut above ten (10) feet, at least one twelve (12) inch live branch must remain.
5. On any harvestable tree, from the ground to a height of ten (10) feet without foliage as described in #4 above must be cut to within 2” of the trunk.

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HABITAT CONSERVATION PLAN FOR FORESTED STATE TRUST LANDS REQUIREMENTS

The Washington State Department of Natural Resources has entered into a Habitat Conservation Plan (HCP) with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service (the Services) to address forested state trust land management issues relating to compliance with the Federal Endangered Species Act. The activities to be carried out under this contract are located within the Department's HCP area and are subject to the terms and conditions of the HCP and Incidental Take Permit No. 812521 (ITP). The ITP authorizes the incidental take of certain federally listed threatened and endangered species, as specified in the ITP conditions. All HCP materials, including the ITP, are available for review at the Department's Regional Offices and the administrative headquarters in Olympia, Washington.

By signing this contract, purchaser agrees to comply with the terms and conditions of the ITP, Schedule H, and the HCP, which shall become terms of this contract. The Department agrees to authorize the lawful activities of the purchaser carried out pursuant to this contract, PROVIDED the purchaser remains in compliance with the terms and conditions of both the HCP and ITP. Non-compliance with the terms and conditions of the HCP and ITP will render the authorization provided in this paragraph void, be deemed a breach of the contract and may subject the purchaser to liability for violation of the Endangered Species Act.

The requirements set forth in this contract are intended to comply with the terms and conditions of the HCP and ITP. In order for the purchaser's activities to be considered in compliance with the HCP and ITP, purchaser's operations must be in full compliance with this contract. Any modifications to the contract shall be proposed in writing by the purchaser, shall continue to meet the terms and conditions of the HCP and ITP, and shall require the prior written approval of the Region Manager before taking effect.

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SCHEDULE H – HCP REQUIREMENTS REGARDING THE INCIDENTAL TAKE PERMIT

1. The (Evergreen Bough Sale) Purchaser shall immediately notify the State of new locations of Permit species covered in the ITP that are discovered within the Bough Sale Area covered by the HCP, including, but not limited to: locations of occupied murrelet habitat; spotted owl nest sites; wolves; grizzly bears; nests, communal roosts, or feeding concentrations of bald eagles; peregrine falcon nests; Columbian white-tailed deer; Aleutian Canada geese; and Oregon silverspot butterflies. In all circumstances notification must occur within a 24 hour time period.
2. Upon locating any live, dead, injured, or sick specimens of any listed species covered by the ITP within the Bough Sale Area, the Purchaser shall immediately notify the State. In all circumstances notification must occur within a 24 hour time period. Purchaser may be required to take certain actions to help the State safeguard the well being of any live, injured or sick specimens of any listed species discovered, until the proper disposition of such specimens can be determined by the State. Purchaser may be required to take certain actions to preserve biological material in the best possible state for handling any dead specimens.
3. Purchaser shall refer to ITP number PRT-812521 (a copy of the ITP is located for reference in the region office) and PRT-1168 in all correspondence and reports concerning Permit activities.
4. All applicable provisions of the ITP and this schedule must be presented and clearly explained by Purchaser to all authorized officers, employees, contractors, or agents of Purchaser conducting authorized activities on the Property. Any questions Purchaser may have about the ITP should be directed to the State.