

CONTRACT CANCELLATION AND RELEASE OF LIABILITY AGREEMENT

_____ Timber Sale, contract number _____

This CONTRACT CANCELLATION AND RELEASE OF LIABILITY AGREEMENT ("Agreement") is entered into as of this¹ ___ day of _____, 2008 between the U.S. Forest Service ("Forest Service") and _____ ("Purchaser") (together sometimes referred to herein as the "Parties").

RECITALS

WHEREAS, Section 8401 of the Food, Conservation, and Energy Act of 2008 (P.L. 110-234, 122 Stat. 93) (Act) provides options for qualifying timber contracts;

WHEREAS, the Forest Service has determined and the Parties mutually recognize that this timber sale meets the conditions for a qualifying contract under Section 8401(a)(2) of the Act;

WHEREAS, the Forest Service has determined and the Parties mutually recognize that the rate at which this timber sale would be advertised on May 22, 2008 is at least 50 percent less than the sum of the original bid rates for all of the species of timber included in the qualifying contract;

WHEREAS, Purchaser desires the Forest Service to cancel the contract under Section 8401(b)(1) of the Act;

WHEREAS, the Parties consulted and the Forest Service determined the contractual obligations needed to bring each unit on which harvesting operations had begun to a logical stopping point.

WHEREAS, the Purchaser has completed the work necessary to bring each unit of harvesting operation to a logical stopping point, and the Forest Service has accepted such work;

WHEREAS, the Purchaser has paid the Forest Service an amount equal to 30 percent of the total value of the timber remaining in the contract based on the bid rates and has no outstanding charges under the contract under Section 8401(b)(1) of the Act;

NOW THEREFORE, in consideration of the foregoing premises and for other good and valuable consideration, the Parties agree as follows:

TERMS AND CONDITIONS

1. **Termination of Rights.** Purchaser agrees to terminate its rights under the contract pursuant to Section 8401(b)(1)(A)(iii);
2. **Release of Liability.** In accordance with the request for relief submitted pursuant to section 8401(b)(1) dated _____, Purchaser has released the United States from all liability, including further consideration or compensation, resulting from the cancellation of this contract.
3. **Limitation.** The cancellation of this contract under Section 8401(b)(1) shall release the timber purchaser from further obligation under this contract (section 8401(d)(3)). Cancellation of this contract under section 8401(b)(1) also shall not have the effect of surrendering any claim by the United States against Purchaser that arose under the contract prior to cancellation (section 8401(d)(1)).
4. **Purchaser's Affirmation.** By executing this Agreement, Purchaser affirms that it has freely, knowingly, and intelligently agreed to the foregoing waiver, release, and limitation of liability, and that it has had an adequate opportunity to seek the advice of counsel regarding this Agreement. Moreover, Purchaser affirms that the timber sale contract cancellation by the Forest Service, constitutes fully adequate consideration for the fulfillment of the requirements of cancellation under section 8401 of the Act.
5. **Choice of law.** This agreement shall be governed by the laws of the United States and federal common law without regard to conflicts of laws.
6. **Severability.** In the event that a tribunal of competent jurisdiction invalidates any part of this Agreement, the Parties agree that such part shall be severed and that the remaining parts shall continue in full force and effect.
7. **Jurisdiction.** The Parties expressly agree that the United States Court of Federal Claims and the Civilian Board of Contract Appeals shall have jurisdiction over this Agreement and hereby consent to the jurisdiction of such bodies. The foregoing agreement and consent shall not be construed to interfere with, or defeat the proper jurisdiction of other courts.

IN WITNESS WHEREOF, the Parties hereto agreed to cancel the above named contract as of the^{1/} _____ day of _____, 2008.

U.S. Forest Service:

[Purchaser]^{2/}

By:
Title: Contracting Officer

By:
Title:

Two Witnesses^{3/}:

Name: _____
Address: _____

Name: _____
Address: _____

I^{1/}, _____, certify that I am the _____ Secretary of the corporation named as Purchaser herein; that _____ who signed this agreement on behalf of Purchaser was then _____ of the corporation; that the agreement was duly signed for and on behalf of the corporation by authority of its governing body, and is within the scope of its corporate powers.

_____ Corporate Seal^{5/}

- 1/ The date approving Forest officer signs this form.
- 2/ The signatures and address of two witnesses are required if sale is to other than a corporation.
- 3/ If contracting party is a co-partnership, the signatures should be: XYZ Company, by John Doe, a member of the firm. If contracting party is a corporation, form of signature should be: XYZ Company, by John Doe, President (or other officer or agent) and the seal of the corporation must be impressed or indicated.
- 4/ The certificate must be completed if the purchaser is a corporation.
- 5/ If the corporation has no corporate seal that fact shall be stated, in which case a scroll or adhesive seal shall follow the corporate name.

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