



# Shoalwater Bay Indian Tribe

REQUEST FOR PROPOSAL

FOR

TIMBER SALE TS-SBIT2022-1 #CHIEF TOKE

FOR

THE ENVIRONMENTAL DEPARTMENT

Date of Issuance: October 20, 2022

## Timber Sale SBIT2022-1 #Chief-Toke

**Name of Sale:** TS-SBIT2022-1 #Chief-Toke

**Allocation:** The forest products sold here are able to be exported.

**Auction:** Sealed bids will be opened at on November 17, 2022 at 10:00 a.m. Pacific time in the tribal meeting room of the Shoalwater Bay Indian Tribe Tribal Center located at 2373 Tokeland Rd. Tokeland, WA 98590.

**Sale Location:** The sale area is located about 0.25 miles East of Town of Tokeland, right on Hwy 105. The sale area is accessed via the 9180-logging road -- access to which is right off of Hwy 105

**Products Sold:** All timber within the areas bounded by pink "Timber Sale Boundary" signs and/or flagging in Sections 1& 2, T14N, R11W, S 1,2 WM, Pacific County, Washington, as shown on the exhibit maps. There is one unit, totaling approximately 123 acres, more or less, as shown on the attached map (the acreage estimate includes road area). The timber stand is approximately 50 years old. The logging prescription is clear-cutting: all living or recently dead trees may be harvested, with the exception that NO old-growth cedar stumps or ground wood shall be removed.

### Estimated Volumes (Tribe does not warrant these volumes)

<u>Species</u>	<u>Net Volume</u>
Western Hemlock	1,536 MBF
Douglas Fir	1,097 MBF
<u>Other Species</u>	<u>503 MBF</u>
<b>Total Net Volume</b>	<b>3,365 MBF</b>

**Sale Type:** Lump Sum. Purchaser shall make payments to the Tribe per the following schedule:

Three installments are due as shown below:

1<sup>st</sup>: 25% at Contract signing.

2<sup>nd</sup>: 25% before cutting begins.

3<sup>rd</sup>: 50% before 1/2 of the acres are yarded.

**Bidding Method:** Sealed Bids shall be submitted on the attached Sealed Bid Form. Envelopes shall be marked "SEALED BID: Timber Sale TS-SBIT2022-1 #Chief-Toke" The sale will be awarded to the bidder with the highest and best bid. In the event the successful bidder fails to complete the making of the initial payment and the execution of the contract as required by the terms, the second highest bidder shall be awarded the bid.

- Bid Deposit:** \$100,000.00 - Certified check or bid bond. Deposits shall be returned to unsuccessful bidders on the day of the sale. The deposit of the highest bidder shall be held until the bid is accepted by the Tribal Council and the 1st Payment is made, at which time the check will be returned, or purchaser may apply deposit towards first payment. If the High Bidder fails to make the first payment then the bid deposit is forfeited to the Tribe.
- Performance Bond:** \$100,000.00 issued by the time the first payment is made. This is a surety bond or a cash bond to guaranty compliance with all terms of the contract. All checks are to be made payable to the "Shoalwater Bay Indian Tribe" (SBIT).
- Contract Term:** The purchaser shall have between November 28, 2022 and December 31<sup>th</sup>, 2023 to remove all timber sold hereunder and have all slash piling accomplished.
- Taxes:** All forest excise taxes due under RCW 84.33.041 shall be the sole responsibility of the purchaser. The timber sale is EARR eligible. The FPA# is 2940525.
- Logging Method:** All areas designated in this timber sale are to be "clear-cut." The logging method is classified as shovel and cable Logging. Shovel logging is allowed only during reasonably dry soil conditions. Slashing is required for all vegetation over 8 feet tall. Slash piling is required on all shovel logged ground.
- Road Construction:** There should be no need to build any new roads there are already existing roads that will need to be brushed out and leveled. Any expense incurred for road or landing construction, including the surface rock, which is deemed necessary by the purchaser for road or landing construction or repair is at purchaser's expense
- Haul Route:** Access for log hauling can be made over the 9100 Line down south to the 9180-line to the Chief Toke gate. All loads must leave from the 9180 rd. on the Chief Toke gate. Any surface rock deemed necessary for additional haul road repair is at purchaser cost. Any haul road rutting will be patched with 2 ½" minus well-graded crushed rock at purchaser cost. Roads used must be graded as needed by purchaser, and as a minimum, shall be graded at the completion of log hauling activities.
- Special Remarks:** All timber cruisers shall use only red flagging. A gate key is required and can be checked out from the SBIT Land Management Department Office.
- Permits & Fees:** The purchaser is required to purchase a business license from the Tribe (\$25.00) Contact Justine Blake: 360-267-8209 or email at [jublake@shoalwaterbay-nsn.gov](mailto:jublake@shoalwaterbay-nsn.gov)

# EXHIBIT A

## Sealed Bid Form

### *Timber Sale – TS-SBIT2022-1 #Chief Toke*

1. Purchaser Information. Please fill out the table below with your pertinent company information.

Firm Name	
Business Address	
Email	
Telephone	Fax
Wash State DOR UBI Acct.#	Wash State DOR Timber Excise Acct.#

2. Bid Deposit. \$100,000.00;  Certified Check  Bid Bond
3. **Bid** \$\_\_\_\_\_ **Lump Sum** for all timber designated in the TS-SBIT2022-1 #Chief Toke Timber Sale in Section 1 & 2 T14N R2W R1W, Pacific County, offered under Chief Toke.
4. Performance Bond. The successful bidder agrees to furnish Performance Security acceptable to the Tribe in the amount of \$100,000.00 at the time of contract signing. Performance Security must guarantee performance of all provisions of the sales contract and payment of any damages caused by operations under the contract or resulting from the successful bidder's noncompliance with any rule or law.
5. Bidders Warrantee and Bid Signature. By signing and submitting this bid as an offer to purchase forest products from the City, the Bidder hereby warrants to the Tribe that they have had an opportunity to fully inspect the sale area and the forest products being sold. Bidder further warrants to the Tribe that they enter this bid based upon their own judgment of the value of the forest products, formed after their own examination and inspection of both the timber sale area and the forest products being sold. Bidder also warrants the Tribe that they enter this bid without any reliance upon the volume estimates, acreage, appraisal, pre-bid documents, or any other representation by the Tribe.

Representative's Name and Title	
Signature	Date

**Bid Submission Due Date:** November 16, 2022 by 4:00 p.m. Pacific Time

**Instructions for Submitting Sealed Bids:**

This form must be submitted with bid deposit by one of the below methods:

1. Submission of sealed bids can be hand delivered to the following address:

Shoalwater Bay Indian Tribe  
2373 Tokeland Rd.  
Tokeland, WA 98590

2. Submissions of sealed bids must be mailed to the following address:

Shoalwater Bay Indian Tribe  
P.O. Box 130  
Tokeland, WA 98590

**This form and bid deposit must be in a sealed envelope marked “SEALED BID: Timber Sale TS-SBIT2022-1 #Chief-Toke”**

For any questions on the and requirements, please contact [solicitations@shoalwaterbay-nsn.gov](mailto:solicitations@shoalwaterbay-nsn.gov) by email only. All questions will be placed on and answered on the Tribe’s website and addendum’s will be forwarded to all bidding contractors. Questions will be accepted until 11/2/22.

**Closing/Opening Date and Time and Method of Solicitation:**

1. Bids will be accepted up to 4:00 pm Pacific time on November 9, 2022, late submissions will not be considered. All timely responses will be considered. The Shoalwater Bay Indian Tribe reserves the right to reject any and all proposals including those proposals received after the closing date and time.

2. This document has been published through the Shoalwater Bay Indian Tribe website as well as local and national media.

3. Sealed bids will be opened on November 17, 2022 at 10:00 a.m. Pacific time in the tribal meeting room of the Shoalwater Bay Indian Tribe Tribal Center located at 2373 Tokeland Rd. Tokeland, WA 98590.

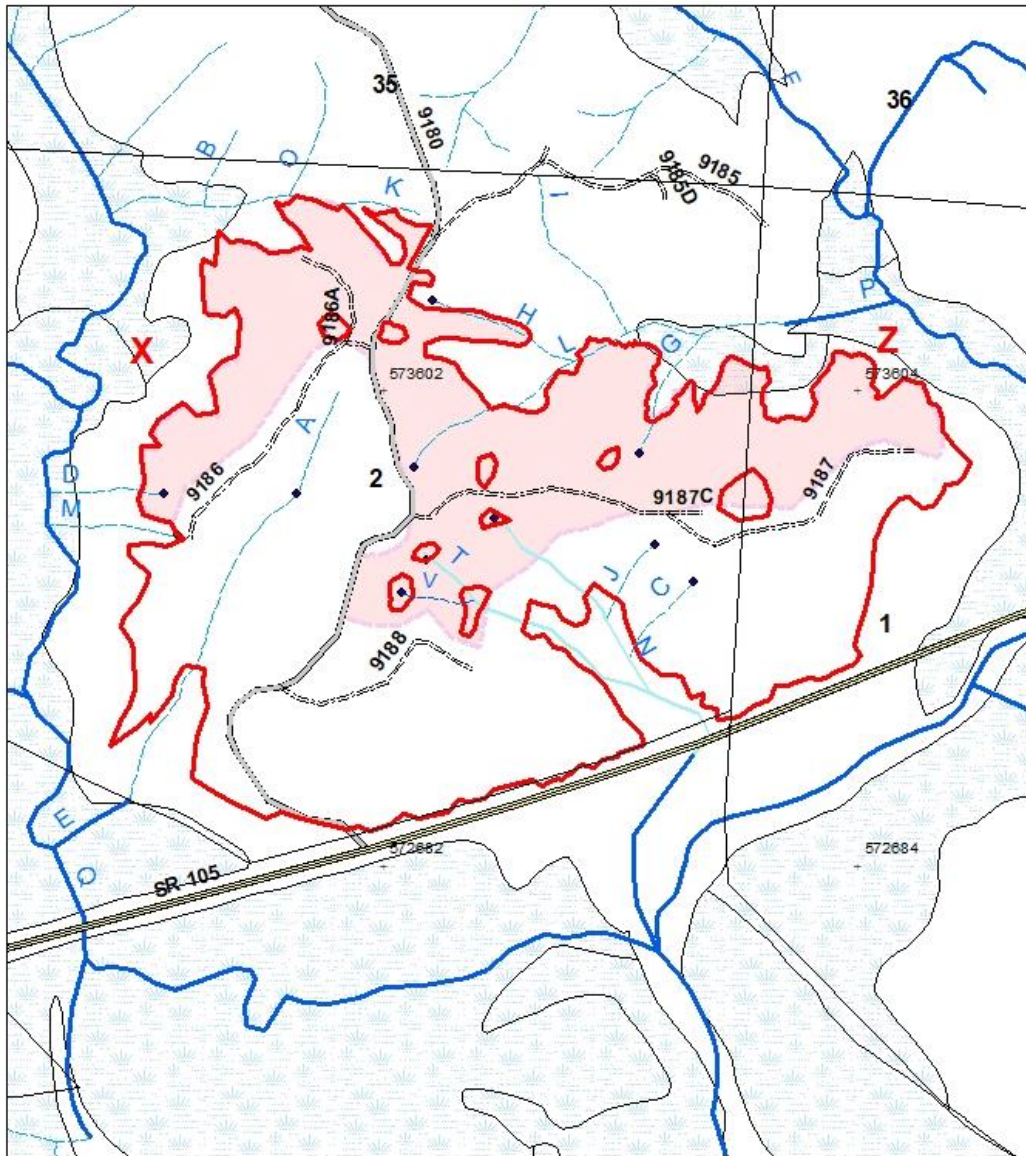
**Disputes:** Protest must be in writing, within 14 days after the bid has been awarded and the submitters notified, the protest must be on valid grounds, and the Tribal Administrator or an assignee will review the protest and make a determination, which will be final and cannot be appealed. To start the deadline for the protest claims, all submitters will be informed by certified mail their bid was not accepted.



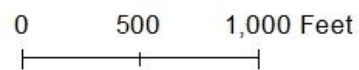
# EXHIBIT B

## Shoalwater Bay Indian Tribe- 2022 Chief Toke

T14N R2WR1WS1, 2



Legend	
	Timber Harvest- 123 acres 3.1MMBF
	Cable
	Stream Type
	F
	Np
	Ns
	PIPS
	Type A Wetland
<b>Roads Types</b>	
	Branch
	Primary Public
	Spur



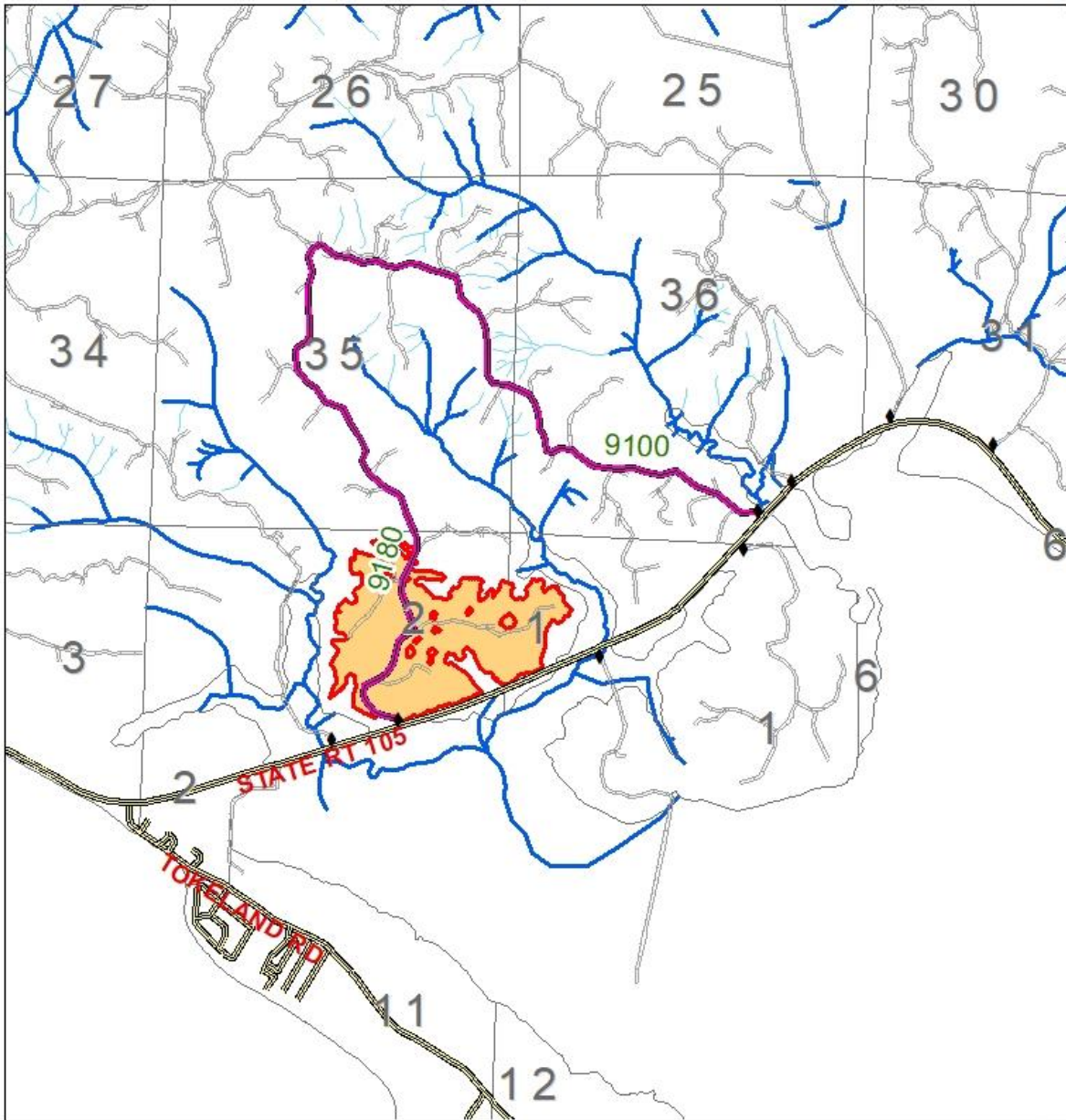
1 inch equals 625 feet

DSW  
Shoalwater Bay Indian Tribe  
Natural Resource Dept. 2022

"CHIEFTOKE"

# Shoalwater Bay Indian Tribe TIMBERSALE ACCESS MAP

T14N R11W S1,2  
46.73100, -124.00670

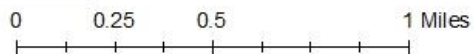


**Legend**

Timber Harvest	Haul Road	F	Gates
Roads	Roads	Np	



Shoalwater Bay Indian Tribe  
Dept. of Natural Resources 2022





# EXHIBIT C

## ROAD PLAN

### **New Construction**

Any expense incurred for road or landing construction, including the surface rock, which is deemed necessary by the purchaser for road or landing construction or repair is at purchaser's expense. If built, any temporary spur shall be deconstructed and made plantable at the end of the logging operations.

### Road Maintenance Plan (Entire Haul Route to Pavement)

Access for log hauling must be made over either the 9100 gates on SR 105 then turn south on to 9180 to the timber sale, or enter from the 9180 gate towards the sale, or otherwise designated in writing. All loaded log trucks must haul out of the (9180) "Chief Toke Gate". Any haul road rutting will be patched with well-graded 2 ½" minus crushed rock at purchaser cost. If rutting deeper than 2" deep occurs the SBIT will close the road until proper maintenance has been carried out and the road dries out sufficiently to prevent further damage. Roads used must be graded as needed by purchaser, and as a minimum, shall be graded at the completion of log hauling activities. All haul roads used under this contract shall be maintained as described below.

#### - Surface

1. Grade and shape the road surface, turnouts, and shoulders to maintain a smooth, crowned, rut-free traveled surface and maintain surface water runoff in an even, unconcentrated manner. This includes reestablishing ditches and cleaning culvert inlets and outlets.
2. Blading must not undercut the back-slope at the bottom of the ditch-line.
3. Water may be needed to control dust and to retain fine surface rock.
4. Desirable surface material shall not be bladed off the roadway.
5. Replace surface material lost or worn away.
6. Remove berms except as directed.

#### - Drainage

1. Keep ditches and culverts clear of obstructions and functioning as intended.
2. Inspect culverts at least monthly and during storms and periods of high runoff.

#### - Structures

## EXHIBIT C

1. Repair bridges, culverts, and other road structures to the condition required by the construction specifications and/or to the condition that existed the date that the contract was signed. Bring any pre-existing substandard conditions to the attention of the contract supervisor prior to the commencement of the contract.

At the completion of hauling activities, the Purchaser's Representative and Tribal Forester shall jointly prepare a plan to address the post-sale road maintenance needs. The Tribal Forester will have the final determination as to what is required to meet the contract specifications. All required post-haul road work shall be completed within 30 days of the completion of log hauling.

## Shoalwater Bay Indian Tribe Timber Sale Bid Bond

Bond Number \_\_\_\_\_

\_\_\_\_\_ of \_\_\_\_\_, which has submitted a bid upon this sale, hereinafter called PRINCIPAL, and \_\_\_\_\_, hereinafter called SURETY, a corporation organized under the laws of the State of \_\_\_\_\_ and authorized to transact surety business in the State of Washington, as SURETY, are held and firmly bound jointly and severally to the Shoalwater Bay Indian Tribe, a municipal corporation, hereinafter called the TRIBE, in the sum of \_\_\_\_\_ Dollars, lawful money of the United States of America. The PRINCIPAL binds itself, its heirs, executors, administrators, successors, and assigns, and the SURETY binds itself its successors, and assigns, all jointly and severally.

This bond shall be governed by the laws of the State of Washington. In the event of a lawsuit involving this bond, venue shall be proper only in the Superior Court of the State of Washington in and for Pacific County.

Signed, sealed, and dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**BID IDENTIFICATION:**

SALES NAME	REQUIRED DEPOSIT	AGREEMENT NUMBER(S)

DATE OF BID: \_\_\_\_\_

**It Is Hereby Understood and Agreed:**

If PRINCIPAL is the high bidder on the sale(s) identified above and, within ten (10) days of the day of sale, transmits cash, certified check, cashier’s check, bank draft or money order, payable to the CITY, in the amount of the bid guaranty required by the terms of the Notice of Sale, then this obligation shall be void, otherwise, it shall remain in force: PROVIDED THAT, if payment is in the form of a negotiable instrument such as a check, draft, or money order, this obligation shall not become void until such instrument has been paid to the City by the issuing institution.

SURETY will make payment to the CITY within ten (10) days after demand by the TRIBE whenever the PRINCIPAL shall fail to make timely payment as described above.

Each Party signing this Bond represents and warrants that they do so within the scope of the authority granted to them by and upon behalf of their respective party.

IN WITNESS WHEREOF: the PRINCIPAL and the SURETY have caused this bond to be executed on the date first mentioned.

**PRINCIPAL:** \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_ (EXAMPLE: President, Managing Member)

Address: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_ (Example: Secretary-Treasurer)

**SURETY:** \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

TRIBE: \_\_\_\_\_

State & Zip: \_\_\_\_\_

**(Address of Local Office of Authorized Agent)**

Address: \_\_\_\_\_

TRIBE & Zip Code: \_\_\_\_\_

**NOTARY OR COMPANY SEAL IN TILE SPACE BELOW**

### **Instructions for Completing Timber Sale Bid Bond**

- A. This form is authorized for use as bid guaranty to qualify for bidding on timber sales of the TRIBE.
- B. The Timber Sale Bid Bond may be used as bid guaranty on more than one timber sale auction held the same date at the same location.
- C. The full legal name and business address of the PRINCIPAL must be the same as will appear on the bidding record and timber sale contract. The bond must be signed by an authorized person, the name typed or printed, and title shown. If PRINCIPAL is a corporation, a second officer must sign in the space to the left of the signature of the officer executing for the PRINCIPAL.
- D. The full legal name and business address of the SURETY must be inserted where indicated. The bond must be signed by an authorized person. For clarity, the name of the person signing must be typed or printed below the signature upon the line denominated "name" and the title must be shown. If this person is not an officer of the corporation, evidence of authority must be submitted as an attachment to the Bond.
- E. If the SURETY does not have a Washington State office or resident agent, but is authorized to transact surety business in the State of Washington as Surety, it may leave the local office signature block blank.
- F. The date of the bid bond must not be later than the auction date.
- G. The TRIBE reserves the right to reject incomplete or incorrect bid bond forms, making such forms unacceptable as guaranty.

# **SAMPLE CONTRACT**

**SHOALWATER BAY INDIAN TRIBE  
PO BOX 130  
Tokeland, WA 98590**

## **BILL OF SALE AND CONTRACT FOR REMOVAL OF TIMBER FROM TRIBE LANDS**

### **CHIEF TOKE RESTRICTED TIMBER SALE NO.**

THE PARTIES to this Bill of Sale and Contract for the Removal of Forest Products are the SHOALWATER BAY INDIAN TRIBE, situate in the County of Pacific , State of Washington, the address of which is Box 130, Tokeland, WA 98590 , hereinafter referred to as "TRIBE"; and \_\_\_\_\_, a \_\_\_\_\_ corporation authorized to do business in the State of Washington, the Washington UBI of which is \_\_\_\_\_ and the mailing address of which for this contract is \_\_\_\_\_, hereinafter referred to as "Purchaser".

#### **SECTION I**

##### **GENERAL TERMS**

###### **1.1. Authorization & Title:**

A. The sale herein memorialized has been authorized and ordered by the Council of the TRIBE. The Purchaser having made the highest qualified bid for the timber hereinafter described on the \_\_\_\_\_ day of \_\_\_\_\_, and that bid having been accepted by the TRIBE on the \_\_\_\_\_ day of \_\_\_\_\_, subject to the reservation of title set forth below, the TRIBE hereby sells and conveys to the Purchaser title to the forest products described in the following paragraphs and more fully described in the Call-for-Bids, Exhibit A, being the Bid Form submitted by Purchaser, the Prospectus, including Exhibits B1, B2 and B3 and Exhibit C (Road Plan), all of which are attached to this document and collectively referred to as Attachment #1, at the time they are removed from the sale area.

B. The transfer of title is subject to the security interest reserved in such products by the TRIBE until payment is made pursuant to the terms of this contract. Such transfer will occur at the time of the removal so long as the Purchaser has either paid to the TRIBE adequate advance payment or provided payment security reasonably satisfactory to the TRIBE.

###### **1.2. Timber Transferred:**

A. Amounts of merchantable timber conveyed, as set out in this Contract or in the Call for Bids, are estimates only. The TRIBE, by making such estimates, neither warrants nor limits the volume of timber conveyed under the terms of this Contract, it being agreed that each party has had full and adequate opportunity to fully investigate the volumes and relies only upon its own observations and estimates.

B. The sale area contains, and this bill of sale covers, the merchantable timber on \_\_\_\_\_ acres, more or less, situate in the County of Pacific, State of Washington, and more fully described as follows:

All merchantable timber products within the harvest unit(s) defined by the Timber Sale Boundary signs and/or pink flagging situate within the area shown on the previously mentioned attachments, not to include any merchantable timber in adjacent standing timber and not to include any old growth cedar salvage or stump cutting.

### 1.3. Disclosures and Acknowledgments:

A. Restrictions on Sale: Purchaser acknowledges as follows:

(1) That it has had full disclosure that the timber in question is subject to restrictions as to its sale. Those restrictions include restrictions upon its export.

(2) That it has made inquiries satisfactory to itself as to any applicable Federal or State statutory or administrative restrictions upon the export or sale of the timber covered by this contract. Log export restrictions in accordance with applicable law.

(3) That it has full knowledge of other provisions of law, rule, or regulation, are incorporated as part of this sale contract.

(4) That it will complete and sign two copies of the Purchaser Certification forms at the time of signing of this Contract. One copy shall be mailed to the Department of Revenue, Forest Tax Division, and one copy mailed to the TRIBE.

(5) That any Forest Excise Tax due the State of Washington on timber removed hereunder shall be the sole responsibility of the Purchaser. Such taxes shall be paid in a timely manner. To the extent allowed by law, including RCW 84.33.078, in the event standing timber is carried over to the following year and such timber becomes subject to personal property tax, the Purchaser shall be allowed to take such credit for any such tax which is levied and paid against the forest excise tax which would otherwise be due.

B. Opportunity to Review: Purchaser agrees that it has had full opportunity to review the site, the roadways and access to the site, and the timber located therein, has made itself fully aware of the boundaries of the unit, and recognizes its responsibility to remain within those boundaries in relation to its logging activities.

C. Merchantability: The TRIBE does not warrant the merchantability of the forest products. The use of the term "merchantable" elsewhere in this contract is not intended to vary the foregoing. The forest products are conveyed "as is."

D. Fitness for Particular Use: The TRIBE has and does not make any warranty as to fitness for a particular use of any product sold under this contract.

1.4. Conditions to Commencement of Activity:

Subject to satisfaction of the following conditions precedent, Purchaser is hereby granted permission to enter upon the sale area and remove therefrom all merchantable timber:

A. Execution of this Contract by the TRIBE and its authorized representatives and Purchaser;

B. Payment to the TRIBE of the sums set out in Section 2.1A and 2.1.B;

C. The furnishing of proof of insurance, pursuant to the applicable paragraphs of this contract, including §8.2, as required by and satisfactory to the TRIBE;

D. Furnishing of the one hundred thousand-dollar (\$100,000.00) performance bond required pursuant to §8.1.

1.5. Period for Performance of Contract:

A. Upon satisfaction of the conditions set forth above, it is agreed that Purchaser shall remove the forest products and all other required activities, including slash piling, between \_\_\_\_\_, subject to extension as provided in this agreement.

B. An extension of operating authority time, as established in paragraph A hereof, may be granted by the TRIBE upon written request made at least fifteen (15) days prior to the expiration date of the grant and upon such additional terms and conditions as may be specified by the TRIBE in authorizing the extension. The terms and conditions may include, but are not required to include, the requirement that the Purchaser pay an additional sum in consideration of the extension agreement. This sum will be based upon such matters as the Council deems relevant in establishing a fee.

C. If for any reason, including but not limited to danger of fire determined to be excessive by the TRIBE or other weather related causes, the TRIBE exercises its right to order the closure or suspension of operations under this Contract, that right being hereby recognized, established, and acknowledged by Purchaser, the time of completion of this Contract shall be extended by the number of days or portion thereof contained within said closure, so long as the closure is not as the result of actions of Purchaser or any person or entity acting upon Purchaser's behalf which are actions in breach of this Contract. The extension of time shall be Purchaser's sole remedy under this Contract for any such closures and shall be in lieu of any other right, whether at law or at equity, including but not limited to monetary damages. If



the closure is as a result of Purchaser's breach of this Contract or is a breach of the Contract by any person or entity acting on Purchaser's behalf, there shall be no right to the extension provided for hereunder.

1.6. Representatives:

A. The rights and duties of the TRIBE in this Agreement will be exercised or discharged by the TRIBE's Forestry Supervisor, or by such officer as may be otherwise designated by action of the Tribal Council.

B. Purchaser agrees to immediately notify the TRIBE in writing of the name and address of a person who will be readily available at all reasonable times during the course of the contract operations and who shall be authorized to receive, upon behalf of the Purchaser, any instruction or notice given by the TRIBE in regard to performance under this Contract, or breach thereof.

**SECTION II**

**PAYMENT**

2.1. Purchase Price and Terms:

Purchaser agrees to make payment of the total sum of \$\_\_\_\_\_, constituting the amount bid, to the TRIBE for all merchantable timber on the sale unit. The purchase price shall not be affected by any factors, including: the amount of forest products actually presents within the contract area, the actual acreage covered by the contract area, the amount or volume of forest products actually cut or removed by purchaser, whether it becomes physically impossible or uneconomical to remove the forest products, and whether the subject forest products have been lost or damaged by fire or any other cause.

The payments of the purchase price shall be made as follows:

A. The amount of \$\_\_\_\_\_, which is equal to 25% of the purchase price, which may include the bid bond amount, if in the form of cash or negotiable instrument, on or before the \_\_\_\_\_.

B. A second payment in the amount of \$\_\_\_\_\_, which is also equal to 25% of the purchase price, on or before cutting begins.

C. The remaining payment of \$\_\_\_\_\_, representing the last 50% of the purchase price, shall be paid when 50 percent of the sale area is yarded, but no later than the\_\_\_\_\_.

2.2. Effect of Non-payment:

In the event any sum is not paid when due and owing, interest shall immediately commence to accrue upon the full outstanding balance on the contract at the rate of 1 percent per month until such time as the payment, plus accrued interest, has been made. Failure to timely pay shall be deemed a breach of this Contract granting to Seller the rights provided in the event of breach.

### 2.3. Ownership of Forest Products Remaining On-site at End of Contractual Period:

Any forest products remaining on the sale area at the end of the contractual period shall become the property of the TRIBE if not removed prior to the termination of the contract as set forth herein.

### 2.4. Liability for Actions Outside Contract Area:

A. Any timber or property outside the contract area that is damaged or taken by Purchaser's operations under this Contract, whether the damage or taking be intentional or unintentional, shall be paid for by Purchaser. As to any property, other than timber so damaged or taken, Purchaser agrees to pay the amount of such loss. As to any forest products taken or damaged, whether outside the contract area or not sold under paragraph 2.1, Purchaser agrees to pay triple the appraised value as determined by the TRIBE for any damage.

B. Any damage to adjacent property owners, whether to their timber or other property, resulting from the Purchaser's activities shall be the responsibility of the Purchaser. To prevent such damage, Purchaser shall take reasonable steps to ensure that no activities of Purchaser, including the falling of trees within the cutting lines, impact the property of the adjacent owner.

## SECTION III

### TIMBER REMOVAL REQUIREMENTS

#### 3.1. Removal:

Purchaser shall yard and remove all merchantable logs. For purposes of this contract, a merchantable log is one in which the net board foot volume is at least 33 1/3 percent of the gross board foot volume, meets the minimum recovery requirements for the lowest log grade for that species, and scales not less than twenty (20) board feet of net volume, has a minimum diameter inside the bark at the small end of six (6) inches, and a minimum length of twelve (12) feet, plus trim.

#### 3.2. Branding Requirements:

A. Each export-restricted conifer log 10 inches d.i.b. (diameter inside bark) or larger, shall be branded with a registered log brand furnished by Purchaser and painted on both ends with durable red paint before removal from the sale area.

B. For pulp loads which are export restricted, Purchaser shall brand at least three logs with legible brands at one end. Also, ten logs shall be painted at one end with durable red paint.

## SECTION IV

### OPERATIONAL PROVISIONS

#### 4.1. Pre-Work Conference:

The Purchaser shall, before starting operations within the sale area, attend a pre-work conference with the TRIBE's Forest Supervisor; the Purchaser's logging supervisor shall also be in attendance. At the pre-work conference, Purchaser shall submit to the TRIBE a written plan of logging operations. No operations shall commence until such plan has been approved by the TRIBE. In the event that the Purchaser deems it necessary or appropriate to modify the plan of logging operations to any significant degree, it shall submit any such modification in writing in advance to the TRIBE for review and approval. Purchaser shall arrange with the TRIBE to undertake a current review of the roads and examine the sale area before any cutting or road building is commenced. Landing slash shall be piled on landings in compact, dirt-free piles to the reasonable satisfaction of the TRIBE.

#### 4.2. Environmental Protections:

A. All operations of the Purchaser under this Contract, including any construction, whether of roads or otherwise, and the falling, bucking, loading, and removal of timber, shall be so conducted as to minimize, to the maximum extent reasonably practicable, danger or damage to adjacent TRIBE forest products or improvements within or without any area within which Purchaser carried on activities, whether transportation or otherwise, as well as to any stream course, stream side, reservoir, lake, or pond within such areas, and to all other properties affected thereby.

B. During operations under this Contract, Purchaser shall take such precautions as are necessary to minimize erosion and/or compaction damage to the soil, and make certain that no governmental rules or regulations or laws are violated through such damage, or as a result of its operations. Purchaser shall exercise every necessary means to prevent contamination and pollution of the soil and waters of any reservoir, stream course, lake, or pond as a result of any operation by Purchaser during the performance of this Contract.

C. Reservoirs, stream courses, stream sides, lakes, and ponds in or adjacent to the sale area shall be cleared of slash, chunks, and other debris deposited therein as a result of operations under this contract. Such material shall be removed and deposited in such a manner as is satisfactory to the TRIBE.

All necessary care shall be taken by the Purchaser to prevent fuel, oil, grease, or other harmful materials from entering the waters of any reservoir, lake, stream course, or pond, or being deposited upon the ground as a result of any operation of Purchaser. Refuse resulting from Purchaser's use, servicing, repair, or betterment of its equipment shall be removed, or otherwise disposed of in a legal and proper manner: PROVIDED, that in no event shall it be buried or disposed of upon the TRIBE's property. Purchaser shall avoid servicing of equipment such as loaders, tractors, and trucks on the TRIBE's lands at or adjacent to the reservoir, lake, stream, or recreational facility without the written consent of the TRIBE.

#### 4.3. Equipment Use Limitations:

Limitations of use of equipment include the following:

A. No motorized equipment may operate within the Riparian Management Zone of any stream, Wetland Management Zone of any forested wetland, or within the 30-foot Equipment Limitation Zone of any Type N stream, unless authority is granted in writing by the Contract Administrator.

B. Ground-based equipment will not be permitted on slopes over 35 percent unless authorized in writing by the Forestry Supervisor.

C. Ground-based equipment shall operate only during reasonably dry soil conditions.

#### 4.4. Falling Standards:

A. When clear cutting, the Purchaser shall fall all timber into the sale area unless otherwise approved by the Forestry Supervisor. The tops and limbs thrown into adjacent areas must be removed concurrently with the logging operation. All trees shall be felled and logs shall be bucked in such a manner as to obtain the greatest practicable utilization of the merchantable logs.

B. Slashing: All live stems greater than one-inch DBH shall be felled concurrently with felling operations. All western red cedar is excluded from this requirement. Areas of young or immature timber may be excluded from this requirement by the Forestry Supervisor.

C. For fire protection purposes, it is preferred that on tower yarded ground, tree tops are not bucked off the top log during falling and bucking operations, but rather yarded to the landing and placed in slash piles, with the intent to clean up the slash and debris left on the sale area.

#### 4.5. Yarding:

A. The mode of yarding specified is shovel and cable yarding, the areas designated for each system are delineated on the maps as may be provided as a part of the Exhibits; yarding by tractors or skidders will not be permitted. On all areas shovel yarded the logging slash on such areas will be required to be piled by shovel/excavator.

B. Yarding may be suspended in the discretion of the Forestry Supervisor when soil rutting exceeds four inches when measured from the natural ground line. If yarding is suspended upon this basis, prior to resumption of operations, the Forestry Supervisor must be reasonably satisfied that future harvesting operations will not potentially damage any public resource. To reduce the risk of soil damage, in the Supervisor's discretion, water bars may be required to be constructed and grass seed placed on exposed soils.

C. Purchaser will suspend operations during periods of wet weather when rutting occurs. Excessive soil damage is not permitted on the skid trail. Skid trail damage is considered excessive when more than 10 percent of the active trail has ruts over 6 inches in depth.

D. Yarding operations on a setting of the sale area shall be completed before any operation begins on any subsequent settings unless authorized in writing by the Forestry Supervisor.

Purchaser shall not deviate from the requirements set forth in this clause without prior written approval from the Contract Administrator.

4.6. Slash Piling: On all areas shovel yarded, the logging slash on such areas will be required to be piled by shovel/excavator.

4.7. Compliance: Purchaser shall comply with all provisions of the Washington Forest Practices Act and any other applicable law, rule, or regulation, and shall be responsible for curing the effects of any violations thereof, hold the TRIBE harmless from penalties, damages, or fines resulting from any violations, and report all such violations to the TRIBE and to appropriate governmental agencies.

4.8. Roads:

A. The TRIBE makes no representations as to the present or future condition of its property or the condition or traffic on any roads, bridges, culverts, or other aspects of its transportation system. Purchaser acknowledges that it has inspected the TRIBE's existing roads and confirmed their adequacy for the use needed to perform this agreement.

B. Purchaser is authorized to utilize the existing roads on the TRIBE land to the extent reasonably necessary to remove the covered products, such use to be in such a manner as to not create any unusual damage to the road system. A Road Plan document, which details all road construction and maintenance specifications required as a part of this contract is provided as Exhibits B and C of Attachment #1. **Purchaser acknowledges that any necessary road improvements, including additional rocking, shall be at its sole expense.** To the extent that Purchaser determines any additional roads or road improvements must be constructed to allow performance of this contract, Purchaser shall obtain the approval of the TRIBE prior to undertaking any such construction. Purchaser shall not block main-line haul roads unless authority is granted by the Forest Supervisor. Mainline haul roads shall be signed by Purchaser to warn the public of any haul traffic or road closure.

C. Purchaser shall be responsible to perform work at its own cost to maintain proper drainage and to keep the surface of the roads it utilizes smooth and crowned. Further, upon completion of the contract, it shall be responsible for restoring such roads and shoulder areas that it may utilize to the same condition in which they were prior to Purchaser's commencement of the operation to the extent that Purchaser's operation has resulted in a deterioration in the condition of the road or shoulder area. The roads shall meet the original construction and pre-haul maintenance specifications at the contract termination.

D. Purchaser shall obtain any hauling permit from Pacific County required for utilization of its roads, including, but not limited to, over the \_\_\_\_\_ road.

4.9. Provisions Relating to Fire Protection:

A. The Purchaser agrees not to operate any equipment powered by a spark-emitting engine after \_\_\_\_\_ within the sale area unless it is equipped with spark arrester of a type approved by the State of Washington for utilization within its lands. Nor shall it operate any power saw or power equipment in any condition which is known or can reasonably be known to start fires. The TRIBE reserves the right during periods of dangerous weather, as designated by the TRIBE, to prohibit the operation of any or all such spark-emitting engines within the sale area.

B. From \_\_\_\_\_, the Purchaser shall provide and maintain a psychrometer for the purpose of checking the relative humidity and shall then designate at least one responsible person to make and record observations. Observations will be made hourly, starting at noon, at each active loading site or at other locations designated by the TRIBE on any day that rain is not falling and temperatures are above 80 degrees F. When the relative humidity is 30 percent or lower, operation of all spark emitting machines, with the exception of automobiles, must cease unless permission to continue is given in writing by the TRIBE. Documented recordings must be available on site at the TRIBE's request.

C. The Purchaser shall not set or allow to be set by employees or subcontractors any open fire at any time of the year without first obtaining permission in writing from the TRIBE.

D. Purchaser shall provide a serviceable pump truck and/or pump trailer as required under any applicable statute, rule, or regulation, including but not limited to WAC 332-24-005 and WAC 332-24-405 and shall provide trained personnel to operate this equipment and to take effective control action on any fire resulting from this operation. This vehicle shall conform to the Motor Vehicle Code of the State of Washington, and include fire hose, fittings, and nozzles.

E. During the closed season, on days when the industrial fire class is 3 or above, Purchaser shall provide a watchman for an additional one hour over and above the requirement of any applicable Administrative Code provision, including but not limited to WAC 332-24-057, following completion of operation of any spark emitting machine. Watchmen shall be trained and capable of operating equipment required under applicable law, rule, or regulation, including WAC 322-24-057, and the provisions of this contract, and shall be capable of taking effective action upon any fire resulting on this operation. Watchmen shall have radio or telephone capability to summon fire control agencies and TRIBE representatives.

4.10. Hazardous Materials and Waste -- Regulatory Compliance:

Purchaser is responsible for understanding and complying with all applicable local, state, and federal hazardous material/waste laws and regulations for operations conducted under this contract. Such regulations pertain to, but may not be limited to, hazardous material storage, handling and transport,

personnel protection, release notification and emergency response, cleanup, and waste disposal. Purchaser shall be responsible for restoring the site in the event of a spill.

A. Hazardous Materials Spill Prevention: All operations shall be conducted in a manner that avoids the release of hazardous materials, including petroleum products, into the environment (water, air or land).

B. Hazardous Materials Spill Containment, Control and Cleanup: If safe to do so, Purchaser shall take immediate action to contain and control all hazardous material spills. Purchaser shall ensure that a spill kit is on site.

C. Onsite Supplies: At a minimum, a quick response kit capable of absorbing 4 to 6 gallons of oil, coolant, solvent, or contaminated water shall be available on site. If large quantities of bulk fuel/other hazardous materials are stored on site, Purchaser must be able to effectively control a container leak and contain and recover a hazmat spill equal to the largest single on site storage container volume. (HAZWOPER reg. 29CFR 1910.120 (j) (I) (vii)).

D. Hazardous Material Release Reporting: Releases of oil or hazardous materials to the environment must be reported according to the State Department of Ecology. It is the responsibility of the Purchaser to have all emergency contact information readily available and a means of remote communication for purposes of quick notification. In the event of a spill, the Purchaser is responsible for notifying the following:

The TRIBE's representative: 360-267-6766.

Department of Ecology: 1-360-407-6300.

#### 4.11. Abandoned Property:

The Purchaser agrees that property owned by or which was in the possession of the Purchaser, his employees, subcontractor, or agents, and remaining on TRIBE land for more than thirty (30) days after the termination of this Contract, at the option of the TRIBE, shall become the property of the TRIBE. Alternatively, the TRIBE may provide for the removal and disposal of such property and Purchaser shall be responsible for the costs thereof.

#### 4.12. Non-Exclusive Use:

The TRIBE reserves the right to sell from the sale area during the period of the Contract any material not covered by its terms. It shall not permit the removal of any such material at a time or in such a manner as will unreasonably interfere with the operations of the Purchaser in the performance of this Contract. The TRIBE further reserves the right to make such use of the property and roads within the sale area during the period of this Contract as will not unreasonably interfere with the operations of the Purchaser.

#### 4.13. Conduct:

Purchaser, its employees, subcontractor, and their employees, shall conduct their activities in a safe and workmanlike manner to comply with all appropriate TRIBE, State, and Federal laws, rules, and regulations in relation to such activities, and shall cooperate fully in making it possible for the TRIBE's officers to inspect any activities of the Purchaser under this Contract and to conduct their official duties on the sale area and its vicinity.

#### 4.14. Notice:

Purchaser agrees to notify the TRIBE at least twenty-four (24) hours in advance of the commencement of any and all operations under this Contract, whether it is the first operation hereunder or operations which are recommencing after a period of cessation. Failure to so notify the TRIBE shall constitute a breach of the Contract.

### **SECTION V**

#### **INDEMNIFICATION & ASSUMPTION OF RISK**

##### 5.1. Negligence:

Purchaser shall reimburse the TRIBE, its agents or employees, for all costs and/or liability of whatsoever nature incurred as a result of negligence of the Purchaser in the creation, spreading, or escape of fire, whether such liability is incurred by the TRIBE through and/or to private parties or governmental agencies.

##### 5.2. Assumption of Risk:

A. Purchaser assumes all risks of personal injury, theft, and damage to Purchaser's property, including the forest products purchased under this agreement.

B. As previously indicated in this agreement, any forest products or property outside the contract area that is damaged by Purchaser's operations under this Contract, whether intentional or unintentional, shall be paid for by Purchaser. Purchaser agrees to pay triple the "fair market value" of any forest product or the value of any property, both as determined by the TRIBE, for any such damage. This responsibility shall also exist as to any non-covered forest products or property located within the contract area which are damaged as the result of Purchaser's operations. If lines or straps need to be placed on or around trees outside the timber sale boundary, protective sleeves shall be used to avoid damage to trees.

C. Any legal land subdivision survey corners and witness objects are to be preserved. If such are destroyed or disturbed, Purchaser shall have them reestablished by a licensed land surveyor, in accordance with U.S. General Land Office standards, at its own expense. Corners and/or witness objects that must necessarily be disturbed or destroyed in process of logging or road construction must be approved by the TRIBE prior to removal of said corners and/or witness objects. Purchaser shall exercise



all reasonable precautions to avoid damage to property and timber adjacent to the Contract Area, whether owned by the TRIBE or by other parties, and shall not trespass on any adjacent property.

### 5.3. General Indemnification:

A. The Purchaser shall hold the TRIBE, its agents, officers, and employees, harmless from any liability of any sort whatsoever, whether for injury to persons or property or otherwise, arising out of any cause whatsoever related to Purchaser's operations or performance, action or inaction, of this Contract. Purchaser shall further, upon the tender of any such claim, assume the defense of any claim filed or brought against the TRIBE arising out of Purchaser's performance of this Contract. In the event Purchaser fails to comply with the provisions of this paragraph, it shall pay to the TRIBE any and all expenses and monies reasonably expended in the processing, defense, and settlement of any such claim, with the payment to be made within thirty (30) days of the tender of a statement therefore.

B. The Purchaser shall defend, indemnify, and hold the TRIBE, its officers, officials, employees, and volunteers harmless from any and all claims, injuries, damages, losses, or suits, including attorneys' fees, arising out of or in connection with the performance of this Agreement, except for injuries and damages caused by the sole negligence of the TRIBE.

C. Should a court of competent jurisdiction determine this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Purchaser and the TRIBE, its officers, officials, employees, and volunteers, the Purchaser's liability hereunder shall be only to the extent of the Purchaser's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Purchaser's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been *mutually negotiated* by the parties. The *provisions* of this section shall survive the expiration or termination of this Agreement.

## SECTION VI

### DEFAULT

#### 6.1. Breach of Contract:

In the event the Purchaser violates or breaches any term of this contract or any requirement hereunder, the TRIBE shall have the right to suspend operations of the Purchaser hereunder by the giving of written notice, specifying the breach alleged. **If such breach is not remedied within fifteen (15) days after the giving of the notice, the TRIBE may terminate this Contract and the Purchaser shall have no further rights under this Bill of Sale and Contract.** Upon such termination, the TRIBE shall enter a forfeiture of the Contract and the payment made in connection herewith may be forfeited upon order of the TRIBE and action may be taken to recover damages from the Purchaser and surety. Such termination and forfeiture shall in no way prejudice the TRIBE's rights to further compensation for any damages arising out of Purchaser's breach of the Contract.

## 6.2. Remedy:

In the event the Purchaser has violated or breached any term of this Contract and has failed to remedy the breach thereof, the TRIBE shall have the option to remedy any such breach if, after the giving of notice of breach required hereby, the Purchaser shows no indication of attempting to remedy the breach, or if there is an apparent inability of Purchaser to remedy the breach as such absence of attempt or inability may be reasonably determined by the TRIBE. Upon the making of such a determination, the TRIBE may, in its discretion, immediately enter upon the property and commence attempts to remedy the breach. Any expense so incurred by the TRIBE shall be charged against the Purchaser and be paid to the TRIBE by the Purchaser within thirty (30) days after receipt of the billing for the expense. Purchaser shall, in addition to the cost of the attempt to remedy the breach, be responsible to the TRIBE for any such losses, such sum to be paid to the TRIBE by the Purchaser within thirty (30) days of the receipt of notice of the amount in question.

## 6.3. Complaints in Writing:

Complaints by the Purchaser as to any action taken or any action not taken by the TRIBE in respect to this Contract, whether such action or inaction be deemed a breach of this Contract or otherwise, shall not be considered unless made in writing to the TRIBE within thirty (30) days of any such action or non-action.

## **SECTION VII**

### **DAMAGES**

7.1. The payment by the Purchaser of any damages to the TRIBE resulting from non-compliance with any rule, regulation, or law of the State is hereby made a condition of this Contract.

## **SECTION VIII**

### **GENERAL PROVISIONS**

## 8.1. Performance Bond:

As a performance bond assuring the TRIBE of Purchaser's faithful performance of its duties and obligations, Purchaser shall post with the Tribal Administrator a bond in the amount of One Hundred Thousand Dollars (\$100,000.00), by and as a performance bond, said amount being established in the manner provided by Section 2.84.040, M.M.C. The monies or bond shall be held by the TRIBE by and as a performance bond and for the purposes established by the applicable State laws and TRIBE ordinances in relation to such bonds. The money or bond shall be provided to and approved by the CFO prior to the commencement of work on the contract area by Purchaser.

All monies represented by the bond shall be subject to the laws and ordinances relating to contracts, including, but not limited to, those relating to retainage. It is further recognized that this

Contract may be subject to the lien laws of the State of Washington and thus the retainage will be held for no less than sixty (60) days after date of completion.

In relation to this retainage, the monies shall be deposited in an interest-bearing account in the name of the TRIBE and held until subject to release pursuant to the terms of this Contract. All interest accrued on these monies shall be the property of the Purchaser.

## 8.2. Insurance:

Before commencement of logging operations, Purchaser shall provide to the TRIBE such proofs of insurance as may be required herein or by the Call for Bids. As is true with the bond, such proofs are to be in a form satisfactory to the CFO of the TRIBE and no work shall be commenced prior to the CFO's issuance of written approval of such proofs. Each policy shall show the TRIBE, its officers, agents, and employees, as a beneficiary, named insured and loss payee, as the case may be. Such insurance shall be of an occurrence type, shall be kept in full force and effect during the lifetime of the Contract until all contractual obligations imposed upon Purchaser are satisfied, and shall provide for no less than thirty (30) days written notice to the TRIBE prior to its alteration, modification, or cancellation.

As to the insurance required to be in place during the performance of this contract, the minimum coverage for which proofs shall be provided, are as follows:

A. Comprehensive Automobile Liability insurance covering all owned, non-owned, or hired vehicles used in connection with the work of this Contract with limits not less than \$1,000,000 each occurrence combined, single limit for bodily injury and property damage liability,

B. General Commercial Liability policy with a Logging and Lumbering Endorsement (Loggers Broad Form "B", with limits not less than \$1,000,000/\$2,000,000 each occurrence combined, single limit for bodily injury and property damage liability,

C. Workers Compensation insurance in an amount not less than \$500,000 for any and all employees engaged in the timber harvesting activities on the Property, and

D. Employers Liability Insurance for Washington State requirements for Public Entities having limits of no less than as follows:

Bodily Injury by

(1) Accident: Each Accident Limit: \$1,000,000

(2) Bodily Injury by Disease Aggregate: \$1,000,000

(3) Bodily Injury by Disease Each Employee Limit: \$1,000,000

## 8.3. General Contract Provisions:

A. Any litigation commenced between the parties to this Contract arising out of this Contract shall be filed in the Superior Court of the State of Washington, in and for the County of Pacific, which shall be the Court having proper venue thereof. In addition to any other relief granted to one party against the other, the parties agree that the non-prevailing party in any such litigation shall pay to the prevailing party, in addition to any such other relief, the sum determined by the Court to constitute reasonable attorneys' fees.

B. Each party acknowledges that they have had the opportunity to have this contract reviewed by their Counsel. Further, that the rule of interpretation against the drafter shall not apply.

C. This writing and any attachments thereto, along with the contract bid documents represent the total understanding of the parties and a complete integration of their negotiations. In the event of any conflict between this contract and any bid document or attachment to this contract, this contract shall control.

D. The individuals signing this contract upon behalf of the Purchaser represent and warrant that they do so within the scope of the authority granted by the Purchaser.

E. The terms and conditions of this contract, including extensions of time for removal, may not be modified except in writing executed by authorized representatives of each of the parties.

F. The Purchaser shall not assign any rights hereunder without the consent of the TRIBE in writing, signed by the Chairwoman of the TRIBAL Council. No purported assignment of any such right shall be effective without the consent herein anticipated. Any assignment done not in compliance with the provisions of this section shall be deemed a default of the Purchaser under this agreement.

G. All notices to be given by either party to this Contract in relation to this Contract shall be in writing and may be served personally upon the parties at the addresses noted below or by certified mail, return receipt requested, addressed to the party to be served at the address hereinafter set forth. Any notice to be given by certified mail shall be deemed to have been received four (4) business days after the posting thereof in the United States Postal Service, postage prepaid and correctly addressed.

IN WITNESS HEREOF, we the undersigned have executed this Contract:

**SBIT**

**CONTRACTOR**

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

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

Charlene Nelson  
Chairperson  
Shoalwater Bay Indian Tribe

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_