

RELEASE OF LIABILITY AGREEMENT

This RELEASE OF LIABILITY AGREEMENT (“Agreement”) is entered into as of this ___ day of _____, _____ between the U.S. Forest Service (“Forest Service”) and _____ (“Purchaser”) (together sometimes referred to herein as the “Parties”).

RECITALS

WHEREAS, on April 10, 2020 the Under Secretary for Natural Resources and Environment, Department of Agriculture determined that there was substantial overriding public interest to extend certain National Forest System timber sale contracts, and defer periodic payments for up to two years;

WHEREAS, the Parties mutually recognize that the _____ Timber Sale, contract number _____ meets the conditions for extension pursuant to the Under Secretaries April 10, 2020 finding;

WHEREAS, Purchaser desires the Forest Service to extend the contract pursuant to the Under Secretaries April 10, 2020 finding;

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

TERMS AND CONDITIONS

1. Contract Modification. After the Parties’ execution of this Agreement, the Forest Service shall promptly execute “Agreement to Extend and Modify Timber Sale Contract” on the terms and conditions herein contained, including without limit (a) Purchaser’s waiver and release of claims against the Forest Service, Department of Agriculture, and/or United States (collectively the “Government”) as set forth in Paragraph Two, and (b) Purchaser’s agreement to the limitation of the Government’s liability as set forth in Paragraph Three.
2. Release of Claims. Except as provided in Paragraph Three, Purchaser agrees to waive and release any and all claims against the Government based in whole or in part upon any instruction issued by the Forest Service after the date of this agreement to delay, suspend, modify, or terminate operations under the contract. Purchaser agrees that the foregoing waiver and release includes, without limit any claim based in whole or in part upon (a) any finding that the Forest Service failed to comply with environmental laws, regulations, rules, and/or policy; (b) any express or implied contractual warranty regarding the availability of timber for harvest; or (c) any express or implied contractual duty to cooperate with and not to hinder Purchaser’s performance.

3. Limitation of Liability. Purchaser agrees that in the event of contract termination, the Government shall have no liability for replacement timber and/or liquidated damages pursuant to the terms of the contract. Purchaser further agrees that the Government shall have no liability to Purchaser for any kind of consequential damages, special damages, and/or lost profits related in any way to any instruction issued after the date of this agreement to delay, suspend, modify or terminate operations.
4. Merger. Upon the Parties' execution of Agreement to Extend and Modify Timber Sale Contract this Agreement shall become part of such contract as an addendum thereto. However, the terms and conditions contained in this Agreement shall supercede and control over any contrary provisions of the contract.
5. 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 extended by the Forest Service, constitutes fully adequate consideration for the foregoing waiver, release, and limitation of liability.
6. 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.
7. 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.
8. 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 have executed this agreement.

U.S. Forest Service:

By:
Title: Contracting Officer

[Purchaser]

By:
Title:

Two Witnesses:

Name: _____

Address:

Name: _____

Address:

I, _____, 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**