

## LOGGING SUBCONTRACT

This Logging Contract (this "Contract") is entered as of the \_\_\_\_ day of \_\_\_\_\_, 200\_\_, by and between \_\_\_\_\_ ("Contractor") and \_\_\_\_\_ ("Subcontractor") as follows:

### Recital

The owners of certain timber growing on the real estate described in Exhibit A (such owners, the "Timber Owners" and such real estate the "Project Area") have, directly or through a managing agent, engaged Contractor to cut, fell, limb, buck and yard designated portions of such timber and to deliver the resulting logs to designated sawmills or other sites. On the terms and subject to the conditions set forth below, Contractor has engaged Subcontractor to perform work on the Project according to the specifications, sequence and schedule set forth in Section 2 and Exhibit "B". Subcontractor has accepted such engagement.

### Consideration

In consideration of the above Recital and their mutual promises herein, the parties contract as follows:

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**Exhibit A** Legal Description of Project Area and Map

**Exhibit B** Subcontractor Job Requirements

**Exhibit C** Road Construction Diagram

## **Contractual Provisions**

### **1 Subcontractor's Representations and Warranties**

To induce Contractor to enter this Contract, Subcontractor makes the following continuous representations and warranties to Contractor each of which is material and all of which shall survive the expiration, suspension or early termination of this Contract for so long as Contractor may assert a remedy hereunder. Subcontractor expressly understands and acknowledges that Contractor is relying upon, has bargained and paid for and would not engage Subcontractor for the compensation and on the terms set forth herein without being provided with, each such representation and warranty and with the related Comprehensive Indemnification set forth in Section 9.

#### **1.1 Licenses, Permits, Equipment and Employees**

Subcontractor has and will continue to have all licenses, permits, employees and equipment (including any special equipment identified in Section 2, Exhibit "B") necessary or advantageous for its efficient and safe performance of Subcontractor's Work. Subcontractor shall provide copies of all such licenses and permits to Contractor at Contractor's request. Subcontractor's equipment is and will remain in good working order and its employees have and will continue to have such experience and skill as is necessary to competently perform such Work.

#### **1.2 Inspection of Project Area - Assumption of Risk**

Subcontractor has visited the Project Area and Delivery Site or has had ample opportunity to visit them. Subcontractor is familiar or has had ample opportunity to become familiar with all observable conditions affecting the Project Area or Delivery Site that may adversely affect Subcontractor's Work. Subcontractor has submitted its bid in light of such conditions. Subcontractor assumes fully all risk that topographical features, sparse timber densities, remote landing areas, defective or inadequate access roads or other foreseeable natural or environmental conditions or events (any such condition or event, an "Accepted Risk") may hinder, delay or increase the cost of performing Subcontractor's Work. Subcontractor shall suspend operations whenever the continued performance of such Work would be hazardous or unlawful because of an Accepted Risk, and shall notify Contractor immediately of such suspension, but shall not be entitled to any additional compensation by reason of such suspension and shall resume Work as soon as such Accepted Risk has abated or been terminated.

#### **1.3 Compliance with laws**

Subcontractor, its employees and all agents or independent third parties that Subcontractor may engage to assist in the performance of Subcontractor's Work have and will comply with all federal, state and local regulations affecting the Project or such Work. Without limiting the foregoing, Subcontractor, its employees and all such agents or third parties shall and will, at all times when present within the Project Area or otherwise performing Subcontractor's Work, comply with all laws and regulations applicable to the Project Area and governing forest practices, fire protection and suppression and with all applicable federal and Washington State safety and health regulations.

#### **1.4 Insurance**

Subcontractor shall maintain continuously during the term of this Contract a commercial and vehicular general liability and property damage insurance policy covering Subcontractor's Work, issued by an

insurance company reasonably acceptable to Contractor, having aggregate limits of not less than \$2,000,000, personal injury limits of not less than \$1,000,000 per occurrence, and fire suppression limits of not less than \$1,000,000. At the request of Contractor, the policy shall name Contractor as an additional insured. In any case, such policy shall provide that it may not be canceled without 45 day's written notice to Contractor. Subcontractor shall deliver a Certificate of Insurance to Contractor confirming that such policy is in force prior to beginning Subcontractor's Work.

## **2 Subcontractor's Work**

Subcontractor's Work shall be performed in accordance with generally accepted timber harvesting practices with due regard to the preservation of the Project Site, the maximum recovery of designated merchantable timber and the minimization of waste or delay. Without limiting the preceding sentence, Subcontractor's Work shall comply strictly with the specifications, sequence and schedules enumerated in Exhibit "B".

## **3 Observance of Boundary Designations**

The Timber Owners have designated boundaries for the Project Area shown on Exhibit "A", plus certain rights-of-way and roads accessing the Project Area shown on Exhibit "C". Contractor expressly disclaims any representation or warranty to Subcontractor respecting the accuracy of the designations or Exhibits. Subcontractor shall indemnify and hold Contractor harmless from any claim by any third party for any damage or loss resulting from a failure by Subcontractor to stay upon such rights of way or roads, or perform Subcontractor's Work within such boundaries.

## **4 Contractor's Inspections**

Contractor has the right, but not the obligation, to inspect Subcontractor's Work at any and all times during the Project and to require that Subcontractor stop, change or correct such Work whenever, in Contractor's good faith reasonable discretion, such Work is not being performance in accordance with this Contract. The foregoing right may be exercised in addition to any other rights available to Contractor, at law or in equity for breach by Subcontractor of this Contract. **Provided:** It is expressly understood that the failure by Contractor, following any such inspection or otherwise, to require that Subcontractor stop, change or correct any of Subcontractor's Work shall not be deemed an acceptance of such Work, or a waiver by Contractor of any of its rights or remedies.

## **5 Suspension of Operations by Contractor or Timber Owners**

In addition to the right set forth in Section 4, Contractor has the right to suspend Subcontractor's Work whenever, in Contractor's good faith discretion, the continued performance of such Work would be hazardous or in violation of any law or regulation. Subcontractor further acknowledges that Contractor shall suspend operations if ordered to do so by the Timber Owners or by a governmental authority having jurisdiction. Immediately upon being notified of any such suspension, Subcontractor shall cease performing Subcontractor's Work and this Contract shall be suspended until such Work may be resumed. Subcontractor shall make no claim for compensation while this Contract is suspended.

## **6 "Force Majeure Condition" - Notice - Effect**

The term "Force Majeure Condition" means any "act of God," strike, lockout, civil strife or other event or condition that (a) occurs without the fault or negligence of the party affected thereby and is beyond the

reasonable control of such party, (b) materially hinders, delays or increases the cost of performance of this Contract by such party and (c) in the case of Subcontractor, is neither an Accepted Risk nor a Contract suspension covered by Section 5. Within 1 day after becoming aware of any force majeure condition, the party affected thereby shall notify the other party, in person or by telephone, of the existence, cause and expected duration thereof. The personal or telephonic notice shall be followed, as soon as practical, by notice in writing or other tangible form such as electronic mail that shall describe such condition in reasonable detail. The party affected by such condition shall, to the extent and during the period so affected, be excused from performing this Contract. The other party shall be excused from performing any obligation that is conditioned upon a performance by the affected party that has been so excused. The parties shall negotiate in good faith for an amendment of this Contract containing such modifications as may reasonably be required for the expeditious resumption and efficient completion of the Project. If the parties are unable to agree upon such an amendment within 10 days after such personal or telephonic notice, this Contract shall be terminated. Subcontractor shall, subject to Section 7, be entitled to pro-rated compensation for all of Subcontractor's Work completed to the day of such personal or telephonic notice and all further legal relationship between the parties shall cease.

## **7 Subcontractor's Compensation**

Subject to the performance by Subcontractor of all of its obligations hereunder, and as exclusive compensation for the Subcontractor's Work, Contractor shall make the following payments to Subcontractor:

### **7.1 Base Compensation and Retainage**

### **7.2 Bonus for Early Delivery**

### **7.3 Penalty for Late Delivery**

### **7.4 Penalty for cutting Non-Designated Timber or Trespass**

### **7.5 Penalty for not cutting Designated Timber**

### **7.6 Payment Dates and Conditions**

Contractor shall pay Subcontractor for each delivery, plus any bonus, but less retainage and any penalty, within 10 days after Contractor receives payment from the Timber Owners for such delivery. Contractor shall make final payment of all remaining compensation due Contractor, e.g. for cleanup and miscellaneous activities, less retainage, within 10 days after the Termination Date set forth in Section 2, Exhibit "B" subject to proper completion all Subcontractor's Work in accordance with this Contract.

Contractor shall pay retainage, net of any penalties e.g. for improper cutting, within 10 days after final approval of the Project by the Timber Owners.

## **8 Subcontractor's Independent Status**

Subcontractor is an independent contractor and not an agent, employee or partner of Contractor. Subcontractor shall report and pay all taxes arising from its performance of Subcontractor's Work under its own tax identification numbers. Subcontractor shall hold Contractor harmless against and from all liability respecting Subcontractors employees arising under Labor and Industry, Worker's Compensation, Unemployment Compensation or similar laws. Subcontractor is and shall remain registered under the following business and tax identification numbers:

UBI Number: \_\_\_\_\_  
L & I number: \_\_\_\_\_  
IRS Tax ID Number: \_\_\_\_\_  
State Contractors: \_\_\_\_\_  
Registration Number: \_\_\_\_\_

## **9 Comprehensive Indemnification and Hold Harmless**

Subcontractor shall indemnify and hold Contractor harmless against and from all liability, expense or risk, including all attorney's fees and other costs of defense or investigation, sustained by Contractor and arising from any and all (a) claims by Timber Owners, other third parties or governmental authorities for personal injury or property damage caused or allegedly caused by the act or omission of Subcontractor, (b) claims for personal injury to Subcontractor's employees or agents sustained during the performance of Subcontractor's Work, whether or not covered or within the immunity conferred by any worker's compensation law or regulation, even if caused or allegedly caused by the act or omission of Contractor (c) claims for theft of, or for loss or damage for any other reason to, logs cut from timber growing within the Project Area if such claims arise while such logs are being transported by or are otherwise within the control of Subcontractor and (d) claims for money secured or enforceable by any lien or other encumbrance affecting the Project Area if created or permitted by Subcontractor. Upon the written request of Contractor, but not otherwise, Subcontractor shall appear and defend Contractor, at Subcontractor's sole cost and expense, against any and all such claims. For the purposes of this Section, the term "personal injury" includes bodily and/or emotional injury, sickness, disease, and death and the term "property damage" includes damage or harm to the roads, soils, timber, wildlife, habitats, water, air or environment on, above, below or otherwise affecting the Project Area.

**10 Miscellaneous Provisions**

**10.1 Notices**

Any notices in tangible form to be given hereunder may be delivered in person or sent by electronic registered or certified mail, addressed to the party notified as designated below:

To Contractor:

To Subcontractor:

\_\_\_\_\_  
Mailing Address

\_\_\_\_\_  
Mailing Address

\_\_\_\_\_  
Telephone/Fax

\_\_\_\_\_  
Telephone/Fax

\_\_\_\_\_  
e-mail address

\_\_\_\_\_  
e-mail address

\_\_\_\_\_  
Contact Person(s)

\_\_\_\_\_  
Contact Person(s)

**10.2 Prohibition of Assignment or Delegation**

No right under this Contract may be assigned and no duty hereunder may be delegated, in whole or in part, by operation of law or otherwise, by either party except upon written consent of the other party.

**10.3 Captions and Headings**

The headings and captions in this Contract are for convenience only and shall neither add to, nor detract from, the substantive provisions set forth in this Contract.

**10.4 Controlling Law**

This Contract shall be construed and enforced according to the laws of the State of Washington.

**10.5 No Waiver of Default**

No waiver by either party of a breach of this Contract shall be deemed a waiver of any subsequent breach.

**10.6 Integration – Modification - Successors**

This Contract contains the final written expression of the complete agreement of the parties respecting the Project. It may not be modified, amended or rescinded except by a written document executed by the party to be charged with any such modification, amendment or rescission. This Contract shall be binding on the heirs, successors, representatives and assigns of the parties.

**10.7 Arbitration**

Any dispute arising under this Contract shall be submitted to arbitration by the parties in accordance with the rules of the American Arbitration Association then in effect. If the parties are unable to agree upon an arbitrator within 30 days after either party has given the other party written notice of a claim giving rise to such dispute, the arbitrator shall be appointed by a court of competent jurisdiction. The compensation and expenses of the arbitrator and any administrative fees or costs associated with the arbitration shall be paid equally by the parties. Arbitration shall be the exclusive remedy for the settlement of disputes arising under this Contract. The decision of the arbitrator shall be final, conclusive and binding, and no action at law or in equity may be instituted by either party other than to enforce the award of the arbitrator. **Provided:** If either party commences a proceeding to enforce this Section and compel arbitration, the prevailing party shall be awarded reasonable attorney's and expert's fees and all costs, whether or not taxable in such proceeding.

**10.8 Time for Performance**

Time is of the essence of this Contract. The parties shall perform their obligations when due hereunder subject only to those provisions hereof permitting the suspension or excused delay of such performance.

DATED this \_\_\_ day of \_\_\_\_\_, 200\_\_.

**“Contractor”**

By

**“Subcontractor”**

By

**EXHIBIT “A” LEGAL DESCRIPTION OF PROJECT AREA AND MAP**

**EXHIBIT “B” SUBCONTRACTOR JOB REQUIREMENTS**

**EXHIBIT “C” ROAD CONSTRUCTION DIAGRAM**

**EXHIBIT "A"**

**LEGAL DESCRIPTION OF PROJECT AREA AND MAP**



**EXHIBIT "B"**

**SUBCONTRACTOR JOB REQUIREMENTS**

**Work Sequence and Delivery Site:**

**Estimated Timber Volumes:**

**Start Date, Delivery Schedule and Termination Date:**

**Ingress, Egress, Road Construction and Maintenance:**

**Merchantable Timber - Included Species:**

**Markings:**

**Required Tools and Equipment:**

Subcontractor shall provide to the Project Area, store within such Area when necessary, insure and maintain at its expense and risk all tools, materials and equipment necessary to perform Subcontractor's Work including, without limitation, the following:

**Cutting Methods:**

**Fire Protection:**

**Stumpage Height and Top Diameter:**

**Slash Disposal and Cleanup:**

**EXHIBIT "C"**

**ACCESS AND ROAD CONSTRUCTION DIAGRAM**