

CITY OF EVERETT
BILL OF SALE AND CONTRACT FOR
FOREST PRODUCTS
EXPORT RESTRICTED
LUMP SUM CONTRACT

SALE NAME: CHAPLAIN GAP

CITY OF EVERETT (CITY) and _____ (PURCHASER),

AGREE AS FOLLOWS:

SECTION G: GENERAL TERMS

G-1 Definitions

The following definitions apply throughout this Contract:

Bill of Sale and Contract for Forest Products: Contract between the Purchaser and the City, which sets forth the procedures and obligations of the Purchaser in exchange for the right to remove forest products from the sale area. The Bill of Sale and Contract for Forest Products may include a Road Plan for any road construction or reconstruction, where applicable. The Bill of Sale and Contract for Forest Products is also referred to as the “Contract.”

Contract Administrator: Person responsible for administering the Contract for the City.

Contract Price: The payment to be made by Purchaser as set forth in clause P-23.

Forest Product: Any material derived from the forest for commercial use.

Purchaser: The company or individual that has entered into this Bill of Sale and Contract for Forest Products with the City for the right to harvest and remove forest products from the timber sale area.

Road Construction: Includes building new and maintaining existing forest roads and associated work that may be optional or required as described in the Road Plan.

City: The City of Everett, the landowner and seller of Forest Products from the timber sale area.

Subcontractor: Individual or company employed by the Purchaser to perform a portion or all of the services required by the Bill of Sale and Contract for Forest Products. The Purchaser is responsible for independently negotiating, procuring and paying for all subcontracted services rendered.

G-11 Right to Remove Forest Products and Contract Area

Purchaser was the successful bidder on July 20th, 2021 and City Council awarded this Contract on _____. The City agrees to sell and permit Purchaser to cut and remove, and Purchaser agrees to purchase, as much of the following Forest Products as can be cut and removed during the term of this Contract:

Sale Description

All timber bound by Timber Sale Boundary tags, Pink Harvest Boundary flagging, S-1100, C-1000, HB-ML, D-1000, SP-1000, SP-1300, E-1000, Right-of-Way tags, timber type changes (young stand edge) and spoils pit, except trees marked with blue paint, (GRT) Leave Tree tags, dead and down old growth logs, stumps and other blowdown trees in Units 1-10.

The described products above are located on approximately 146.9 acres in parts of Sections 25, 35 and 36, Township 29 North, Range 7 East, and parts of Sections 6, 7, 8 and 17, Township 28 North, Range 8 East all W.M., in Snohomish County as shown on Timber Sale Maps and as designated in the sale area.

All forest products described above from the bole of the tree that meet or exceed 2 inches diameter inside bark on the small end are eligible for removal. Above ground components of a tree that remain as by-products after the manufacture of logs, including but not limited to tree tops, branches, limbs, needles, leaves, and stumps, are not eligible for removal under the terms of this contract.

This Contract does not convey an interest in land.

G-12 Export Restricted

The timber sold herein is hereby designated as export restricted. WAC 240-15-015 (relating to the prohibition on export and substitution), WAC 240-15-025 (relating to reporting requirements) and WAC 240-15-030 (relating to enforcement) are incorporated herein by reference. A violation by the purchaser of the prohibitions under WAC 240-15-025 shall be sufficient cause for the City to cancel this Contract and, in the City's sole discretion, may be cause to disqualify Purchaser from future purchases and Contracts with the City.

G-20 Inspection By Purchaser

Purchaser hereby warrants to the City that they have had an opportunity to fully inspect the sale area and the Forest Products being sold. Purchaser further warrants to the City that it enters into this Contract based solely upon its own judgment of the value of the Forest Products, formed after its own examination and inspection of both the timber sale area and the Forest Products being sold. Purchaser also warrants to the City that it enters this Contract without any reliance upon the volume estimates, acreage estimates, appraisals, pre-bid documentation, or any other representations by the City or Roots Forestry Consulting, LLC.

G-25 Exhibits

The following exhibits are hereby incorporated by reference into this Contract:

- A. Timber Sale Maps
- B. Road Plan

G-30 Contract Term

Purchaser shall remove the Forest Products conveyed and complete all work required by this Contract prior to September 30, 2023. This Contract expires on such date.

G-40 Contract Term Adjustment – No Payment

Purchaser may request an adjustment in the Contract term. A request must be submitted in writing, must be received by the City within 30 days after the start of interruption or delay, and must indicate the actual or anticipated length of interruption or delay. The City 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. Shutdowns caused by, or resulting from, action or inaction by the State, including, but not limited to, rules, changes in rules or regulations, or other State action;
- c. Access road closures imposed by road owner;
- d. Excessive suspensions as provided in clause G-220.

G-51 Contract Extensions

Extensions of this Contract term may be granted only if, in the judgment of the City, Purchaser is acting in good faith and is endeavoring to remove the Forest Products conveyed. The City may extend the term of this Contract for a reasonable time if all of the following conditions are satisfied:

- a. A written request for extension of the Contract term must be received prior to the expiration date of the Contract.
- b. Completion of all required roads and compliance with all Contract and regulatory requirements.
- c. For the first extension, not to exceed one (1) year, payment of at least twenty-five percent (25%) of the total Contract Price.

For the second extension, not to exceed one (1) year, payment of at least ninety percent (90%) of the total Contract Price.

The payments shall not include the initial deposit.

- d. Payment of an amount based on twelve percent (12%) interest per annum on the unpaid portion of the total Contract Price.

All payments, except the initial deposit, will be deducted from the total Contract Price to determine the unpaid portion of the Contract.

- e. Payment of One Hundred Ten Dollars (\$110.00) per acre per annum for the acres on which an operating release has not been issued. In no event will this portion of the extension charge be less than Fifty Dollars (\$50.00) per annum per acre.
- f. Extension payments are non-refundable.

G-53 Surveys - Sensitive, Threatened, Endangered Species

Whenever the City determines that a survey for sensitive, threatened, or endangered species is prudent, or when Purchaser determines a survey is prudent and the City agrees, Purchaser shall perform such surveys at Purchaser's expense and to the standards required by the City. The survey information shall be supplied to the City.

G-60 No Warranties by City

THE PARTIES AGREE THAT THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ALL OTHER WARRANTIES EXPRESSED OR IMPLIED ARE EXCLUDED FROM THIS TRANSACTION AND SHALL NOT APPLY TO THE GOODS SOLD. FOR EXAMPLE, THE FOLLOWING SPECIFIC MATTERS ARE NOT WARRANTED, AND ARE EXCLUDED FROM THIS TRANSACTION:

- 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 ACREAGE contained within any sale area. Any acreage descriptions appearing in the timber notice of sale, Timber Sale Maps, this Contract, or other documents are estimates only, provided solely for administrative and identification purposes.
- d. The VOLUME, QUALITY, OR GRADE of the Forest Products. The descriptions of the Forest Products conveyed in this Contract are estimates only, made for the sole purpose of identification.
- e. THE CORRECTNESS OF ANY SOIL OR SURFACE CONDITION AND PRE-SALE CONSTRUCTION APPRAISALS, INVESTIGATIONS, AND ALL OTHER PRE-BID DOCUMENTS PREPARED BY OR FOR THE CITY. These documents were prepared for appraisal purposes only.
- f. Items which extend beyond the description of the face of this Contract.
- g. THAT THE SALE AREA IS FREE FROM THREATENED OR ENDANGERED SPECIES or their habitat. The City is not responsible for any interference with forestry operations that result from the presence of any threatened or endangered species, or the presence of their habitat, within the sale area.

G-62 Safe Harbor and Cooperative Habitat Enhancement Agreements

The City has entered into a Safe Harbor Agreement (SHA) with the U.S. Fish and Wildlife Service (USFWS) and a Cooperative Habitat Enhancement Agreement (CHEA) with Washington State Department of Natural Resources (DNR) to address Chaplain Tract land management and conservation relating to compliance with the Federal Endangered Species Act. The activities to be carried out under this Contract are located within the City's SHA and CHEA area and are subject to the terms and conditions of the SHA and CHEA, and the Incidental Take Permit issued by USFWS. All SHA and CHEA materials are available for review at the City of Everett Public Works Building at 3200 Cedar St., Everett, WA

By signing this Contract, Purchaser agrees to comply with the terms and conditions of the SHA and CHEA and the Incidental Take Permit, which shall become terms of this Contract. The City 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 SHA and CHEA and the Incidental Take Permit. The requirements set forth in this Contract are intended to comply with the terms and conditions of the SHA and CHEA and the Incidental Take Permit. Accordingly, non-compliance with the terms and conditions of the SHA or CHEA or the Incidental Take Permit will render the authorization provided in this paragraph void, be deemed a breach of the Contract and may subject Purchaser to liability for violation of the Endangered Species Act.

Any modifications to the Contract shall be proposed in writing by Purchaser, shall continue to meet the terms and conditions of the SHA and CHEA and the Incidental

Take Permit, and shall require an amendment signed by the Mayor of the City before taking effect.

G-63 Incidental Take Permit Notification Requirements

- a. Purchaser shall immediately notify the Contract Administrator of new locations of permit species covered by the Incidental Take Permits (ITP) that are discovered within the area covered by the SHA and CHEA including, but not limited to: locations of occupied murrelet habitat and; spotted owl nests. Purchaser is required to notify the Contract Administrator upon discovery of any fish species found in streams or bodies of water classified as non-fish bearing. In all circumstances, notification must occur within a 24 hour time period.
- b. Upon locating any live, dead, injured, or sick specimens of any permit species covered by the ITP, Purchaser shall immediately notify the Contract Administrator. Purchaser shall notify the Contract Administrator if there is any doubt as to the identification of a discovered permit species. Purchaser may be required to take certain actions to help the Contract Administrator safeguard the well-being of any live, injured or sick specimens of any permit species discovered, until the proper disposition of such specimens can be determined by the Contract Administrator. Any such requirements will be explained to Purchaser by the Contract Administrator during the Pre-Work Conference. In all circumstances, notification must occur within a 24 hour time period.
- c. Provisions and requirements of the ITP shall be clearly presented and explained to Purchaser by Contract Administrator during the Pre-Work Conference as per Contract clause G-330. 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 in the timber sale area. Any questions Purchaser may have about the ITP should be directed to the Contract Administrator.

G-64 Permits

Purchaser is responsible for obtaining any permits not already obtained by the City that relate to Purchaser's operation. Forest Practice Application / Hydraulic Project Approval permits obtained by the City shall be transferred to Purchaser. Approved Forest Practice Applications include #'s 2817134, 2817867, and 2817867. Purchaser is responsible for all permits, amendments and renewals and ensuring all FPHP work under this Contract is completed.

G-65 Disclaimer of Regulatory Actions

The City 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 timber sale.

G-66 Governmental Regulatory Actions

a. Risk

Purchaser shall be responsible for any increased operating costs arising from any applicable foreign or domestic governmental regulation or order that does not cause Contract performance to become commercially impracticable or that does not substantially frustrate the purpose of the Contract. If impracticability or frustration results from Purchaser's failure to comply with this Contract, Purchaser shall remain responsible for payment of the total Contract Price notwithstanding the impracticability or frustration.

b. Sale Area

When portions of the sale area become subject to a domestic governmental regulation or order that will likely prevent timber harvest for a period exceeding six months, and the Purchaser has complied with this Contract, then:

- i. If forty percent (40%) or less of the sale area is affected by the governmental regulation or order, the City, at Purchaser's request, shall adjust the total Contract Price as set forth in paragraph (c) below.
- ii. If forty-one percent (41%) to seventy-four percent (74%) of the sale area is affected by the governmental regulation or order, and if so requested by the Purchaser in writing, the City shall adjust the total Contract Price as set forth in paragraph (c) below or terminate the Contract. Termination will discharge any unexecuted portion of the Contract.
- iii. If seventy-five percent (75%) or more of the sale area is affected by the governmental regulation or order, the City reserves the right to unilaterally terminate the Contract and thereby discharge any unexecuted portion thereof. If the City does not exercise this right, the City shall adjust the total Contract Price as set forth in paragraph (c) below if requested to do so by the Purchaser.

c. Adjustment of Price

When required by clause G-66 (b), the City shall adjust the total Contract Price by subtracting from the total Contract Price an amount determined as provided in this clause. The City shall cause the timber sale area acreage subject to governmental regulation or order to be surveyed. The City shall calculate the percentage of the total sale area acreage subject to the governmental regulation or order. The City shall multiply the total Contract Price by percentage obtained by dividing the timber sale area subject to regulation or order by the total sale area acreage. No adjustment will be made for variation in species, value, costs, or other items. A reduction in total Contract Price terminates all of the Purchaser's rights to purchase and remove the timber and all other interest in the affected sale area.

G-70 Limitation of Damages

In the event of a breach of any warranty or any other act or omission under this Contract by the City, the liability of the City shall be limited to, and Purchaser's exclusive remedy shall be, a return of the initial deposit, unapplied payments, and credit for unamortized improvements made by Purchaser.

The City shall not be liable for any other damages, whether direct, incidental or consequential.

G-80 Statements by City

No advice by any agent, employee, or representative of the City regarding the method or manner of performing shall constitute a representation or warranty that said method, manner or result thereof will conform to the Contract or be suitable for Purchaser's purposes under the Contract. Purchaser's reliance on any City advice regarding the method or manner of performance shall not relieve Purchaser of any risk or obligation under the Contract. Purchaser retains the final responsibility for its operations under this Contract and City shall not be liable for any injuries resulting from Purchaser's reliance on any City advice regarding the method or manner of performance.

In addition:

- a. Nothing in this Contract requires the City to provide the Purchaser with direction or advice. If a duly authorized representative of the City approves, suggests or recommends any practice, means, method or manner for performance of this Contract, including logging practices, such approval, suggestion or recommendation shall not: (1) guarantee such approval, suggestion or recommendation will accomplish the requirements of the Contract; (2) relieve the Purchaser of any risks or obligations under the Contract; or (3) create any liability by the City to the Purchaser.
- b. Suggestions as to plans or methods of accomplishing the Contract by the City or the City's representative to the Purchaser, but not specified or required, if adopted or followed by the Purchaser in whole or in part, shall be used at the risk and responsibility of the Purchaser. The City and the City's representative assume no responsibility therefor and in no way will be held liable for any defects in the work which may result from or be caused by use of such plan or method or work.

G-91 Sale Area Adjustment

The Parties may agree to adjustments in the sale area boundary. The cumulative changes to the sale area during the term of the Contract shall not cause an increase or decrease to the original sale area by more than four percent (4%). Forest Products within any such increase to the original sale area are sold as a part of this Contract and Purchaser shall pay the City the fair market value of such Forest Products, as determined by the City. Forest Products within any such decrease to the original sale area shall be deemed removed from this Contract and the Purchaser shall not pay the City for such Forest Products.

G-101 Forest Products Not Designated

Any trees or Forest Products that are not designated for removal and which must be removed in the course of operations authorized by the City, shall be approved and designated by the Contract Administrator. Purchaser shall pay City for such Forest Products at a fair market value determined by the City.

G-110 Title and Risk of Loss

Title to the Forest Products conveyed passes upon the execution of this Contract by the City. Purchaser bears the risk of loss or damage to the Forest Products in this Contract from the time the City executes this Contract. In the event any such Forest Products are destroyed, damaged, 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 City.

G-120 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 G-130, shall be repaired promptly to the satisfaction of the City at Purchaser's expense during the Contract period unless an operating release has been issued.

G-130 Exceptions

- a. Exceptions to Purchaser's responsibility in G-120 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.
 1. The City shall bear the cost to repair any third-party damage involving any existing roadway or section of new construction completed under this Contract to a fully functional stage. Purchaser shall accomplish repairs promptly as required by the City at an agreed price. The City may elect to accomplish repairs itself, either by its own forces or by contracting with a third party.
 2. Catastrophic damage is defined as City identified damage valued in excess of Ten Thousand Dollars (\$10,000.00), which is caused by forces beyond the control, and without the negligence of, Purchaser, such as earthquakes, volcanic eruptions, landslides, and floods. The Parties shall share equally the cost to repair any part of the required work performed by Purchaser, which is damaged by catastrophic damage. Purchaser shall be responsible for the first Ten Thousand Dollars (\$10,000.00) of repair costs. Purchaser shall accomplish repairs promptly as required by the City at an agreed price. The City may elect to accomplish repairs by means of City provided resources.

- b. Nothing contained in G-120 and G-130 shall be construed as relieving Purchaser of responsibility for, or damage resulting from, Purchaser's operations or negligence, nor shall Purchaser be relieved from full responsibility for making good any defective work or materials.

G-140 Indemnity

To the fullest extent permitted by law, Purchaser shall indemnify, defend and hold harmless City and all officials, agents and employees of City, from and against all Claims arising out of or resulting from the performance of this Contract. "Claim" as used in this Contract means any and all financial loss, claim, suit, action, damage, or expense, including but not limited to attorneys' fees, attributable for bodily injury, sickness, disease or death, or injury to or destruction of tangible property including loss of use resulting therefrom. Purchaser's obligations to indemnify, defend, and hold harmless includes any Claim by Purchaser's agents, employees, representatives, or any subcontractor or its employees. Purchaser expressly agrees to indemnify, defend, and hold harmless City for any claim arising out of or incident to Purchaser's or any subcontractors' performance or failure to perform the Contract. Purchaser's obligation to indemnify, defend, and hold harmless City shall not be eliminated or reduced by any actual or alleged concurrent negligence of City or its agents, agencies, employees and officials. Purchaser waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend and hold harmless City and its agents, officials, agents or employees and acknowledges this was mutually negotiated. This clause G-140 survives termination or expiration of this Contract.

G-150 Liability Insurance

Purchaser shall, 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 a breach and/or termination of the Contract at City's option. City may suspend Purchaser operations until required insurance has been secured.

All insurance and surety bonds should be issued by companies admitted to do business within the State of Washington and have a rating of A-, Class VII or better in the most recently published edition of Best's Reports. Any exception shall be reviewed and approved by the City's Risk Manager before the insurance coverage 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.

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

1. Insurers subject to Chapter 48.18 RCW (admitted and regulated by the Insurance Commissioner): The insurer shall give the City 45 days advance notice of cancellation or non-renewal. If cancellation is due to non-payment of premium, the City shall be given 10 days advance notice of cancellation.

2. Insurers subject to Chapter 48.15 RCW (surplus lines): The City shall be given 20 days advance notice of cancellation. If cancellation is due to non-payment of premium, the City shall be given 10 days advance notice of cancellation.

Prior to the performing any part of this Contract, Purchaser shall provide the City with a Certificate of Insurance acceptable to the City Attorney evidencing the required insurance. In addition, Purchaser shall provide the City with either (1) a true copy of an endorsement naming the City of Everett, its officers, employees and agents as Additional Insureds on all general liability, excess, umbrella, and property insurance policies with respect to the operations performed and services provided under this Contract and that such insurance shall apply as primary, non-contributing insurance on behalf of such Additional Insureds or (2) a true copy of the blanket additional insured clause providing such coverage from the policies. Receipt by the City of any certificate showing less coverage than required is not a waiver of the Service Provider's obligations to fulfill the requirements. The full policy limits maintained by the Purchaser shall be available to the City as Additional Insured, even if such limits are greater than those required by this Contract.

Insurance coverage shall be obtained by the purchaser prior to operations commencing and continually maintained in full force until all Contract obligations have been satisfied or an operating release has been signed by the City.

Purchaser shall include all subcontractors as insured under all required insurance policies, or shall furnish separate certificates of insurance and endorsements for each subcontractor. 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. Purchaser waives all rights against City for recovery of damages to the extent these damages are covered by general liability or umbrella insurance maintained pursuant to this Contract.

By requiring insurance herein, City does not represent that coverage and limits will be adequate to protect Purchaser and such coverage and limits shall not limit Purchaser's liability under the indemnities and reimbursements granted to City in this Contract.

The limits of insurance, which may be increased as deemed necessary by City, shall not be less than as follows:

Commercial General Liability (CGL) Insurance. Purchaser shall maintain general liability (CGL) insurance, and, if necessary, commercial umbrella insurance with a limit of not less than \$2,000,000.00 per each occurrence. If such CGL insurance contains aggregate limits, the General Aggregate limit shall be at least twice the "each occurrence" limit. CGL insurance shall have products-completed operations aggregate

limit of at least two times the "each occurrence" limit. CGL coverage shall include a Logging and Lumbering Endorsement (i.e. Logger's Broad-Form) to cover the events that include, but are not limited to, fire suppression expenses, accidental timber trespasses, and wildfire property damage with limits of not less than \$2,000,000.00 each occurrence.

CGL insurance shall be written on Insurance Services Office (ISO) occurrence form CG 00 01 (or a substitute form providing equivalent coverage). All insurance shall cover liability arising out of premises, operations, independent contractors, products completed operations, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another party assumed in a business contract), and contain separation of insureds (cross liability) condition.

Employer's Liability "Stop Gap" Insurance. Purchaser shall buy employers liability insurance, and, if necessary, commercial umbrella liability insurance with limits not less than \$1,000,000.00 each accident for bodily injury by accident or \$1,000,000.00 each employee for bodily injury by disease.

Workers' Compensation Coverage. Purchaser shall comply with all State of Washington workers' compensation statutes and regulations. Workers' compensation coverage shall be provided for all employees of Purchaser and employees of any subcontractor or sub-subcontractor. Coverage shall include bodily injury (including death) by accident or disease, which exists out of or in connection with the performance of this Contract. Except as prohibited by law, Purchaser waives all rights of subrogation against City for recovery of damages to the extent they are covered by workers' compensation, employer's liability, commercial general liability, or commercial umbrella liability insurance.

If Purchaser, subcontractor or sub-subcontractor fails to comply with all State of Washington workers' compensation statutes and regulations and City incurs fines or is required by law to provide benefits to or obtain coverage for such employees, Purchaser shall indemnify City. Indemnity shall include all fines, payment of benefits to Purchaser or subcontractor employees, or their heirs or legal representatives, and the cost of effecting coverage on behalf of such employees.

Business Auto Policy (BAP). Purchaser shall maintain business auto liability and, if necessary, commercial umbrella liability insurance with a limit not less than \$1,000,000.00 per accident. Such insurance shall cover liability arising out of "Any Auto". Business auto coverage shall be written on ISO form CA 00 01, or substitute liability form providing equivalent coverage. If necessary the policy shall be endorsed to provide contractual liability coverage and cover a "covered pollution cost or expense" as provided in the 1990 or later editions of CA 00 01. Purchaser waives all rights against City for the recovery of damages to the extent they are covered by business auto liability or commercial umbrella liability insurance.

- a. The Contract Administrator will administer the Contract on behalf of the City. The Public Works Director will notify the Purchaser in writing who is responsible for administering the Contract. No agent, employee, or representative of the City, including the Contract Administrator, has any authority to bind the City to any affirmation, representation or warranty concerning the Forest Products conveyed beyond the terms of this Contract.
- b. Purchaser is required to have a person on site during all operations that is authorized to receive instructions and notices from the City. Purchaser shall inform the City in writing who is authorized to receive instructions and notices from the City, and any limits to this person's authority.

G-161 Independent Contractor

- a. The parties agree that this Contract shall not constitute nor create an employer-employee relationship, and since the Purchaser is an independent Contractor, Purchaser shall be responsible for all obligations relating to federal income tax, self-employment FICA taxes and contributions, and all other so called employer taxes and contributions, including, but not limited to, industrial insurance (Workmen's Compensation), and that the Purchaser agrees to indemnify, defend and hold the City harmless from any claims, valid or otherwise, made to the City, because of these obligations.
- b. While engaged in the performance of this Contract, any and all employees of the Purchaser shall be considered employees of only the Purchaser and not employees of the City. The Purchaser shall be solely liable for any and all claims that may or might on behalf of said employees or Purchaser, while so engaged and for any and all claims made by a third party as a consequence of any negligent act or omission on the part of the Purchaser's employees, while so engaged on any of the Work.
- c. Purchaser shall comply with all applicable provisions of the Fair Labor Standards Act and other legislation affecting its employees and the rules and regulations issued thereunder insofar as applicable to its employees and shall at all times save the City free, clear and harmless from all actions, claims, demands and expenses arising out of said act, and rules and regulations that are or may be promulgated in connection therewith.
- d. Purchaser assumes full responsibility for the payment of all payroll taxes, use, sales, income, or other form of taxes (such as state and, city business and occupation taxes), fees, licenses, excises or payments required by any city, federal or state legislation which are now or may during the term of the Contract be enacted as to all persons employed by the Purchaser and as to all duties, activities and requirements by the Purchaser in performance of the Work and Purchaser shall assume exclusive liability therefore, and meet all requirements thereunder pursuant to any rules or regulations that are now or may be promulgated in connection therewith.

G-162 Employment

The Purchaser warrants that it had not employed or retained any company or person, other than a bona fide employee working solely for the Purchaser, to solicit or secure this Contract and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Purchaser, any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranty, the City shall have the right to terminate this Contract without liability or, in its discretion, to deduct from the Contract Price or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

G-170 Assignment and Delegation

No rights or interest in this Contract or performance of Contract duties shall be assigned or delegated by Purchaser without prior written permission of the City. Any attempted assignment shall be void and ineffective for all purposes unless made in conformity with this paragraph. Approval or assignment by the City shall not include or in any way constitute release of security provided by the Purchaser.

G-180 Modifications

Waivers, modifications or amendments of the terms of this Contract must be in writing signed by Purchaser and the Mayor of the City.

G-181 Waiver

Any waiver by the Purchaser or the City or the breach of any provision of this Contract by the other party will not operate, or be construed, as a waiver of any subsequent breach by either party or prevent either party from thereafter enforcing any such provisions.

G-182 Severability

If any part of this Contract is found to be in conflict with applicable laws, such part shall be inoperative, null and void, insofar as it is in conflict with said laws and the remainder of the Contract shall remain in full force and effect.

G-190 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.

G-201 Notice

- a. Notices required to be given pursuant to clauses G-211 Violation of Contract and G-220 City Suspends Operations 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:

PURCHASER ADDRESS

- b. 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 City of any change of address.

G-211 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, the Purchaser has thirty (30) days after receipt of a suspension notice to remedy the violation. If the violation cannot be remedied (such as a violation of WAC 240-15-015) or Purchaser fails to remedy the violation within the thirty (30) days after receipt of a suspension notice, the City may terminate the rights of Purchaser under this Contract and collect the liquidated damages provided for in D-13.
- b. If the Contract expires pursuant to G-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 City 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 City, to remedy the breach. Any expense incurred by the City shall be charged to Purchaser and shall be paid within thirty (30) days of receipt of the billing.
- d. If Purchaser's violation is the 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 of one percent (1%) per month computed daily beginning the date payment was due.

G-220 City Suspends Operation

The Contract Administrator may suspend any operation of Purchaser under this Contract when, in the opinion of the City, the City is suffering, or there is a reasonable expectation the City will suffer environmental, monetary, or other 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 City.

Purchaser may request a modification of a suspension within thirty (30) days of the start of suspension through the dispute resolution process in clause G-240. If this process results in a finding that the suspension exceeded the time reasonably necessary to stop or prevent damage to the City, Purchaser is entitled to a Contract

term adjustment under clause G-40 for the actual interruption or delay in operations caused by the excessive suspensions.

If it reasonably appears that the damage that the City is suffering, or can reasonably be expected to suffer, if the operation continues, will prevent harvest for a period that will exceed six months, and the Purchaser has complied with this Contract, the provisions of Clause G-66 shall govern just as if the harvest was prevented by an applicable foreign or domestic governmental regulation or order.

G-230 Unauthorized Activity

Any cutting, removal, or damage of Forest Products by Purchaser, its employees, agents, or invitees, including independent contractors, in a manner inconsistent with the terms of this Contract or State law, is unauthorized. Such activity shall be considered outside this Contract and may subject Purchaser to liability for triple the value of said Forest Products.

G-240 Dispute Resolution

The following procedures apply in the event of a dispute regarding interpretation of the 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 City Public Works Director for resolution prior to seeking other relief.
- b. The Public Works Director will issue a written decision on Purchaser's request within ten (10) working days.

G-241 Audits and Inspections

At any time during normal business hours and as often as the City may deem necessary, the Purchaser shall make available to the City for the City's examination all of the Purchaser's records and documents with respect to all matters covered by this Contract and, furthermore, the Purchaser will permit the City to audit, examine and make copies, excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Contract.

G-242 City of Everett Business License

Purchaser agrees to obtain a City of Everett business license prior to performing any work pursuant to this Contract.

G-250 Compliance With All Laws

Purchaser shall comply with and obey all federal, state and local laws, regulations, and ordinances applicable to the operation of its business and to its performance of work

hereunder, including, but not limited to, the applicable requirements of WAC 240-15-015 (relating to prohibitions on export and substitution), WAC 240-15-025 (relating to reporting requirements), and WAC 240-15-030 (relating to enforcement).

G-260 Venue

The laws of the State of Washington shall govern this Contract. In the event of a lawsuit involving this Contract, venue shall be exclusively in Snohomish County Superior Court.

G-270 Equipment Left on City Land

All equipment owned or in the possession of Purchaser or its delegates shall be removed from the sale area and other City land by the termination of this Contract. Equipment remaining unclaimed on City land sixty (60) days after the expiration of the Contract period is subject to disposition as provided by law. Purchaser shall pay to the City all costs of moving, storing and disposing of such equipment. The City 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.

G-280 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 release area will terminate.

G-310 Road Use Authorization

Purchaser is authorized to use the gravel portion of the following City roads and those roads on which the City has acquired easements or road-use permits: C-1000, C-1300, C-1320, C-1330, D-1000, D-1100, D-1200, D-1300, D-1320, D-1360, D-1370, D-1400, D-1410, D-1460, D-1600, E-1000, E-1300, HB-ML, LL-ML, SP-1000, SP-1300, S-1000, T-1000, T-1200, or T-1240.

The City may authorize in writing the use of other roads subject to fees, restrictions, and prior rights.

G-330 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 City and Purchaser before beginning any operations. To the extent that the plan of operations is inconsistent with the Contract, the terms of the Contract shall prevail. City's acceptance and approval of Purchaser's plan of operations shall not be construed as any statement or warranty that the plan of operations is adequate for Purchaser's purposes or complies with applicable laws.

G-340 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 in accordance with U.S. General Land Office standards. Corners and/or witness objects that must be disturbed or destroyed in the process of road construction or logging shall be adequately referenced and/or replaced. Such references must be approved by the Contract Administrator prior to removal of said corners and/or witness objects.

G-360 Road Use Reservation

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

G-370 Blocking Roads

Purchaser shall not block the C-1000, C-1300, C-1320, C-1330, D-1100, D-1200, D-1300, D-1320, D-1360, D-1370, D-1400, D-1410, D-1460, D-1600, E-1000, E-1300, HB-ML, LL-ML, SP-1000, SP-1300, S-1000, T-1000, T-1200, or T-1240 roads unless the Contract Administrator grants authority in writing.

G-375 Locked Gates

All gates on the C-1300, D-1000, D-1300, E-1000, HB-ML, LL-ML, SP-1000, S-1000, and T-1000 roads shall be kept closed and locked unless permission to do otherwise is granted by the Contract Administrator.

G-430 Open Fires

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

G-435 Water Quality Protection Specifications

All on site work associated with this Contract shall be done under the City of Everett Water Quality Protection Specifications Clause S-5, dated 6/1/2011 and are hereby made part of this Contract.

G-440 Sanitary Facilities

The City shall provide and maintain portable toilets at active worksites during the operation of this Contract. Purchaser shall use these facilities.

G-445 Equipment Watchman

Location of watchman facility for security reasons shall be approved by the Contract Administrator prior to move in.

G-450 Encumbrances

This Contract and Purchaser's activities are:

- a. Subject to easement for power transmission lines.
- b. Subject to easement for water transmission lines.
- c. Subject to easements for road use by others.
- d. Subject to easement granted to the City from Washington State Department of Natural Resources (Snohomish County Auditor File #9201160106).
- e. Subject road easement granted to the City from Washington State Department of Natural Resources (Permit No. 50-091200).

SECTION P: PAYMENTS AND SECURITY

P-11 Initial Deposit

Purchaser shall pay the City \$XXXX as an initial deposit. This initial deposit shall be maintained throughout the Contract and may be used as a final payment. If the operating authority on this Contract expires or this Contract expires without Purchaser's payment of the full amount specified in Clause P-023, the initial deposit will be immediately forfeited to the City, and will be offset against Purchaser's remaining balance due. Any excess initial deposit funds not needed to ensure full payment of the Contract Price, or not needed to complete any remaining obligations of the Purchaser existing after Contract expiration, will be refunded to the Purchaser.

P-23 Payment for Forest Products

Purchaser agrees to pay the total Contract Price of \$XXXXXXXX plus \$400.00 in fees. In the event the courts invalidate the Forest Resource Conservation and Shortage Relief Act of 1990 (Pub. L. No. 101-382) in a manner that would allow unprocessed timber from this timber sale to be exported, the Purchaser may convert this timber sale to an unrestricted timber sale by notifying the City in writing. By converting this timber sale to an unrestricted timber sale, Purchaser agrees that the total Contract Price will be adjusted using a factor of 1.350 to adjust the Contract Price to a fair market value. In the event that timber has been removed from the sale area at the time the Purchaser notifies the City that Purchaser is converting the sale, Purchaser agrees to pay a total Contract Price that is calculated by multiplying the amount still owed under the Contract plus the amount of the initial deposit by the adjustment factor specified in this section.

P-40 Guarantee of Payment

Purchaser will pay for Forest Products prior to cutting or will guarantee payment by posting payment security approved by the City. The amount of cash or payment security shall be determined by the City and shall equal or exceed the value of the cutting proposed by Purchaser.

P-50 Billing Procedure

The City will compute and forward to Purchaser statements of charges provided for in the Contract. The payment shall be delivered to the City on or before the date shown on the billing statement.

P-80 Payment Account Refund

Advance payments remaining on account above the value for the charges shall be returned to Purchaser within thirty (30) days following the final report of charges.

P-90 Performance Security

Purchaser agrees to furnish within thirty (30) days after the auction date, security acceptable to the City in the amount of fifty thousand Dollars (\$50,000.00) that guarantees performance of all provisions of this Contract and 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 the City has accepted performance security. If at any time the City decides that this security has become unsatisfactory, Purchaser agrees to suspend operations and, within thirty (30) days of notification, to replace the security with one acceptable to the City.

P-100 Performance Security Reduction

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

SECTION H: HARVESTING OPERATIONS

H-017 Preventing Excessive Soil Disturbance

Operations may be suspended when soil rutting exceeds 12 inches as measured from the natural ground line. To reduce soil damage, the Contract Administrator may require water bars to be constructed, grass seed to be placed on exposed soils, or other mitigation measures. Suspended operations shall not resume unless approval to do so has been given, in writing, by the Contract Administrator.

H-051 Branding and Painting

Purchaser shall provide a State of Washington registered log brand and a quality log marking paint for the purpose of branding and painting Forest Products prior to removal from the landing on this sale in a manner that meets the requirements of WAC 240-15-030(2).

For pulp loads purchased under a contract designated as export restricted, Purchaser shall brand at least 3 logs with legible brands at one end. Also, 10 logs shall be painted at one end with durable Red paint.

H-10 Cutting and Yarding Schedule

Shovel logging will not be permitted from October 15 through June 15 except by written permission from the Contract Administrator.

H-11 Hauling Restrictions

The City reserves the right to shut down haul on the C-1000, C-1300, C-1320, C-1330, D-1000, D-1100, D-1200, D-1300, D-1320, D-1360, D-1370, D-1400, D-1410, D-1460, D-1600, E-1000, E-1300, HB-ML, LL-ML, SP-1000, SP-1300, S-1000, T-1200, T-1240, or NW-170046 roads under the following conditions.

- (a) Emergency repair to City facilities.
- (b) During periods of freezing and thawing weather that may result in road damage.

H-40 Purchaser Cutting Plan

Purchaser shall, as part of the plan of operations, prepare an acceptable cutting plan for the sale area. The cutting plan shall be approved by the Contract Administrator prior to beginning the cutting operation.

H-80 Snags and Non-Merchantable Trees Not to be Felled

Snags and non-merchantable trees not required to be felled for safety reasons shall be left standing except as specified in clause H-140.

H-110 Stump Height

Trees shall be cut as close to the ground as practicable. Stump height shall not exceed twelve (12) inches in height measured on the uphill side, or 2 inches above the root collar, whichever is higher. Trees with major defect at the stump may be cut above the defect.

H-120 Equipment

Forest products sold under this Contract 2021-01 may be yarded by cable or ground-based methods (See H-10 for timing restrictions) in Units 1-8 and 10. Tether-assist methods and/or self-leveling equipment may be used in Units 1-8 with prior written permission by Contract Administrator. Unit 9 must be cable logged with minimum lead-end suspension except with written permission by Contract Administrator.

H-140 Special Yarding Requirements

Purchaser shall accomplish the following during the yarding operations:

- (a) All old growth stumps and logs and blowdown trees that do not have small branches shall be left undisturbed as much as possible.
- (b) Shovel roads shall be located to avoid brushy areas, old down logs, and marked leave tree clumps.
- I Shovel logging shall be done in accordance with the City of Everett Shovel Logging Specifications dated 6/1/2011 (see below) and incorporated herein by reference.
- (d) Purchaser must comply with the following specification during yarding:
 - (i) Skid trails will not exceed 15 feet in width, including rub trees.
 - (ii) Deviations from designated skid trail locations must be pre-approved by the Contract Administrator.
 - (iii) Trees within skid trails shall be felled and yarded prior to the felling of adjacent timber.
 - (iv) Excessive skid trail damage is not permitted. Skid trail damage is considered excessive when more than 10 percent of the active trail has ruts over 4 inches in depth.
 - (v) Skid trails will be water barred at the time of completion of yarding, if required by the Contract Administrator.
 - (vi) Rub trees along the skid trail shall be left standing until all timber tributary to the skid trail has been removed.
- (e) Wet areas shall be crossed in only one location and must be pre-approved by the Contract Administrator. Trees around the wet areas shall be felled away from these areas.
- (f) All trees marked with blue paint shall be left standing. If any tree marked with blue paint must be felled due to safety or operational reasons, they may be felled but must be left un-bucked on site. Permission to do otherwise must be granted in writing by the Contract Administrator.

H-190 Completion of Settings

Operations begun on any setting of the sale area shall be completed before any operation begins on subsequent settings unless authorized in writing by the Contract Administrator.

H-220 Protection of Residual or Adjacent Trees

Purchaser shall take necessary care to avoid damage to residual or adjacent trees. Purchaser shall comply with the following:

CITY OF EVERETT

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SHOVEL LOGGING SPECIFICATIONS

- A. Only low ground pressure (9 lbs. P.S.I) track mounted machines with hydraulic boom and grapple shall be allowed.
 - B. Shovel must be large enough to pick up one end of the largest log 30 feet from the center of the machine.
 - C. When yarding and loading operations are going on simultaneously, an additional shovel shall be required for loading trucks to avoid extra shovel trips to the landing.
 - D. No more than one round trip per shovel road is authorized unless permission to do otherwise is granted by the Contract administrator.
 - E. Shovel roads shall be pre-planned and approved in writing prior to yarding. Roads shall be a minimum of 60 feet apart unless otherwise approved in writing.
 - F. Shovel logging shall not be permitted on slopes over 30% unless permission to do so is granted in writing.
 - G. Shovel operations shall be suspended during periods of wet weather to avoid soil compaction, rutting, or puddling.
 - H. Logging debris created from the operation shall be removed from natural watercourses concurrently with yarding.
 - I. Shovel shall stay a minimum of 20 feet from all watercourses and areas of wet or soft soils.
 - J. All merchantable logs containing 20 board feet net scale, minimum top diameter of 6 inches and minimum length of 20 feet shall be yarded concurrently with the shovel operation.
 - K. Within the area to be shovel logged, all logging debris concentrations--except large logs--shall be piled (on non-plantable spots such as new stumps, etc., as much as possible) to ensure good, clear plantable spots every 13 feet by 13 feet. Debris shall not be piled on old logs or stumps, high stumps, or wet areas. Slash piles should be between 5 to 10 feet tall.
 - L. On return trip to road, shovel shall loosen compacted debris and soil under tracks with grapple to leave soil loose and aerated.
 - M. Additional site-specific recommendations may be included on case-by-case basis.
 - N. Shovel yarding approval is only provisional and shall be withdrawn if these specifications, in the opinion of the Contract Administrator, are not being followed.
 - O. Old down logs, cull logs and stumps shall be left undisturbed whenever possible.
-

SECTION C: CONSTRUCTION AND MAINTENANCE

C-40 Road Plan

Road construction, bridge purchase and install and associated work provisions of the Road Plan for this sale, dated July 20th, 2021, are hereby made part of this Contract. Purchaser shall complete all work in the Road Plan. Required installation of Chaplain Creek Bridge shall be completed by September 30th, 2022.

C-50 Purchaser Road Maintenance and Repair

Purchaser shall perform work on the gravel portions of C-1000, C-1300, C-1320, C-1330, D-1000, D-1100, D-1200, D-1300, D-1320, D-1360, D-1370, D-1400, D-1410, D-1460, D-1600, E-1000, E-1300, HB-ML, LL-ML, S-1000, T-1240, T-1000, T-1200 or TL-ML roads to prevent damage to subgrade, to maintain proper drainage and to keep the road surface smooth and crowned. All gravel roads used shall meet the original construction or reconstruction specifications at Contract termination. All other gravel roads used shall be left in the condition that exists at the time the plan of operations is completed.

C-80 Landing Locations and Clean-up

Landings shall be located and marked by the Purchaser and approved by the Contract Administrator prior to construction. Upon completion of use, landing debris shall be piled as designated by the Contract Administrator and a four (4) foot wide fire trail shall be constructed around each landing.

SECTION S: SITE PREPARATION AND PROTECTION

S-1 Emergency Response Plan

An Emergency Response Plan (ERP) shall be provided to the Contract Administrator containing but not limited to, valid contact numbers and procedures for medical emergencies, fire, hazardous spills, forest practice violations and any unauthorized or unlawful activity on or in the vicinity of the sale area. The Contract Administrator and the City shall be promptly notified whenever an incident occurs requiring an emergency response.

The ERP must be presented for inspection at the prework meeting and kept readily available to all personnel, including subcontractors, on site during active operations

S-5 Operations in Watershed

Purchaser shall adhere to all “City of Everett Water Quality Protection Specifications” dated 6/1/2011, when operating inside the Chaplain Watershed in Units 1, 9, and 10. See below.

CITY OF EVERETT
WATER QUALITY PROTECTION SPECIFICATIONS

I. DESCRIPTION

Water from Lake Chaplain Reservoir is used to provide drinking water for the majority of Snohomish County residents. The Purchaser shall use EXTREME care to protect water quality in the watershed.

REGULATIONS

- A. Lake Chaplain and its tributaries are classified as “AA”, a designation reserved for very high quality waterways. No discharge of any waste or wastewater will be permitted to the reservoir or its tributary streams.
- B. The Purchaser shall comply with regulations from the Department of Health, Rules and Regulations of the State Board of Health Regarding Public Water Systems (WAC 246-290) and Department of Ecology Water Quality Standards for Waters of the State of Washington (WAC 173-201).

II. CONTRACTOR REQUIREMENTS

- A. Compliance. The Purchaser shall comply with the restrictions, requirements and methods listed below and it shall be the Purchaser’s responsibility to ensure that workers are fully aware of the importance of maintaining high water quality in the watershed. All workers shall be familiar with these water quality protection specifications and understand that violation may be grounds for dismissal and/or Contract termination.
 - 1. Site Requirements. The Purchaser shall, where applicable, divert clean water around construction sites and yard areas to reduce the amount of water subject to contamination. Temporary ditches, culverts and dikes may be used. Purchaser shall disturb areas no larger than necessary for work yards and construction areas.
 - 2. The Purchaser shall not discharge waste of any type into the Lake Chaplain Reservoir or its tributaries.
 - 3. Purchaser shall regularly instruct workers of the importance of maintaining sanitary conditions in the watershed and complying with specifications as they pertain to water quality protection. The Purchaser shall make a copy of these specifications available to all workers in the watershed.
 - 4. Purchaser shall not draw, dip or pump water from the Reservoir or its tributaries for drinking, culinary or other construction purposes without the written approval of the City’s Contract Administrator.

5. Domestic animals are not permitted on the work site or in vehicles.
6. Swimming or other water contact activities are not permitted in the watershed. The Purchaser shall discharge any worker violating this rule.
7. To the extent practical refueling and servicing of construction equipment shall be performed outside the watershed. When necessary to bring or dispense fuel, lubricants or other petroleum products into the watershed to service construction equipment, it shall be accomplished with the use of a designated refueling truck which has been suitably equipped for this purpose. The location for refueling and servicing of construction equipment shall be approved by the City's Contract Administrator prior to starting construction work. The cleanliness, condition, suitability and use of the refueling truck shall be subject to review by the City's Contract Administrator.
8. During transfer of fuels from one container or vehicle to another, a competent operator shall be on-site to oversee the operation. Dispensing devices shall automatically shut off when the container is full. No overflows or spillage will be allowed. Condensation siphoned from fuel tanks shall not be discharged onto the ground or the surface waters. It shall be collected and disposed of off-site by the purchaser. Storage tanks shall be structurally capable of holding the full contents without leakage. Excessive rust, perforations, holes, splits, *et cetera*, on tanks will not be permitted. The fuel trucks shall be labeled or marked as such and shall carry a minimum of one 5-gallon bucket with lid, one shovel and oil absorptive pads for use in the event of a spill. Fueling of equipment shall not take place where spillage could contaminate the water of Lake Chaplain, tributaries and streams except as approved by the City's Contract Administrator.
9. All stationary equipment shall be stored in a designated storage and maintenance area. This includes generators, compressors and engine-driven pumps in addition to other equipment while not in use such as backhoes, loaders, dozers, trucks and other construction vehicles. Each equipment item to be left overnight shall have an oil absorbent pad placed beneath it and reasonable measures taken to protect against vandalism.
10. Soiled pads shall be replaced as often as necessary to preclude runoff of water containing sheens. Pads need to be picked up immediately when equipment is moved. Also, when the equipment is moved, any contaminated soil beneath it shall be excavated to a minimum depth of 6 inches and disposed of off-site by the Purchaser.
11. Petroleum products or waters containing sheens or rainbows shall not be discharged or be permitted to drain into the Reservoir. Spillage shall be mopped up immediately. Absorbent material and spillage shall be disposed of off-site by the Purchaser.
12. In the event of repair or routine maintenance such as oil changes or adjustment of hydraulic gear, equipment shall be moved to a designated storage and maintenance location agreed to by City's Contract Administrator.

13. Particular attention shall be given to housekeeping practices in the watershed. The area shall be kept free of trash, oily rags, empty containers etc. All extraneous or partially full containers of petroleum products or other chemicals shall be removed from the watershed at the end of each day.
14. Sanitary facilities provided by the City and rubbish containers provided by the Purchaser shall be located at all work sites and all locations where workers gather prior to start of work or shift changes. Sanitary facilities shall be maintained by the City in a clean and sanitary condition and shall be serviced regularly to prevent spillage or undue odors. All personnel shall be required to exclusively use the sanitary facilities. Notice shall be given that offenders will be dismissed and shall not be rehired for work on this Contract. Rubbish containers will have watertight lids, will be lined with plastic and will not be permitted to overflow. Whenever possible, sanitary facilities and rubbish containers shall be located, so that should a spill occur, it will drain away from the Reservoir.
15. Stockpiles of construction materials such as explosives and other potential pollutants shall be stored and protected from the effects of weather and surface runoff.

B. Earthwork.

1. The Purchaser shall exercise judgment and skill in carrying out all earthwork-related activities due to the turbidity threat they pose to water quality. All work shall be within accepted standards of good practice for environmentally sensitive locations and as specified.
2. Constructed slopes whether temporary or permanent shall be constructed as shown on the Road Plan and/or as dictated by safe practice.
3. The Purchaser shall conduct work activities under the premise that an intense precipitation event can occur at any time and preventive measures should be taken to protect against erosion. Temporary erosion control shall be installed prior to start of earthwork activities.
4. Drainage shall be arranged to avoid concentration of runoff. Preference shall be given to longer, less direct drainage paths to existing waterways utilizing overland flow through undisturbed areas.

C. Emergency Response.

1. Any condition causing or threatening to cause chemicals, petroleum products or large amount of turbid water to enter the Reservoir or natural streams, or an accident such as a vehicle entering the Reservoir will be considered an emergency condition and actions to stop or remove the violating conditions shall be taken immediately. Purchaser shall contact City's Contract Administrator or Water Filtration Plant Personnel immediately. Purchaser shall have a list of emergency phone numbers readily available at all times. This list shall be coordinated with the City to ensure the inclusion of City required emergency phone numbers.

2. The Purchaser shall provide the City's Contract Administrator with a list of personnel, their addresses and telephone numbers who can be contacted if a spill occurs during the Purchaser's absence.
3. The Purchaser shall immediately notify the City's Contract Administrator or City of Everett Filtration Plant at 425-257-8200 if an emergency condition occurs and maintain contact until the matter is corrected. Containment and clean-up measures are subject to review and approval by the City's Contract Administrator.
4. Purchaser shall provide and maintain at each active worksite an Emergency Oil spill kit with enough capacity to effectively control a container or equipment leak and to contain & recover a hazardous materials spill equal to the largest single on-site storage container volume. The Spill Kit shall be kept in a clearly labeled, waterproof container and include (but not limited to) the following items in appropriate quantities:
 - Shovel
 - Screened pitchfork
 - Flashlight including batteries
 - 5-gallon containers with lids
 - Oil absorbent pads/oil absorbent pellets
 - 30 gallon Plastic garbage bags

S-10 Fire Hazardous Conditions

Purchaser acknowledges that operations under this Contract may increase the risk of fire. Purchaser shall conduct all operations with the use of the highest degree of care to prevent uncontrolled fires from starting.

In the event of an uncontrolled fire, Purchaser agrees to provide equipment and personnel working at the site to safely and effectively engage in first response fire suppression activity.

Purchaser's failure to effectively engage in fire-safe operations is considered a breach and may result in suspension of operations

S-50 Cessation of Operations for Low Humidity

During the "closed season", as determined by Washington State Department of Natural Resources, when the humidity is thirty percent (30%) or lower on the sale area, all operations must cease.

S-60 Pump Truck or Pump Trailer

Purchaser shall provide a fully functional pump truck and/or pump trailer equipped to meet the specifications of WAC 332-24-005 and WAC 332-24-405 during the "closed season" or

as extended by the State and shall provide trained personnel to operate this equipment on the sale area during all operating periods.

S-80 Watchman

During the "closed season" or as extended by the State, on days when the class of day is 3L or above, Purchaser shall provide a watchman for an additional one hour more than required by WAC 332-24-005 and WAC 332-24-405. Watchman shall be capable of operating fire equipment and taking effective action upon any fire on the operation.

S-130 Hazardous Materials

a. 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.

b. 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).

c. 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 enough quick response spill kits capable of absorbing 4 to 6 gallons of oil, coolant, solvent or contaminated water are available on site to quickly address potential spills from any piece of equipment at all times throughout active operations. 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 & recover a hazmat spill equal to the largest single on site storage container volume.

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:

Appropriate Department of Ecology regional office (contact information below).

City Contract Administrator, Travis Miranda- 360-631-7606 or City of Everett Filtration Plant 24hrs a day at 425-527-8200.

DOE - Northwest Region:

1-425-649-7000

(Island, King, Kitsap, San Juan, Skagit, Snohomish, and Whatcom counties)

S-131 Refuse Disposal

All Purchaser generated refuse, including petroleum products, shall be removed from City Property in accordance with the City's Water Quality Protection Specifications Dated 6/1/2011. All material must be removed prior to termination of this Contract. No refuse shall be burned, buried or abandoned on state forest lands. All refuse shall be transported in a safe manner and all loads or loose materials shall be covered/secured such that these waste materials are properly contained during transport.

SECTION D: DAMAGES

D-13 Liquidated Damages

- a. This Clause provides for payments by Purchaser to the City for certain breach 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 City 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.
- b. Purchaser's failure to pay for all or part of the Forest Products sold in this Contract prior to the expiration of Purchaser's operating authority results in substantial injury to the City. The value of the Forest Products sold at the time of breach is not readily ascertainable. Purchaser's failure to perform disrupts the City's management plans, the actual cost of which is difficult to assess. A resale involves additional time and expense and is not an adequate remedy. Therefore, Purchaser agrees to pay the City as liquidated damage a sum calculated using the following formula:

$$LD = (0.35 \times V) - ID - R + C + A$$

Where:

LD = Liquidated Damage Value

V = Bid Value remaining at the date of breach of Contract,
which is the unpaid portion of the Contract Price

- ID* = Initial Deposit paid at date of Contract that has not been applied to timber payments
- R* = Unamortized value of roads constructed based on City's appraised value of road cost for roads built but not utilized by Purchaser prior to breach of Contract
- C* = Charges assessed for Contract requirements completed prior to breach of Contract but not paid for
- A* = Administrative fee of Two Thousand Five Hundred Dollars (\$2,500.00)

c. In no event shall the liquidated damage be less than zero. Interest on the liquidated damage is owed from the date of breach until final payment, calculated using the following formula:

$$I = r \times LD \times N$$

Where:

- LD* = Liquidated Damage Value
- I* = Interest
- r* = One percent (1%) per month
- N* = Number of calendar days from date of breach to time of payment

[Signatures on following page]

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

CITY OF EVERETT

PURCHASER

Cassie Franklin, Mayor

_____, President

ATTEST:

APPROVED AS TO FORM:

City Clerk

City Attorney

DATE

**EXHIBIT A
TIMBER SALE MAPS**

**EXHIBIT B
ROAD PLAN**