

COUNTY OF DEL NORTE

AGREEMENT FOR ACCESS TO HARVEST COUNTY TREES

THIS AGREEMENT For Access to Harvest County Trees (“Agreement”) is made as of the Agreement Date set forth below by and between the County of Del Norte, a legal subdivision of the State of California (“the COUNTY”), and

“LANDOWNERS”

In consideration of each and every covenant and condition contained herein, the parties hereto agree as follows:

OPERATIVE PROVISIONS

1. ACCESS

COUNTY agrees to provide access upon and over County’s property to LANDOWNER so that LANDOWNER may harvest the COUNTY’S trees which are located within _____ (____ feet) of the property line located at _____, according to the payment terms specified in paragraph three of this agreement.

Said trees shall be clearly designated by COUNTY before any tree is harvested. Ownership of the trees after harvesting shall partially vest in LANDOWNER.

This Agreement is not intended to be used for trees in the County right-of-way that are a safety concern. The County, at the discretion of the County Engineer, shall be responsible for removing such hazard trees.

2. TERM

Commencement Date: _____

Termination Date: _____

3. PAYMENT

No payment shall be made by COUNTY pursuant to this Agreement. In exchange for COUNTY providing access to COUNTY property for the purpose of harvesting trees, LANDOWNER and COUNTY shall each be entitled to one-half of the proceeds of the mill’s payment for timber logged from County’s right of way. LANDOWNER shall forward COUNTY’S share of the proceeds to COUNTY within 5 days of LANDOWNER’S receipt thereof from the mill. LANDOWNER shall be solely responsible for all LANDOWNER’S and LANDOWNER’S Related Parties’ expenses relating to the timber’s harvest, deductions for those expenses shall be made prior to paying the COUNTY one-half of the proceeds. Upon COUNTY’S request, LANDOWNER agrees to provide a full accounting of any profits or losses from the sale of said trees. All payments made by LANDOWNER to COUNTY shall be accompanied by a scaler’s report and any and all scaling receipts which shall be delivered to COUNTY by LANDOWNER.

4. SCALING

LANDOWNER shall buck and prepare the timber for transport to maximize its value with respect to its eventual scaling and grading by the mill.

5. FACILITIES, EQUIPMENT AND OTHER MATERIALS AND OBLIGATIONS OF COUNTY.

LANDOWNER shall, at its sole cost and expense, furnish all facilities, equipment, and other materials that may be required pursuant to this Agreement.

6. OPERATIONS BY LANDOWNER

LANDOWNER and Landowner's Related Parties shall cut, fall, limb, buck and remove the downed timber from the real property in a safe, prudent, good and workmanlike manner and in accordance with any applicable Timber Harvesting Plan or permits which may be required. Prior to commencement of any portion of the work in this agreement, LANDOWNER shall contact USA North (Underground Service Alert of Northern California and Nevada) and confirm that there are no under ground or above ground utilities in the area which might be damaged by any digging or other activities conducted pursuant to this Agreement.

7. INDEMNITY

LANDOWNER and/or CONTRACTOR agrees to and shall indemnify, defend, protect, and hold harmless COUNTY, its elected and appointed councils, boards, commissioner, officers, agents, and employees from and against any and all Liabilities caused by any act, omission, or arise out of or as the result out of the Landowner's Activities and/or those of Landowner's Related parties. Landowner's obligations under this section apply regardless of whether or not such Liabilities were caused in part or contributed to by the passive negligence of COUNTY. As used in this provision the word "Liabilities " means liabilities, lawsuits, claims, judgments, demands, clean-up orders, damages (whether in contract or tort, including personal injury, death at any time, or property damage), costs, expenses, loss, penalties and other detriments of every nature and description whatsoever, including all costs and expenses of litigation or arbitration, attorneys fees (whether staff attorneys or outside attorneys) and court costs.

"Landowner Activities" means any actions or omissions of Landowner or Landowner's Related Parties in connection with or arising out of the performance of obligations under this Agreement and/or out of the operations conducted by Landowner in the performance of this Agreement.

"Landowner's Related Parties" includes Landowner and its respective officers, directors, shareholders, members, partners, agents, employees, subcontractors, consultants, licensees, invitees, guarantors or affiliates and anyone other than the foregoing named parties for whom Landowner is legally liable.

8. INSURANCE

LANDOWNER, at its own cost and expense, shall procure and maintain in full force and effect during LANDOWNER'S felling or removal of timber from the real property, public liability and property damage insurance which will provide sufficient coverage of at least one million dollars

(\$1,000,000.00) for any one loss due to bodily injury or death and for any one loss due to damage or destruction of property. If LANDOWNER has homeowner's or other insurance which will cover any such potential liability, this shall be acceptable only upon approval by COUNTY. LANDOWNER further agrees that the certificates for the insurance policies required by this Paragraph shall be displayed to COUNTY or COUNTY'S representative at any time on request.

9. NECESSARY PERMITS

Prior to commencement of harvesting, LANDOWNER shall, when required by law, obtain any and all permits or other necessary documentation required for carrying out any portion of this Agreement as required by state, federal, and local law. LANDOWNER has sole responsibility for determining what permits or documentation is required for harvesting trees.

LANDOWNER shall be responsible for any regeneration of the property that might be required.

10. POST-HARVEST CLEANUP

LANDOWNER must, within two months of the time the trees are felled, clean up the premises. Such cleanup shall include the removal of all timber debris and harvest operations materials from the property of COUNTY. Timber debris shall include any merchantable timber as well as non-merchantable timber such as stumps, branches, roots, twigs, bark, leaves and any other debris, left as a result of the harvesting operation. Harvest operations materials includes but is not limited to any equipment, tools, refuse or other man-made materials left in the course of timber harvesting operations. Such cleanup shall also include either chipping or burning of any timber debris. If LANDOWNER has a County-approved burn permit and the harvest was completed during the permitted burn period, LANDOWNER shall commence burning operations within three weeks of completion of the project. If the project is not completed during the permitted burn period, LANDOWNER shall either commence chipping or wait until burning is permitted and then commence burning of any timber debris within three weeks of the commencement of the permitted burning season. LANDOWNER shall use ordinary care for the preservation of the premises and shall leave the property in a clean and safe condition. "Safe condition" shall include but is not limited the harvest area and any surrounding area being free of equipment or debris which might impair the vision of or pose a road hazard to vehicle operators or pedestrians. LANDOWNER agrees to pay for all costs of clean up. A designated COUNTY representative shall determine whether or not the clean up is sufficient. If COUNTY determines that the clean up is inadequate, LANDOWNER agrees to fix any discrepancies within three (3) business days, weather permitting, after receiving written notice of the discrepancies.

11. CONTRACTOR

LANDOWNER agrees to hire a fully licensed, insured, and bonded contractor to perform any work under this agreement. The Contractor shall maintain in full force and affect a policy of general commercial liability insurance with a minimum coverage of \$500,000 in the aggregate. The Contractor shall provide COUNTY with proof of current insurance at the request of COUNTY'S designated representative.

12. TIME OF THE ESSENCE

Time is of the essence of this Agreement.

13. COMPLIANCE WITH LAWS

LANDOWNER shall comply with all federal, state, and local laws and regulations in the performance of this Agreement.

14. ATTACHMENT

COUNTY and LANDOWNER fully consent to any and all additional provisions set forth in the "Attachment." The provisions contained in the Attachment are incorporated by reference into this Agreement and are part of this Agreement. Any inconsistency between the provisions in said attachment and any other terms or conditions of this Agreement shall be controlled by the other term or condition insofar as it is inconsistent with the general provisions.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on _____
_____.

COUNTY OF DEL NORTE:

LANDOWNER:

[Click here to enter text.](#)

Chair of the Board

[Click here to enter text.](#)

ATTEST:

APPROVED AS TO FORM:

[Click here to enter text.](#)

Clerk of the Board

[Click here to enter text.](#)

County Counsel

Attachment

GENERAL PROVISIONS:

1. This Agreement is solely for the benefit of the parties who signed it and their successors and assigns. Nothing is intended to relieve or discharge the obligations or liability of any third persons to any party to this Agreement or give any third party any right of subrogation or action over or against any party to this Agreement.
2. This Agreement may be executed in more than one counterpart with original signatures, but all of the originals are the same instrument and the agreement is binding when at least one has been signed by all of the parties.
3. This Agreement is the complete statement of the subject between the parties and takes the place of all prior discussions, negotiations, whether oral or written. When anyone, even the court, looks at this agreement to determine the parties intent, it shall be given a fair and reasonable construction according to the intentions of the parties without considering who drafted it. This Agreement may not be modified orally or in any manner other than by an agreement in writing signed in the same way that this agreement was signed.
4. If any term of this Agreement is declared invalid for any reason, the remainder of the contract terms shall remain in full force and effect and shall not be affected. In the event such terms are found to be (or contended by a party to be) invalid or unenforceable the parties agree to negotiate in good faith and take all necessary steps, including modifying the agreement, to provide the parties with the benefits intended by this agreement, or if this is not lawfully possible, to the maximum extent permitted by law. If the parties can not agree, or fail to take action, either party may apply to the court for reformation of the agreement to achieve the benefits intended by the agreement to the maximum extent permitted by law.
5. In the event any lawsuit or arbitration, (excepting an action for declaratory relief) is commenced, the party deemed to have won shall be entitled to recover from the losing party all reasonable and necessary attorney's fees, costs and expenses including staff time at billing rates effective at the time of litigation or arbitration incurred by the prevailing party.
6. The parties warrant that all action necessary was taken before signing it and that the persons signing it were authorized to sign it by a person who has the authority to sign it.
7. Waiver of a breach or default under this Agreement shall not constitute a continuing waiver of a subsequent breach of the same or any other provision under this Agreement.
8. The parties agree to execute all documents and perform all actions which may be required to effectuate the intent of this agreement.
9. The parties agree that this Agreement does not create a joint venture or partnership between them or any other party.

10. Notices. Notices shall be in writing, and may be given either personally or by registered or certified mail, return receipt requested to a party shall be conclusively presumed to be notified when notice is sent to the persons and addresses stated below. If given by registered or certified mail, the same shall be deemed to have been given and received when deposited in the mail. Such notices or communications shall be given to the parties at their addresses set forth below:

<u>LANDOWNER:</u> Click here to enter text. Click here to enter text. Click here to enter text. Click here to enter text.	<u>COUNTY ENGINEER OR DESIGNEE:</u> CDD Engineering Division Attn: County Engineer 981 H Street, Suite 110 Crescent City, CA 95531 707-464-7229
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