**Forest Enterprise Operating Agreement**

**between**

**The \_\_\_\_\_\_\_\_\_\_\_\_\_ Tribe**

**and**

**The \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Enterprise**

**August XX, 20XX**

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**A FOREST ENTERPRISE OPERATING AGREEMENT BETWEEN**
**THE \_\_\_\_\_\_\_\_\_\_\_\_\_\_ TRIBE AND**

**THE \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ FOREST ENTERPRISE**

# Authority

This agreement is made under the authority of the National Indian Forest Resources Management Act and in accordance with the regulations contained in 25 CFR 163 and pursuant to \_\_\_\_\_\_\_\_\_\_\_\_ Tribal Council Resolution #XXXX-XXXX which created the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Tribal Forest Enterprise (XTFE).

# Parties to the Agreement

Parties to the Agreement are the \_\_\_\_\_\_\_\_\_\_\_\_\_\_ Tribe, a federally recognized Indian tribe that became federally recognized on November XX, XXXX, the \_\_\_\_\_\_\_\_\_\_ Tribal Forest Enterprises (XTFE), and the United States Secretary of Interior, through the Bureau of Indian Affairs, signatory to this Agreement in its capacity as statutory Trustee for all Trust timber resources, who shall be considered a party to this Agreement for the limited purposes set out herein.

# Purpose

This Agreement establishes and sets forth the general conditions and requirements for XTFE. XFTE is a for profit enterprise established to perform forest land management activities on the \_\_\_\_\_\_\_\_\_\_\_ Indian Reservation Trust lands according to their Forest Management Plan. Profits are to be generated from the sale of forest products from Trust lands by contract, permit, purchase agreement.

# Definitions

As used in this Agreement, the following definitions shall apply:

### **Approving Officer –** The Secretary of the Interior, or an authorized representative, is hereinafter called the Approving Officer.

### **Regional Director –** The \_\_\_\_\_\_\_\_\_\_ Regional Director of the Bureau of Indian Affairs, \_\_\_\_\_\_\_\_\_Regional Office (XRO) (or such other official of the Bureau of Indian Affairs as shall officially assume the duties of the Regional Director), or an authorized representative, is hereinafter called the Regional Director.

### **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Tribal Council** – The governing body of \_\_\_\_\_\_\_\_\_\_\_\_\_\_ Tribe as elected by the Tribal membership.

### **Trust Land** – Lands held in trust by the United States for the benefit of the Indian owners.

### **Board of Directors –** the Tribe may opt to create a Board of Directors of the XFTE or a subordinate body which may be appointed by the Tribe to provide guidance for the XFTE.

### **BIA –** The Bureau of Indian Affairs.

### **XFTE** – \_\_\_\_\_\_\_\_\_\_ Tribal Forest Enterprises.

### **Logging Costs –** Those costs associated with harvest operations as allowed in timber contracts such as the falling, bucking, yarding, loading, lop & scatter, slashing, mechanical piling, road construction, road maintenance, and grass seeding.

### **Haul Costs** – Costs associated with hauling of forest products to mill or destination for processing.

### **Other costs –** Costs associated with lop & scatter, slashing, mechanical piling, road construction, road maintenance, grass seeding, etc.

### **Forest Management Plan (FMP) –** The principal document that specifies the overall management of the Tribe’s forest resources on Trust land.

### **Trust Timber –** Meansall timber held in trust by the United States for and on behalf of the Tribe.

# Management

 The Enterprise Manager’s responsibilities and duties are as follows:

1. Oversight of day-to-day operation including harvest operations to ensure contractual obligations are met
2. Hiring of entities to complete contractual obligations
3. Entering into Log Purchase agreements with mills
4. Ensure payments specified in contracts are paid in a timely manner
5. Provide harvest volume information to the XRO BIA

# General Conditions

1. Use of Standard Contracts

Trust timber sold from the Tribe to XFTE in accordance with this Operating Agreement shall be sold pursuant to the terms and conditions contained in BIA standard form contracts approved by the Approving Officer (Secretary of the Interior or the Secretary’s designee) as may be supplemented or amended from time to time.

1. Modifications

This Agreement may be modified only through additional written consent of the parties to this Agreement. Any party to this Agreement may initiate a request for modification.

No modification agreed to by the parties in interest shall become effective until approved by the Approving Officer.

1. Effective and Termination Date

This Agreement shall become effective on the date when approved by the Approving Officer (Secretary of the Interior or the Secretary’s designee) and shall remain in force so long as the parties to this Agreement have not terminated it in writing.

This Agreement may be terminated by any of the parties with 30 days’ written notice to the other parties.

# Negotiated Sales

If rates will be negotiated for timber sale contracts or permits, the method to determine fair market value will be documented in adequate detail to ensure the Tribe is duly apprised of how the value was determined. Follow guidance found in 25 CFR 163.16(b).

# Payment for Timber

Payments shall be made as specified in the contract or permit and within 30 days of invoicing.

# Allocation of Timber

Timber sales will be conducted at the request of \_\_\_\_\_\_\_\_ Tribal Council and planned by the \_\_\_\_\_\_\_\_\_\_ Forestry program in a Forest Officers Report (FOR), with review by BIA XRO Forester. All sales will be offered to XFTE for a period of 30 days. If the sale is not accepted within the 30-day period or is declined within the 30-day period, the sale will be offered on the open market.

# Quality Control

The Natural Resources Director or their designee, will be responsible for ensuring the successful performance of each sale and that all on the ground contractual obligations are completed.

# Stumpage Value

The appraised value of forest products designated for harvest within a specified area.  Stumpage value is the monetary value available to an owner of trees or other forest products for the right to harvest and remove the trees or forest products from Indian Land. Stumpage value is often based on the value of the forest product upon delivery to a processing facility (delivered log price) minus the costs of delivering the forest products to a processing facility, harvesting costs, forestry project costs, but before the Forest Management Deduction allocation is subtracted.

# Stumpage Rates

The value per unit of measure for a forest product.

1. Appraisal

The determination of the stumpage rates and the product recovery values shall comply with the standard procedures set forth in 53 IAM, Volume 3, Contract Sale of Forest Products.

Determination of Logging Costs

Logging costs for each Logging Unit will be determined based on current harvesting and hauling rates.

1. New Road Construction

The cost of new road construction will be deducted during the appraisal and included in the timber sale contract or permit as another sale obligation. The cost of this work will be based on historic prices, updated as needed to account for increased fuel, labor and other costs.

1. Profit and Risk

A profit and risk allowance for XFTE may be included in the appraisal for all Tribal Timber as directed by \_\_\_\_\_\_\_\_\_\_\_\_ Tribal Council, to account for any market fluctuations.

1. Other

Other costs that might occur on a specific sale will be deducted during the appraisal and included in the timber sale contract or permit as another sale obligation unless another source of funding is secured to cover the work. The cost of this work will be based on historic prices, updated as needed to account for increased fuel, labor and other costs or based on mutual discussion and agreement between XFTE, BIA and the Tribe.

# General Dispute Resolution

Any disputes that are unable to be resolved between XFTE and the \_\_\_\_\_\_\_\_\_\_\_ Tribe will be taken to the \_\_\_\_\_\_\_\_\_ Tribal Council and/or the BIA \_\_\_\_\_\_\_\_ Regional Director to resolve.

# Failure to Make Payments

If XFTE fails to make payments according to the contract or permit stipulations, the tribe may require work to cease immediately. If XFTE does not complete the work as stated in the contract or permit, no further contract or permits will be issued to XFTE until they can demonstrate that they have the financial means and personnel to execute contracts and permits and the Tribal Council has approved them to enter contracts or permits.

# Performance Bond Requirements

Performance bonds will not be required (25 CFR, Parts 163.13 and 163.21 for Tribal Trust timber) unless specified by the Tribe or BIA.

# Approval

This Operating Agreement was approved on\_\_\_\_\_\_\_20XX at a regular monthly meeting of the \_\_\_\_\_\_\_\_\_\_\_ Tribal Council at which \_\_\_\_ council members were in attendance. The motion to approve was made by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and seconded by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. The vote was \_\_\_\_ in favor, \_\_\_\_ opposed, and \_\_\_\_ abstained.

# Required Signatures

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Tribe**

By: Date:

*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Tribal Council Chairperson*

By: Date:

*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Tribal Council Secretary*

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Tribal Forest Enterprise

By: Date:

*Enterprise Manager XFTE*

**Bureau of Indian Affairs**

By: Date:

*\_\_\_\_\_\_\_\_\_\_ Regional Director Approval Pursuant to 209 DM 8, 230 DM 1, 3, IAM 4, 4A*