

USDA Forest Service		FS-5400-0036 v(06/17)	
<b>OPTION CONTRACT FOR THE PURCHASE OF AN INTEREST IN REAL PROPERTY (REFERENCE FSH 5409.13)</b>		<b>VENDOR:</b>	
<b>AUTHORITY:</b> 7 U.S.C. § 428a		<b>UNIT:</b>	<b>TRACT #:</b>

**THIS OPTION CONTRACT** (“Option”) is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between:

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(“Vendor”), and the **UNITED STATES OF AMERICA** and its assigns (“United States”), by and through the Secretary of Agriculture (“Secretary”) (collectively, “Parties”). The acquiring Federal agency is the Forest Service. Reference herein to the Secretary includes all Forest Service employees acting under delegated authority.

**FOR AND IN CONSIDERATION OF** one dollar (\$1.00) paid by the United States to the Vendor, the receipt of which is acknowledged, and for other good and valuable consideration, the Vendor hereby offers and agrees to sell to the United States the lands and interests in lands herein described (“Property”) subject to the terms and conditions set forth below.

### **I. The Property**

A. The Property that is the subject of this Option is more fully described in Appendix A. The Property shall include all associated improvements, appurtenances, rights-of-way, waters, and water rights, minerals, oil, gas, and geothermal resources, except as specifically excluded in Appendix A.

B. The precise acreage and legal description of the Property may be ascertained by a survey or other method deemed adequate by the Secretary. The Secretary may approve an existing survey of the Property if the existing survey is done in conformity with accepted survey standards and state and local requirements, or the Secretary or the Secretary’s authorized agents may enter upon the Property to conduct a survey. A survey made by and at the expense of the United States shall be the property of the United States. In states utilizing the public land survey system, all surveys shall be in accord with the horizontal measurements made by the United States in the survey of public lands, or by reference to the records of the Bureau of Land Management, or both.

### **II. Option and Purchase Price**

A. By law, the consideration for this Option is limited to one dollar (7 U.S.C. § 428a(b)).

1 B. If the United States elects to acquire the Property pursuant to and during the term of  
2 this Option, the Vendor agrees to sell the Property to the United States for the purchase price of  
3 \$ \_\_\_\_\_.  
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5 C. The purchase price has been determined by [SELECT ONE]:  
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7 [ ] an appraisal prepared in conformity with the Uniform Appraisal Standards for  
8 Federal Land Acquisitions, and reviewed and approved by the Forest Service. Reappraisal shall  
9 not be required during the Option Period (defined in Section III, below) solely due to the passage  
10 of time required for the Secretary to conduct the necessary reviews and obtain approvals as set  
11 forth in this Option.  
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13 **OR**  
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15 [ ] an estimate of value without an appraisal, because the valuation problem is  
16 uncomplicated and meets Forest Service guidelines for an appraisal waiver.  
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### 19 **III. Option Period and Exercise of this Option by the United States** 20

21 A. The Secretary, acting by and through an authorized representative of the Forest  
22 Service, shall have until \_\_\_\_\_ to exercise this Option (“Option Period”). The  
23 exercise of this Option by the Secretary shall be evidenced by the signature of such authorized  
24 representative, dated on or before the end of the Option Period, in the Exercise of Option section  
25 below.  
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27 B. Upon exercise of the Option, the Secretary shall deliver the executed Option to  
28 Vendor by first class mail or other delivery mechanism at the discretion of the Secretary.  
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30 C. The operative date for exercise of this Option by the Secretary shall be the date on  
31 which the Exercise of Option section below is signed by the Secretary, not the date of receipt of  
32 the executed Option by the Vendor. Delivery of the executed Option after the Option Period shall  
33 not invalidate the contract.  
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35 D. Within 10 business days of receiving the executed Option, Vendor shall provide the  
36 Secretary with written acknowledgment of receipt.  
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38 E. The terms and conditions of this Option shall remain in effect during the Option  
39 Period except by mutual written agreement by the Parties to amend or terminate the Option. If  
40 the United States does not elect to acquire the Property on or before the end of the Option Period,  
41 then this Option shall terminate, and any rights or interests of the Parties under this Option shall  
42 be of no force and effect, unless both Parties agree in writing to an extension.  
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44 F. In the event that Vendor offers to donate or exchange all or a portion of the Property  
45 to the United States and the Secretary accepts, Appendix A of this Option shall be amended in  
46 writing to delete the donated or exchanged portion(s), and the purchase price in Section II.B,  
47 above, shall be amended in writing, if approved by the Forest Service Review Appraiser, to  
48 exclude the value of the donated or exchanged portion(s).

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**IV. Congressional Oversight**

Certain acquisitions under the Weeks Act of 1911, as amended, are subject to congressional oversight. In the event that any Senator or Member of Congress responds during the oversight period requesting more information or otherwise invokes congressional oversight procedures concerning this proposed acquisition, the Option Period shall be extended for such reasonable period as to accommodate congressional requests or procedures.

**V. Rights of Entry of the United States**

A. During the Option Period, and after the Option is exercised by the Secretary, officers and authorized agents of the United States shall have the right to reasonable access to the Property for any purpose deemed necessary or desirable by the Secretary to determine suitability for purchase or to facilitate acquisition, including but not limited to: inspection of the land and facilities; appraisal; survey; timber cruise; wildlife inventory; and investigation for environmental contamination, including the right to take samples for off-site examination and testing.

B. The Secretary shall provide the Vendor with reasonable advance notice of entry onto the Property pursuant to Subsection V.A. It is the responsibility of the Vendor to notify any occupants or tenants on the Property of such entry.

**VI. Management Responsibilities of the Vendor**

A. The Vendor agrees not to do or allow others to do any act by which the value or title to the Property may be diminished or encumbered, including but not limited to extraction of oil, gas, minerals, or mineral materials, harvesting or cutting of timber, or any other removal of renewable or nonrenewable resources, or the removal or demolition of improvements, or building of roads, except as expressly provided in this Option.

B. In the event of any violation of Subsection VI.A, the Secretary may void this Option or may require an equitable adjustment of the purchase price including damages for any added administrative costs, or require other forms of restitution. The equitable adjustment may be based on a reappraisal of the property, a cruise of timber, or other method of ascertaining the remaining value of the property or the value of the resources removed or diminished.

**VII. Liabilities and Risk of Loss**

A. The risk of loss or damage to the Property occurring prior to the vesting of satisfactory title in the United States including loss or damage by fire or acts of God, shall be borne by the Vendor. In the event of such a loss, the Secretary may, at the Secretary's discretion and without liability, withdraw from the transaction and terminate this Option, including after it has been exercised, prior to the vesting of satisfactory title in the United States.

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B. In the event of loss or damage to the Property prior to the vesting of satisfactory title in the United States, the Parties may mutually agree in writing to adjust the purchase price and proceed with the transaction based upon appraisal or other mutually acceptable valuation methodologies.

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C. The United States' liability for tort claims that may arise by reason of this instrument or any activity conducted pursuant to this instrument shall be governed by the Federal Tort Claims Act, as amended (28 U.S.C. §§ 2671-2680).

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D. The United States shall not be liable to the Vendor for any loss, damages, lost rent, temporary takings, or other cause of action in the event that this Option is not exercised during the Option Period, nor on any portion(s) of the Property which is/are not acquired by the United States for any reason.

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## VIII. Title

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A. If the Secretary elects to exercise this Option during the Option Period, the Vendor shall deliver, without cost to the United States, all available documents as may be necessary or desirable for title review of the Property by the Secretary, including any abstract or certificate of title relating to the Property. Such documents shall be returned upon request of the Vendor if the purchase is not consummated.

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B. Unless the Parties mutually agree otherwise in writing, the Secretary shall, at the cost of the United States, secure an abstract, certificate of title, or other evidence of title satisfactory to the United States Department of Agriculture Office of the General Counsel ("OGC"), as authorized by the Attorney General of the United States. Only those exceptions to title shown in Appendix B or otherwise deemed administratively acceptable by the Secretary pursuant to instructions given by OGC shall be acceptable to the United States.

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C. Prior to closing, title to the Property shall be submitted to OGC for approval, in conformity with the title standards and regulations of the Attorney General of the United States.

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D. Prior to closing, any encumbrance, exception or other cloud on the title shall be eliminated and quieted, unless listed in Appendix B or otherwise deemed administratively acceptable by the Secretary pursuant to instructions given by OGC.

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## IX. Conveyance Instruments

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A. The Vendor shall execute and deliver at closing a warranty deed conveying the Property to the "United States of America and its assigns," subject to the exceptions listed on Appendix B or otherwise deemed administratively acceptable by the Secretary pursuant to instructions given by OGC. Conveyance of the Property with less than general warranty, such as special warranty or quitclaim, is unacceptable unless authorized in writing by the Secretary upon OGC approval and in conformity with the title standards and regulations of the Attorney General of the United States.

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146 B. The Vendor shall deliver at closing, without cost to the United States, such other  
147 documents as are required to convey good and merchantable title, including powers of attorney,  
148 corporate resolutions, trust documents, and similar instruments.

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150 C. Unless otherwise agreed to herein, the deed or deeds of conveyance shall be prepared  
151 by the Secretary at the expense of the United States.

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**X. Reserved Rights**

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156 A. No rights in the Property shall be reserved in any conveyance to the United States  
157 pursuant to this Option except as expressly agreed upon herein.

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159 B. Any reservations of rights in the Property must be acceptable to the Secretary, and  
160 shall be subject to rules and regulations required for the protection of National Forest System  
161 lands and resources, including but not limited to, conditions, rules and regulations governing:

- 162  
163 1. The exercise of reserved timber rights (36 C.F.R. § 251.14);  
164 2. The exercise of reserved mineral rights (36 C.F.R. § 251.15);  
165 3. Reserved occupancies (36 C.F.R. § 251.17);  
166 4. Reserved rights-of-way (36 C.F.R. § 251.18);  
167 5. Reserved water rights (36 C.F.R. § 251.19).

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**XI. Closing**

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172 A. After exercise of the Option, the Secretary shall have a reasonable time to close the  
173 acquisition. A reasonable time shall include that period necessary to complete required pre-  
174 closing activities and inspections, including title review and all appropriate inquiries pursuant to  
175 sections 101(35)(B)(ii) and (iii) of the Comprehensive Environmental Response, Compensation,  
176 and Liability Act (42 U.S.C. §§ 9601(35)(B)(ii) & (iii)).

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178 B. The Vendor shall pay any taxes which constitute a lien against the Property and shall  
179 eliminate or quiet any encumbrance, exception or other cloud on the title that has not been listed  
180 in Appendix B or otherwise deemed administratively acceptable by the Secretary pursuant to  
181 instructions from OGC.

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183 C. If the Vendor fails to take the actions set forth in Subsection XI.B, above, the  
184 Secretary may pay any taxes that constitute a lien against the Property and may satisfy any such  
185 encumbrance, exception or other cloud on the title. Any amounts thus expended shall be  
186 deducted from the purchase price of the Property.

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188 D. The services of an escrow agent acceptable to both Parties may be utilized in the  
189 closing of the acquisition. In such event, the Parties shall mutually agree upon closing  
190 instructions to the escrow agent. The fee of the escrow agent shall be paid as follows: \_\_\_\_\_.

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192 E. The Parties may, by mutual written agreement, provide for particular payment  
193 mechanisms, including but not limited to electronic funds transfer, in the closing instructions.  
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196 **XII. Costs**

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198 A. Each party shall pay their own attorney's fees and charges.  
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200 B. The Vendor shall pay:

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202 1. Any grantor's taxes and tax stamps, as well as any real property taxes or  
203 assessments owed on the Property up to and including the date of closing;  
204 and  
205  
206 2. The costs of the measures required under the Environmental Quality  
207 Provisions in Section XIV, below.  
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209 C. The Secretary shall pay the costs of recording deeds and other instruments necessary  
210 for good title.  
211

212 D. If requested by the Vendor, the Secretary shall reimburse the Vendor for the  
213 following expenses the Vendor necessarily incurred for:  
214

- 215 1. Recording fees, transfer taxes, documentary stamps, boundary surveys,  
216 legal descriptions of the real property, and similar expenses incident to  
217 conveying the real property to the United States (see 49 C.F.R. §  
218 24.106(a)(1)),  
219  
220 2. Penalty costs and other charges for prepayment of any preexisting  
221 recorded mortgage entered into in good faith encumbering the real  
222 property (see 49 C.F.R. § 24.106(a)(2)), and/or  
223  
224 3. The pro rata portion of any prepaid real property taxes which are allocable  
225 to the period after the United States obtains title to the property or  
226 effective possession of it, whichever is earlier (see 49 C.F.R. §  
227 24.106(a)(3)).  
228

229 E. The Secretary shall not pay costs required for the Vendor to perfect the title to the  
230 Property except as set forth in Subsection XI.C, above.  
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232 F. No other costs shall be borne by the Secretary except as expressly stated in this  
233 Option.  
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236 **XIII. Remedies of the United States**

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238 A. If the Vendor cannot convey satisfactory title to the Property, or the Vendor otherwise  
239 fails to perform, the Secretary may seek specific performance of this Option or acquire the

240 Property by condemnation. In the event that the Secretary seeks legal remedies to compel  
241 conveyance, the payment of consideration shall be as agreed to herein. This Option instrument  
242 may be introduced in such proceedings as the stipulation of the Parties hereto with regard to all  
243 matters contained herein. In the event the Secretary resorts to judicial proceedings to enforce its  
244 rights under this Option, the Secretary shall be entitled to collect damages resulting from  
245 Vendor's breach including attorneys' fees. Attorneys' fees shall be calculated at commercial  
246 rates prevailing in the area.

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248 B. The Secretary may at any time record this Option in the land records of the county or  
249 jurisdiction where the Property is located.

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251 C. The United States shall not be liable for any damages or for specific performance in  
252 the event that it does not acquire all or part of the Property for any reason.

#### 253 254 255 **XIV. Environmental Quality Provisions**

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257 A. The Vendor agrees to inspect the Property for the presence of hazardous substances,  
258 pollutants and contaminants, and oil. The Vendor shall provide documentation of the results of  
259 such inspection, and certify that to the best of Vendor's knowledge there are no releases,  
260 threatened releases, disposal or storage of hazardous substances, pollutants, contaminants, or oil  
261 on the Property. For purposes of this Option, "hazardous substance", "pollutant or contaminant"  
262 and "release" are as defined at 42 U.S.C. §§ 9601(14), (33) and (22), respectively. For purposes  
263 of this Option, "oil" is as defined at 33 U.S.C. § 2701(23).

264  
265 B. The Vendor shall comply with the "all appropriate inquiries" ("AAI") regulations of  
266 the Environmental Protection Agency at 40 C.F.R. Part 312, throughout the Option period. The  
267 Secretary may conduct and/or update appropriate environmental due diligence by performing  
268 additional AAI, throughout the Option period. The Secretary may complete such AAI in  
269 accordance with prescribed industry standards including the procedures of ASTM International  
270 Standard E1527-13 entitled "Standard Practice for Environmental Site Assessments: Phase I  
271 Environmental Site Assessment Process," and ASTM International Standard E2247-08 entitled  
272 "Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment  
273 Process for Forestland or Rural Property." If any Recognized Environmental Conditions  
274 ("RECs") are identified by the Phase I, the Secretary may conduct a Phase II Environmental Site  
275 Assessment consistent with ASTM International Standard E1903-11. The estimated cost of  
276 remediation of any contamination will be established by the Secretary. In the event the  
277 regulations or industry standards referred to herein are updated, this paragraph shall be deemed  
278 to refer to the latest version.

279  
280 C. If, prior to vesting of title in the United States, previously unknown contamination is  
281 discovered on the Property, including but not limited to contamination resulting from solid  
282 wastes, hazardous wastes or substances, pollutants or contaminants, oil, or other regulated  
283 substances, or that the Property is in a condition which would constitute a violation of any  
284 applicable federal, state or local law or regulation relating to the protection of health, safety, or  
285 the environment, the Secretary may, at the Secretary's sole election and without incurring any  
286 liabilities or obligations therefrom:

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- 288 1.) Unilaterally revoke any Exercise of Option by the Secretary with respect  
289 to the Property,  
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291 2.) Permit the Vendor to remediate the contamination at the Vendor's  
292 expense, if the Vendor elects to do so,  
293  
294 3.) Escrow an amount of the purchase price that is estimated to be necessary  
295 for environmental remediation of the contamination, to be used by the  
296 Secretary for such purpose, and/or  
297  
298 4.) If the parties mutually agree in writing, adjust the acreage and description  
299 of the Property to exclude from the conveyance those portions of the  
300 Property which are affected by any discovered contamination condition.  
301 The consideration to be given by the United States as set forth under this  
302 Option shall be adjusted to exclude the contributory value(s) of the  
303 excluded portion(s) of the Property.  
304

305 D. The Parties may mutually agree in writing to extend the Option Period to allow the  
306 Vendor to complete remediation of contamination and for the Secretary to determine the  
307 acceptability of remediation measures.  
308

309 E. If the Secretary elects to exercise this Option, the Vendor shall clean up and remove  
310 all solid waste in or on the Property at Vendor's expense. For purposes of this provision, "solid  
311 waste" is as defined at 42 U.S.C. § 6903(27), and may also include inorganic debris, tires,  
312 vehicle bodies, fences, trash dumps, hunter shelters, etc. Solid waste cleanup and removal shall  
313 be completed according to a timeline deemed reasonable by the Secretary. The Secretary shall  
314 determine whether the cleanup and removal are acceptable as a condition precedent to closing.  
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## 316 **XV. Indemnification**

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319 The Vendor agrees to indemnify the United States for all costs and damages necessary to  
320 remedy any contamination on the Property and bring the Property into compliance with all  
321 applicable health, safety and environmental laws.  
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323 [NOTE 1: If Vendor has acquired title to the Property at the written request of the United States,  
324 Vendor may agree to indemnify the United States only for contamination or violation which  
325 occurred during the time Vendor had title to the Property, and which is not attributable to actions  
326 of the United States.]  
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328 [NOTE 2: If the AAI indicates no releases, threatened releases, disposal or storage of hazardous  
329 substances, pollutants, contaminants or oil on the Property, indemnification of the United States  
330 may be waived by approval of the Regional Forester after consultation with OGC.]  
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## 332 **XVI. Relocation Benefits**

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335 Vendor acknowledges that the Vendor is not a displaced person and does not claim any  
336 relocation benefits as a result of this acquisition by the United States (see 49 C.F.R. Part 24).  
337 Unless otherwise indicated in Section XVIII, Special Provisions, the Vendor acknowledges that  
338 acquisition of the Property by the United States does not displace any person as defined at 49  
339 C.F.R. Part 24.

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342 **XVII. General Provisions**

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344 A. No Member of Congress, Delegate to Congress, or Resident Commissioner, after  
345 their election or appointment, either before or after they have qualified, and during their  
346 continuance in office, shall be admitted to any share or part of this agreement, or to any benefit  
347 to arise thereupon (41 U.S.C. § 6306). Nothing in this provision shall be construed to extend to  
348 any incorporated company, where this agreement is made for the general benefit of such  
349 corporation or company.

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351 B. All representations, warranties, obligations and rights set forth herein shall survive the  
352 closing and shall not merge with the deed.

353  
354 C. All terms and conditions with respect to this Option are expressly contained herein  
355 and the Vendor agrees that no representative or agent of the United States has made any  
356 representation or promise with respect to this Option not expressly contained herein.

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358 D. The Secretary may assign any and all rights of the United States under this Option to  
359 any other party.

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361 E. This Option is conditioned on funds being appropriated or made available to the  
362 Secretary for the purchase of the Property. Federal funds are subject to congressional  
363 appropriations and other funding conditions and approvals.

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366 **XVIII. Special Provisions**

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368 **XIX. Notices**

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370 A. Written notices shall be communicated to the Vendor at the following address:  
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373 B. Written notices shall be communicated to the United States at the following  
374 address:  
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382 **IN WITNESS WHEREOF**, the Vendor has executed this Option Contract on this \_\_\_\_ day of  
383 \_\_\_\_\_, 20\_\_\_\_.

384  
385 **VENDOR**

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388 By \_\_\_\_\_

389  
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391 Title \_\_\_\_\_

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397 **EXERCISE OF OPTION:**

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399 The offer of the Vendor as contained in this Option is hereby accepted for and on behalf of the  
400 United States of America.

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403 **UNITED STATES OF AMERICA**  
404 **SECRETARY OF AGRICULTURE**

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408 By \_\_\_\_\_

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**APPENDIX A  
PROPERTY DESCRIPTION**

The Property that is the subject of this Option is more fully described as follows:

**APPENDIX B  
EXCEPTIONS TO TITLE**

The following exceptions to title to the Property have been deemed administratively acceptable by USDA's OGC: