

**RESOLUTION OF THE
WHITE MOUNTAIN APACHE TRIBE OF THE
FORT APACHE INDIAN RESERVATION**

WHEREAS, the Board of Directors for the Fort Apache Timber Company has exercised its rights pursuant to Paragraph 13 of the contract for sales of timber products for the Fort Apache Timber Company between itself and Birdsong Wholesale Lumber Company, which provides that the Board of Directors of FATCO may terminate the contract at any time by giving the contractor, Birdsong, ninety (90) days notice in writing, with the approval of the Tribal Council and Superintendent; and

WHEREAS, the Tribal Council is advised by FATCO General Manager, Ken Lott, that the Board of Directors has terminated the contract due to Mr. Birdsong's refusal to move the sales office from Pinetop-Lakeside, Arizona to Whiteriver, Arizona on the Fort Apache Indian Reservation, and has been reluctant to train a tribal member in sales operation; and

WHEREAS, the Tribal Council concludes that said refusal may constitute a violation of Paragraph 12 of the sales agreement which justifies termination and cancellation of the sales agreement if the contractor is guilty of disobedience of the company's rules, instructions or orders, or unfaithfulness to the company's interests; and

WHEREAS, the Tribal Council regards the refusal of Mr. Birdsong to move the sales office to the reservation and to train a tribal member in the sales operation as not in the best interest of FATCO or the Tribe in respect to goals of self-determination, self-governance and self-sufficiency; and

WHEREAS, the Board of Directors has already terminated the contract with the required 90 day notice but that the Tribal Council believes there are additional grounds to accelerate termination prior to expiration of the 90 day period as described herein.

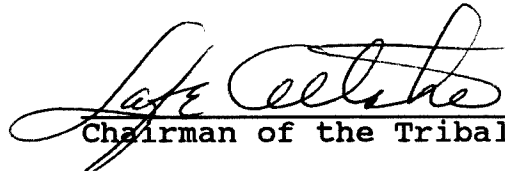
BE IT RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby approves the FATCO Board of Director's termination of the sales agreement between FATCO and the Birdsong Wholesale Lumber Company pursuant to Paragraph 13(a) of the agreement.

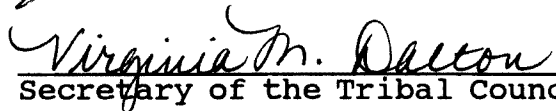
Resolution No. 05-92-128

BE IT FURTHER RESOLVED by the Tribal Council that in addition to the provisions of Paragraph 13(a) and without waiving a termination pursuant to that paragraph, it further finds grounds and hereby terminates the agreement pursuant to Paragraph 12 of the agreement, and requests that the Board of Directors of FATCO take whatever steps are necessary to accelerate the termination pursuant to that paragraph and to transfer the sales operation to Whiteriver, Arizona on the Fort Apache Indian Reservation.

The foregoing resolution was on May 07, 1992, duly adopted by a vote of eight for and zero against by the Tribal Council of the White Mountain Apache Tribe, pursuant to authority vested in it by Article V, Section 1 (i) of the Amended Constitution and By-Laws of the Tribe, ratified by the Tribe June 27, 1958 and approved by the Secretary of the Interior on May 29, 1958 pursuant to Section 16 of the Act of June 18, 1934 (48 Stat. 984).

ACTING


Chairman of the Tribal Council


Secretary of the Tribal Council

RECEIVED

MAY 12 1992

FORT APACHE INDIAN AGENCY
WHITERIVER, ARIZONA

CONTRACT FOR SALES OF TIMBER PRODUCTS
FOR THE FORT APACHE TIMBER COMPANY
an Enterprise of the
White Mountain Apache Tribe

THIS AGREEMENT made as of the 1st day of October, 1990,
by and between the White Mountain Apache Tribe dba Fort Apache Timber Company,
hereinafter referred to as "Company", and Birdsong Wholesale Lumber, Sales
Representative, hereinafter referred to as "Contractor":

W I T N E S S E T H:

WHEREAS, the Company is engaged in the manufacture and production of
timber products at its mill located in Navajo County, State of Arizona; and

WHEREAS, the Contractor is qualified to carry on the wholesale and
retail sales thereof within and without the boundaries of the State of
Arizona and further, has customers who have long dealt with it in the lumber
business;

NOW, THEREFORE, in consideration of the premises, and of the conditions
and stipulations hereinafter contained, and parties hereto agree as follows:

1. The Contractor is hereby granted the exclusive agency to solicit
orders for and sell any and all of the timber products, which shall include
lumber, mine props and other wood products but shall not include chip
production and logs sold with no manufacturing cost, manufactured by the
Company on the Fort Apache Indian Reservation. However, Company reserves
the right to sell timber products manufactured by Company from said mill to
members of the White Mountain Apache Tribe, Tribal Enterprises, and to the
Fort Apache Indian Agency of the Bureau of Indian Affairs, and no hereinafter
mentioned commissions shall be paid to Contractor for such sales of said
timber products.

2. The Contractor is hereby given the right, option and privilege to
appoint any associate, representative or assistant to aid and assist

said Contractor or to represent it in the performance of its services hereunder. However, the Company shall not be obligated to pay any additional compensation for the services of such associate, representative, or assistant in addition to that provided to be paid to said Contractor as provided herein; and further, Contractor shall be responsible to Company for the acts of any associates, representatives, or assistants so employed by it and shall indemnify Company for any loss or liability arising from the acts of any associates, representatives, or assistants.

3. The term of this sales contract shall be from October 1, 1990 through April 30, 1994 unless it is terminated or cancelled by either party as provided herein.

4. Company agrees to pay to the Contractor as compensation for its services, each month of operation, a sum of \$29,166.60 (Twenty Nine Thousand One Hundred Sixty Six Dollars and Sixty Cents), to be paid monthly on the first of each month, which will total a flat annual fee of \$350,000.00 (Three Hundred Fifty Thousand Dollars); and provided further that the Contractor shall pay all of its own expenses, including all salaries and commissions to its employees, applicable occupational taxes in the form of licenses to engage in or conduct a business and all applicable taxes, including (but not by way of limitation) taxes that may be assessed on the personal property and equipment of Contractor used in the conduct of its business, sales taxes, collectible or not collectible from the customer, and personal property taxes; if any assessed on lumber stock, further, that all expenses incurred by the Contractor, including but not limited to staff, office, telephone, customer public relations, entertainment, subscription to journals and weekly price reporting service, travel and lodging to conventions, computer services, fax service, shall be the sole responsibility of the Contractor.

5. The Company agrees that during the life of this Agreement, it will not sell or cause any of its timber products to be sold, with the exception of those sold to members of the White Mountain Apache Tribe, White Mountain Apache Tribal Enterprise, the Fort Apache Indian Agency of the Bureau of Indian Affairs, chip production and logs but no manufacturing cost, except through the Contractor, and to refer all inquiries except those from Tribal Members, Tribal Enterprises, the Fort Apache Indian Agency of the Bureau of Indian Affairs and those pertaining to chip production and logs with no manufacturing cost, concerning its timber products that may be received by it through any source, or by any means whatsoever, to the Contractor for its attention. Inquiries are included to mean all local export commission houses that are generally known or described as such and indicate that the product is for use in foreign countries. The Contractor agrees that during the term of this contract, it will not sell or manufacture for itself or others the same types and kinds of products manufactured by the Company.

6. Contractor agrees to indemnify, protect and hold harmless the Company from all claims, demands, suits or actions for damages to persons or property or for personal injuries which may be suffered by any third party or parties arising out of or incidental to the conduct of the business of the Contractor growing out of this contract. Contractor agrees not to use or permit employees or consultants to employ or use an automobile in connection with any business contemplated herein unless and until it has and/or they have obtained public liability and property damage insurance thereon in form and amount required and approved by the Board of Directors of the Company.

7. Contractor shall maintain records of prospects and users of lumber products in accordance with Company regulations and policies as determined by the Board of Directors and the Superintendent of the Fort Apache Indian

Agency, and shall communicate to the Board of Directors and Superintendent, complete information thereof without any reservation whatsoever.

8. (a) Contractor shall send to Company Board of Directors and Agency Superintendent annually, or at such other intervals as they may prescribe, on a form or forms prescribed by the Board of Directors and Superintendent, a statement of the income and expenses of its operations. Contractor further agrees to furnish at any time upon request of the Board of Directors or the Superintendent a sworn statement of its financial condition and to permit the duly authorized representative of the Company and/or Agency Superintendent to audit and examine its books and accounts, and shall make full disclosure, without reservation of any kind, necessary to enable the Company to determine fully its financial condition and whether it is faithfully performing its obligations under this contract. Such right of audit shall continue throughout the period of this contract and for six (6) months after its termination.

(b) The Company's right to and authority to require audits shall include the right to an audit inventory and to trace all timber products shipped to Contractor and entrusted to its care and in the event stocks are not fully accounted for, Contractor agrees to pay in cash to Company the full retail value of any items missing or not accounted for, less the applicable discount, such payments to be made upon demand on conclusion of the audit. Contractor shall also have the right to audit the inventory books and records of Company at Contractor's expense. In the event Company has not properly recorded all sales, resulting in an under payment to Contractor, then Company agrees to pay in cash to Contractor any such discrepancy, such payment to be made upon demand on conclusion of the audit which verified such under payment. The right of audit hereby given shall be without prejudice to any legal remedy available to Company and this exercise shall not be deemed a condition precedent to resort to any legal remedy.

9. Contractor agrees to abide by all of Company rules and regulations pertaining to credit sales of timber products, and where Company policies permit delivery on credit, Contractor agrees to assist the Company in the collection of accounts without additional compensation.

10. Contractor further agrees to perform its duties carefully, efficiently and satisfactorily to the Company; that it will make true and accurate entries and reports and that it will be industrious, loyal and faithful to the Company at all times.

11. The Contractor shall be bonded to the White Mountain Apache Tribe in the amount of \$100,000.00 with a surety company or companies on the United States Treasury's approved list, which bond shall protect the Company against financial loss by reason of any act or acts of fraud, dishonesty, forgery, embezzlement, wrongful abstraction, or willful misapplication on the part of the Contractor.

12. If at any time the said Contractor is guilty of neglect of duty, negligence, incompetence or inefficiency, dishonesty, disobedience of the Company's rules, instruction or orders, unfaithfulness to the Company's interests, immorality, disreputable and unbecoming conduct, or it consistently fails to secure the individual item prices as computed by the monthly price summary of the Western Wood Products Association on all items, and in that event or events, the Company may elect to terminate this Agreement by giving to the Contractor written notice of its election to so do; whereupon, this Agreement, together with any and all modifications thereof, shall be terminated and cancelled as to all particulars and for all purposes, and the Contractor shall be relieved and released from further performance under this Agreement.

13. It is mutually agreed by the parties hereto that this contract may be terminated in any of the ways set forth herein.

(a) The Board of Directors of the Company may terminate this contract at any time by giving the Contractor ninety (90) days notice in writing, with the approval of the Tribal Council and Superintendent. The Contractor may be required to turn over all property and funds of the Company to an authorized representative of the Tribal Council, upon receipt of a notice of termination. In the event the contract is terminated in this manner, the Contractor shall be entitled to receive its compensation on sales in accordance with the provisions of Section 4, on all timber products sold by it during the remaining ninety (90) day period from the date of its notice of termination.

(b) Company may terminate this contract at any time without prior notice to the Contractor for cause as provided in Section 12 and with approvals as provided in Section 13 (a) above.

(c) The Contractor may terminate this contract at any time by giving the Company Board of Directors and the Superintendent ninety (90) days notice in writing. Should the Contractor terminate this contract without giving the Company the required ninety (90) days notice, it hereby agrees that it or any of its employees or associates will not sell to any customer of the Company, any timber products manufactured by the Company, or any other company, for a period from October 1, 1990 to April 30, 1994, and it further agrees not to represent any company or sell or cause to be sold any products manufactured by the Company, or any other Company in the State of Arizona, New Mexico, and Texas for a period of one (1) year from the effective date of such termination.

14. The Contract and the right and obligations hereunder shall be non-assignable except with the written consent of the Company (Board of Directors).

15. Any dispute arising under this sales contract between Company and Contractor shall be governed by the laws of the White Mountain Apache

WITNESSES:

Name

Address

Name

Address

memorandum

MAR 23 1991

DATE: **ACTING**
REPLY TO: Phoenix Area Director
ATTN OF: Branch of Forestry, Code 440

SUBJECT: 1990-1994 Fort Apache Timber Company Lumber Sales Contract

TO: Superintendent, Fort Apache Agency *Low 3/28/91*

We have reviewed the subject Contract for Sales of Timber Products for the Fort Apache Timber Company (FATCO), Tribal Resolution No. 09-90-201 approving this contract with Birdsong Wholesale Lumber, and your recommendation that this contract is fair and equitable to the White Mountain Apache Tribe. In addition, we sent these documents to the Field Solicitor's Office for their review and recommendations.

The Field Solicitor concluded that this contract does not fall under 25 U.S.C.A. 81, and therefore does not require Bureau of Indian Affairs approval at any level. The Solicitor noted that this is a contract for sale of timber products to a third party (Birdsong), and would be approved as directed by the FATCO Plan of Operations.

We note that the contract does comply with Section C.3., Sales Representative, provisions of the Plan of Operations.

Larry Welch

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MAR 28 1991

FORT APACHE INDIAN AGENCY
WHITERIVER, ARIZONA