

Bayfield County Forestry Department

P.O. Box 445, Washburn, WI 54891

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TIMBER SALE CONTRACT

CONTRACT NUMBER: _____ TRACT: _____ EXPIRATION DATE:

LOCATION: Section _____, T ___ N, R ___ W. Town of : _____, Bayfield,
Wisconsin.

THIS CONTRACT IS ENTERED INTO by and between **Bayfield County** (Seller) and _____ (Purchaser) for the purpose of selling timber of the Seller. The Seller sells and the Purchaser agrees to purchase, cut and remove **ONLY** those trees (timber) specifically described in this Contract or marked by the Seller for cutting on the "sale area" which is identified or described in maps or diagrams attached to and made part of this Contract.

THE PROVISIONS OF THIS CONTRACT and all authority for use of the Seller's property for the cutting of timber (which includes felling, bucking, skidding, loading or hauling) are mutually agreed upon by the Seller and Purchaser and subject to the following terms and conditions:

1. PERFORMANCE.

- a. Commencement. Cutting and removal of timber in conformance with this Contract may commence and continue only after the signing of this Contract by both parties and only after submission and maintenance of all bonds, certificates or statements required under it. The Purchaser agrees to notify the seller prior to starting harvesting, any time harvesting operations stop for a period of two weeks or more, and of the subsequent restart of operations.
- b. Contract Oversight. Cutting and removal of timber purchased under this Contract shall be conducted in conformance with this Contract and in a good and workmanlike manner with reasonable diligence to assure completion of all performance within the Contract period specified in par. 2.

2. CONTRACT PERIOD.

- a. All work under this Contract shall be completed to the satisfaction of the Seller between the signing of the Contract by both Parties and _____ (date) _____, FOR TIME IS OF THE ESSENCE. Contract amendments or extensions may not be relied upon by the Purchaser for the purpose of completing performance under this Contract.
- b. The Seller may temporarily suspend operations under this Contract due to excessive property damage, wet conditions or for any other reason upon notice to the Purchaser or other persons operating on the sale area under this Contract with subsequent equitable adjustment of this Contract deemed reasonable by the Seller.

3. CONTRACT EXTENSIONS. If extensions of this Contract are deemed reasonable by the Seller, and the performance bond has been extended to expire at least 30 days after the expiration date of the proposed extension, the stumpage price agreed upon herein shall be adjusted as follows:

- a. First 1 year extension: 5% increase over the bid price
- b. Second and final 1 year extension: 15% increase over the bid price
- c. Other applicable charges or fees: \$100.00/extension

4. TERMINATION. The Seller may terminate this Contract by oral or written notice to the Purchaser upon its breach as determined by the Seller or at other times when deemed necessary by the Seller. Upon such notice, the Purchaser shall cease all operations on and immediately leave, and not return to, the Seller's property unless otherwise provided by the Seller.

5. PERFORMANCE; PERFORMANCE BOND; LIQUIDATED OR ACTUAL DAMAGES; FUTURE CONTRACTS.

- a. A performance bond in the Seller's favor in an amount equal to 15% of the bid price or \$500.00, which ever is greater, in cash, by surety bond expiring no earlier than 30 days after the expiration date of this contract, or in any other form accepted by the Seller, shall be submitted by the Purchaser no later than 30 days after

the bid opening to be retained by the Seller to assure full and complete performance of the Contract by the Purchaser to the Seller's satisfaction. Failure to submit the bond will be considered a breach of this Contract and subject the Purchaser to liability for damages. The Purchaser agrees that the bond shall be forfeited to the Seller as liquidated damages upon the Seller's determination a condition or term of this Contract has been breached by the Purchaser, unless the Seller chooses and can reasonably determine the actual damages suffered as a result of the breach of the Contract. Damages assessed under this Contract are the responsibility of the Purchaser and may be deducted from this performance bond and otherwise collected by the Seller.

- b. The Purchaser agrees that the performance bond may be retained by the Seller until all performance under this Contract has been completed to the Seller's satisfaction and the Seller determines the performance has been so completed. If the Seller determines the performance has not been completed satisfactorily and in conformance with this Contract, the performance bond may be retained by the Seller until the Seller can determine damages caused by the lack of performance. Only in the event the Purchaser provides written notice of sale completion to the Seller shall the Seller have sixty (60) days to determine that performance has been completed as required under this Contract.
- c. If timber or other forest products not specifically described in this Contract or designated by the Seller for cutting are cut, damaged or removed by the Purchaser, the Seller may pursue any and all remedies for the unlawful use of the Seller's property and the cutting, damage or removal of property without consent, including the seeking of criminal or civil charges for theft, timber theft or criminal damage to property in addition to its Contract remedies for breach.
- d. The Seller may, when it deems it reasonable and in the best interest of the Seller, allow the Purchaser to continue performance under the Contract and the Purchaser shall pay as liquidated damages double the mill value as determined by the Seller for the timber or other forest products cut, removed or damaged without authorization under or in violation of this Contract. The Seller's permission to continue cutting shall not be considered a waiver of breach nor prevent it from considering such breach for purposes of asserting any other remedies available to it. It is agreed that the double mill scale sum is a reasonable estimate of the probable damages suffered by the Seller and shall not be construed as or held to be in the nature of a penalty.
- e. The Purchaser agrees that if the timber identified in this Contract for cutting is to be resold due to a breach of this Contract, as determined by the Seller, the Seller is not obligated to give oral or written notice to the Purchaser of the resale.
- f. The Seller's damages upon the Purchaser's failure to perform this Contract include, but are not limited to:
 - (1) The Purchaser's bid value of timber not cut and removed under this Contract.
 - (2) Double the mill value, as determined by the Seller, for timber cut, removed or damaged without authorization under or in violation of this Contract.
 - (3) All costs of sale area cleanup, restoration or completion of performance not completed by the Purchaser.
 - (4) All costs of resale of timber not cut and removed as required under this Contract.
 - (5) If the Seller seeks damages for breach of this Contract through court proceedings, and if the Seller prevails in such proceedings, in whole or in part, then the purchaser agrees to pay all of the Seller's actual and reasonable expenses, including attorneys and expert witness fees.

The Seller agrees to mitigate the damages for breach by offering the timber for resale if it determines the timber is saleable based upon its volume or quality.

- g. The Purchaser shall not violate the terms of any other timber sale agreement in effect between the parties while this contract is in effect. Any such violation shall constitute a violation of this contract, and any violation of this contract shall constitute a violation of all such other timber sale agreements. The seller may apply funds paid in advance under this contract towards any deficiency in payments under any other timber sale agreement between the parties, and may apply funds paid in advance under any other timber sale agreement between the parties to any deficiency in payments under this contract.
- h. A Purchaser deemed by the Seller to be in breach of this Contract may also be considered an irresponsible bidder and be refused the opportunity to bid upon or obtain future timber sales of the Seller for a period not

to exceed two (2) years from the date of determination of the breach.

6. **REMOVAL WITHOUT PAYMENT.** Timber or other forest products may not be removed from the sale area until paid for as provided in this Contract or other guarantees for payment have been made with and to the satisfaction of the Seller so as to authorize its cutting and removal. Upon removal of timber or other forest products in violation of this paragraph, the Purchaser agrees to pay as liquidated damages double the mill value of the timber removed, and in addition to pursuing its remedies for breach of Contract, the Seller may seek charges against the Purchaser for Timber Theft, Theft, Criminal Damage to Property, or a violation of administrative rule or ordinance.
7. **TITLE TO TIMBER.** Title to timber cut under this Contract shall remain in the Seller until the timber or forest products have been removed from the Seller's property in full accordance with all terms, conditions, and stipulations in this contract. The Seller shall not compensate the purchaser in any manner for the damage or loss to standing or decked timber. In the event of catastrophic damage occurring on a sale and less than 2/3 of the sale area has been harvested, the purchaser may exercise the option of withdrawing from the contract without penalty within 60 days of being notified of the event. Catastrophic damage will be determined by a systematic random survey of yet to be harvested areas within the contract. Catastrophic damage shall be defined as: 1/3 of the plots having greater than 50% of the merchantable trees damaged. The termination option for the purchaser shall not be applicable during contract extensions.
8. **PAYMENT; PAYMENT SCHEDULE (Attached).**
 - a. The Purchaser agrees to pay payments for timber harvested under this Contract in the amount and in accordance with the payment schedule, and its conditions, which is attached to and made a part of this Contract.
 - b. The volume of timber indicated in this Contract or other appraisal or cruise documents of the Seller are estimates. The Seller gives no warranty or guarantee respecting the quantity, quality or volume of marked or otherwise designated timber or forest products on the sale area.
9. **CUTTING REQUIREMENTS.** ("DBH" represents the diameter of the timber 4.5 feet above the ground):

Refer to the attached timber sale map.
10. **UTILIZATION SPECIFICATIONS:**
 - a. **CORDWOOD:** Cordwood shall be reasonably straight and sound. Conifers shall be utilized to a 4 inch top diameter. Hardwood species shall be utilized to a 5 inch top diameter.
 - b. **SAWLOGS:** Any section of tree at least eight feet long which contains a minimum 30 bdf of volume and is greater than 50% sound.
11. **WASTE.** The Purchaser agrees to complete all operations and performance as described in this Contract without waste or nuisance on the sale area or any other property of the Seller and use all reasonable care not to damage trees not designated or marked for cutting. Young growth bent or held down by felled trees shall be promptly released.
12. **STUMP HEIGHT; TOPS.** The maximum stump height may not exceed the stump diameter; except for stumps of a diameter of less than 10 inches, the height of the stump may not exceed 10 inches. Title to tops shall remain in the owner and may not be utilized by the Purchaser, or at the Purchaser's direction, unless otherwise specified in this Contract.
13. **ZONE COMPLETION.** The Purchaser agrees to complete all operations progressively on each portion of the sale area or each zone as designated on the sale area map, or other attachments or in the cutting requirements before beginning cutting in the next portion or zone, unless agreed to otherwise by the Seller.
14. **FOREST FIRE PREVENTION.** The Purchaser agrees to take reasonable precautions to prevent the starting and spreading of fires. Those precautions include, but are not limited to:
 - a. If a fire occurs, the Purchaser agrees to promptly cooperate in the control and suppression of the fire.
 - b. The Purchaser shall comply with requests regarding forest fire prevention and suppression made by the Seller and take all reasonable precautions to prevent, suppress and report forest fires. Those requests may include ceasing or modifying operations.
 - c. The Purchaser shall be responsible for damage and forest fire suppression costs, including that provided in

ss. 26.14 and 26.21, Wis. Stats., caused by their operation under this Contract.

- d. Other:
15. SLASH. Slash as defined in s. 26.12, Wis. Stats., shall be disposed of as follows:
- a. Slash falling in any lake or stream, in a right-of-way or on land of an adjoining landowner shall be immediately removed from the waters, right-of-way or adjoining land. Tops from felled trees may not be left hanging in standing trees. All trees shall be completely felled and not left leaning or hanging in other trees.
 - b. Other:
16. CLEANUP AND USE OF SALE AREA.
- a. The Purchaser shall remove, to the satisfaction of the seller, all equipment, tools, solid waste, oil filters, grease cartridges, trash and debris remaining on the sale area or Seller's property upon completion of performance under this Contract, termination of this Contract due to breach by the Purchaser or when requested by the Seller.
 - b. No residence, dwelling, permanent structure, or improvement may be established or constructed on the sale area or other property of the Seller.
 - c. The Purchaser agrees to properly use and dispose of all petroleum products, including but not limited to oil, hydraulic fuel and diesel fuel. The seller must be promptly notified of any on-site spillage which also must be properly removed and cleaned up by the Purchaser to the satisfaction of the Seller.
17. ROADS, LANDINGS, MILL SITES, CAMPSITES, EROSION CONTROL, BEST MANAGEMENT PRACTICES (BMPs).
- a. When not otherwise designated by the Seller, the location of roads, landings, mill sites and campsites on Seller's property is subject to advance approval and under the conditions established by the Seller. All restoration, cleanup or repair of roads, landings, mill sites and campsites, or the cost of the cleanup, if not completed by the Purchaser to the satisfaction of the Seller, is the responsibility of the Purchaser.
 - b. All logging debris accumulated at landing areas, including bark, tops and slash, shall be scattered within the sale area to the satisfaction of the Seller.
 - c. Berms constructed on the Seller's property shall be leveled to restore the area to the Seller's satisfaction unless they are constructed at the direction of the Seller under par. d.
 - d. Roads and landings shall be graded or closed upon the request of and to the Seller's satisfaction upon completion or termination of this Contract.
 - e. Other restoration requirements (e.g., seeding, gravel, water bars, back blading, culvert removal, etc.):
 - f. Erosion control and Best Management Practices (BMPs) requirements:
 - (1) The Purchaser shall comply with all recommended BMP guidelines as described in "*Wisconsin's Forestry Best Management Practices for Water Quality*" published by the Wisconsin Department of Natural Resources, publication Pub-FR-093, unless specifically provided otherwise below. A copy of this publication is available upon request to the Seller if not possessed by the Purchaser. Purchaser's certification in Wisconsin BMP training through a FISTA coordinated BMP workshop is also recommended.
 - (2)
 - (3)
18. OTHER APPROVALS. Logging roads that intersect town, county or state roads or highways must have the intersections approved by the proper authorities prior to construction and cleared of all unsightly debris at the time of construction. The Purchaser agrees to apply for and obtain all approvals. The Purchaser also agrees to fully comply with all terms and conditions of intersection approvals.
19. SURVEY MONUMENTS. The Purchaser agrees to comply with s. 59.74, Wis. Stats., regarding perpetuation of landmarks and pay for the cost of repair or replacement of property or land survey monuments or accessories which are removed, destroyed or made inaccessible.

20. **INDEMNIFICATION.** The Purchaser agrees to protect, indemnify and save harmless the Seller and the Seller's employees and agents from and against all causes of action, claims, demands, suits, liability or expense by reason of loss or damage to any property or bodily injury to any person, including death, as a direct or indirect result of operations under this Contract or in connection with any action or omission of the Purchaser, who shall defend the Seller and the Seller's employees and agents in any cause of action or suit.
21. **INDEPENDENT CONTRACTOR.** The Purchaser is an independent contractor for all purposes, including worker's compensation, and not an employee or agent of the Seller. The Seller agrees that the undersigned Purchaser shall have the sole control of the method, hours worked, time and manner of any timber cutting to be performed hereunder and takes no responsibility for supervision or direction of the performance of any of the harvesting to be performed by the undersigned Purchaser or of the Purchaser's employees except for the limited right of the Seller to cease operations under clause 2.b. or for breach of this Contract. The Seller further agrees it will exercise no control over the selection and dismissal of the Purchaser's employees.
22. **INSURANCE; NOTIFICATION.**
- a. Unless the Purchaser is exempted by the Seller from this coverage requirement as an independent contractor, as defined in s. 102.07(8)(b), Stats., and as determined by the Seller based on an affidavit submitted to it, the Purchaser agrees to elect to maintain worker's compensation insurance coverage for the cutting operation under this Contract and any and all employees engaged in cutting on the Seller's land during the period of this Contract regardless of any exemptions from coverage under chapter 102, Wis. Stats.
 - b. The purchaser agrees to elect to maintain liability insurance coverage for the cutting operation under this contract in the amount of no less than \$750,000.00.
 - c. Prior to commencement of any work under this Contract and during the period of the Contract, the Purchaser shall provide proof of insurance coverage required by this Contract on an original Certificate of Insurance, counter-signed by an insurer licensed to do business in Wisconsin naming the Seller as a Certificate Holder.
 - d. The Purchaser shall notify the Seller in writing at the Seller's office as indicated in the Contract or otherwise in writing by the Seller, immediately upon any change in or cancellation of insurance coverage required by this Contract.
23. **ASSIGNMENT.** The Purchaser is precluded from assigning payment and Contract oversight, duties or other performance requirements of this Contract to another. The Purchaser's direction to or contracting with another to complete performance required under this Contract does not relieve the Purchaser from the responsibility for performance required under this Contract or for liability for breach.
24. **ENTIRE CONTRACT.** This Contract shall constitute the entire agreement of the parties and any previous communications or agreements are hereby superseded and that no modifications of this Contract or waiver of its terms and conditions shall be effective unless made in writing and signed by the parties.
25. **CONTRACTING PARTIES.**
- a. In this Contract, the Seller and the Purchaser include their respective officers, employees, agents, directors, partners, representatives, successors, heirs, members and servants.
 - b. If the Purchaser ceases to exist, in fact or by law, the Seller may terminate this Contract without waiving any remedies available to it and take all action necessary to assure its performance.
26. **INSPECTION.** The Seller retains for itself the right of ingress and egress to and on the sale area and may inspect the sale area and trucks hauling forest products from or traveling on the sale area at any time. If the inspection reveals any violations of this Contract, the Purchaser shall promptly take measures to remedy the violation. The Seller may terminate the Purchaser's operations upon oral notice to the Purchaser. Upon receipt of the notice, the Purchaser shall cease operations until the Seller approves resumption of them.
27. The Purchaser has no access or privilege to go upon the Seller's property other than to comply with this Contract and may not authorize access or use to others except for the sole purpose of performing this Contract.

28. SCALING AND CONVERSION FACTORS.

- a. When peeled cordwood is measured, it is agreed that 12.5% will be added to handpeeled volume, 16% to ring debarked volume, and 25% to other machine peeled volume to compute equivalent unpeeled volume.
- b. The Scribner Decimal C Log Rule shall be used for scaling logs.
- c. Conversion of MBF (thousand board feet) to cords or cords to MBF shall be 2.44 cords per MBF for softwoods and 2.20 MBF for hardwoods.
- d. Conversion of weight scale to cords shall use "Bayfield County cordwood weight conversion factors." A copy of this table is available upon request to the seller.

29. OTHER CONDITIONS:

- a. Diggers Hotline. The Purchaser is responsible to contact the digger's hotline, or other informational sources performing similar services, prior to digging or conducting other activities on the property which may result in contact with utility or service lines or facilities.
- b. OSHA Compliance, Danger trees. The Purchaser is responsible to comply with, and assure compliance by all employees or subcontractors with, all Occupational Safety and Health Act (OSHA) requirements for the health and safety of Purchaser's employees, including provisions relating to danger trees. In addition, the Purchaser agrees to notify, and obtain agreement from, the Seller if the Purchaser intends to modify performance required under this Contract for the purpose of compliance with OSHA requirements.
- c. Release of Mill Records. The Purchaser agrees that mill slips or records respecting timber from the Seller's sale area, are to be released to the Seller upon Seller's request, and that the Purchaser will execute any letter or form of the Purchaser to that effect upon Seller's request.
- d. Dead trees: The Purchaser agrees that dead trees (snags) shall not be cut or damaged except to comply with Section 29, Paragraph B of this agreement.
- e. Soil conditions: The Purchaser agrees that harvesting operations shall take place in such a way as not to cause damage to the soil.
- f. Damage to residual trees: The purchaser agrees that harvesting operations shall not cause unnecessary damage to residual trees.

ATTACHMENTS. Any and all attachments to this Contract shall be made a part of this Contract and be fully complied with, including:

- a. Map(s) or Diagrams(s) of Sale Area and included harvest requirements.;
- b. Payment Schedule and Conditions of Payment;
- c.

SELLER

Date _____

By _____
Bayfield County Forest Administrator

PURCHASER

Date _____

By _____

Signature

Name/Company

Address of Purchaser

Telephone of Purchaser