

Unit Price

TIMBER SALE CONTRACT – IFB 02-4101-19

THIS AGREEMENT, made this _____, by and between the CITY OF WILLIAMSBURG, a municipal corporation chartered and existing under the laws of the Commonwealth of Virginia, hereinafter called SELLER, and _____ hereinafter called PURCHASER.

WITNESSETH THAT:

ARTICLE I

1. SELLER agrees to sell and PURCHASER agrees to buy timber resulting from the thinning of the pine forest all as more specifically shown on a Pre-Harvest Plan attached hereto and designated Exhibit "A". The total area of these parcels is approximately 34 acres and is designated as the "Sale Area". The sale area is located on property owned by the City of Williamsburg in the Waller Mill watershed in York County, Virginia and is more specifically shown on Exhibit "A".

2. SELLER hereby expressly grants to PURCHASER the right of ingress and egress to the sale areas.

3. SELLER warrants that it has clear title to all timber in the sale areas.

ARTICLE II

1. PURCHASER agrees to pay SELLER the following sums:

- Pine pulpwood \$ _____ per ton

2. PURCHASER agrees to issue weekly payment checks to SELLER, which payments must be received by SELLER not later than 12:00 noon on Tuesday of each week. Payments must be accompanied by tickets from the log yard. If any payment due hereunder is not made in full and timely received by SELLER, then SELLER may give written notice to PURCHASER whereupon PURCHASER shall forthwith cease all cutting and removal of timber from SELLER'S property and shall not resume such cutting and removal unless and until authorized to do so in writing by SELLER. Should any payment not be made within thirty (30) days of its due date, such non-payment shall be cause for SELLER'S termination of this Contract. Any payment not made within thirty (30) days of its due date shall bear interest at the rate of eight percent (8%) per annum. Any unpaid amount claimed by SELLER and disputed by PURCHASER which is submitted to arbitration by either party under Article IV of this Contract shall not be deemed in default so as to allow termination of the Contract by SELLER until thirty (30) days following any award by the arbitrator's to SELLER; provided, however, that interest at the rate aforesaid shall commence to accrue on the amount awarded from the date that the payment was originally

due and payable.

3. Unless a written extension of time is granted by SELLER, all timber sold hereunder shall be removed on or before _____. This includes any forest products produced by PURCHASER from the standing trees. In case of bad weather or other condition beyond PURCHASER'S control which in PURCHASER'S or SELLER'S opinion, makes it impossible or impractical to comply with such requirement, the provisions of Article III 2 f shall apply in determining whether a variance from the above performance requirement should be allowed.

4. PURCHASER shall provide surety in the form of a Performance Bond or Cash in an amount equal to Two thousand dollars (\$2,000.00). This surety will be returned to PURCHASER upon proper completion of all Contract requirements including the correction of all punch list items that result from a formal inspection by the SELLER and the State Forester at the conclusion of the work.

ARTICLE III

1. PURCHASER agrees to harvest the timber in compliance with the methods of the Best Management Practices of the Virginia Department of Forestry and the Pre-Harvest plan for this Timber Sale as set out on Exhibit "A".

a. Thinning operations shall be done by a combination of corridor and selective thinning techniques. Not less than 200 of the best crop trees per acre shall be left upon completion. (A more precise determination of the number of trees to be left shall be made at the on-set of the project by agreement of Purchaser, Seller, and Forester.).

2. Timber harvested hereunder shall be felled, skidded and concentrated in such manner as to cause the least possible waste and a minimum of damage to areas located outside the sale area, streams, creeks, springs and soil.

a. No trees located outside the sale area shall be damaged, and PURCHASER shall take utmost care not to damage healthy trees that will be left after this timbering operation.

b. Watershed, road, and trail buffers shall not be disturbed in any way during timbering operations

c. Stumps shall be cut in such a manner as to cause the least possible waste, and not higher than six (6) inches above ground level. Tree tops and other logging residue shall be reduced to acceptable dimensions.

d. All trees shall be felled within the cutting boundaries. Logging debris accumulated outside the sale area shall be pulled back within the sale area unless otherwise specified by the State Forester or his agent.

e. No trees, laps or logging debris will be left in open fields, streams, creeks or springs.

f. SELLER and PURCHASER shall mutually agree to postpone logging activities

during such time as these activities would result in serious consequences to forest soils during prolonged periods of inclement weather. In event that SELLER and PURCHASER cannot reach mutual agreement, SELLER shall nevertheless have the right to temporarily stop PURCHASER'S work by giving PURCHASER written notice. In such case, PURCHASER shall forthwith halt further work until the parties reach agreement. If the parties have not so agreed within five (5) business days of such stop work order, PURCHASER may submit the stop work order to arbitration as provided in Article IV.

3. Timber or manufactured products produced by PURCHASER shall be removed in such a manner as to cause the least possible damage to existing main haul roads and the least public hazard at entrance ways to primary and secondary Virginia highways.

- a. Access to the sale areas is adequate and will be designated by the SELLER or SELLER'S agent, such access being generally shown on Exhibit A. Main hauls will be confined to this system for all men, materials and logging and sawmill equipment, including any trucks necessary to the manufacture and removal of said timber, but PURCHASER may construct such additional roads in the sale area as are reasonably necessary to the performance of its work, provided, however, that such roads shall be approved by the SELLER and shall be constructed and maintained in accordance with the Best Management Practices of the Virginia Department of Forestry. PURCHASER will be responsible for obtaining any approval necessary from the Virginia Department of Highways and Transportation for use of State maintained roadways.
- b. All such roads, with the exception of skidding roads constructed by PURCHASER, and all existing roads within the timber sale area, shall be left in passable condition equal to or better than original condition upon completion of this Contract. Skidding roads shall be protected against rutting, and any ruts that do develop shall be repaired at the completion of the work.
- c. PURCHASER shall guard against unnecessary erosion problems on any new or existing roads resulting from destructive use or non-maintenance of the roads. SELLER reserves specifically the right to request corrective action by PURCHASER in maintenance of culvert pipes, water bars, side ditches and lead-off ditches where destructive action of PURCHASER has created or contributed to an erosion problem.
- d. PURCHASER shall guard against the unnecessary transfer of mud and debris by vehicle onto the public highway system of the Commonwealth of Virginia, and shall promptly clean up and remove any mud and debris which is of such size or nature as to endanger the public. Furthermore, PURCHASER assumes all responsibility for the preventative and/or corrective action necessary to eliminate this source of hazard should the problem develop.

4. PURCHASER shall follow generally accepted logging industry procedures to prevent damage to trees that are not designated for sale. SELLER will assess double stumpage value for unnecessary damage to healthy standing trees that are outside the sale area. Such assessment shall be in writing and shall be due and payable in full within 30 days following PURCHASER'S receipt of such assessment. However, if PURCHASER

disagrees with such assessment, PURCHASER shall so notify SELLER in writing not later than the payment date of the assessment and PURCHASER and SELLER shall attempt to reach mutual agreement as to the assessment. If the parties do not reach agreement within ten (10) business days of PURCHASER'S notice, then PURCHASER may, within thirty (30) days of PURCHASER'S notice, elect to submit the matter to arbitration in the manner hereinafter provided. If PURCHASER fails to timely elect arbitration, then the assessment as notified by SELLER shall be final and binding on the parties.

5. Landings or loading deck areas are subject to approval by the State Forester or his agent prior to development.

6. PURCHASER agrees to exercise the utmost care and caution to prevent the inception and spread of forest fires on the sale area and on adjoining areas. PURCHASER further agrees to observe and comply with all forest fire laws of the State of Virginia and to immediately notify the City of Williamsburg Fire Department of any fire, actual or suspected, on the Sale Area or on property adjacent thereto. As to any fire that results from PURCHASER'S operations under this Contract PURCHASER shall assist with the control of same as directed by fire department personnel with all means at PURCHASER'S disposal without compensation.

ARTICLE IV

1. Except in case of PURCHASER'S failure to make full and timely payment of monies due hereunder, which is governed by Paragraph 2 of Article II of this Contract, in case of PURCHASER'S non-compliance with the terms of this Contract, SELLER may give written notice to PURCHASER specifying the non-compliance. If in SELLER'S opinion the non-compliance is of such gravity as to constitute an immediate threat to the public, to the land whereon the logging operations are in progress, to other lands of SELLER or of others, then SELLER may also notify PURCHASER to immediately stop timber cutting and removal ("stop work"). Unless SELLER shall notify PURCHASER to stop work, PURCHASER may continue work, but shall begin forthwith to remedy the non-compliance complained of which remedy must have been completed to SELLER'S reasonable satisfaction within thirty (30) days of PURCHASER'S receipt of SELLER'S notice and if such non-compliance is not remedied to SELLER'S reasonable satisfaction within such thirty (30) day period, then SELLER may terminate this Contract by giving written notice to PURCHASER, whereupon PURCHASER shall forthwith stop work and remove all of PURCHASER'S equipment from SELLER'S property. In event of a stop work order, SELLER and PURCHASER shall attempt to reach mutual agreement on what PURCHASER must do to remedy the situation that has caused the stop work order and to establish the terms under which PURCHASER may again commence work under the Contract.

2. In the case of any dispute between SELLER and PURCHASER which they fail to resolve by mutual agreement, either party may request arbitration in a written notice to the other. In such case, each of the parties shall select a professional forester as its

representative and the two representatives chosen by the parties shall select a third person who will be the third arbitrator and the chairman of the arbitration panel. The decision of the arbitrators shall be final and binding on the parties. The cost of arbitration shall be borne equally by the parties.

ARTICLE V

1. PURCHASER agrees to indemnify and hold harmless SELLER, its officers, employees and agents from any and all claims, demands, actions, causes of action, suits, proceedings, damages, liabilities and costs and expenses of every nature, including attorney's fees, relating to or arising out of or in any way relating to PURCHASER'S performance under this Contract. This indemnity shall include reasonable attorney's fees incurred by any party here indemnified in seeking to enforce PURCHASER'S performance of this indemnity. Any dispute relating to or arising out of this indemnity shall not be subject to arbitration.

2. PURCHASER shall maintain during the life of this Agreement Commercial General Liability insurance coverage on an occurrence basis insuring against all claims, loss, cost, damage, expense or liability for loss of life or damage or injury to persons or property arising out of any of the work or activity under or by virtue of this Agreement. The minimum limits of liability for this coverage shall be \$2,000,000 combined single limit for any one occurrence.

- (a) Contractual Liability. PURCHASER shall maintain during the life of this Agreement broad form Contractual Liability insurance including the indemnification obligation set forth in this Agreement.
- (b) Workers' Compensation. PURCHASER shall maintain during the life of this Agreement Workers' Compensation insurance covering PURCHASER'S statutory obligation under the laws of the Commonwealth of Virginia and Employer's Liability insurance for all its employees engaged in work under this Agreement.
- (c) Automobile Liability. PURCHASER shall maintain during the life of this Agreement Automobile Liability insurance. The minimum limit of liability for such insurance shall be \$1,000,000 combined single limit applicable to owned or non-owned vehicles used in the performance of any work under this Agreement.
- (d) Umbrella Coverage. The insurance coverages and amounts set forth in subsections (a), (c), and (d) above may be met by an umbrella liability policy following the form of the underlying primary coverage in a minimum amount of \$5,000,000. Should an umbrella liability insurance coverage policy be used, such coverage shall be accompanied by a certificate of endorsement stating that it applies to the specific policy numbers indicated for the insurance providing the coverages required by subsections (a), (c) and (d), and it is further

agreed that such statement shall be made a part of the certificate of insurance furnished by PURCHASER to SELLER.

(e) Evidence of Insurance. All insurances shall meet the following requirements:

- 1) PURCHASER shall furnish SELLER a certificate or certificates of insurance showing the type, amount, effective dates and date of expiration of the policies. Certificates of insurance shall include any insurance deductibles, the amount of such deductible being subject to approval by SELLER.
- 2) The required certificate or certificates of insurance shall include substantially the following statement: "The insurance covered by this certificate shall not be canceled or materially altered, except after thirty (30) days written notice has been received by the City of Williamsburg."
- 3) The required certificate or certificates of insurance shall name SELLER, its officers, agents, employees, and volunteers as additional insured.
- 4) Insurance coverage shall be in form and with an insurance company approved by SELLER which approval shall not be unreasonably withheld. Any insurance company providing coverage under this Agreement granted shall be authorized to do business in the Commonwealth of Virginia.

3. Neither SELLER nor PURCHASER may assign this Contract or any portion thereof without the written consent of the other.

4. STATUTORY CLAUSES

A. Nondiscrimination. CONTRACTOR shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin or physical or mental handicap which can be reasonably accommodated. CONTRACTOR shall take affirmative action to insure that applicants for employment are employed and that employees are treated during employment without regard to their race, color, religion, sex, national origin or physical or mental disability. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. CONTRACTOR shall state in all advertising for job openings that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, or mental or physical disability which can be reasonably accommodated. CONTRACTOR shall include these non-discrimination provisions in all contracts with its Sub-contractors and suppliers.

B. Anti-Kickback. CONTRACTOR warrants that no person has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee and that no member of CONTRACTOR's team has any interest, financially or otherwise, in SELLER or with any of its employees. For breach or violation of this warranty, SELLER shall have the right to annul this Contract and the License Agreement without liability or, in its discretion, to

deduct from the Contract Sum or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

C. Drug Free Workplace. During the performance of this Contract, CONTRACTOR agrees to (i) provide a drug-free workplace for CONTRACTOR's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in CONTRACTOR's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of CONTRACTOR that CONTRACTOR maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor. For the purposes of this paragraph, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a subcontractor in accordance with Title 11, Chapter 7 of the Code of Virginia (1950), as amended, (the "Virginia Public Procurement Act").

D. Use of Unauthorized Aliens Prohibited: CONTRACTOR does not, and shall not during the performance of this Agreement knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

5. MISCELLANEOUS

A. Notices. All notices required to be given under the terms of this Agreement shall be in writing and shall be deemed to have been duly given when personally delivered to the addressee in person (and receipted on a copy of such notice) or upon receipt when properly addressed, return receipt requested, and delivered by the United States Postal Service or other letter delivery service to the address listed below:

TO SELLER:

City of Williamsburg
c/o Daniel C. Clayton
401 Lafayette Street
Williamsburg, VA 23185

TO PURCHASER:

or to any such other address as the party to receive the notice shall advise by due notice given in accordance with this section 8a.

B. Binding Agreement. This Contract shall be binding upon the heirs, executors, administrators, personal representatives, successors and assigns of the parties hereto; provided, however, the foregoing shall not be deemed or construed to (a) permit the assignment of any of PURCHASER's rights or obligations hereunder or (b) confer any right, title benefit, cause of action or remedy upon any person or entity not a party hereto.

C. Amendments. This Contract shall be subject to modification or amendment only by an instrument in writing signed by the party to be charged with such amendment.

D. Construction. Whenever the context hereof so requires, reference to the singular shall include the plural and the plural shall include the singular; words denoting gender shall be construed to mean the masculine, feminine or neuter, as appropriate; and specific enumeration shall not exclude the general, but shall be construed as cumulative of the general recitation. The headings contained in this Contract are inserted for convenience only and shall not affect the meaning or interpretation of this Contract or any provision hereof.

E. Severability. If any clause or provision of this Contract is held to be illegal, invalid or unenforceable under any law applicable to the terms hereof, then the remainder of this Contract shall not be affected thereby, and in lieu of each such clause or provision of this Contract that is illegal, invalid or unenforceable, such clause or provision shall be judicially construed and interpreted to be as similar in substance and content to such illegal, invalid or unenforceable clause or provision, as the context thereof would reasonably suggest, so as to thereafter be legal, valid and enforceable.

F. Waiver. Any term, condition or provision of this Contract may be waived in writing at any time by the party which is entitled to the benefits thereof.

G. Attorney's Fees. If either party shall default in the performance of any of the terms and conditions of this Contract, the non-defaulting party shall be entitled to recover all costs, charges, and expenses of enforcing this Contract including reasonable attorneys' fees, paralegal fees and costs including, but not limited to attorneys' and paralegal fees incurred in any trial or appellate proceeding.

H. No Assignment. PURCHASER may not assign this Contract or any right, liability, or obligation hereunder without the prior written consent of SELLER, which consent may be withheld by SELLER in his sole discretion. Any purported assignment in violation of this provision shall be null and void. Any assignment to which SELLER consents, which consent must be in writing, shall not release PURCHASER from any obligation or liability hereunder unless such release is provided in writing signed by SELLER.

I. Virginia Law. This Contract shall be construed in accordance with and governed by the laws of the Commonwealth of Virginia.

WITNESS the following signatures:

SELLER:

CITY OF WILLIAMSBURG:

DATE: _____ BY: _____

PURCHASER:

DATE: _____ BY: _____