

Timber Sale Contract

This agreement is entered into this _____ day of _____ 20_____

Between

The Land Department of Beltrami County (the "Land Department")

And

_____ (the "Purchaser")

1. Sale Agreement

The Purchaser agrees to purchase contract _____ as defined in the Timber Appraisals appended to this agreement.

2. Sale Price

The Purchaser agrees to pay \$_____ to open sale prior to harvest operations beginning.

3. Expiry of the Agreement

This agreement shall be effective from _____ and shall expire on _____.

4. Requirements of this contract include, but are not limited to:

- General Contract Conditions (attached)
- Timber Sale Conditions (attached)
- Project Plan (may be more restrictive and therefore supersede conditions outlined in this document)
- Auction Advertisement
- TSMM Timber Appraisal
- Site Map

For the Purchaser/Operator

For the County

SIGNING AUTHORITY (PRINTED)

Richard A. Moore

SIGNING AUTHORITY

TITLE

Land Commissioner

TITLE

SIGNATURE

SIGNATURE

DATE

DATE

CONTROLLED DOCUMENT: ANY PRINTED COPY OF THIS DOCUMENT IS NOT CONTROLLED CHECK ORIGINAL ON THE INTRANET TO ENSURE THIS COPY IS CURRENT

General Contract Conditions – Beltrami County

1. Contract Interpretation and Construction

- 1.1. The interpretation and construction of the contract shall be subject to the following provisions:
 - 1.1.1. A reference to any statute, enactment, order, regulation or similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as subsequently amended or re-enacted.
 - 1.1.2. The headings in these conditions are for ease of reference only and shall not affect the interpretation or construction of the contract.
 - 1.1.3. A reference to a “person”, where the context allows, includes a corporation or an unincorporated association.

2. Acts by the County

- 2.1. Any decision, act or thing which the County is required or authorized to take or do under the contract may be taken or done by any person authorized, either expressly or impliedly, by the County to take or do that decision, act or thing.

3. Indemnity

- 3.1. The Contractor/Purchaser shall indemnify and save harmless the County, its officers and employees from all suits, actions and claims of any character brought because of injuries or damages received or sustained by any person, persons or property on account of the operations of the said Contractor/Purchaser, or on account of or in consequence of any negligent act in safeguarding the work; or through the use of unacceptable materials in constructing the work; or because of any act or omission, neglect or misconduct of the Contractor/Purchaser; or because of any claims arising or amounts recovered under the Worker's Compensation Act or under any other law, ordinance, order or decree.

4. Equal Opportunity

- 4.1. Beltrami County does not discriminate on the basis of race, color, national origin, sex, religion, age, creed, marital or public assistance status, political affiliation, sexual orientation or disability in employment and the provision of services. Prospective bidders who require special accommodations to participate in the auction should inform Beltrami County Natural Resource Management at least three (3) working days before the auction.

5. Insurance

- 5.1. The Contractor/Purchaser shall not commence work under this contract until it has obtained at its own cost and expense all insurance required herein. All insurance coverage is subject to approval of the County and shall be maintained by the Contractor/Purchaser until final completion of the work.
- 5.2. The County shall not accept any insurance coverage provisions under which the Contractor/Purchaser or its insurer attempt or purport to avail themselves of any governmental right of immunity available to the County as a municipal corporation pursuant to any common law doctrine, M.S. Ch.466 et. Seq. or other statutory authority.
- 5.3. The Contractor/Purchaser further agrees that to protect itself as well as the County under the indemnity contract set forth above it shall at all times during the term of the contract have and keep in force:
 - 5.3.1. Comprehensive General Liability: Coverage shall have minimum limits (\$1,000,000 Each Occurrence, \$2,000,000 General Aggregate) consistent with MN Stat. 466.04 unless otherwise approved and shall include: Combined Single Limit for Bodily Injury Liability and Property Damage Liability. This shall include Premises and Operations; independent Contractor/Purchasers; Products and Completed Operations (if applicable); Contractual Liability; “XC” Hazard Liability (if applicable); Personal Injury Liability; Aircraft and Watercraft Liability (if applicable).

6. Assignment and Sub-Contracting

- 6.1. The Contractor/Purchaser shall not give, bargain, sell, assign or otherwise dispose of the contract or any part thereof without the previous agreement in writing of the County.
- 6.2. The Contractor/Purchaser shall not sub-contract or use the services of self-employed individuals in connection with the contract without the notification and consent of the County.
- 6.3. The Contractor/Purchaser will be responsible for payment of all services and materials provided by the Sub-Contractor/Purchaser.
- 6.4. The Contractor/Purchaser shall be responsible for the acts and omissions of his/her Sub-Contractor/Purchasers as though they were his/her own.

7. Entire Agreement

- 7.1. The contract constitutes the entire agreement and understanding between the parties and supersedes all prior written and oral representations, agreements or understandings between them relating to the subject matter of the contract provided that neither party excludes liability for fraudulent misrepresentations upon which the other party has relied.

8. Waiver

- 8.1. The failure by either party to exercise any right or remedy shall not constitute a waiver of that right or remedy.
- 8.2. No waiver shall be effective unless it is communicated to the other party in writing.
- 8.3. A waiver of any right or remedy arising from a breach of the contract shall not constitute a waiver of any right or remedy arising from any other breach of the contract.

9. Severability

- 9.1. If any condition, clause or provision of the contract not being of a fundamental nature is held to be unlawful, invalid or unenforceable by a court or tribunal in any proceedings relating to the contract, the validity or enforceability of the remainder of the contract shall not be affected. If the court finds invalid a provision so fundamental as to prevent the accomplishment of the purpose of the contract, the parties shall immediately commence negotiations in good faith to remedy the invalidity.

10. Confidentiality

- 10.1. The Contractor/Purchaser agrees not to disclose any confidential information to any third party without the prior written consent of the County. To the extent that it is necessary for the Contractor/Purchaser to disclose confidential information to its staff, agents and Sub-Contractor/Purchasers, the Contractor/Purchaser shall ensure that such staff, agents and Sub-Contractor/Purchasers are subject to the same obligations as the Contractor/Purchaser in respect of all confidential information.
- 10.2. Condition 10.1 shall not apply to information which:
 - 10.2.1. Is or becomes public knowledge (otherwise than by breach of these conditions or a breach of an obligation of confidentiality);
 - 10.2.2. Is in the possession of the Contractor/Purchaser, without restriction as to its disclosure, before receiving it from the County or any other department or office of state or US government; and/or
 - 10.2.3. Is required by law to be disclosed.
- 10.3. The Contractor/Purchaser shall not communicate with representatives of the general or technical press, radio, television or other communications media, with regard to the contract, unless previously agreed in writing with the County.
- 10.4. Except with the prior consent in writing of the County, the Contractor/Purchaser shall not make use of the contract or any confidential information otherwise than for the purposes of carrying out the services.

11. Amendments and Variations

- 11.1. No amendment or variation to the terms of the contract shall be valid unless previously agreed in writing between the County and the Contractor/Purchaser.

12. Provision of Services

- 12.1. The Contractor/Purchaser shall conduct the work in accordance with and as specified in the contract to the satisfaction of the County whose decision shall be final and conclusive. The County shall have the power to inspect and examine the work at any reasonable time.

13. Termination for Breach of Contract

- 13.1. If either party commits a material breach of the contract which is either not capable of remedy, or, if it is capable of remedy, fails to remedy such breach within five (5) days of being notified by the other party in writing to do so, that other party shall be entitled to terminate the contract with immediate effect by notice in writing to the party that committed the material breach and without prejudice to any other rights or remedies of either party in respect of the breach concerned or any other breach of the contract.
- 13.2. If the Purchaser feels that they are being penalized unfairly under this clause, they may appeal this action to the Director of Resource Management/Land Commissioner, then to the County Board.

14. Cancellation

- 14.1. The County shall be entitled to cancel the contract, or to terminate the provision of any part of the contract, by giving to the Contractor/Purchaser not less than fifteen (15) days' notice in writing to that effect without prejudice to any rights or remedies of the Contractor/Purchaser for breach of contract.

15. Rights of Third Parties

15.1. It is not intended that the contract, either expressly or by implication, shall confer any benefit on any person who is not a party to the contract.

16. Law and Jurisdiction

16.1. The contract shall be governed by and construed in accordance with Minnesota State Law and United States Federal Law and shall be subject to the exclusive jurisdiction of the courts of Minnesota and the United States.

17. Compliance with Laws, Regulations and Other Requirements

- 17.1. The Contractor/Purchaser shall conduct all activities in accordance with all applicable federal, state and local laws, regulations and ordinances.
- 17.2. The Contractor/Purchaser will ensure that all activities and practices adhere to the following requirements:
 - 17.2.1. The Project Plan for the site;
 - 17.2.2. The Minnesota Voluntary Site-Level Forest Management Guidelines
 - 17.2.3. SFMS Procedures as defined in the Contractor Procedure Package; and
 - 17.2.4. Any oral or written directions provided to the Operator or Operator’s designated supervisor on the sale site by the Contract Administrator or other Land Department personnel and Timber Sale conditions.
 - 17.2.5. Operator shall have all necessary permits, approvals or certifications required by law to conduct said activities.

Timber Sale Conditions

1. Definition of Terms

| | |
|-------------------------------|---|
| Active Sale | A timber sale on which all of the remaining payments due before cutting have been paid and logging activities may begin. |
| Bolts | Logs 100 inches in length, ≥6 inches diameter inside bark (DIB), but ≤12 inches DIB on the small end, and of sufficient quality to saw lumber. |
| Closed Sale | A terminated sale contract. All sale activities are complete. |
| Contract Administrator | Individual county employees responsible for administration and enforcement of timber sale policies, procedures, and cutting regulations. |
| DBH | Diameter Breast Height |
| Delinquent Account | An overdue account beyond the interest-free period. |
| Inactive Sale | Sale in which the final payment has not been made to fully secure the contract (cash or letter of credit). No harvesting activities have occurred or are allowed to occur. |
| Merchantable Timber | Hardwood and upland conifer tree species 5 inches or greater in DBH and containing two or more 100 inch bolts or pulp sticks to a 4-inch DIB top. Swamp conifer species with 2 or more bolts and/or pulp sticks to a 3-inch DIB top. Merchantable trees must also have a reasonable market and be of sufficient quality, as determined by the Contract Administrator. |
| Progressive Harvest | A harvest method in which the contractor works incrementally across the sale area, harvesting all merchantable timber products as the contractor proceeds, as opposed to the contractor moving throughout the entire sale area selecting and harvesting a particular timber product. |
| Sale Area | The area identified on a Timber Appraisal that contains all timber sold on that timber sale contract. |
| Scaling | The measuring of cut timber products. Stick scaling refers to volume measurements made by the Contract Administrator or their representative. Consumer scaling refers to volume or weight measurements taken by a timber consuming mill. |
| Sold on Area Estimate | Timber sold based upon the volume estimate shown on the Timber Appraisal whereby no scaling of timber is required. |
| Stick | A 100 inch length of timber that exceeds minimum pulpwood dimensions. |
| Timber Appraisal | The portion of the timber sale contract that contains the volume estimates, appraised values, sale map, legal description, contract acreage, other descriptive factors, and special cutting regulations. |

2. Financial and Payment Provisions

2.1. Payment of Timber

2.1.1. Advance Payment: Sealed Bid Auction

2.1.1.1. The Purchaser shall submit one (1), three hundred (\$300.00) dollar bank certified check, personal check, or money order as a “bid guarantee” and it must be included with the sealed bid form. One (1) bid guarantee check will cover all tract bids for that day and will be returned within five (5) working days if none of the bids are successful. For a successful bidder, the bid guarantee will be applied to the advance payment on the first tract awarded. This payment acknowledges agreement to the Timber Sale

Contract conditions for any tracts on which they are the successful bidder. Successful bidders will have fifteen (15) days to submit the remainder of the balance for the down payment which is fifteen (15%) percent of the "bid-up" value. Failure to do so will result in rejection of bid, loss of bidding privileges for one (1) regularly scheduled auction, and loss of the "bid guarantee".

2.1.2. Advance Payment: Oral Auction

- 2.1.2.1. The successful bidder is required to pay fifteen (15%) percent advance payment of the appraised value on the day of the auction sale. The balance of fifteen (15%) percent of the "bid-up" sale value is due within fifteen (15) days of the sale date. Failure to meet either of these payment responsibilities will result in forfeiture of the bidder's rights to the sale, and loss of bidding privileges for one (1) regularly scheduled auction.
- 2.1.2.2. For auction sales that are partitioned into and sold as separate cutting blocks, the advance payment is to be fifteen (15%) percent of the bid-up price of the entire timber sale.

2.1.3. Full Payment

- 2.1.3.1. The sold value of the appraised volume of timber must be paid before cutting begins.
- 2.1.3.2. The value of each separate block must be paid in full before any cutting may begin on that block.
- 2.1.3.3. If paid by check, the contract is not valid until the check has cleared.
- 2.1.3.4. The balance of the sale may be secured using an Irrevocable Letter of Credit issued by a financial institution. This letter of credit will not exceed the closing date of the permit or one (1) year, whichever comes first. If the contractor removes their equipment from the sale area, Beltrami County must be paid for the timber that has been hauled within thirty (30) days. On area estimate sales, the Contract Administrator will estimate the percentage complete. Beltrami County will contact the financial institution to reduce the value of the Letter of Credit.

2.1.4. Overruns & Underruns

- 2.1.4.1. Payment of overruns will be made within thirty (30) days of notification by the Land Department. Ten (10%) percent interest will be charged on all overruns exceeding thirty (30) days.
- 2.1.4.2. Overruns not paid within thirty (30) days from date of scale may be considered as a timber trespass.
- 2.1.4.3. Underruns on scale products will be credited to the Purchaser.
- 2.1.4.4. In the event that the actual main species volume on a timber sale contract (main species being the largest appraised single-species volume) exceeds one-hundred twenty (120%) percent of the appraised main species volume during the course of harvesting a timber sale contract (as determined by consumer scale or administrator field scale), the contractor has the option of choosing not to harvest the remaining standing timber volume under the following conditions:
 1. The Contractor has conducted a progressive harvest;
 2. The Contractor communicates their desire to not harvest the remaining standing timber volume to the Contract Administrator;
 3. The contract alteration of sale area is documented on a Field Corrective Action Request form and signed by the Contractor; the Contract Administrator; and the Land Commissioner; and;
 4. The Contractor completes all the original contract provisions within a new sale completion boundary established and marked by the Contract Administrator internal to the original sale boundary.

2.2. Delinquent Accounts

- 2.2.1. New contracts may not be bid upon, purchased or opened, nor cutting begun on already-purchased sales until outstanding overruns, extension fees, and/or other Land Department bills are paid.
- 2.2.2. No contract shall be approved for an auction tract from any bidder having a delinquent or uncollectible timber sale account with any county, state, or federal agency, or from any bidder involved in a pending timber trespass case with any county, state, or federal agency.
- 2.2.3. No individual shall participate in any contract on county managed land that has a delinquent or uncollectible timber sale account with any county, state, or federal agency.

2.3. Scaling (ONLY IF SALE IS NOT SOLD ON AREA ESTIMATE)

- 2.3.1. The Purchaser shall pay for all merchantable products on the sale area at the rate stated in this contract. All products are sold subject to scale unless otherwise stated in this contract. No products will leave the harvest site unless scaled or under a consumer agreement.

2.3.2. Consumer Scale

- 2.3.2.1. Timber hauled under Consumer Scale Agreement is subject to the conditions stated on that agreement and on the consumer scale ticket book. A consumer scale agreement will remain in force until the contract expires.
- 2.3.2.2. The cord-weight conversions listed in Appendix 1 shall be used.
- 2.3.2.3. Consumer scale books must be properly completed and returned to the County within thirty (30) days after timber removal.
- 2.3.2.4. The Operator authorizes the release of information pertaining to all loads hauled to a consumer regardless of source.
- 2.3.2.5. The Purchaser may be charged fifty (\$50.00) dollars for each unreturned or improperly filled out ticket book. Unaccounted for loads will be billed at a rate equal to the average load of a sale.
- 2.3.2.6. A conversion factor of 2.25 cords/MBF will be used to determine cords from scale tickets expressed in board feet.

2.3.3. Stick Scales

- 2.3.3.1. Products subject to stick scale must be piled to facilitate efficient and accurate scaling, and labeled with the contract number.
- 2.3.3.2. The Contract Administrator must be notified at least two (2) working days in advance of when a stick scale is required.

2.3.4. Mixing of Species

- 2.3.4.1. Mixed species and species products sold subject to scale must be kept separate until scaled unless otherwise approved by the Contract Administrator.

2.4. Sold Area Estimate Sales (Lump Sum Sale)

- 2.4.1. Any sales, or parts thereof, scaled and sold as appraised by timber cruise scale, will not be adjusted or reappraised after the sale.

2.5. Timber Damaged by Pests, Disease or Catastrophic Events

- 2.5.1. The County will not renegotiate the price on a timber sale.
- 2.5.2. **Inactive Timber Sale** – When thirty-three (33%) percent or more of the sale volume has been damaged within the sale area as determined by the Contract Administrator, the Purchaser may either harvest the sale “as is” or the sale will revert to the County and the Purchaser will be refunded their advance payment.
- 2.5.3. Advance payment will not be refunded if the sale has been extended.
- 2.5.4. **Active Timber Sale** – When thirty-three (33%) percent or more of the sale volume has been damaged within the sale area as determined by the Contract Administrator prior to the expiration date of the original sale contract, the County may refund the balance of the sale to the Purchaser depending on the damage and the situation under which it occurred.

3. Sale Start and Expiration

3.1. Notification

- 3.1.1. **Startup of Sale Activities** – The Purchaser shall notify the Contract Administrator at least three (3) days before commencing work on a sale, and each time activities are resumed after being discontinued for an extended period.
- 3.1.2. **Pre-Work Meeting** – The Purchaser must meet with the Contract Administrator on-site to conduct a pre-work meeting.
- 3.1.3. **Closure of Sale Activities** – The Purchaser shall notify the Contract Administrator at least three (3) working days before logging equipment is removed from the sale.

3.2. Expiration of Timber Sale Contract

- 3.2.1. All timber must be cut prior to the expiration date of the Timber Sale Contract.
- 3.2.2. An extension request must be received in writing and may be granted at the discretion of the Land Commissioner.
- 3.2.3. No extension will be granted without an additional payment of ten (10%) percent of the uncut volume based on bid price, as determined by the Contract Administrator.
- 3.2.4. Extensions will not be granted to any operator having a delinquent or uncollectible timber sale account with any county, the state or federal agency.

- 3.2.5. A no-fee ninety (90) day hauling extension to haul and skid timber that has been cut prior to the expiration date may be granted at the discretion of the Land Commissioner upon a request prior to expiration date in writing from the Purchaser.

3.3. Closing of Contract within Thirty (30) Days

- 3.3.1. Road repair, felling of residual timber and other contract requirements must be completed within the timeframe designated by the Contract Administrator.
- 3.3.2. If work is not completed within the timeframe designated, the County may complete the contract requirements at the cost of Purchaser.

3.4. Halting of Sale Activities

- 3.4.1. The Contract Administrator may stop any or all sale activities immediately for non-compliance with this contract, the Project Plan or County procedures, to prevent damage to the site or during high fire danger. Work can be stopped for as long as necessary to resolve the infraction or ensure protection of the site.

3.5. Sale Closed with Conditions

- 3.5.1. A sale may be 'closed with conditions' which may be to complete hauling or site work, upon recommendation of Contract Administrator and approval of the Land Commissioner. This status may allow other sale opening or bidding, given that fees are not outstanding, timeframe and requirements for completion of contract are agreed upon, contract remains in force at this time.

3.6. Eligibility for Sales

- 3.6.1. Violation of the eligibility requirements to participate in Timber Sales shall result in loss of the sale and may result in loss of all money deposited on the sale to help offset enforcement costs and as punitive damages.

4. Sale Activities

4.1. Alternate Landing Sites

- 4.1.1. The County may allow temporary stockpiling of timber outside of the sale area subject to the conditions stated on the "Alternate Landing Addendum to Sale Contract". Alternate landing sites must be approved in writing and signed by all parties.

4.2. Marking Loads

- 4.2.1. All truckloads of timber **must** have contract numbers marked on the right and left sides of the load. Any load leaving a contract area without proper identification may be treated as trespass and penalized as such.

4.3. Timber Utilization

- 4.3.1. Upon final inspection of a contract, any residual, non-reserve timber down or standing which is deemed merchantable in the estimation of the Contract Administrator and shall be charged for.
- 4.3.1.1. A scaling fee will be charged if substantial time is required to estimate the volume.
- 4.3.1.2. Timber remaining on the landing after the sale is closed or closed with conditions shall be removed within ninety (90) days.
- 4.3.1.3. Timber left on landings beyond the approved time shall become the property of the County.

4.4. Residual Tree Damage Guide

- 4.4.1. Timber sales with tree damage exceeding five (5%) percent of the residual leave tree on clear cuts or thinning may be charged at a rate of double bid up value. The damaged trees are not to be harvested. If a reserve tree has been willfully cut, the rate of triple bid up value shall be charged.

4.5. Land Survey Markers or Monuments

- 4.5.1. Land Survey markers or monuments will not be damaged and bearing trees will not be damaged or cut. Willful destruction of a monument is a misdemeanor per M.S. 505.33.

4.6. Access to Sale Area

- 4.6.1. Purchaser shall obtain approval from all affected landowners and/or land management agencies before gaining access to the sale area.
- 4.6.2. Road locations and landings must be approved by the Contract Administrator.
- 4.6.3. Upon approval of the Contract Administrator, the Purchaser may enter a sale prior to full payment to develop logging roads or landings. Any incidental timber logged in development of roads and landings must be paid before it can be removed from the site.

Appendix 1 – Cord Weight Conversions

When timber is weight-scaled, the following cord-weight conversions shall apply

Weight to Cord Conversions for use with all Forest Products as of July 1, 2005

- Includes all chips – bark on or bark off
- Winter/Summer weights no longer apply to aspen

| Species | Weight |
|-----------------------|--------|
| Ash | 5000 |
| Elm | 5500 |
| Silver Maple/Boxelder | 5000 |
| Aspen Species | * |
| Q. Aspen | 4500 |
| P. Birch | 4600 |
| Balm of Gilead | 4800 |
| Cottonwood | 5000 |
| Bigtooth Aspen | 4500 |
| Mixed Maple | 5000 |
| Red Maple | 5500 |
| Sugar maple (hard) | 5500 |
| Basswood | 4600 |
| Yellow birch | 5500 |
| Black Walnut | 5500 |
| Butternut | 5000 |
| Oak Spp. | 5500 |
| Red Oak | 5500 |
| White Oak | 5500 |
| Burr Oak | 5500 |
| White Ash | 5000 |
| Mixed Pine | * |
| White Pine | 4400 |
| Norway Pine | 4700 |
| Jack Pine | 4600 |
| White Spruce | 4200 |
| Balsam Fir | 4700 |
| Black Spruce | 4200 |
| Tamarack | 5000 |
| N. White Cedar | 2900 |
| Mixed Spruce | 4200 |

* Weighted by species percentage from appraisal or scale