



TIMBER SALE CONTRACT

THIS CONTRACT made and entered into this 3rd day of August, 2022, by and between the Commonwealth of Virginia, Department of Forestry hereinafter called the **Department**, and _____, of _____, Virginia, _____ hereinafter called the **Purchaser**.

WITNESSETH THAT:

ARTICLE I

- (1) The Department agrees to sell and the Purchaser agrees to buy all the sawtimber and standing pulpwood on an estimated 57.9 acre tract designated for harvest. ALL MERCHANTABLE TIMBER WITHIN THE IDENTIFIED SALE AREA SCHEDULED FOR CUTTING UNDER THIS CONTRACT. The sale area is located on the Cumberland State Forest in Cumberland County, Virginia. See attached sale area map (Attachment A). The volume is estimated to be approximately 1,052,800 board feet of sawtimber (International 1/4" Rule) and 1,331 tons of standing pulpwood. The volumes are only estimates and not guaranteed. Each bidder is encouraged to use their own cruise data to compute bids. The timber sold consists of pine and hardwood sawtimber and pulpwood.
- (2) The Department guarantees the title to said timber and to defend it against any and all claims for taxes, mortgages or other legitimate encumbrances at its own expense. However, title to all forest products shall remain with the Department until payment has been made in full.
- (3) The Department hereby expressly grants to the Purchaser the right of ingress and egress across and upon the sale area.

ARTICLE II

- (1) The Purchaser agrees to pay the Department the sum of _____ (\$_____) for all the timber sold hereunder. The full payment is due and payable within ten (10) business days from the date hereof. No timber shall be cut, nor shall this contract be deemed to be in effect, until payment has been made in full. **Checks should be made payable to the Treasurer of Virginia, Department of Forestry.**
- (2) **The Purchaser agrees to the deposit of two thousand five hundred dollars (\$2,500.00) made payable to the "Treasurer of Virginia, Department of Forestry" accompanying the Purchaser's executed contract that will serve as a performance bond for the duration of this contract. The Purchaser understands that this performance bond will refund upon the successful completion of the harvesting provisions of this contract.** Furthermore, the Purchaser understand that forfeiture of this deposit/bond can occur for any breach or noncompliance of same provisions or termination of this Contract prior to its expiration. Performance bonds shall be returned to the Purchaser within thirty (30) business days after the expiration or sooner termination of this Contract. In the event Department's actual loss or damage exceeds the balance of the "deposit" being held, Purchaser agrees to reimburse the Department promptly for any difference and nothing in this provision shall limit, in any way, the Department's right to pursue its appropriate remedies in law or equity.
- (3) The boundaries of the timber sale areas are shown on the attached map (Attachment A) which is hereby incorporated into this contract. Sale area boundaries are designated by blue paint marks on perimeter trees. Approximate acreages are stated by sale area or unit, but not guaranteed. Also shown on the attached map (Attachment A) are stream courses, sensitive areas or other equipment exclusion zones (if present) that shall not be disturbed by harvest operations.

- (4) The Purchaser agrees to notify the Cumberland State Forest office at 804-492-4121 or cell 434-326-2364 **five (5)** business days prior to the commencement of harvest activities.
- (5) The Purchaser shall designate in writing, unless otherwise agreed to, a representative authorized to receive notices regarding performance under this contract and take related action. Such designation should occur prior to the actual harvest of any timber.
- (6) Unless a written extension of time is granted by the Department, or barring forfeiture of cutting rights for noncompliance of contract provisions, all stumpage sold hereunder shall be removed on or before **February 15, 2024**.
- (7) The Department reserves the right to inspect any and all contractors and subcontractors operations at any time.
- (8) **Independent Contractor**: The Purchaser, his employees and agents are not to be, at any time, considered servants, agents, or employees of the Commonwealth of Virginia, nor of any department or division thereof, but instead are considered to be independent contractors.
- (9) Purchaser also agrees to comply with all laws, rules and/or regulations applicable to the safe performance of such work, including without limiting the generality of the foregoing, Public Law 91-596, Title: "Occupational Safety and Health Act of 1970."

ARTICLE III

- (1) 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 designated crop trees, roads, property lines, fences, streams, creeks, springs and soils.
 - (a) Stumps shall be cut in such manner as to cause the least possible waste and not higher than eight (8) inches above ground level, except on misshapen or defective trees where cutting below eight (8) inches is not practical.
 - (b) To improve post-harvest wildlife habitat, standing dead trees shall be left, if safe to do so.
 - (c) **NO CUTTING OR EQUIPMENT OPERATION is allowed inside established mitigation buffers.** This harvest borders mitigation buffers for long distances. The mitigation buffer has been identified by orange shading on the detailed harvest map. The mitigation buffer has been identified on the ground with orange paint on perimeter trees where the buffer is adjacent to the harvest. No damage should occur in the mitigation buffer.
 - (d) All trees sold hereunder shall be utilized as low in diameter in the tops as may be practical.
 - (e) All merchantable trees are to be cut within the boundaries of the designated sale area(s), unless stated otherwise, including any downed trees.
 - (f) All trees are to 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 Forest Manager. Equipment operation within, or the felling of trees into a mitigation buffer is not allowed. Mitigation buffers are marked with orange paint stripes along perimeter trees.
 - (g) Extreme caution will be requested in felling and skidding any marked trees from the reserve areas to be thinned (if applicable – see attached map). This is to minimize damage to the residual growing stock, which will be retained.
 - (h) No trees, laps or logging debris are to be left in roads, open areas, streams, creeks, vernal pools, drainage ditches or springs.
 - (i) The Purchaser and the Department shall mutually lay out the designated system of temporary roads (if needed) and decking locations over which the timber sold hereunder shall be removed and all skidding activities will be concentrated to flow into these temporary roads or decks. Decking along existing (non-State or locality) permanent roads is allowed, but the road must remain open at all times. No skidding allowed on any State, Locality, or property permanent / paved roads.
 - (j) The Department may require the Purchaser to suspend logging activities during prolonged periods of inclement weather, as these activities could result in detrimental consequences to forest soils. The Purchaser may be granted a contract extension, if weather related delays become significant.

- (k) All prehistoric caves, endangered species, sensitive areas, and historic areas have been excluded from ground disturbance when identified. Any discovery by the Purchaser of additional areas, resources, species, or members of species needing special protection shall be promptly reported to the Department and the Purchaser shall immediately suspend operations within the area discovered. No trees may be felled into any areas identified as requiring special protection. If additional areas needing special measures for protection are discovered after the contract is signed, those measures will/may be revised or newly prescribed in which case timber volumes and values may be adjusted based upon the timber contracted values and volumes by product.
 - (l) Purchaser shall use reasonable efforts to not leave trash, bottles, cans, or other debris on the Sale Area during or after harvesting. In the event Purchaser leaves such debris the Department shall provide written notice of the condition and allow Purchaser fifteen (15) business days from the date of notification to rectify the area. If Purchaser declines or fails to remove such debris in a timely manner, the Department shall have the right to hire a contractor to remove such debris at the Purchaser's sole cost and expense.
 - (m) Fences damaged (if any) by the Purchaser's operations shall be repaired by the Purchaser, including any fence section removed to facilitate the removal of trees harvested. No piling of slash adjacent to fences or property lines allowed.
 - (n) In the event the included timber to which the Department holds title to is destroyed, the Department shall make an appraisal to determine for each product/species the difference between the appraised value immediately prior to the loss and the appraised value after the loss. The Purchaser shall not be obligated to accept and pay for timber that is destroyed or damaged except through written agreement. Damages to timber would include events such as fire, wind, flood, or similar cause but does not include damage caused by the Purchaser's operations or those of any subcontractor.
- (2) Timber harvested by the Purchaser from standing trees shall be removed in such a manner as to cause the least possible damage to the existing main haul roads and no public hazard at entranceways to primary and secondary Virginia highways.
- (a) Access to the sale area is adequate and main hauls will be confined to this system for all men, materials and logging equipment including transport trucks necessary for the removal of said timber; the right to designate or approve the location of any new road across State Forest land is specifically reserved.
 - (b) All such new roads with the exception of skidding trails constructed by the Purchaser and all existing roads within the timber sale area shall be left in passable condition (usable by pickup truck) during and upon completion of this contract. Roads are to be left in the same or better condition as found prior to harvesting.
 - (c) During and upon completion of the harvest operation, the Purchaser shall comply with the Water Quality and BMP standards listed in the "Virginia's Forestry Best Management Practices for Water Quality, Fifth Edition" issued by the Virginia Department of Forestry. The Department reserves specifically the right to request corrective action of the Purchaser in maintenance and stabilization of forest roads, trails, culvert pipes, water bars, side ditches, lead-off ditches, decks, skid trails and streams where destructive action of the Purchaser has contributed to a BMP or Water Quality problem.
 - (d) The Purchaser shall comply with all Virginia Department of Transportation regulations and obtain all required permits for temporary logging entrances. The Purchaser shall guard against the unnecessary transfer of mud and debris by vehicle onto the public highway system of the Commonwealth of Virginia, whereby the same poses a threat to public safety. Furthermore, the Purchaser assumes the responsibility for the preventive and/or corrective action necessary to eliminate this source of hazard should the problem develop.
 - (e) The Purchaser will assume the responsibility for stabilizing against erosion on used forest roads and trails according to the Water Quality BMP Handbook.
 - (f) The location of any landings, logging deck areas and stream crossings will be approved by the Department prior to development.
- (3) All logging operators on State Forest lands must be trained and certified under their respective state's professional logger program such as Virginia's SHARP Logger Program.
- (4) The Purchaser agrees to exercise the utmost care and caution to prevent the inception and spread of forest fires on the area for sale and on adjoining areas. The Purchaser further agrees to observe and comply with all the forest fire laws of the State of Virginia which may be applicable. The Purchaser will be held liable for costs associated with controlling any fire caused by the harvest operation or for fire damage to residual trees and adjacent forest stands. Purchaser also agrees to report all fires immediately. Effective muffler systems installed by the manufacturer as standard equipment shall be maintained on exhausts

of trucks, power saws and other internal combustion engines used in the Purchaser's Operations. When local fire weather conditions are becoming critical, the Purchaser shall keep with gasoline chain saws at all times 1) a fire extinguisher (A:B:C Dry Chemical, 5 lb. min.); and 2) a Standard Grade Round point Long-handled shovel (48" min.), and/or a Standard Grade Long-handled Fire Rake (48" min.) and take precautionary measures requested by the Department.

- (5) If Purchaser maintains storage for oil, gas, or oil products on the harvest area, Purchaser shall take appropriate preventive measures to ensure that any spill of such oil, gas, or oil products does not enter any stream or other water of the Commonwealth. Purchaser shall notify the Department's Forest Manager of all releases of hazardous substances on or in the vicinity of the harvest area caused by the Purchaser and/or the Purchaser's employees, agents, subcontractors, or their employees or agents, directly or indirectly, as a result of Purchaser's operations.
- (6) So far as practicable, the Purchaser shall protect specified roads and other improvements (such as State or Private roads, trails, telephone lines, ditches, fences, and culverts), along with any improvements not owned by the Department. Purchaser shall protect all known survey monuments, witness corners, reference monuments, signs, and bearing trees. Any damage to specified roads or other improvements shall be repaired and/or replaced by the Purchaser and at their cost.

ARTICLE IV

- (1) The Department reserves the right to postpone timber removal under terms of this contract for gross noncompliance with the agreed upon provisions herein.
- (2) Applicable Laws and Courts: This resulting contract shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto shall be brought in the courts of the Commonwealth. The agency and the Purchaser are encouraged to resolve any issues in controversy arising from the award of the contract or any contractual dispute using Alternative Dispute Resolution (ADR) procedures (*Code of Virginia*, § 2.2-4366). The Purchaser shall comply with all applicable federal, state and local laws, rules and regulations.
- (3) MINIMUM INSURANCE COVERAGE AND LIMITS REQUIRED BY PURCHASER OR THEIR CONTRACTORS:
 - a) Workers' Compensation - Statutory requirements and benefits. Coverage is compulsory for employers of three or more employees, to include the employer. Purchasers or their contractors who fail to notify the Commonwealth of increases in the number of employees that change their workers' compensation requirements under the *Code of Virginia* during the course of the contract shall be in noncompliance with the contract.
 - b) Employer's Liability - \$100,000.
 - c) Commercial General Liability - \$1,000,000 per occurrence and \$2,000,000 in the aggregate. Commercial General Liability is to include bodily injury and property damage, personal injury and advertising injury, products and completed operations coverage. The Commonwealth of Virginia must be named as an additional insured and so endorsed on the policy.
 - d) Automobile Liability - \$1,000,000 combined single limit. (Required only if a motor vehicle not owned by the Commonwealth is to be used in the contract. Purchaser must assure that the required coverage is maintained by them or its Contractor (or third party owner of such motor vehicle.)

ARTICLE V

- (1) The Purchaser's signature on this contract certifies that this timber sale is made without prior understanding, agreement, or connection with any corporation, firm or person submitting a bid for the same material and is in all respects, fair and without collusion or fraud. The Purchaser understands that collusive bidding is a violation of the Virginia Governmental Fraud Act and federal law and can result in fines, prison sentences, and civil damage awards. The Purchaser agrees to abide by all conditions of this contract. The Purchaser understands that collusive bidding is a violation of the Virginia Governmental Fraud Act – Section 18.2-498.1 and federal law and can result in fines, prison sentences, and civil damage awards.
- (2) The Purchaser, and all solicitations and advertisements for employees placed by or on behalf of the Purchaser, will state that such Purchaser is an equal opportunity employer.

- (a) The Purchaser will not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin, except where religion, sex or national origin is a bonafide occupational qualification reasonably necessary to the normal operation of the Purchaser.
- (b) The Purchaser agrees to post in conspicuous places, available to employees and applicants for employment, notice setting forth the provisions of this nondiscrimination clause.

(3) DRUG FREE WORKPLACE: The Purchaser acknowledges and certifies that they understand that the following acts by the Purchaser, its employees, and/or agents performing services on state property are prohibited:

- (a) The unlawful manufacture, distribution, dispensing, possession or use of alcohol or other drugs; and
- (b) Any impairment or incapacitation from the use of alcohol or other drugs (except the use of drugs for legitimate medical purposes).

The Purchaser further acknowledges and certifies that they understand that a violation of these prohibitions constitutes a breach of contract and may result in default action being taken by the Commonwealth in addition to any criminal penalties that may result from such conduct.

- (4) The Purchaser certifies and warrants that by their signature within this contract that they have neither offered nor received any kickbacks from any other purchaser in connection with their bid on this solicitation. A kickback is defined as an inducement for the award of a contract, in the form of any payment, loan, subscription, advance, deposit of money, services or anything, present or promised, unless consideration of substantially equal or greater value is exchanged. Further, no person shall demand or receive any payment, loan subscription, advance, deposit of money, services or anything of value in return for an agreement not to compete on a public contract.
- (5) No Purchaser shall confer on any public employee having official responsibility for a procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is exchanged.
- (6) The required deposit/performance bond shall protect the Department in event the Purchaser defaults before a contract is executed. The Department will hold the deposit until the harvest is complete and the Purchaser has fulfilled all contracted provisions.
- (7) Indemnification: Purchaser agrees to indemnify, defend and hold harmless the Commonwealth of Virginia, its agencies, its officers, agents, and employees from any claims, damages and actions of any kind or nature, by Purchaser or by third parties, whether at law or in equity, arising from or caused by the Purchaser's or its Contractor's performance under any contract awarded hereunder, included but limited to claims arising as the result of the use of materials, goods, equipment or services furnished by Purchaser thereunder.
- (8) This contract may not be assigned, sublet or transferred without the written consent of the Department.
- (9) In witness whereof this Timber Sale Contract has been executed on the date first above written.

PURCHASER

TELEPHONE NUMBER

Approved at _____, VA under the above conditions _____, 2022

STATE LANDS MANAGER

Attachment "A"
Sale / Harvest Area Map

Cumberland State Forest

CU 12-001 -005 -006

Timber Harvest: Final Harvest of Jenkins (Unit 12); Stands 001, 005, and 006. Total harvest area: 57.9 acres.

