

## **REQUEST FOR PROPOSALS**

Sealed Request for Proposals will be received by the City of Oak Harbor until 2:00 p.m., Wednesday, October 21, 2015 at the Office of the City Clerk at which time they will be opened and publicly read aloud for the furnishing of the following services:

### **NOTICE OF TIMBER SALE**

Any questions and/or comments or objections to the proposal documents shall be submitted in writing to the Public Works Director at least five (5) days prior to the bid opening date. If necessary, an addendum will be issued to all bidders who obtained proposal documents from the City of Oak Harbor.

The City of Oak Harbor reserves the right to reject any and/or all proposals and to waive any informality in the form of proposal. The City also reserves the right to waive individual specifications if it is satisfied that the proposals otherwise meet the performance standards set by these specifications.

Proposal documents may be obtained from Sandra Place, 1400 NE 16<sup>th</sup> Avenue, Oak Harbor, Washington 98277, (360) 279-4757 or via e-mail at [splace@oakharbor.org](mailto:splace@oakharbor.org). The proposals may also be downloaded on the City of Oak Harbor website at [www.oakharbor.org](http://www.oakharbor.org)

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Anna Thompson, City Clerk

Published: Daily Journal of Commerce-September 16, 23, 30 & October 7, 2015  
Whidbey News-Times – September 16, 23, 30 & October 7, 2015

TIMBER NOTICE OF SALE

**SALE NAME:** **Sleeper Road**

**BID PACKAGES:** Contract terms and bidding information may be obtained by contacting the City of Oak Harbor Department of Public Works located at 1400 NE 16<sup>TH</sup> Ave, Oak Harbor, WA. 98277 360-279-4764

**SEALED BIDS:** Due by 2:00 p.m. October 21, 2015  
Oak Harbor City Hall  
865 SE Barrington Drive, Oak Harbor, WA 98277

**AUCTION:** Sealed bids will be opened and read publicly at 2:00 p.m., October 21, 2015  
At the City Hall Council Chambers

**SALE LOCATION:** Sale is located approximately 2 miles by road north of Oak Harbor, Washington.

**PRODUCTS SOLD:** All timber, except wildlife Reserve trees as described in the contract, bounded by Timber Harvest Flagging, comprising approximately 560,000 board feet of Douglas fir, 100,000 board feet of western hemlock, 28,000 board feet of red cedar, 21,000 board feet of lodgepole pine, and 13,000 board feet of red alder; located on approximately 34 acres on parts NW1/4 NE1/4 of Section 24, in Township 33 North, Range 1 East, W.M. in Island County as shown on the attached timber sale map. All timber is export restricted and shall not be exported until processed.

ESTIMATED SALE VOLUME:

DF = 560	MBF
WH = 100	
RC = 28	
LP = 21	
<u>RA = 13</u>	
722	MBF

<b>MINIMUM BID:</b>	\$160,000.00	<b>BID METHOD:</b>	Sealed Bids
<b>BID DEPOSIT;</b>	\$16,000.00		
<b>PERFORMANCE SECURITY:</b>	\$10,000.00	<b>SALE TYPE:</b>	Lump Sum
<b>EXPIRATION DATE:</b>	October 31, 2016	<b>ALLOCATION:</b>	Restricted
<b>BID DEPOSIT:</b>	10 percent of bid amount.	<b>CERTIFICATION:</b>	No certification
<b>HARVEST METHOD:</b>	Skidder, tractor, shovel or cable		
<b>ROADS:</b>	Reconstruction of low standard existing haul roads with no requirements on spurs not used.		
<b>ACREAGE DETERMINATION:</b>	Approximation by aerial photo interpretation.		
<b>SPECIAL REMARKS:</b>	Extreme hazard abatement is required. All logging related slash within 100 feet of Sleeper Road shall be removed.		
<b>QUESTIONS (?):</b>	Questions pertaining to this timber sale should be directed to Mike Cronin, Cronin Forestry at (360) 385-5454.		

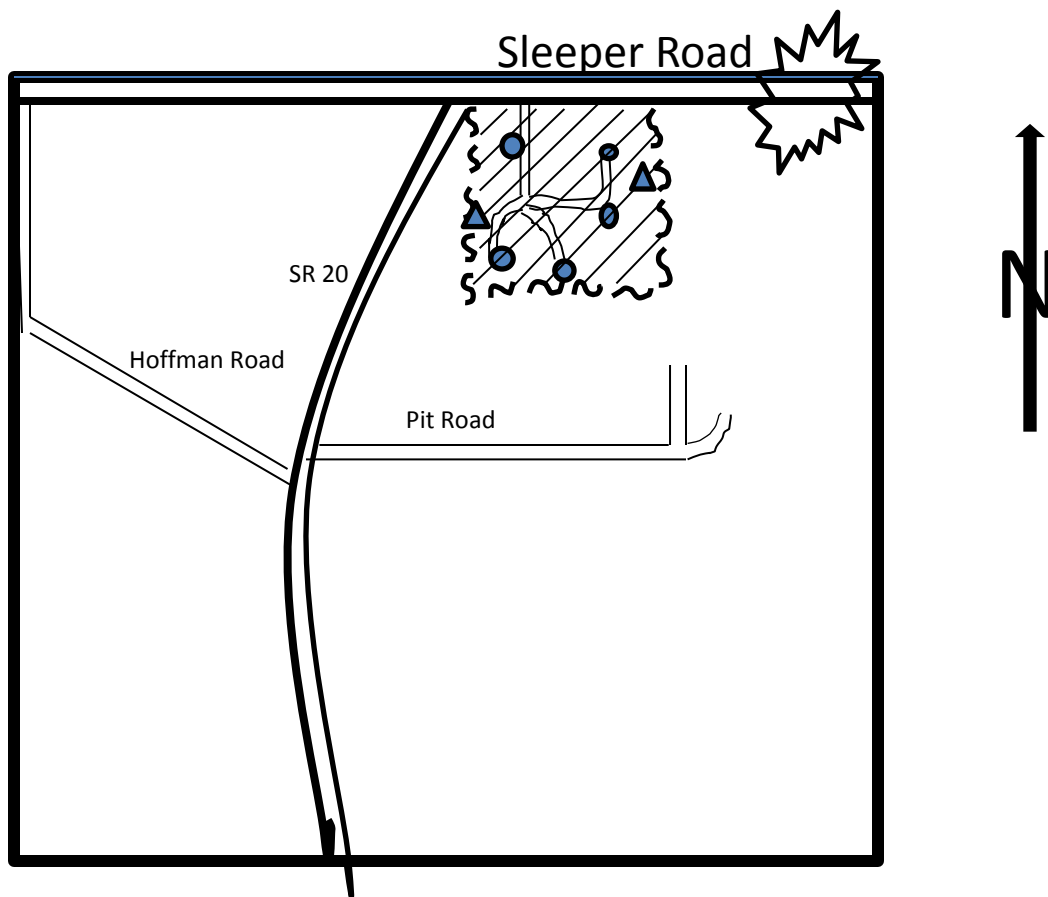
AWARD OF BID IS DEPENDENT UPON CITY COUNCIL APPROVAL ON NOVEMBER 17, 2015.

# TIMBER SALE MAP







## City of Oak Harbor WA.

### Sleeper Road Timber Sale

Section 24, T 33N, R1 E



#### Legend:

-  = timber sale area
-  = Sale boundary Pink THB flagging
-  = wetland
-  = Leave tree clump bounded by white + green flagging
-  = existing roads
-  = Landings

scale: approx .1" = 1000'

# City of Oak Harbor

## Public Works Department

### SEALED BID FORM

Sale name: **Sleeper Road**

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hereby submits the following bid for timber

*Print full, legal company name*

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Street address, city, state, zip code

Phone number

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**Lump Sum Bid:** \_\_\_\_\_

Bid deposit \_\_\_\_\_

*Cash, certified check, cashier's check or money order*

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**Within 30 days of confirmation date** the successful bidder agrees to furnish Performance Security (\$10,000.00) acceptable to the City. Performance security must guarantee performance of all provisions of the contract and payment of any damages caused by operations under the contract or resulting from the successful bidder's noncompliance with any rule or law.

#### **Bidders Warranty and Bid Signature**

By signing and submitting this bid as an offer to purchase forest products from the City, the bidder hereby warrants to the City that they have had opportunity to fully inspect the sale area and products being sold. Bidder further warrants that to the City that they enter this bid based upon their own judgements of the value of the forest products, formed after their own examination and inspection of both the timber sale area and products being sold. Bidder also warrants to the City that they enter this bid without any reliance upon the volume estimates, acreage, appraisal or any other representation by the City.

Authorized Company Representative: \_\_\_\_\_

**BILL OF SALE AND CONTRACT FOR  
SLEEPER ROAD TIMBER**

**EXPORT RESTRICTED**

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2015, between the CITY OF OAK HARBOR, a municipal corporation hereinafter referred to as "City", and \_\_\_\_\_ of \_\_\_\_\_ hereinafter referred to as "Purchaser".

WHEREAS, on \_\_\_\_\_, the City Council authorized the surplus of Parcel Numbers R13324-461-3620 & R13324-461-2960; and

WHEREAS, sale of timber as personal property can occur apart from the sale of real property; and

WHEREAS, on April 21, 2015, the City Council authorized Cronin Forestry to obtain a Class 3 FPA for clear cutting the Sleeper Road properties; and

WHEREAS, on April 21, 2015, the City Council authorized the creation of contracts for the purchase and sale of the Sleeper Road timber; and

WHEREAS, on \_\_\_\_\_, the City Council authorized the surplus of the timber located on the Sleeper Road properties and authorized the Public Works Department to solicit bids for the removal and sale of the timber; and

WHEREAS, the Purchaser submitted the highest bid in response to the City's call for bids;

NOW THEREFORE, in consideration of the terms and conditions contained herein and attached and made a part of this agreement, the parties hereto covenant and agree as follows:

**SECTION A: GENERAL TERMS**

1. Products Sold and Sale Area. Purchaser was the successful bidder on \_\_\_\_\_, 2015, and the sale was confirmed on \_\_\_\_\_, 2015, for the total sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) in accordance with and as described in the attached documents.

The City agrees to sell to Purchaser and Purchaser agrees to purchase the following forest products:

All timber marked bounded by Timber Harvest Boundary flagging except designated leave trees marked with blue paint or bounded by white and green flagging, comprising approximately 560,000 board feet of Douglas fir, 100,000 board feet of western hemlock, 28,000 board feet of red cedar, 21,000 board feet of lodgepole pine, and 13,000 board feet of red alder located on approximately 34 acres located in the NW 1/4 NE 1/4 of Section 24, T33N, R1 East in Island County as shown on the attached timber sale map. All timber is export restricted and shall not be exported until processed.

The Purchaser shall provide and be at the expense of all equipment, work and labor of any sort whatsoever that may be required for the transfer of materials and for constructing and completing the work provided for in this contract and every part thereof.

2. Inspection by Purchaser. Purchaser has had the opportunity to inspect the forest products and sale area and enters into this contract in reliance on Purchaser's own examination and not by reason of any representation by the City
3. Contract Period. The Purchaser shall complete the described work within the twelve (12) month period following the Notice to Proceed, subject to the restrictions provided for in this contract.
4. Contract Term Adjustment. Purchaser may request an adjustment in the contract term. Claim must be submitted in writing, must be received by the City within thirty (30) days after the start of interruption or delay, and must indicate the actual or anticipated length of interruption or delay. The City may grant the adjustment only if the cause for contract term adjustment is beyond Purchaser's control. The cause must be one of the following and the adjustment may be granted only if operations or planned operations under this contract are actually interrupted or delayed:
  - a. road and bridge failures which deny access;
  - b. access road closures imposed by road owner;
  - c. excessive suspensions as provided in Section A, Clause 22;
  - d. regulatory actions not arising from Purchaser's failure to comply with this contract.
5. Contract Extensions. Extensions of this contract period may be granted only if, in the judgment of the City, Purchaser is acting in good faith and is endeavoring to remove the forest products conveyed. The term of this contract may be extended for a reasonable time by the City if all of the following conditions are satisfied:

- a. A written request for extension of the contract period must be received prior to the expiration date of the contract.
  - b. For the first extension, not to exceed one (1) year, payment of at least fifty percent (50%) of the total contract price.
  - c. For the second extension, not to exceed one (1) year, payment of at least ninety percent (90%) of the total contract price.
  - d. The payments shall not include the initial deposit.
  - e. Payment of an amount based on ten percent (10%) interest per annum on the unpaid portion of the total contract price.
  - f. All payments, except the initial deposit, will be deducted from the total contract price to determine the unpaid portion of the contract.
  - g. Extension payments are non-refundable.
6. No Warranties. The City does not warrant any of the following:
- a. The merchantability of the forest products. The use of the term "merchantable" elsewhere in this contract is not intended to vary the foregoing.
  - b. The condition of the forest products. The forest products are conveyed "as is".
  - c. The volume, quality, or grade of the forest products. The description of the forest products conveyed in this agreement are estimates only made for the sole purpose of identification.
  - d. The correctness of any soil or surface conditions and presale construction appraisals, investigations, and all other pre-bid documents prepared by or for the City. These documents were prepared for appraisal purposes only.
  - e. Items which extend beyond the description of the face of this contract.
  - f. The presence or absence of any threatened or endangered species listed by the U.S. Fish and Wildlife Service that may affect the operability of the sale.
7. Regulatory Disclaimer. The City disclaims any responsibility for, or liability relating to, regulatory actions by any government agency, including actions pursuant to the Forest Practices Act, Ch. 76.09 RCW that may affect the operability of the timber sale.

8. Governmental Regulatory Actions.

- a. Increased Costs. Purchaser shall be responsible for any increased operational costs arising from any applicable foreign or domestic governmental regulation or order that does not cause contract performance to become commercially impracticable or that does not substantially frustrate the purpose of the contract. If impracticability or frustration results from Purchaser's failure to comply with this contract, Purchaser shall remain responsible for payment of the total contract price notwithstanding the impracticability or frustration.
- b. Sale Area. When portions of the sale area become subject to a domestic governmental regulation or order that will likely prevent timber harvest for a period that will exceed six (6) months, and the Purchaser has complied with this contract, the following shall apply:
  - i. If forty percent (40%) or less of the sale area is affected by the governmental regulation or order, the City, at Purchaser's request, shall adjust the total contract price as set forth in paragraph (c) below.
  - ii. If forty-one percent (41%) to seventy-four percent (74%) of the sale area is affected by the governmental regulation or order, the City, at Purchaser's request, shall adjust the total contract price as set forth in paragraph (c) below or terminate the contract. Termination will discharge any unexecuted portion of the contract.
  - iii. If seventy-five percent (75%) or more of the sale area is affected by the governmental regulation or order, the City reserves the right to unilaterally terminate the contract and thereby discharge any unexecuted portion thereof. If the City does not exercise this right, the City, at Purchaser's request, shall adjust the total contract price as set forth in paragraph (c) below.
- c. Adjustment of Price. When required by Section A, Clause 8(b), the City shall adjust the total contract price by subtracting from the total contract price an amount determined in the following manner:

The City shall cause the timber sale area subject to governmental regulation or order to be surveyed. The City shall calculate the percentage of the total sale area subject to the governmental regulation or order. The City shall reduce the total contract price by that calculated percentage, notwithstanding potential variations in species, value, costs, or other items over the total sale area.

9. Limitation of Damage. In the event of a breach of any warranty by the City, the liability of the City shall be limited to a return of the initial deposit, unapplied payments, and credit for unamortized improvements made by Purchaser. The City shall not be liable for any damages, whether direct or consequential.
10. Scope of City Advice. No advice by the City regarding the method or manner of performing shall constitute a representation or warranty that the result of such method or manner will conform to the contract, relieve Purchaser of any risk or obligation under the contract, or create any liability to the City because of such advice.
11. Title and Risk of Loss. Title to the forest products conveyed passes at confirmation of the sale. Purchaser bears the risk of loss of or damage to and has an insurable interest in the forest products in this contract from the time of confirmation of the sale of forest products. In the event any such forest products are destroyed, damaged, or stolen after passage of title, whether the cause is foreseeable or unforeseeable, the forest products shall be paid for by Purchaser. Breach of this contract shall have no effect on this provision. Title to the forest products not removed from the sale area within the period specified in this contract shall revert to the City.
12. Responsibility for Work. All work, equipment and materials necessary to perform this contract shall be the responsibility of Purchaser. Any damage to improvements, except as provided in Clause 13, shall be repaired promptly to the satisfaction of the City at Purchaser's expense during the contract period unless an operating release has been issued.
13. Exceptions. Exceptions to Purchaser's responsibility in Section A, Clause 12 shall be limited exclusively to the following. These exceptions shall not apply should damages occur because of Purchaser's failure to take reasonable precautions or to exercise sound forest engineering and construction practices.
  - a. The City shall bear the cost to repair any third party damage involving any existing roadway or section of required road completed to the point that an authorization to haul has been issued. Purchaser shall accomplish repairs promptly as required by the City at an agreed price. The City may elect to accomplish repairs by means of City provided resources.
  - b. The parties shall share equally the cost to repair any part of the required roads constructed under this contract which suffer catastrophic damage, except that Purchaser shall be responsible for the first five thousand dollars (\$5,000). Catastrophic damage is defined as City identified damage valued in excess of five thousand dollars (\$5,000), resulting from a single event caused by forces beyond the control and without the negligence of Purchaser, such as earthquakes, volcanic eruptions, landslides, and floods. Purchaser shall accomplish repairs promptly as required by the City at an agreed price. The City may elect to accomplish repairs by means of City provided resources.

Nothing contained in Clause 12 and Clause 13 shall be construed as relieving Purchaser of responsibility for, or damage resulting from, Purchaser's operations or negligence, nor shall Purchaser be relieved from full responsibility for making good any defective work or materials.

14. Responsibility for Damage. Purchaser shall defend, indemnify, and save harmless the City, its officers, officials, employees and volunteers from all claims, actions, costs and damages of any nature arising out of or in connection with activities or operations performed under this agreement. This obligation shall not include damages caused by the sole negligence of the City and its authorized agents.

In addition to any other remedy authorized by law, the City may retain as much of the initial deposit, performance security or any money or credits due Purchaser necessary to assure indemnification until disposition has been made of any such actions or claims.

15. Liability Insurance. Prior to commencing work, the Purchaser shall obtain at its own cost and expense the following insurance from companies licensed in the State with a current A.M. Best's rating of no less than A:VII. The Purchaser shall provide to the City certificates of insurance with original endorsements affecting insurance required by this clause prior to the commencement of work to be performed.

The insurance policies required shall provide that thirty (30) days prior to cancellation, suspension, reduction or material change in the policy, notice of same shall be given to the City by registered mail, return receipt requested, for all of the following stated insurance policies.

If any of the insurance requirements are not complied with at the renewal date of the insurance policy, payments to the Purchaser shall be withheld until all such requirements have been met, or at the option of the City, the City may pay the renewal premium and withhold such payments from the moneys due the Purchaser.

All notices shall name the Purchaser and identify of the agreement by contract number or some other form of identification necessary to inform the City of the particular contract affected.

- a. Workers Compensation and Employers Liability Insurance. The Purchaser shall procure and maintain for the life of the contract, Workers Compensation Insurance, including Employers Liability Coverage, in accordance with the laws of the State of Washington.
- b. General Liability - with a minimum limit per occurrence of one million dollars (\$1,000,000) and an aggregate of not less than two million dollars (\$2,000,000) for bodily injury, death and property damage unless otherwise specified in the contract specifications. This insurance coverage shall contain no limitations on the scope of the protection provided and indicate on the certificate of insurance the following coverage:

- i. Broad Form Property Damage with no employee exclusion;
- ii. Personal Injury Liability, including extended bodily injury;
- iii. Broad Form Contractual/Commercial Liability including completed operations (Purchasers only);
- iv. Premises - Operations Liability (M&C);
- v. Independent Contractors and Subcontractors; and
- vi. Blanket Contractual Liability.

\*Note: The City shall be named as an additional insured party under this policy.

- c. Automobile - with a minimum limit per occurrence of one million dollars (\$1,000,000) for bodily injury, death and property damage unless otherwise specified in the contract specifications. This insurance shall indicate on the certificate of insurance the following coverage:

- i. Owned automobiles;
- ii. Hired automobiles; and
- iii. Non-owned automobiles.

\*Note: The City shall be named as an additional insured party under this policy.

Any deductibles or self-insured retention shall be declared to and approved by the City prior to the approval of the contract by the City. At the option of the City, the insurer shall reduce or eliminate deductibles or self-insured retention or the Purchaser shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

The Purchaser shall include all subcontractors as insured under its insurance policies or shall furnish separate certificates and endorsements for each subcontractor. All insurance provisions for subcontractors shall be subject to all of the requirements stated herein.

Failure of the Purchaser to take out and/or maintain any required insurance shall not relieve the Purchaser from any liability under the Agreement, nor shall the insurance requirements be construed to conflict with or otherwise limit the obligations concerning indemnification.

It is agreed by the parties that insurers shall have no right of recovery or subrogation against the City (including its employees and other agents and agencies), it being the intention of the parties that the insurance policies so affected shall protect both parties and be primary coverage for any and all losses covered by the above described insurance. It is further agreed by the parties that insurance companies issuing the policy or policies shall have no recourse against the City (including its employees and other agents and agencies) for payment of any premiums or for assessments under any form of policy. It is further agreed by the parties that any and all deductibles in the above described insurance policies shall be assumed by and be at the sole risk of the Purchaser.

It is agreed by the parties that judgments for which the City may be liable, in excess of insured amounts provided herein, or any portion thereof, may be withheld from payment due, or to become due, to the Purchaser until such time as the Purchaser shall furnish additional security covering such judgment as may be determined by the City.

The City reserves the right to request additional insurance on an individual basis for extra hazardous contracts and specific service agreements.

16. Agents. Purchaser is required to have a person on site during all operations who is authorized to receive instructions and notices from the City. Purchaser shall inform the City in writing who is authorized to receive instructions and notices from the City, and any limits to this person's authority.
17. Assignment and Delegation. No rights or interest in this contract shall be assigned by Purchaser without prior written permission of the City. Any attempted assignment shall be void and ineffective for all purposes unless made in conformity with this paragraph. Purchaser may perform any duty through a delegate, but Purchaser is not thereby relieved of any duty to perform or any liability for breach. Any assignee or delegate shall be bound by the terms of this contract.
18. Modifications. Waivers, modifications or amendments of the terms of this contract must be in writing signed by Purchaser and the City.
19. Contract Complete. This contract is the final expression of the Parties' agreement. There are no understandings, agreements, or representations expressed or implied, which are not specified in this contract.
20. Notice. Notices required to be given under the following clauses shall be in writing and shall be delivered to the Party's authorized agent or sent by certified mail to the Party's post office address:

Clause 21 Violation of Contract

Clause 22 City Suspends Operations

All other notices required to be given under this contract shall be in writing and delivered to the authorized agent or mailed to the Party's post office address. Purchaser agrees to notify the City of any change of address.

21. Violation of Contract.

- a. If Purchaser violates any provision of this contract, the contract administrator, by written notice, may suspend those operations in violation. If the violation is capable of being remedied, the Purchaser has thirty (30) days after receipt of a suspension notice to remedy the violation. If the violation cannot be remedied or Purchaser fails to remedy the violation within the thirty (30) days after receipt of a suspension notice, the City may terminate the right of Purchaser under this contract and collect the liquidated damages provided for in Section F, Clause 1.
- b. If the contract expires pursuant to Section A, Clause 3 without Purchaser having performed all its duties under this contract, Purchaser's right to operate is terminated and Purchaser shall not have the right to remedy the breach. This provision shall not relieve Purchaser of any payment obligations.
- c. The City has the right to remedy the breach in the absence of any indicated attempt by Purchaser or if Purchaser is unable, as determined by the City, to remedy the breach. Any expense incurred by the City shall be charged to Purchaser and shall be paid within thirty (30) days of receipt of the billing.
- d. If Purchaser's violation is a result of a failure to make a payment when due, in addition to a. and b. above, interest shall accrue on the unpaid balance at a rate of twelve percent (12%) per annum computed daily beginning the date payment was due.

22. City Suspends Operation. The contract administrator may suspend any operation of Purchaser under this contract when the City is suffering or there is a reasonable expectation that the City will suffer damage if the operation is allowed to continue.

Purchaser shall be in breach of this contract if the operation continues after the suspension notice or if the operation resumes without prior approval and notice from the contract administrator.

Purchaser may request a modification of a suspension within thirty (30) days of the start of suspension through the dispute resolution process in Section A, Clause 24. If this process results in a finding that the suspension exceeded the time reasonably necessary to stop or prevent damage to the City, Purchaser is entitled to a contract term adjustment under Section A, Clause 4 for the actual interruption or delay in operations caused by the excessive suspension.

If it reasonably appears that the damage that the City is suffering, or can reasonably be expected to suffer if the operation is allowed to continue, will prevent harvest for a period that will exceed six months, and the Purchaser has complied with this contract, the provisions of Section A, Clause 8 shall govern just as if the harvest was prevented by an applicable foreign or domestic governmental regulation or order.

23. Unauthorized Activity. Any cutting, removal, or damage of forest products by Purchaser or Purchaser's delegate or agent in a manner inconsistent with the terms of this contract or State law is unauthorized.
24. Dispute Resolution. The following procedures apply in the event of a dispute regarding interpretation or administration of this contract and the parties agree that these procedures must be followed before a lawsuit can be initiated.
- a. In the event of a dispute, Purchaser must make a written request to the City Administrator for resolution prior to seeking other relief.
  - b. The City Administrator will issue a written decision on Purchaser's request within ten (10) working days.
  - c. Within ten (10) working days of receipt of the City Administrator's decision, Purchaser may make a written request for resolution to the Oak Harbor City Council.
  - d. Unless otherwise agreed, a conference will be held within ten (10) working days of the receipt of Purchaser's request. Purchaser and the City Administrator will have an opportunity to present their positions. The City Council will issue a resolution within five (5) working days of the conference.
25. Compliance With All Laws. Purchaser shall comply with all statutes, regulations and laws which apply to this contract, including, but not limited to, the applicable requirements of WAC 240-15-015 (relating to prohibitions on export and substitution), WAC 240-15-025 (relating to reporting requirements), and WAC 240-15-030 (relating to enforcement).
26. Venue. This Agreement shall be interpreted and construed in accord with the laws of the State of Washington and venue shall be in Island County, WA.
27. Equipment Left on City Land. All equipment owned or in the possession of Purchaser or its delegates shall be removed from the sale area and other City land by the termination of this contract. Equipment remaining unclaimed on City land sixty (60) days after the expiration of the contract period is subject to disposition as provided by law. Purchaser shall pay to the City all costs of moving, storing and disposing of such equipment. The City shall not be responsible for any damages to or loss of the equipment or damage caused by the moving, storing or disposal of the equipment.
28. Operating Release. Purchaser and contract administrator may agree to an operating release for this sale, or portion of this sale prior to the contract expiration, when all contract requirements pertaining to the release area, except slash disposal and payments, have been satisfactorily completed. Upon issuance of a release, Purchaser's right to cut and remove forest products on the released area will terminate.

29. Road Use Authorization. Purchaser is authorized to use City roads and those roads on which the City has acquired easements and road use permits as shown on the vicinity map. The City may authorize in writing the use of other roads subject to fees, restrictions and prior rights.
30. Pre-work Conference. Purchaser shall arrange with the contract administrator to review this contract and to examine the sale area before beginning any operations. A plan of operations shall be developed and agreed upon by the contract administrator and Purchaser before beginning any operations.
31. Preservation of Markers. Any legal land subdivision survey corners and witness objects are to be preserved. If such are destroyed or disturbed, Purchaser shall have a licensed land surveyor re-establish them.
32. Road Use Reservation. The City shall have the right to use, without charge, all existing roads and any road constructed or reconstructed on City lands by Purchaser under this contract. The City may extend such rights to others. If the City grants such rights to others, the City shall require performance or payment, as directed by the City, for their proportionate share of maintenance based on their use.
33. Open Fires. Purchaser shall not set or allow to be set by Purchaser's employees or subcontractors any open fire at any time of the year without first obtaining permission in writing from the contract administrator.

#### **SECTION B: PAYMENTS AND SECURITY**

1. Initial Deposit. Purchaser paid \_\_\_\_\_ (\$\_\_\_\_\_) initial deposit.
2. Payment for Forest Products. Purchaser agrees to pay the total contract price of \_\_\_\_\_ (\$\_\_\_\_\_).
3. Guarantee of Payment. Purchaser will pay for forest products prior to cutting or will guarantee payment by posting an approved payment security. The amount of cash or payment security shall be equal to the total contract value.
4. Billing Procedure. The City will compute and forward to Purchaser statements of charges provided for in the contract. The payment shall be delivered to the City on or before the date shown on the billing statement.
5. Payment Account Refund. Advance payments remaining on account above the value for the charges shall be returned to Purchaser within thirty (30) days following the final report of charges. Refunds not made within the thirty (30) day period will accrue interest at a rate of twelve percent (12%) per annum computed on a daily basis until paid.

6. Performance Security. Purchaser agrees to furnish within thirty (30) days of the award date security acceptable to the City in the amount of ten thousand dollars (\$10,000) that guarantees performance of all provisions of this contract and payment of any damages caused by operations under this contract or resulting from Purchaser's noncompliance with any rule or law. Purchaser shall not operate unless performance security has been accepted by the City. If at any time the City decides that this security has become unsatisfactory, Purchaser agrees to suspend operations and, within thirty (30) days of notification, to replace the security with one acceptable to the City.
7. Performance Security Reduction. The City may reduce the performance security after an operating release has been issued if the City determines that adequate security exists for any remaining obligations of Purchaser.
8. Payment of Forest Excise Tax. Purchaser shall pay all required forest excise tax.

### **SECTION C: LOG DEFINITIONS AND ACCOUNTABILITY**

1. Branding and Painting. Purchaser shall provide a State of Washington registered log brand unless the City agrees to furnish the brand. Purchaser must brand and paint logs in a manner that meets the requirements of WAC 240-15-030(2).

### **SECTION D: HARVESTING OPERATIONS**

1. Leave Tree Damage Definition. Leave tree damage exists when one or more of the following criteria are satisfied as a result of Purchaser's operation:
  - a. A leave tree has one (1) or more scars on its trunk exposing the cambium layer, which in total exceeds one hundred (100) square inches.
  - b. A leave tree top is broken or the live crown ratio is reduced below thirty percent (30%).
  - c. A leave tree has more than one-third (1/3) of the circumference of its root system injured such that the cambium layer is exposed.

**Excessive damage is established when more than five percent (5%) of the leave trees are damaged in a unit. The damaged trees will be identified by the Contract Administrator.**

2. Forest Practices Act. All operations associated with harvesting of timber shall adhere to requirements set forth in the Forest Practices Act Ch. 76.09 RCW and the requirements of the approved Forest Practices Application relating to this sale.
3. Harvesting Equipment. Forest products sold under this contract shall be yarded by all ground methods including rubber tired skidder, tractor or processor unless authority to use other equipment is granted in writing by the Contract Administrator.

4. Special Requirements.
  - a. Ground and Shovel Methods - Operations shall be suspended during periods of wet weather when rutting of skid or shovel roads begins. Slash and displaced soil shall be removed from swales and natural drainage channels concurrent with yarding.
  - b. Rubber tired skidders will be limited to areas and periods of dry soil and will be the first to be limited if rutting appears imminent.
  - c. Extreme hazard abatement. All logging generated slash on that part of the sale area within one hundred (100) feet of the running surface of Sleeper Road and SR 20 shall be removed and placed in locations approved by the Contract Administrator.
  - d. Slash accumulation at landing sites shall be piled in clean, dirt-free piles for later on- site chipping or burning.
  - e. Operation of heavy equipment shall be limited to the hours of 6 AM until 8 PM each day. This requirement may be waived on specific days where the IFPL class 3 and higher designations have been declared by the WDNR.
5. Tops and Limbs Outside the Sale Boundary. Tops and limbs outside the sale boundary as a result of Purchaser's operation shall be removed concurrently with the yarding operation. Timber must be felled away from private property boundaries.

#### **SECTION E: SITE PREPARATION AND PROTECTION**

1. Fire Hazardous Conditions. Purchaser agrees to conduct operations including maintenance and operation of equipment in a manner to minimize the risk of fire.
2. Cessation of Operations for Low Humidity. During the "closed season" when the humidity is thirty percent (30%) or lower on the sale area, all operations must cease unless authority to continue is granted by the Island County in writing.
3. Pump Truck or Pump Trailer. Purchaser shall provide a fully functional pump truck and/or pump trailer equipped to meet the specifications of WAC 332-24-005 and WAC 332-24-405 during the "closed season" or as extended by the City and shall provide trained personnel to operate this equipment on the sale area during all operating periods.
4. Refuse Disposal. All refuse, including petroleum products, resulting from this operation shall be removed from the sale area concurrently with the completion of each setting and shall be deposited in a disposal area approved by the contract administrator. "Refuse" as referred to in this clause does not include logging slash.

## **SECTION F: DAMAGES**

1. Liquidated Damages. This clause provides for payments by Purchaser to the City for certain breaches of the terms of this contract. These payments are agreed to as liquidated damages and not as penalties. They are reasonable estimates of anticipated harm to the City caused by Purchaser's breach due to the difficulty of proving loss and the inconvenience or non-feasibility of obtaining an adequate remedy. They also recognize Purchaser's need for more certainty in assessing its responsibilities under this contract.

Purchaser's failure to pay for all or part of the forest products sold in this agreement prior to the expiration of Purchaser's operating authority results in substantial injury to the City. The value of the forest products sold at the time of breach is not readily ascertainable. Purchaser's failure to perform disrupts the City management plans, the actual cost of which is difficult to assess. A resale involves additional time and expense and is not an adequate remedy. Therefore, Purchaser agrees to pay the City as liquidated damages a sum calculated using the following formula:

$LD = .35V - ID + C + A$      Where: LD = Liquidated Damage value.

V = Bid Value remaining at the date of breach of contract, which is the unpaid portion of the contract bid price.

ID = Initial Deposit paid at date of contract that has not been applied to timber payments.

C = Charges assessed for contract requirements completed prior to breach of contract but not paid for.

A = Administrative Fee = Two thousand five hundred dollars (\$2,500).

In no event shall the liquidated damage be less than zero (0). Interest on the liquidated damage is owed from the date of breach until final payment, calculated using the following formula:

$\text{Interest} = r \times LD \times N$

Where: r = daily equivalent of an annual interest of twelve percent per annum.

LD = Liquidated Damage value.

N = date of breach to time of payment in days.

2. Leave Tree Excessive Damage. When Purchaser's operations exceed the damage limits set forth in Section D, Clause 1, Leave Tree Damage Definition, the trees damaged result in substantial injury to the City. The value of the damaged leave trees at the time of the breach is not readily ascertainable. Therefore, Purchaser agrees to pay the City as liquidated damages at the rate of one hundred dollars (\$100) per tree for all damaged trees in the unit.

IN WITNESS WHEREOF, the Purchaser has executed this instrument on the day and year first below written and the City has caused this instrument to be executed by and in the name of said City the day and year first above written.

Executed by the Purchaser \_\_\_\_\_, 2015.

\_\_\_\_\_  
Purchaser

By: \_\_\_\_\_

SEAL:

CITY OF OAK HARBOR

\_\_\_\_\_  
Scott Dudley, Mayor

ATTEST:

\_\_\_\_\_  
Anna Thompson, City Clerk

APPROVED AS TO FORM  
this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
Nikki C. Esparza, City Attorney