

IOWA DEPARTMENT OF NATURAL RESOURCES
CONTRACT NUMBER (number)

Between

IOWA DEPARTMENT OF NATURAL RESOURCES
And
(NAME OF BUYER)

(Include only if this Contract is required to be approved by a Commission because the Contract amount is over \$25,000.00)

This Contract was approved by the [Environmental Protection Commission/Natural Resource Commission](#) on [Commission Approval Date](#).

IN WITNESS THEREOF, the parties hereto have executed this Contract on the day and year last specified below.

DEPARTMENT OF NATURAL RESOURCES

By: _____ Date: _____
(DNR signatory)

(NAME OF BUYER)

By: _____ Date: _____
(Name and Title)

For DNR use only:

1. Retain the original contract in the project file and send a hardcopy with the first invoice.
2. a) Fax contract to 515-725-8201 (check one box below before faxing)
OR
b) Email scanned copy to your Division's Contract Rep:

| DIVISION | DIVISION CONTRACT REP |
|--|------------------------------|
| <input type="checkbox"/> Conservation & Recreation | Kim.Rasler@dnr.iowa.gov |
| <input type="checkbox"/> Director's Office | Karen.Fynaardt@dnr.iowa.gov |
| <input type="checkbox"/> Environmental Services | Jerah.Sheets@dnr.iowa.gov |

If you do not have faxing or scanning/emailing capabilities, you may mail a copy of the contract to IA DNR, Wallace State Office Building, Attention: (your respective bureau's contract rep), 502 East 9th Street, Des Moines, IA 50319.

This Contract is entered into between the Iowa Department of Natural Resources (DNR) and (name of Buyer) (Timber Buyer). The parties agree as follows:

Section 1 IDENTITY OF THE PARTIES

1.1 Parties. DNR is authorized to enter into this Contract. DNR's address is: Wallace State Office Building, 502 East 9th Street, Des Moines, Iowa 50319.

(Timber Buyer) is bonded in the State of Iowa in accordance with section 456A.36 of the Code of Iowa. Timber Buyer's address is: (address)

1.2 Project Managers. Each party has designated a Project Manager, who shall be responsible for oversight and negotiation of any contract modifications, as follows:

DNR Project Manager: (Name)
(Title or Forest)
Bureau of Forestry
(Address)
(Phone)
(Fax)
(Email)

Timber Buyer Project Manager: (Name of Buyer)
(Company Name)
(Address)
(Phone)
(Fax)
(Email)

Section 2 STATEMENT OF PURPOSE

2.1 Statutory Authority. The DNR enters this Contract based on its statutory authority in Iowa Code section 456A.36 to enter into agreements with persons buying state timber resources for sawing into lumber for processing or resale.

2.2 Purpose. Timber Buyer shall cut and remove timber in the amount of approximately (number) board feet (Scribner) in (number) trees marked with (color) paint on their boles. The timber is located on a tract of land known as the (Forest or Area), (Name of County) County, Iowa.

Section 3 DURATION OF CONTRACT

3.1 Term of Contract. The term of this Contract shall be (start date) through (end date) unless terminated earlier in accordance with the Termination section of this Contract.

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| <p>c. Timber Buyer shall avoid damage to fences, gates, signs and other permanent structures on or near the timber sale area.</p> <p>d. Cutting is permitted only during the period of October 1 through March 31 when the ground is firm or frozen unless otherwise authorized by DNR's Project Manager. It is the responsibility of Timber Buyer to obtain permission from DNR's Project Manager prior to working in the area.</p> <p>e. Iowa Forestry Best Management Practices must be followed. An Iowa Forestry Best Management Practices Guide is available at http://www.iowadnr.gov/Environment/forestry/WoodIndustryLogging.aspx.</p> <p>f. Motor vehicles and logging equipment shall be operated only in designated areas. All logs shall be skid on designated trails, and decked and loaded in designated areas.</p> <p>g. Streams, roads and trails shall remain free of logging debris. Stream crossings must be approved by DNR's project manager prior to harvest.</p> <p>h. All skid trails, decking areas and access roads shall be returned to satisfactory condition by Timber Buyer once the operation is complete. Wheel and log ruts 6" deep or more shall be filled in and smoothed to satisfactory condition by the Timber Buyer. Timber Buyer shall contact DNR's Project Manager for a site inspection prior to removing equipment from the site to insure the timber sale area has been returned to satisfactory condition.</p> | |
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5.2 Stop Services. In addition to its other remedies described herein, DNR shall have the right at any time during the Contract term to direct the services of Timber Buyer fully or partially suspended or stopped, if Timber Buyer fails to comply with the requirements in this Contract. DNR shall give Contractor written notice of a stop work directive. DNR shall provide to Timber Buyer the reasons for the stop work directive. An action on Timber Buyer's bond for forfeiture may be commenced pursuant to Section 456A.36, Code of Iowa.

5.3 Industry Standards. Services rendered pursuant to this Contract shall be performed in a professional and workmanlike manner in accordance with the terms of this Contract and the standards of performance considered generally acceptable in the relevant industry for similar tasks and projects. In the absence of a detailed specification for the performance of any portion of this Contract, the parties agree that the applicable specification shall be the generally accepted industry standard.

5.4 Final Notice of Completion. If DNR concludes, in its sole discretion, that all the Tasks required by the Statement of Work have been completed in accordance with this Contract, then DNR shall issue a written Final Notice of Completion.

5.5 Incorporation of Documents. The following documents, and any amendments thereto existing on the date this Contract is signed by DNR, are incorporated into this Contract by this reference: (1) the Notice of Timber for Sale (Notice) issued on [\(date issued\)](#) and (2) the Timber Buyer's Proposal of [\(proposal date\)](#) submitted in response to the Notice.

5.6 Preference. In the case of any inconsistency or conflict between the provisions of this document (including all related schedules and Statements of Work), the Notice or Timber Buyer's Proposal, the inconsistency or conflict shall be resolved as follows: first, by giving preference to the provisions of this document (including any Statements of Work); second, by giving preference to the provisions of the Proposal; and third, by giving preference to the provisions of the Notice.

Section 6 MONITORING AND REVIEW

6.1 Performance. Timber Buyer shall complete its obligations under this Contract at the intervals or by the dates described in Section 5.1.

6.2 Review Meetings. The DNR may request a meeting with Timber Buyer for the purposes of reviewing work under the Contract at any time during the term of this Contract. Timber Buyer shall make every effort to attend such a meeting and address the issues presented at the meeting.

6.3 DNR right to review and observe. DNR shall have the right to review and observe, at any time, completed work or work in progress. Timber Buyer shall allow the State of Iowa or DNR, to inspect the premises and records of the Timber Buyer for the purpose of monitoring and evaluating performance of this Contract.

6.4 Nonperformance. Failure for Timber Buyer to perform its obligations pursuant to Section 6 of this Contract shall constitute material breach of this Contract by DNR and shall be grounds for DNR to immediately terminate this Contract for cause.

Section 7 PAYMENT

7.1 Payment. Timber Buyer shall make full payment of \$ [\(amount\)](#) upon signing this Contract. No cutting of timber will be permitted until this Contract has been signed and full payment made to DNR.

Section 8 SURETY BOND AND OTHER REMEDIES

8.1 Surety Bond. Timber Buyer shall have on file with the State of Iowa a bond meeting the requirements of Section 456A.36 of the Code of Iowa and Chapter 571-72 of the Iowa Administrative Code. DNR may bring action on this bond in accordance with Section 456A.36 of the Code of Iowa.

8.2 Alternative Remedies. In lieu of an action on the surety bond in Section 456A.36 of the Code of Iowa, DNR may choose at its discretion to instead require compensation for improperly cut or damaged trees at current stumpage value.

8.3 Treble Damages. DNR may at its discretion seek treble damages for the willful injury to timber, trees, or shrubs occurring in the performance of this Contract pursuant to Section 658.4 of the Code of Iowa.

8.4 Prohibited Destructive Acts. Iowa law prohibits the destruction, injury, or removal of plant life or trees on state lands, except as authorized by the DNR (Section 461A.35 of the Code of Iowa). A person who violates this statutory provision commits a simple misdemeanor.

Section 9 LIABILITY INSURANCE

9.1 Required Insurance. Timber Buyer shall carry appropriate liability insurance throughout the effective duration of this Contract.

9.2 Insurance Coverage. The liability insurance shall be written by an insurance company (or companies) qualified to do business in Iowa. The minimum coverage provided by such insurance shall be:

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| Bodily injury: | \$100,000 per person, \$300,000 per accident |
| Property damage: | \$50,000 per accident, \$100,000 per aggregate |

9.3 Proof of Insurance. Timber Buyer shall provide to DNR, upon signing this Contract, a statement giving the name and address of Timber Buyer's insurance company providing the above coverage.

Section 10 GENERAL CONDITIONS

10.1 Self-Insurance and No Indemnity by the State of Iowa

Pursuant to Iowa Code chapter 669, DNR and the State of Iowa are self-insured against all risks and hazards related to this Contract. No separate fund has been established to provide self-insurance, and the State of Iowa is not obligated to establish any such fund during the term of this Contract. Further, according to the provisions of the Constitution of the State of Iowa, Article VII, Section 1, the State of Iowa shall not indemnify any contractor.

10.2 Compliance with Laws

Timber Buyer shall comply with all applicable federal, state, and local laws, rules, ordinances, regulations and orders when acting under this Contract, including without limitation, all laws applicable to the prevention of discrimination in employment. Timber Buyer also shall comply with all federal, state and local laws regarding business permits and licenses that may be required to carry out the work performed under this Contract.

10.3 Termination

The parties agree to the following termination provisions.

Immediate Termination by DNR. DNR may terminate this Contract for any of the following reasons effective immediately without advance notice and without penalty:

- DNR determines that the actions, or failure to act, of Timber Buyer, and its agents and employees have caused, or reasonably could cause, any person's life, health or safety to be jeopardized;
- Timber Buyer furnished any statement, representation or certification in connection with this Contract or Notice which is materially false, deceptive, incorrect or incomplete.

Termination for Cause. The occurrence of any one or more of the following events shall constitute cause for DNR to declare Timber Buyer in default of its obligations under this Contract.

- Timber Buyer fails to perform, to DNR's satisfaction, any material requirement of this Contract or is in violation of a material provision of this Contract, including, but without limitation, the express warranties made by the Timber Buyer;
- DNR determines that satisfactory performance of this Contract is substantially endangered or that a default is likely to occur;
- Timber Buyer fails to make substantial and timely progress toward performance of the Contract;
- Timber Buyer becomes subject to any bankruptcy or insolvency proceeding under federal or state law to the extent allowed by applicable federal or state law including bankruptcy laws; Timber Buyer terminates or suspends its business; or DNR reasonably believes that Timber Buyer has become insolvent or unable to fulfill its obligations consistent with applicable federal or state law;
- Timber Buyer has failed to comply with applicable federal, state and local laws, rules, ordinances, regulations and orders when performing within the scope of this Contract;
- Timber Buyer has engaged in conduct that has or may expose the State or DNR to liability, as determined in DNR's sole discretion; or
- Timber Buyer fails to comply with any of the Task Milestone dates contained in this Contract.

Notice of Default. If there is a default event caused by Timber Buyer, DNR shall provide written notice to Timber Buyer requesting that the breach or noncompliance be remedied within the

period of time specified in DNR's written notice to Timber Buyer. If the breach or noncompliance is not remedied by the date of the written notice, DNR may either:

- Immediately terminate the Contract without additional written notice; or,
- Enforce the terms and conditions of the Contract and seek any legal or equitable remedies.

Remedies of Timber Buyer in Event of Termination by DNR. Following 30 days written notice, DNR may terminate this Contract in whole or in part without the payment of any penalty or incurring any further obligation to Timber Buyer. Following termination upon notice, Timber Buyer shall be entitled to a refund for uncut timber. Refund shall only be made upon proper documentation. This provision in no way limits the remedies available to DNR under this Contract in the event of termination. However, DNR shall not be liable for any of the following costs:

- The payment of unemployment compensation to Timber Buyer's employees;
- The payment of workers' compensation claims, which occur during the Contract or extend beyond the date on which the Contract terminates;
- Any costs incurred by Timber Buyer, including, but not limited to, startup costs, overhead or other costs not directly associated with the performance of the Contract;
- Any taxes that may be owed by Timber Buyer not directly in connection with the performance of this Contract, including, but not limited to, sales taxes, excise taxes, use taxes, income taxes or property taxes.

Timber Buyer's Termination Duties. Timber Buyer upon receipt of notice of termination or upon request of DNR, shall:

- Cease work under this Contract and take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish a report within 30 days of the date of notice of termination, describing the status of all work under the Contract, including, without limitation, results accomplished, and conclusions resulting there from, any other matters DNR may require.
- Immediately cease using and return to DNR any personal property or materials, whether tangible or intangible, provided by DNR to the Contractor.
- Comply with DNR's instructions for the timely transfer of any active files and work product produced by the Contractor under this Contract.
- Cooperate in good faith with DNR, its employees, agents and contractors during the transition period between the notification of termination and the substitution of any replacement contractor.

10.4 Independent Contractor

The parties agree that the status of Timber Buyer shall be that of an independent contractor. Timber Buyer, and its employees and agents performing under this Contract are not employees or agents of the State of Iowa or any agency, division or department of the state. Neither Timber Buyer nor its employees shall be considered employees of DNR or the State of Iowa for federal or state tax purposes. DNR will not withhold taxes on behalf of Timber Buyer. Timber Buyer shall

be responsible for payment of all taxes in connection with any income earned from performing this Contract.

10.5 Choice of Law and Forum

This Contract is governed by the laws of the State of Iowa, and state and federal courts in Iowa shall have exclusive jurisdiction over any claim arising from or related to this Contract.

10.6 Use of Third Parties and Subcontractors

Timber Buyer may not contract with third parties for the performance of any of Timber Buyer's obligations under this Contract, unless and then only to the extent agreed upon by DNR pursuant to this Contract. If the DNR agrees to the use of a subcontractor, then the following conditions shall apply:

- All subcontracts shall be subject to prior approval by the DNR. The DNR's consent shall not be deemed in any way to provide for the incurrence of any obligation of DNR in addition to the terms agreed upon in this Contract. Any subcontract to which DNR has consented shall be in writing and shall in no way alter the terms and conditions of this Contract.
- The Timber Buyer may enter into subcontracts to complete the work required by this Contract provided that the Timber Buyer remains responsible for all services performed under this Contract. No subcontract or delegation of work shall relieve or discharge the Timber Buyer from any obligation, provision, or liability under this Contract. The Timber Buyer shall remain responsible for such performance and shall be fully responsible and liable for all acts or omissions of any subcontractor.
- All restrictions, obligations and responsibilities of the Timber Buyer under this Contract also shall apply to the subcontractors.
- DNR shall have the right to request the removal of a subcontractor from the Contract for good cause. The Timber Buyer shall indemnify, defend and hold harmless DNR and the State from and against any and all claims, demands, liabilities, suits, actions, damages, losses, costs and expenses of every kind and nature whatsoever arising as a result of Timber Buyer's breach of any subcontract in which it enters, including Timber Buyer's failure to pay any and all amounts due by Timber Buyer to any subcontractor.
- Any action of a subcontractor, which, if done by Timber Buyer, would constitute a breach of this Contract, shall be deemed a breach by Timber Buyer and have the same legal effect.

10.7 Indemnification; Liability

The Timber Buyer agrees to indemnify and hold harmless the State of Iowa and DNR, its officers, employees and agents appointed and elected and volunteers from any and all costs, expenses, losses, claims, damages, liabilities, settlements and judgments, related to or arising from: any breach of this Contract; any negligent, intentional or wrongful act or omission of the Timber Buyer or any agent or subcontractor utilized or employed by the Timber Buyer; the Timber Buyer's performance or attempted performance of this Contract, including any agent or

subcontractor utilized or employed by the Timber Buyer; any failure by the Timber Buyer to comply with the Compliance with Laws provision of this Contract; or any failure by the Timber Buyer to make all reports, payments and withholdings required by federal and State law with respect to social security, employee income and other taxes, fees or costs required by the Timber Buyer to conduct business in the State of Iowa. Every person who is a party to the Contract is hereby notified and agrees that the State, the DNR and all of their employees, agents, successors, and assigns are immune from liability and suit for or from Timber Buyer's and/or subcontractors' activities involving third parties arising from the Contract.

10.8 EAB (Emerald Ash Borer) Quarantine Areas

All *Fraxinus* (Ash) spp. logs within the quarantine area are considered regulated for Emerald Ash Borer. The quarantine areas will be listed and updated at http://www.emeraldashborer.info/files/MultiState_EABpos.pdf

All *Fraxinus* (Ash) spp. logs may only be shipped out of quarantine from October 1st through March 31st under an appropriate joint USDA/IDALS compliance agreement, an IDALS compliance agreement, and/or with a valid federal/state limited permit. In addition, all regulated *Fraxinus* (Ash) logs will move to a mill approved under an appropriate USDA Compliance Agreement or under an appropriate cooperator's compliance agreement.

For questions about Emerald Ash Borer regulations and quarantines please contact:

Mike Kintner
Iowa Department of Agriculture and Land Stewardship
515/745/2877
mike.kintner@iowaagriculture.gov

or

Mark Hollister
USDA, APHIS, Plant Protection and Quarantine
515/251/4083
Mark.G.Hollister@aphis.usda.gov