

**Fairbanks North Star Borough  
Division of Land Management  
Over-the-Counter Timber Sale-Lost Birch TS 2012-006  
WINTER HARVEST ONLY**

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**Contractor Signature**

**Date**

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**FAIRBANKS NORTH STAR BOROUGH  
DIVISION OF LAND MANAGEMENT**

**OVER-THE-COUNTER TIMBER SALE CONTRACT NO. TS 2012-006**  
**LOST BIRCH**  
**WINTER HARVEST ONLY**

The Fairbanks North Star Borough, whose address is P.O. Box 71267, Fairbanks, Alaska 99707-1267, hereinafter referred to as FNSB, and XXXXXXXXXXXX whose address is XXXXXXXXXXXX Fairbanks, AK 997XX, hereinafter referred to as Purchaser, enter into this Timber Sale Contract of 19 pages, including a signature page, and agree as follows:

**SECTION 1 – SALE DESCRIPTION**

The sale area of approximately **58.4 acres** which consists of one cutting unit located within the S1/2 SE1/4 of Section 13 and N1/2 NE1/4 of Section 24; Township 7 South, Range 5 East, Fairbanks Meridian, and W1/2 NW1/4 of Section 19, Township 7, Range 6 East, Fairbanks Meridian, Alaska, as shown on the Timber Sale Map which is made part hereof as Attachment "A". FNSB has designated the unit boundaries on the ground.

**SECTION 2- METHOD OF STUMPAGE PAYMENT**

No timber shall be cut or removed until payment has been made in accordance with the following:

- (a) The total price of the products being purchased by Purchaser is: **\$ 43,500.00**. In addition to this price, Purchaser shall pay for timber outside the sale area, mentioned in Section 3(b), at the rates set forth in that section multiplied by the applicable volume. Purchaser shall also pay applicable performance bonds at the rates set forth in Section 6(b). The exterior boundaries of the cutting units are flagged with pink flagging and painted with blue paint. The painted sides of the trees face into the cutting unit and are considered the boundary of the sale.
- (b) Purchaser hereby makes a stumpage payment of **\$10,875.00** which payment is equivalent to twenty five percent (25%) of the purchase price upon execution of this Contract, receipt of which is hereby acknowledged.
- (c) The Purchaser shall pay the second installment payment of twenty five percent (25%) of the total purchase price balance due in Section 2(a), before commencing development activities or harvesting timber. The Purchaser shall pay the balance of the purchase price after half (1/2) of the timber has been cut and before commencing to cut the balance of the timber. All payments made are non-refundable regardless of the actual volume of timber cut or removed from the sale area. No timber is to be harvested until the FNSB receives advance payment.

**SECTION 3 - TIMBER INCLUDED**

- (a) Timber Inside Sale Area. This contract includes all merchantable timber on the sale area that equals or exceeds the following minimum specifications and is designated for cutting on the ground and as displayed on the attached Sale Area Map. Merchantable timber means all white spruce trees that are 9" and greater at diameter breast height (DBH) and any spruce piece at least 12' long, 6" in diameter at the small end, and at least 1/3 sound. All merchantable timber must be removed from the sale area. All spruce less than 9" DBH and all other species are leave trees, meaning they must not be cut. Merchantable Timber within the sale area will be paid according to the following schedule:

SPECIES & PRODUCT	UNIT PRICE	ESTIMATED TOTAL NET VOLUME	TOTAL PRICE
Spruce Sawtimber	\$ 60.00 /MBF	725 MBF	\$ <b>43,500.00</b>

(b) Timber Outside Sale Area. This contract also includes all merchantable timber as defined, in Section 3(a) as well as fuelwood, on Fairbanks North Star Borough land, outside the sale area, which must be cut or removed in clearing for roads, camps, landings, or other improvements constructed by the Purchaser in connection with the sale and which are part of an approved plan of operation. Fuelwood includes any tree that is 6" DBH or larger and white spruce fuelwood that is 6" to 9" DBH. Also, any piece from any species of tree that is at least 12' long, 4" in diameter at the small end, and at least 1/3 sound is considered a merchantable fuelwood product. Any merchantable timber cut outside the sale area must be designated and approved in writing by the FNSB Land Management Division prior to logging. The timber inside the sale area in the designated cutting units is paid for by lump sum. Merchantable Timber outside the sale areas will be paid for in full prior to its being removed from the locations where it is cut and scaled. It shall be scaled at a place designated by the FNSB, and paid for at the time it is scaled, at the prices set below:

SPECIES & PRODUCT	UNIT PRICE
Spruce Sawtimber	\$ 60.00 /MBF
Fuelwood (any species)	\$1.00/CCF

(c) The FNSB makes no warranties, express or implied, as to quantity, quality, value, and merchantability or fitness for a particular use concerning the timber in this contract. The FNSB shall not be liable under any circumstances for any damages to Purchaser arising out of or relating to the harvesting or use of such timber or for any special, consequential or incidental damages.

**SECTION 4 – SCALING**

- (a) No scaling is required except for timber volume covered under Section 3(b).
- (b) Scaling provisions: For scaling, U.S. Forest Service National Forest Log Scaling Handbook scaling rules shall apply. Volume determination shall be by the Scribner Decimal "C" Log Rule for sawtimber and Smalian Formula for fuelwood. Other methods of scaling may be used if agreed on in writing between the FNSB and Purchaser.

**SECTION 5 – LIABILITY**

- (a) The Purchaser shall be liable for damages to all property and materials resulting from his operations. The amount of liability shall not be limited to the performance bond. The FNSB may assess damages against the Purchaser, which may exceed the bond amount.
- (b) The Purchaser shall pay the Borough the stipulated damages of \$10.00/piece for merchantable products as defined under Section 3(a), product specifications, that are not removed from the sale area. The Purchaser shall pay the Borough the stipulated damages of \$300.00/acre for every acre where slash has not been piled in accordance with sections 9(m) and 9(p). Any additional non-compliance of contract specifications may result in additional damages being assessed.
- (c) The Purchaser shall pay the FNSB damages of no less than \$300.00 for each landing or skid road constructed outside the sale area boundary without prior written approval from the FNSB. In addition, the Purchaser shall repair to the satisfaction of the FNSB all damage caused by such actions, and shall pay the FNSB stipulated damages of \$10.00/tree for all trees outside the sale area boundary that were damaged, including seedlings. The Purchaser shall pay the Borough \$100.00 for each boundary tree (Section 9 (a)) and leave tree (Section 9 (b)) that is cut or damaged as determined by the Borough.

(d) The Purchaser agrees to defend, at its sole expense, and to hold the FNSB harmless (including the FNSB's representatives, agents, and employees), and to indemnify the FNSB against all liability, losses, and damages, including awards of costs and attorney fees, by reason of any claims, including claims for injury to or death of persons, loss or damage to property and other economic loss, environmental liability arising out of or in any manner connected with Purchaser's performance of this sale or actions taken in connection with this timber sale contract.

## **SECTION 6 - PAYMENTS, DEPOSITS AND INSURANCE**

(a) All payments and deposits shall be payable to the Fairbanks North Star Borough and shall be hand delivered or mailed to the FNSB at the above stated address. Payments will be made by money order and/or bank cashier's check only.

(b) The Purchaser, upon signing this contract and as part hereof, will file with the FNSB a timber sale performance bond of **\$ 1,000.00**. Such bond shall remain in continuous effect throughout the term of this Contract. When Purchaser wishes to have the bond released, it shall so notify Borough at the conclusion of its timber harvest operations. Within thirty (30) days of receipt of such notice (weather permitting), or such other time as may be mutually agreeable to the parties, the FNSB shall inspect Purchaser's timber harvest operations for the purpose of determining compliance with this Contract. In the event the FNSB determines that the timber harvest operations are in compliance with the terms of this Contract, it shall release the performance bond. Release of the bond shall not constitute release or waiver of any breach, nor shall it stop the FNSB from pursuing other remedies against Purchaser with respect to any breach. In the event the FNSB determines the Purchaser's timber harvest operations are not in conformity with the terms of this Contract, then Purchaser shall perform such additional work as is necessary to bring the timber harvest operations into compliance with the terms of this Contract, and the performance bond shall remain in effect until such time as the work has been completed and approved by the FNSB. In the event Purchaser fails to perform such additional work within one (1) month, from written notice, without good cause, then the FNSB may, but shall not be obligated to, perform or have performed the work, and execute on the performance bond for the cost thereof.

In the event the FNSB determines at any time during the term of the Contract that Purchaser's timber harvest operations are not being conducted in accordance with the terms of the Contract, and further work will not remedy the damage which resulted from such non-compliance, then the parties shall use their best efforts to agree upon a value for the damage which occurred, and said amount shall be paid to the FNSB from the performance bond, or, at the option of Purchaser by Purchaser directly; provided, that if Purchaser fails to pay said amount within thirty (30) days of the date of agreement upon the amount of damages due, then the FNSB, at its option, may execute on the performance bond. In the event the performance bond is insufficient to cover the amount due and owing to the FNSB under this Section, Purchaser shall remit to the FNSB such additional moneys within thirty (30) days of notice from FNSB of the additional amount due and owing. If the noncompliance is that the Purchaser fails to complete the timber harvest, the FNSB may - at its option - elect to retain the bond amount as a penalty. The FNSB may elect to disregard any part or all of the procedures outlined above in this Section and also pursue other remedies.

(c) Insurance. The Purchaser and its contractors shall obtain before commencing work, and maintain in full effect during all operations for the mutual benefits of the FNSB and Purchaser, the following insurance policies:

- (1) **Commercial General Liability Insurance.** Purchaser and all its contractors and/or sub-contractors will carry commercial general liability (CGL) insurance on an occurrence form with limits not less than \$1,000,000 combined single limit per occurrence and \$2,000,000 general aggregate. Policy shall include premises operations, independent contractors, products and completed operations, broad form property damage, blanket contractual. As a winter harvest only extraction (1 Oct. thru 31 March), the contractor will not be required to carry a policy for Logger's Broad Form Property Damage Liability.

- (2) **Automobile Liability.** Purchaser and all contractors and/or sub-contractors will carry auto liability covering all owned, hired and non-owned vehicles with liability limits of a combined single limit of \$1,000,000 each occurrence for bodily injury and property damage.
- (3) **Workers' Compensation.** Purchaser and purchaser's contractors and/or sub-contractors will carry workers compensation and employers' liability: Statutory requirements by the State of Alaska. Employers' Liability in the amount of \$100,000 each accident, \$500,000 policy limits for bodily injury by disease, \$100,000 per employee for bodily injury by disease. If exposure is over water or on harbors, the policy must be endorsed to include U.S. Longshoremen's and Harbor Workers' Compensation Act, Jones Act or laws regulations and statutes applicable to Maritime employee coverage.

Prior to the start of work the Purchasers and its sub-contractors will provide a certificate of insurance naming the Fairbanks North Star Borough as additional insured on Commercial General Liability and Auto Liability and give a waiver of subrogation on workers' compensation. 30 days notice of cancellation shall be given to the FNSB and all policies shall be endorsed to be primary coverage and placed with a carrier rated "A" or better by A.M. Best, or specifically approved by the Borough's Risk Manager.

All limits are a minimum and if Purchaser or its contractors and/or sub-contractor policies have higher limits, the FNSB shall be entitled to such limits. The FNSB, at its sole discretion, may raise or lower the above limits. All policies shall be maintained throughout the life of this Contract.

### **SECTION 7 – PLAN OF OPERATIONS**

- (a) Purchaser shall submit an overall Plan of Operations at least thirty (30) days prior to the time it desires to commence operations under this Contract. Purchaser shall not commence timber harvest, road construction or related activities until the FNSB in writing has approved the plan. Once approved, the Plan of Operations is incorporated herein by reference.
- (b) Purchaser shall set forth in the Plan of Operations the cutting units to be logged, the approximate dates of logging and anticipated volumes of timber to be cut by year. The plan shall also include provisions for maintenance of improvements and measures to prevent erosion. The plan shall include maps showing the location of cutting units, main roads, spur roads, and landings that are proposed for construction. The Purchaser shall request any deviation from the approved plan in writing. The FNSB must approve in writing the request for deviation before any deviation may occur. Unapproved deviation from the plan may be cause for suspension or termination under Section 11 of this Contract.
- (c) Commencement of Operations. The Borough shall review the Plan of Operations for compliance with the terms of this Contract. If there are no questions it shall approve the Plan of Operations and the Purchaser may initiate the Plan upon execution of the Contract. If the Borough has questions it shall provide them to the Purchaser for response. The Purchaser may not proceed with an approved Plan of Operations until it has provided the Borough with any additional permits needed under the terms of this Contract and one-half (½) of the timber purchase price.

### **SECTION 8- PARTIES' REPRESENTATIVES**

At all times when development activities or timber harvest operations are in progress, the FNSB and Purchaser shall each have a representative available who shall be authorized by the party to receive and act upon in that party's behalf any or all notices and instructions given by the other party concerning this Contract. Each party shall provide the other with notice of the name(s) of its representative(s) within ten (10) days of the execution of this Contract.

### **SECTION 9 - LOGGING REQUIREMENTS**

- (a) Boundary Lines, Survey Monuments, Mining Claim Witness Monuments. No painted or tagged tree that marks the boundary of the cutting units may be cut unless approved in writing by the FNSB. No blazed tree on any survey line or any witness tree to any survey corner, mining claim or monument,

shall be severed or removed, nor shall any survey corner be damaged or destroyed. Any violation of this clause will require the Purchaser to bear the expense of re-establishing such lines, corners, or monuments including, but not limited to survey costs and damages under Section 5 (c).

(b) Leave Trees. The Purchaser shall make every effort to avoid killing or damaging leave trees in this sale. Many of the trees will become future crop trees (see Section 5 (c) for damages). Leave trees are all spruce less than 9" DBH and all other species.

(c) Erosion Control. Road construction or logging operations in connection with this Contract shall be conducted so as to avoid damage to streams, lakes, or other water areas and land adjacent thereto. Timber shall not be cut so that it falls into any stream or other water area. Logs shall not be skidded in or across live stream courses. The FNSB shall approve locations and/or improvements necessary for stream crossings for skid or haul roads. All skid roads and other roads shall be treated with such measures as necessary to prevent erosion. The Purchaser shall repair at its own costs, any damages resulting from failure to perform these requirements to the satisfaction of the Borough.

(d) Fish Spawning Waters. All operations in connection with this Contract adjacent to lakes, streams, or fish bearing waters shall be conducted so as to avoid causing stream silting in excess of Alaska's water quality standards for turbidity, and shall not be permitted to interfere with the passage of fish or to injure the spawning grounds in accordance with AS 16.05. Purchaser is responsible for compliance with AS 16.05.

(e) Fire Protection.

- (1) The Purchaser shall take all reasonable, prudent and necessary action on fires in or near his timber sale area. He shall continue such action until relieved by an authorized officer of the agency responsible for forest protection.
- (2) AS 41.15.050 established the fire season from April 1 - August 31, inclusive, of each year. AS 41.15.080 requires every person owning or operating a sawmill or logging camp or other commercial plant or operation in forested lands to post and keep displayed at all times a copy of AS 41.15.050-080 and AS 41.15.140 in a conspicuous place upon the building or ground of the milling, logging, or commercial operation.
- (3) All fires shall be reported immediately to the Borough or to the agency responsible for protection in the area regardless of the size or apparent insignificance of the fire.
- (4) The FNSB may stop all or part of the logging operations of the Purchaser during especially hazardous fire weather.
- (5) The Purchaser shall comply with all laws, regulations, and rules promulgated and enforced by the agency responsible for fire protection in the sale area. The agency responsible for protection in this area is The State of Alaska, Division of Forestry. All fires shall be reported to Forestry Dispatch Phone 451-2623, or to an officer of the agency or the State who is in the sale area at the time the fire is discovered.

(f) Sanitation. The sale area shall be maintained in a clean and sanitary condition. Any foreign materials or wastes such as cans, bottles, barrels, garbage, equipment, equipment parts, or other debris resulting from this operation shall be removed from the sale area at the time of completion of operations on any cutting unit. Vehicle maintenance, campsites and/or storage and stockpiling of material on the surface ice of lakes, ponds or rivers is prohibited.

(g) Security of Sale Area. The FNSB will provide no additional timber to the Purchaser and shall incur no liability to the Purchaser in the event that third parties remove timber materials covered by this Contract from the sale area during the life of this Contract. The Purchaser may take reasonable measures to prevent unauthorized removal of or damage to the timber covered by this Contract. Such measures shall pose no threat of harm to the public. The use of wires, chains, pits, unmarked or

inadequately marked barricades or gates, and the use of any other method, device, or activity, which poses a threat of harm to the public, is expressly prohibited.

(h) Locating. The Purchaser is responsible for accurately locating his operations within the sale area authorized by this Contract.

(i) Keeping Roads Clean. The main haul road as shown on the approved Plan of Operations and major skid roads shall be kept clear of debris and other obstructions at all times. No trees are to be purposely felled onto the main haul road. Any trees that may accidentally fall on the main haul road shall be removed, including ALL woody material, within two (2) hours unless approved in advance by the FNSB.

(j) Yarding on Roads. Skidding or yarding is not allowed on the main haul road, nor shall any part of the main haul road be utilized as a landing, unless approved in writing by the FNSB. No logs may be decked on the main haul road, unless approved in writing by the FNSB and only with the understanding that the Purchaser shall repair the road to the satisfaction of the FNSB at the conclusion of logging.

(k) Concurrent Logging. The Purchaser will fall and skid all merchantable timber in one operation i.e. no cut trees are to be left on the ground in the units at the end of each season of operation.

(l) Tree Length Yarding. This sale is designated for whole tree yarding. The entire stem, including tops and limbs, shall be yarded to designated landings.

(m) Landings. At the completion of any landing use, the unmerchantable material and debris on landings shall be piled in the center of the landing. In addition, these piles shall be no smaller than ten (10') feet across and shall not contain more than 10% dirt. Landings shall not be constructed on frozen water areas. Piles shall be placed over stump free areas. All fires must be extinguished prior to the Purchaser removing its equipment from the sale area or by April 1st, whichever comes first.

(n) Road Use. Use of access roads may be suspended during breakup or other wet weather conditions at the discretion of the FNSB. The FNSB hereby reserves the right to use any road constructed by the Purchaser under this Contract for any and all purposes in connection with the protection and administration of FNSB lands. Roads constructed and/or used by the Purchaser under this Contract may be used by third parties in connection with the utilization of FNSB or other resources adjacent to the road; provided, that on spur roads, such use shall not materially interfere with the operations of the Purchaser.

(o) Notice of Operations. Before initiating operations in the Contract area the Purchaser shall notify the FNSB in writing of the date they plan to begin operations. They shall also notify the FNSB in writing if they intend to cease operations for any period of sixty (60) or more days. The FNSB must approve any exception to the above in writing.

(p) Slash Disposal. The Purchaser is required to pile slash. The piles shall be no smaller than ten (10') feet across and shall not contain more than 10% dirt. In addition; piles shall be made concurrently with the logging operations.

(q) Snag Felling. Hazardous snags shall be felled in accordance with the "Logging and Sawmill Safety Code." See also Section 13 of this Contract.

(r) Stump Height. Any stump cut so as to exceed a height equal to the diameter of the stump outside bark as measured on the side adjacent to the highest ground, except when necessary for safe and efficient conduct of logging, shall be paid for by the Purchaser at the rate of \$10.00 per stump, which sum shall be regarded as fixed, agreed, and liquidated damages.

(s) Roads. Before constructing any main haul, secondary, or spur truck roads, the Purchaser shall obtain written approval of the location and construction standards of such roads from the FNSB. See Section 10 for required roads or other improvements.

(t) Borrow Pits. The Purchaser shall obtain written approval in advance for the locations of borrow pits from the FNSB. Materials removed from these borrow pits shall be used only on main haul, secondary haul roads, and other improvements in connection with the Contract.

(u) Production Requirements. By April 1st of every year, the Purchaser must have all merchantable timber harvested during the previous 12 months removed from the sale area. If the Purchaser fails to meet this requirement, it will be cause for the FNSB to seek termination or suspension under Section 11 of this Contract.

(v) Fuel Storage Requirements. Fuel storage facilities shall not be placed within 100 feet of water bodies and must be stored within a secondary containment system or in a temporary, double plastic lined dike that provides 110% holding capacity for the amount contained in the largest single container. All fuel drums shall be stored in an upright position. Refueling of equipment shall not occur on the active floodplain of a river or stream. If the presence of any hazardous substance on the Premises results in any contamination of the Premises or other properties owned by the Borough, the Purchaser shall promptly take all actions, at its sole expense, as are necessary to remediate the contamination and restore the area.

(w) Trail Crossings. Local winter trails may cross the proposed haul road. These crossings shall be kept clear throughout the term of this contract.

## **SECTION 10 - IMPROVEMENTS AND ROADS**

(a) The Purchaser in connection with this sale without further approval may use existing improvements in the sale area, owned by the FNSB, unless such use is limited or prevented elsewhere in this Contract or as set forth below under item (c) of this section. Existing improvements in or outside the sale area when used by the Purchaser shall be kept in good repair.

(b) Any improvements or transportation facilities including sawmills, buildings, bridges, roads, etc., constructed by the Purchaser in connection with this sale and within the sale area or on other FNSB land leased for this purpose shall be in accordance with standard or special plans approved by the FNSB. Bonding may be required on each improvement.

(c) Road Construction General Description The Borough owns the area between the Richardson Highway Right of Way, and the timber sale; including the access route. Access to the timber sale begins from the south side of the Richardson Highway ½ mile from the wayside of Birch Lake. This sale requires winter road construction from the DOT right of way limit to within the sale boundary. The new haul road construction to within the timber sale boundary, totaling approximately 0.5 miles in length will be required to access this sale. The haul road to be constructed on borough land will be constructed as a winter road. The centerline has been marked with orange flagging and red paint. The Borough prefers that the contractor stay within this 40 ft. construction width, but exceptions may be granted upon submittal of the Plan of Operations required by this contract. Beyond the Richardson Highway right-of-way limit, the first 800 feet of proposed road has been previously hydro-axed. Past the 800 foot point the haul road will require clearing and blading. No jackstrawing of cut right-of-way timber into adjacent uncut timber is allowed. Tree tops of merchantable trees or fuelwood trees must be burnt or removed along with any slash removed from the road construction.

(d) All Season Spur Road Standards.

(1) **RIGHT OF WAY CLEARING:** The right of way clearing is 14'-20' in width. All trees will be cut and decked in approved landings ahead of construction. Construction of timber road(s) may occur during the period of April 1 through September 30 if need be; however absolutely no timber harvesting is allowed during said period without the Logger's Broad Form Property Damage Liability policy.

(2) **DEBRIS DISPOSAL AND GRUBBING:** All debris is to be placed in natural openings or in areas marked by the FNSB, and in no case buried under the road

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surface. Debris may not be pushed into standing timber. Stump removal is required under running surfaces unless 18" of fill will be over the top of any stump. Stump removal is not required under side-cast slopes which are not under the running surface. Sub-grade will be cast on slopes or used as fill where needed.

- (3) CUT AND FILL SLOPES: Cut grades and castings shall be at a maximum grade of 1.5:1 except that loess soils may be cut vertically.
- (4) SURFACE GRADE: Surface grade shall be out sloped so that water will not remain on the surface. No ditches are required. The drivable surface width is to be no less than 12'.

(e) Winter Road Standards.

- (1) Beyond the all season spur, road construction through the valley bottom will require blading of brush vegetation that will be bermed along the roadside. No jackstrawing of cut right-of-way timber into adjacent uncut timber is allowed.
- (2) Blading of the vegetative mat must be kept to a minimum. Excessive blading of the vegetative mat is prohibited unless approved by the FNSB.
- (3) Winter road use will require adequate snow cover to prevent damage to the ground surface. A minimum of 3" of compacted snow and ice will be maintained.

## **SECTION 11 - TERMINATION AND SUSPENSION**

Except as otherwise specifically set forth in this contract:

(a) Breach and Remedies. In the event a party shall breach this Contract through any nonpayment or non-performance of any provision of the Contract, the party shall have 15 days after written notice of default to remedy such breach or default; provided that the party in default shall have the right in good faith to contest any determination based on disputed facts. Payment, if any, shall be due within 15 days after final resolution of the dispute. Upon a party's material default of any other provisions of this Contract, the defaulting party shall have 15 days after written notice of default to remedy such breach/default, unless such breach is the type of breach that cannot be reasonably remedied within 15 days. In that event, and provided that at all times after the written notice the defaulting party diligently and in good faith pursues efforts to cure such breach, the defaulting party shall have such additional time as may be reasonably necessary to remedy such breach. In the event the defaulting party fails to remedy such breach within the foregoing respective time period, the other party may at its election:

- (4) Take such action as necessary to cure such breach and charge all its reasonable costs to the defaulting party. The defaulting party shall pay such costs within 30 days after receipt of a billing.
- (5) Terminate this Contract and pursue its rights at law or in equity.
- (6) Obtain specific enforcement, money damages, and other relief that may be available at law or in equity; provided that money damages may not be awarded against the FNSB in an amount greater than the purchase price under section 2(a); provided

further that the FNSB will not be liable for any special, subsequent, or incidental damages.

(b) Contract Waiver or Breach. No waiver by either party of any breach or default of this Contract by the other party shall operate as a waiver of any subsequent breach or default of the same, or of any other term, covenant, or condition herein contained, or the right to require strict performance thereof.

(c) Remedies Not Exclusive. The remedies reserved to each party herein are not exclusive and are cumulative. Except as otherwise provided herein, both parties shall be entitled to exercise any and all remedies available to each party at law or in equity for the other party's default, whether stated herein or otherwise, unless such exercise conflicts with procedures required pursuant to remedies herein reserved.

(d) Contract Suspension. The FNSB may, in its discretion, require the Purchaser to suspend contract operations at any time if the Purchaser is irretrievably damaging the FNSB's property, or creating liability for the FNSB.

(e) Rights Upon Termination. If the FNSB terminates a timber sale contract, all rights to operate under this Contract cease upon termination. All payments previously made to the Borough are non-refundable.

## **SECTION 12 – RESERVATIONS**

The FNSB reserves the right to permit other compatible uses of the lands in the contract area provided the FNSB determines that such uses will not unduly impair the Purchaser's operations under this Contract. The Borough also reserves the right to waive technical defects in this Contract. The right is also reserved to waive any informality in this contract whenever the waiver is in the best interest of the Fairbanks North Star Borough.

## **SECTION 13 - INCLUSION OF APPLICABLE LAWS AND REGULATIONS**

(a) The Purchaser shall comply with all laws and regulations applicable to this Contract, including the Alaska Fire Control Act, Forest Resources and Practices Act, State "Fish and Game Regulations" pertaining to the protection of wildlife and wildlife habitat and State regulations pertaining to safety, sanitation, and the use of hazardous materials. Such laws and regulations shall have the force of any other provision of this Contract.

(b) The Purchaser shall be responsible for obtaining necessary permits at its sole cost prior to development activities.

(c) Forest Practices Act notification has been filed by FNSB. The Purchaser will be required to submit information on the notification prior to commencement of development activities or timber harvest operations. The notification must be approved by the State of Alaska prior to commencement of development activities or timber harvest operations.

## **SECTION 14 – ASSIGNMENT**

The Purchaser shall not assign this Contract nor may duties under the Contract be delegated without written consent to such assignment or delegation first having been obtained from the FNSB and the necessary amendment made to the Contract. This includes Purchaser's use of contractors or subcontractors.

## **SECTION 15 - NO LIENS**

Purchaser will keep the land encompassed within the sale area free and clear of all liens of whatsoever nature arising out of or connected with the timber harvest operations and/or the activities of Purchaser. In

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the event Purchaser knows, or has reason to know, of the placement of any liens upon the FNSB's land or other property, Purchaser shall immediately notify the FNSB. Unless the FNSB otherwise consents in writing, Purchaser, within ten (10) days of learning of any lien, shall obtain the release of the lien or shall commence and diligently prosecute an action for the removal of the lien at Purchaser's sole expense. Upon request of the FNSB, Purchaser shall file a bond with the court, in compliance with AS 34.35.310 or any other applicable lien statute, to obtain the release of FNSB's property from the lien. Purchaser shall further defend and indemnify the FNSB from all costs, liabilities and expenses which may be incurred by the FNSB as a result of any lien placed upon borough real or personal property as a result of Purchaser's timber harvest operations or activities.

#### **SECTION 16 – PERMITS**

The Purchaser is responsible for acquiring, at its own cost, all the permits necessary for the operations related to the contract. An application under the Forest Practices Act (FPA) will be filed with the state of Alaska. The Purchaser may have to obtain a Stream Crossing Permit under AS 16.05 as well as comply with the other requirements of the FPA.

#### **SECTION 17 - PASSAGE OF TITLE**

All right, title, and interest in or to any timber included in this Contract shall remain with the FNSB until the timber has been paid for and removed from FNSB land in conformity with this Contract. When the sale is terminated or when the Contract expires or is complete, the Purchaser loses all interest in any timber included in this contract that has not been removed from FNSB land.

#### **SECTION 18 - RISK OF LOSS**

Notwithstanding any other provision of this Contract, the FNSB shall not be liable to the Purchaser for any loss of timber or for any other damages incurred by the Purchaser due to Acts of God or to acts of third parties.

#### **SECTION 19 – EXPIRATION**

This Contract shall expire on **(three years from the signing of this contract)** unless extended by the FNSB. All rights to operate under this Contract cease upon the expiration date (unless the Contract was previously terminated pursuant to Section 11).

#### **SECTION 20 - EXTENSION OF CONTRACT**

- (a) This Contract may be extended by the FNSB with a written request by the Purchaser for a period not to exceed 12 months.
- (b) Upon extension of Contract, Purchaser agrees to pay the FNSB the sum of ONE HUNDRED DOLLARS (\$100) per acre, to the nearest acre, for every acre left un-logged after the initial contract period.
- (c) Purchaser agrees to pay the FNSB for tree seedlings that are ordered and not able to be planted in the cutting units due to Purchaser not harvesting the stated acreage shown in Purchaser's Plan of Operations. The seedling reimbursement will be based on the seedling cost plus shipping to Fairbanks.

#### **SECTION 21 – CONFLICTS**

If there is a conflict between this Contract and the Timber Sale Specifics, which is made part hereof as Attachment B, or any other representation by the FNSB, this Contract shall govern. This Contract, the Attachments A & B, expresses the entire agreement of the parties and there are no oral contracts affecting or modifying this Contract, which may be amended only by a writing executed by both parties.

**SECTION 22 - EFFECTIVE DATE**

This Contract is effective as of the date of execution by the FNSB.

**SECTION 23 - MISCELLANEOUS.**

Amendment. This Contract may not be modified or amended except by written agreement of the Parties.

Governing Law. This Contract shall be governed by the laws of the State of Alaska with venue in the Fourth Judicial District at Fairbanks, Alaska.

- a. Time is of the Essence. Time is of the essence in the performance of this Contract.
- b. Entire Contract. There are no verbal or other agreements, which modify or affect this Contract.
- c. Benefit. The provisions in this Contract shall inure to the benefit of and be binding upon the successors, assigns and personal representatives of the parties hereto.
- d. Execution of Documents. The parties agree to execute any documents which may be necessary, appropriate or convenient to carry out the intent of the transaction contemplated by this Contract.
- e. Counterparts. This Contract may be executed in any number of counterparts, each of which will be deemed to an original and all of which together constitute a single Contract.
- f. Severability. If any term or provision of this Contract or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Contract and the application of such term or provision to persons or circumstance other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each term or provision of the Contract shall be valid and enforceable to the fullest extent permitted by law.
- g. Notices. All notices or demands to be given by each Party to the other pursuant to this Contract shall be hand delivered or deposited in the United States mail, postage prepaid, by certified or registered mail, return receipt requested, and addressed as follows:

**If to Purchasers:**  
 Name of purchaser  
 Mailing address  
 Fairbanks, Alaska

**If to FNSB:**  
 Land Management Division  
 P.O.Box71267  
 Fairbanks, Alaska 99707  
If by Hand Delivery:  
 907 Terminal St., 2<sup>nd</sup> Floor  
 Fairbanks,Alaska



PURCHASER:

By \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Please complete the attached Signers Acknowledgement Form.

# SIGNER'S ACKNOWLEDGMENT

The signer of the agreement and the signer of this Acknowledgment must be the same person.  
 (Mark only one – all signatures must be notarized)

STATE OF ALASKA )  
 )SS  
 Fourth JUDICIAL DISTRICT )

**The Contractor is a sole proprietorship**

The foregoing Contract was signed and acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_,

by \_\_\_\_\_  
*(Print Name of Proprietor)*

Of \_\_\_\_\_  
*(Print Name of Company)*

\_\_\_\_\_  
*(Signature of Proprietor)*

**The Contractor is a partnership**

The foregoing Contract was signed and acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_,

by \_\_\_\_\_, partner (or agent) on  
*(Print Name of Acknowledging partner or agent)*

behalf of \_\_\_\_\_, a partnership.  
*(Name of partnership)*

\_\_\_\_\_  
*(Signature of Acknowledging Partner or Agent)*

**The Contractor is a corporation**

The foregoing Contract was signed and acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_,

by \_\_\_\_\_  
*(Print Name of Officer)*

\_\_\_\_\_  
*(Title of Officer)*

of \_\_\_\_\_  
*(Name of Corporation)*

a/an \_\_\_\_\_ Corporation,  
*(State of Incorporation)*

on behalf of said Corporation.

\_\_\_\_\_  
*(Signature of Officer\*)*

**(CORPORATE SEAL)**

Attest \_\_\_\_\_  
 (Corporate Secretary)

\*The signer of the contract should be a corporate officer unless there is a corporate resolution attached authorizing the person to bind the corporation.

**The Contractor is a limited liability company**

The foregoing Contract was signed and acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_,

by \_\_\_\_\_  
*(Name of Manager or Managing Partner)*

\_\_\_\_\_  
 (Title)

of \_\_\_\_\_  
*(Name of Limited Liability Company)*

\_\_\_\_\_  
*(Signature of Manager or Managing Partner)*

Attach Letter of Partners indicating Manager's or Managing Partner's authority to enter into agreement.

**Regardless of the type of company, the signature must be notarized. The signer of the contract or agreement and the signer above of this Acknowledgment must be the same person.**

(Notary Seal)

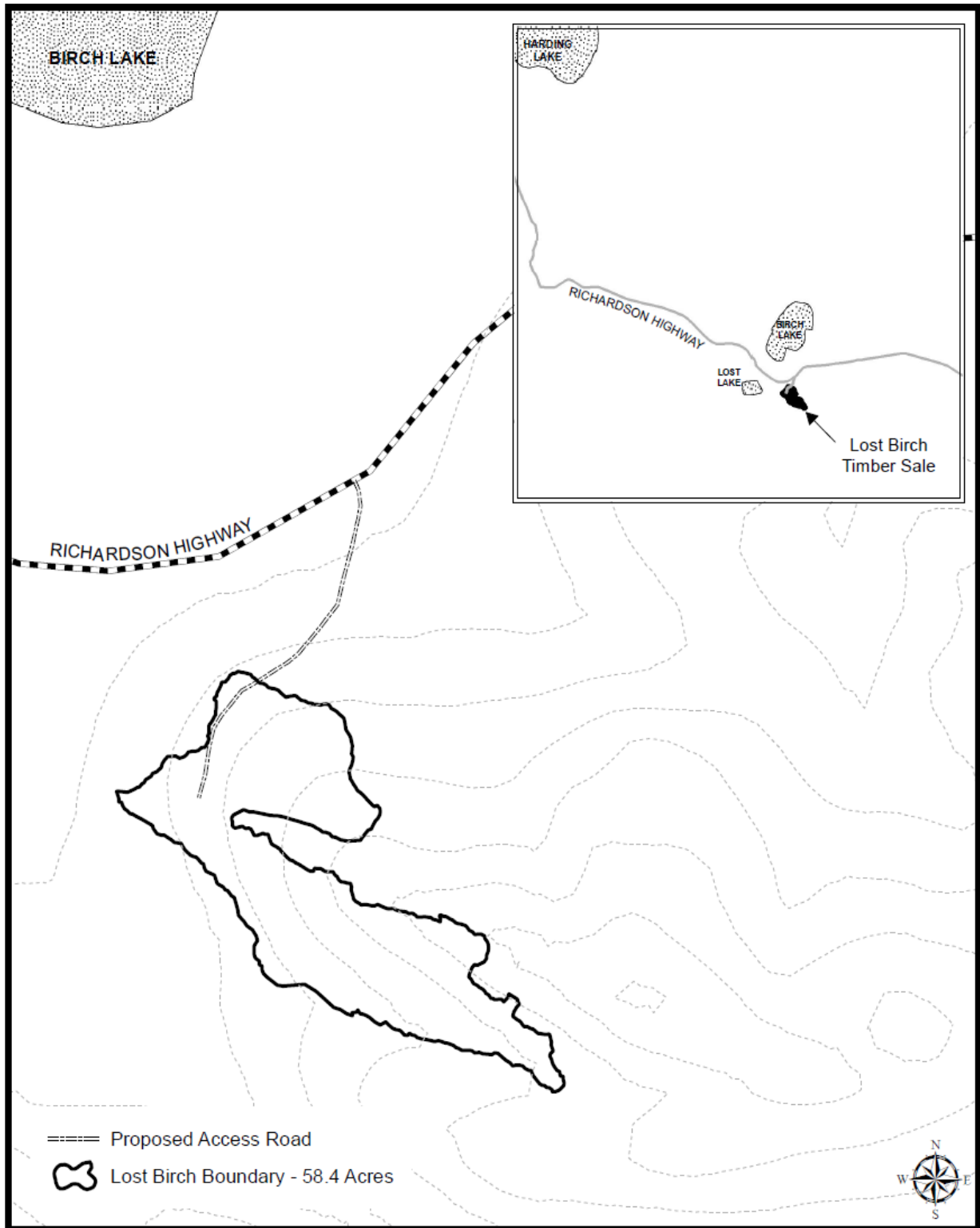
Subscribed and sworn to before me on this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_.

\_\_\_\_\_

Notary Public in and for the State of \_\_\_\_\_

My commission expires: \_\_\_\_\_

# ATTACHMENT A - TIMBER SALE AREA MAP





## ATTACHMENT B TIMBER SALE SPECIFICS

"Lost Birch Timber Sale"

### Location and Access

The Fairbanks North Star Borough timber sale of **58.4 acres** and 775 MBF of white spruce sawtimber is located off the Richardson Highway, 0.25 miles southeast of the Birch Lake wayside. The timber will be sold by over-the-counter sale. The timber sale is within U.S. Geological Survey quadrangle map Big Delta C-6. The location is described as the south ½ SE1/4 Section 13 and N1/2 NE1/4 Section 24, Township 7 South, Range 5 East, Fairbanks Meridian, and W1/2 NW1/4 Section 19, Township 7 South, Range 6 East, Fairbanks Meridian. Access to the timber sale begins from the south side of the Richardson Highway ½ mile east of the wayside at Birch Lake. Winter Road construction to the timber sale, approximately 0.5 miles in length will be required to access this sale. The centerline of the proposed winter road has been marked with blue and pink flagging and brush for line of sight and a 20 foot offset on either side is marked with orange flagging and red paint. The Borough prefers that the contractor stay within this 40 ft. construction width, but exceptions may be granted upon submittal of the Plan of Operations required by this contract.

### Overall Sale Averages

Tree Data:

Species & Products	Size Specifications	Average Tree Diameter	Average Tree Height
Spruce Sawtimber	≥ 9" DBH	12.4 Inches	76 Feet

Cruise Error and Defect Data:

# of Plots	% Cruise Error	% Visible Defect	% Hidden Defect	% Total Defect
57	13%	5.8%	5.3%	11.1%

Volume Summary:

Estimated Net Volume Per Acre	Total Sale Acreage	Estimated Total Net Volume
12,420 BF	58.4	725 MBF

Price Summary:

Species & Products	Estimated Total Net Volume	Unit Price	Appraised Price	Expiration Date
Spruce Sawtimber	725 MBF	\$60.00	\$ 43,500.00	<b>June 30, 20XX</b>

Spruce Stand Table:

DBH	Average Height	Trees/Acre	BF Vol/Acre	Total Trees	Total BF Volume	Percent of Total Volume
9	62	15	645	892	37,680	5.2%
10	68	20	1,138	1,165	66,462	9.2%
11	73	20	1,508	1,149	88,053	12.1%
12	78	11	1,088	611	63,532	8.8%
13	81	12	1,532	700	89,459	12.3%
14	85	7	1,151	418	67,216	9.3%
15	86	13	2,531	762	147,806	20.4%
16	87	4	739	211	43,149	5.9%
17	92	2	600	137	35,029	4.8%
18	91	1	410	78	23,950	3.3%
19	81	1	275	51	16,029	2.2%
20	92	1	170	28	9,927	1.4%
21	93	3	555	77	32,422	4.5%
23	88	<1	80	9	4,669	0.6%
		108	12,420	6,288	725,383	100.0%

Method of Cruising

This sale was cruised by Tanana Chiefs Conference, Inc. Forestry personnel using the Variable Radius Plot Method with a 20 basal area factor. Volume was calculated using State of Alaska, Fairbanks Upland White Spruce regression formulae with a maximum scaling length of 16 feet. A total of 70 variable plots were systematically distributed and measured. The sample resulted in a 9.6 % sampling error at one standard deviation. Defect estimates were based on visual indicators and hidden defect was determined through individual tree corings.

Topography and Stand Condition

This sale consists of one unit located on **58.4 acres** on moderately sloped ground along a low ridge south of the Richardson Highway. Slopes are generally south westerly with an average percent slope of 18%. There are small areas near the ridgetop with slopes up to 40%.

The unit is a mixed stand of spruce sawtimber and poletimber with a relatively decadent birch component. Average age of the spruce sawtimber component is 125 years. A small amount of butt rot was detected in corings of sample trees, resulting in an estimate of hidden internal defect of 5.3% in the spruce sawtimber. A substantial component of the spruce stocking is sawtimber sized (under 9" DBH), representing about 21% of the total spruce stocking cubic volume. This unmerchantable component is scattered through the stand, sometimes intermixed with the sawtimber, and sometimes in discreet patches. There is estimate to be about 3,500 birch stems in the unit, about 1,500 of which are greater than 9" DBH, with estimated defects on a board-foot basis to be around 50%.

Contract Requirements and Stipulations

Contracts will be issued by the Fairbanks North Star Borough and administered through Tanana Chiefs Conference. **The contract period will allow for the timber to be harvested seasonally, winter only,**

**from October 1 to March 31st, over a 3 year period.** A logging plan must be submitted and accepted, prior to any road or harvest development work.

#### Method of Harvest

This sale requires whole tree yarding of all spruce that meet the minimum size specifications stated above. Trees can be limbed and topped at the stump location. Other material that are not removed from the sale area will be decked in the center of designated landings. Usable material larger than 4 inches diameter will be sorted in a different pile than unusable material and material smaller than 4 inches diameter. Residual spruce trees damaged during harvest will also be required to be yarded.

#### Method of Payment

A deposit equal to 10% of the bid amount will accompany all offers (\$4,350.00). This deposit may be applied to the total amount due, including bonds, or retained as liquidated damages if the accepted purchaser does not execute the contract within 30 days. This sale is a lump sum sale that will be paid for in installments. The purchaser will pay one-quarter of the contract price at contract signing. The next one-quarter payment of the contract price for the sale will be due prior to any harvest development work. The purchaser shall pay the balance of the purchase price after half (1/2) of the timber has been cut and before commencing to cut the balance of the timber. Stumpage payments must be made by either money order or bank cashier's check.

#### Bonding

A performance bond for this sale is set at **\$1,000.00** and is due at time of Purchaser's signature.

#### Over-The-Counter (OTC) Sale Procedure

The sale price is **\$43,500.00** with additional costs for cutting or removing timber outside of the sale area in clearing for roads, camps, landings, or other improvements undetermined at this time. All pertinent documents, including insurance certificate and business license, must be presented to the Fairbanks North Star Borough 10 business days prior to the intended effective date of this contract.