

## NOTICE TO BIDDERS

SEALED BIDS shall be plainly marked- **“DO NOT OPEN –SEALED TIMBER BID”** and submitted to Town of Westport, 22 Champlain Ave, P.O. Box 465, Westport, NY 12993. Any bid not so marked automatically becomes VOID. All bids shall be submitted on the bid sheets included in the package, and no other forms shall be accepted.

Specifications and bid forms are available by contacting Essex County Soil and Water Conservation District at 3 Sisco Street, Westport, NY 12993, by calling 518-962-8225, or available online at <http://www.essexcountyswcd.org/>.

Sealed bids will be received at Town of Westport, 22 Champlain Ave, P.O. Box 465, Westport, NY 12993 until **November 22, 2016 at 3 P.M.** local time at which time all timely received bids will be publicly opened and read aloud.

**VOLUMES:** An estimated **149,317 BF** (International 1/4” Rule) 72% white pine, 14% red oak, 9% sugar maple, 4% paper birch, and 1% white ash; plus **444 green tons pulpwood** marked in natural stands, on 44 acres, more or less. Marked trees were 100% tallied.

In addition to bid sheets, the bidder shall submit executed non-collusion bid certificates signed by the bidder or one of its officers as required by the General Municipal Law Sec. 103d.

Town of Westport and its foresters reserve the right to waive any technicalities concerning bids, and also reserve the right to reject any and all bids, in the Seller’s sole discretion.

PLEASE TAKE FURTHER NOTICE that Town of Westport and Essex County Soil and Water Conservation District affirmatively states that in regard to any contract entered into pursuant to this notice, without regard to race, color, sex, religion, age, national origin, disability, sexual preference or military veteran status, disadvantaged and minority or women-owned business enterprises will be afforded equal opportunity to submit bids in response hereto.

Dated: October 27, 2016

**TIMBER SALE (Exhibit A)  
FOR MARKED STANDING TIMBER  
ON LANDS OF TOWN OF WESTPORT, NEW YORK  
IN THE TOWN OF WESTPORT**

**BIDDING SPECIFICATIONS**

**PROPERTY OWNER:** Town of Westport, NY

**VOLUMES:** An estimated **149,317 BF** (International ¼" Rule), plus **444 green tons of cordwood**, marked in natural stands, on 44 acres, more or less. Marked trees were 100% tallied. **Species:** 72% white pine, 14% red oak, 9% sugar maple, 4% paper birch and 1% white ash, based on sawtimber distribution.

**HARVEST AREA SIZE:** 44 acres, more or less.

**TYPE OF SALE:** Lump sum.

**FORESTER:** Essex County Soil and Water Conservation District (SWCD), (518) 962-8225, [essexswcd@westelcom.com](mailto:essexswcd@westelcom.com).

**VIEWING THE TIMBER:** The sale area is public land, and may be inspected at any time. Independent timber cruises are welcomed. The Seller's foresters will be available to show the timber on **Wednesday November 9 at 12:30 P.M.**; RSVP is required. Interested parties should meet at the sale area parking area off of Mountain Spring Road. The parking area is approximately 1 mile west of the intersection of Stevenson Road and Mountain Spring Road in the Town of Westport, NY. Serious bidders who can't make the showing can contact SWCD at (518) 962-8225 for a private showing. Please be aware that the land is open to hunting.

**LOCATION:** The timber sale is located off of Mountain Spring Road, one mile west of the intersection of Stevenson Road and Mountain Spring Road in the Town of Westport, NY. A parking area is located across from the intersection of MacMahon Road and Mountain Spring Road which provides access to Greeley Pond.

**CONTRACT PERIOD:** From contract signing until June 1, 2018

All timber remaining on said premises after this date will be and shall remain the property of the Town, and any and all payments which have been made thereon or theretofore, will be retained by the Town.

**BIDDING TERMS:** Award will be to the highest qualified bidder. All bids shall be considered final - no adjustments after opening will be allowed. Bids shall be in United States dollars. Bids must be submitted on the form provided, found on page 18, or a photocopy of it - alteration of the bidding form will not be accepted. All bids must be accompanied by the signed non-collusive bidding certificate on the back of the bidding form. Bidders must guarantee their bid

for 45 days. **Sealed bids must be labeled: "DO NOT OPEN – SEALED TIMBER BID" in large letters on both front and back.**

Town of Westport and its foresters reserve the right to waive any technicalities concerning bids, and also reserve the right to reject any and all bids, in the Seller's sole discretion.

The timber described for sale herein is offered "as is". Neither the Town nor its foresters guarantee the quantity, quality or merchantability of the timber described herein, and assume no responsibility for under-run or over-run of actual timber volumes harvested, compared to the volume estimates listed herein. The estimates herein are presented as a reference base, not a guarantee. Each bidder is considered an expert, and shall base his/her bid on his/her own volume, quality and merchantability estimate as a condition of bidding.

**CONTRACT SIGNING:** The contract will be available to sign after bid approval at the Town Board meeting currently scheduled for November 22, 2016. The entire bid sum for the marked timber listed herein is due at that time. The payment must be in the form of a bank cashier's check, money order, travelers check or certified personal or company check, drawn on a bank located in the United States. **Uncertified personal or company checks will not be accepted.**

**Make this check out to: *Town of Westport.***

**MAILED BIDS** should be addressed to: Town of Westport, 22 Champlain Ave, P.O. Box 465, Westport, NY 12993.

**HAND-DELIVERED BIDS** may be brought to Town of Westport, 22 Champlain Ave, Westport, NY 12993 during normal operating hours, up to the time of bid opening.

**BID WITHDRAWAL DEPOSIT:** Ten percent (10%) of the bid amount must be submitted with the bid. This will be held and returned to each unsuccessful bidder after the contract is signed. Town of Westport reserves the right to retain the bid deposit in the event the successful bidder fails to execute the contract. **Bids not accompanied by a deposit will not be accepted.** Bid deposits must be in the form of a bank cashier's check, money order, traveler's check, or certified personal or company check, drawn on a bank located in the United States. **Uncertified personal or company checks will not be accepted.**

**Make this check out to: *Town of Westport***

**PERFORMANCE DEPOSIT:** A performance deposit of ten percent (10%) of the total contract amount is required at contract signing. This will be held by Essex County Soil and Water Conservation District, and returned at satisfactory completion of the contract, with accrued interest. The bid withdrawal deposit will be used for this. The funds on deposit with Essex County Soil and Water Conservation District may be subjected to forfeiture in whole or in part if excessive damage is caused to the land or residual timber as a result of improper logging practices, or if the Buyer fails to grade and drain skid trails, cleanup landing(s), and/or lop conifer tops, all to the satisfaction of the Seller's forester(s).

**INSURANCE REQUIREMENTS:** Refer to attachments herein.

**TIMBER ESTIMATION METHODS:** Original timber volume estimates are based on a 100% sample of marked trees.

Trees are marked at eye level and ground level with orange paint. Trees tallied as sawtimber were marked at eye level with diagonal slashes (\), and pulp trees were marked with spots (●). Cull trees/ cutter's choice are marked at eye level with an "X". Trees marked with slashes (\) as sawtimber will occasionally display one or more paint spots approximately eight feet (8') above stump height. These can be used as an aid in estimating merchantable sawlog height. Trees marked with an "X" were not recorded with any volume or weight information.

Trees were considered sawtimber if they were estimated to contain at least one 8'4" sawlog. Trees were considered cordwood if they didn't seem to be sawtimber quality, but contained at least two reasonably sound 8' bolts.

White pine trees suspected of red rot (*Phellinus pini*.) were sampled with an increment borer. If rot was detected, the entire tree was tallied as cordwood and marked with "ROT" in addition to spots (●).

Trees in this sale were tallied by 2- inch DBH classes. For example, the 14- inch DBH class includes trees measuring 13.1 inches to 15.0 inches DBH, and the 16- inch DBH class includes trees measuring 15.1 inches to 17.0 inches DBH. DBH was taken using a Biltmore stick, and frequently checked with a diameter tape. Sawtimber heights were estimated with a Merritt hypsometer, and defect was estimated on an individual basis. U.S. Forest Service Girard Form Class tables were used for sawtimber volume estimates, using Form Class 80 for pine, and Form Class 78 for hardwoods. Cordwood trees were measured for DBH only, and a local volume table based on DBH and species was used to compute volumes. Topwood (cordwood found in the tops of sawtimber) was estimated using tables based on research done by the U.S. Forest Service.

**Utilization Limits:** Pine sawlogs were estimated to an 8" top, or wherever the tree appeared to become unmerchantable as sawtimber. Hardwood saw logs were estimated to a 10" top.

**WORKING CONDITIONS:** Only trees marked with orange paint by the Seller's foresters shall be harvested. It is **NOT** mandatory to harvest every marked tree - any marked tree may be left standing, for market or safety reasons.

Parts of the sale compartment boundaries are marked with pink plastic flagging, imprinted with "TIMBER HARVEST BOUNDARY" in black. In areas with wet soils, pink plastic flagging imprinted with "RMZ" in black was used to protect those areas. Red flagging is used to indicate the property boundary and should not be crossed.

**FORESTER'S COMMENTS:** The volumes are an unguaranteed estimate only and bidders should satisfy themselves by examination as to quantity, quality and merchantability of the timber offered.

85% of sawtimber volume is estimated to be in trees with a DBH of 22 inches or larger, and 42% in trees 30 inches DBH and larger. Sawlog quality ranges from utility grade to high quality logs. No attempt was made to classify sawtimber volumes by log grade.

Much of the compartment has been harvested in the past at various times. The predominant harvest type has been improvement thinning to promote excellent growth on the highest quality trees. Timber quality appears to be above average. The slopes of the compartment are mild in grade over most of the timber sale area, with a few areas that have steeper slopes and rock outcrops. Areas with steep slopes and rock outcrops have a minimal number of trees marked, and were judged by the foresters to be accessible.

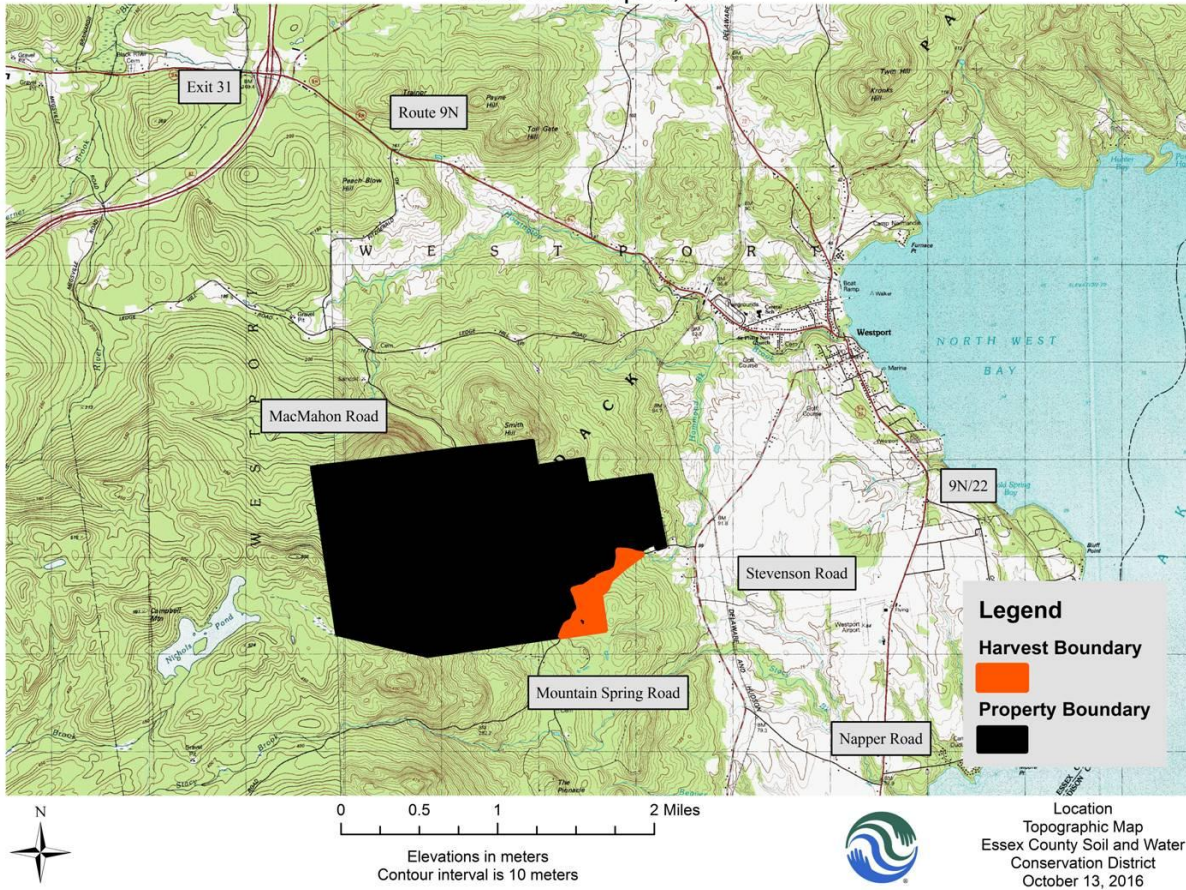
Many skid trails are in place. However, some additional bulldozing may be needed to widen trails. New trails may be placed with approval by the foresters.

The landing will be located along a parking area that is currently used by the public. Because the landing is located on a public parking area, it will require an elevated level of cleanliness. Buyer shall remove debris from the landing, as far into the adjoining woods as the Seller's foresters require. Grass seeding will also be required in areas disturbed around the parking area, and grading may be required for the entire landing. The above may also be required if the landing is not used for an extended time during the contract period, to be determined by the Seller's forester(s).

Soft soils are present in some parts of the sale area. Rutting may occur in any season, and Buyer shall be responsible to restore these areas to the satisfaction of the Seller's foresters. A stream bisects part of the harvest area. The stream shall not be crossed, except at the crossing by Greeley Pond, and minimal harvesting will occur within 50' of either side of the stream, as marked out by pink plastic flagging labeled in black with "RMZ".

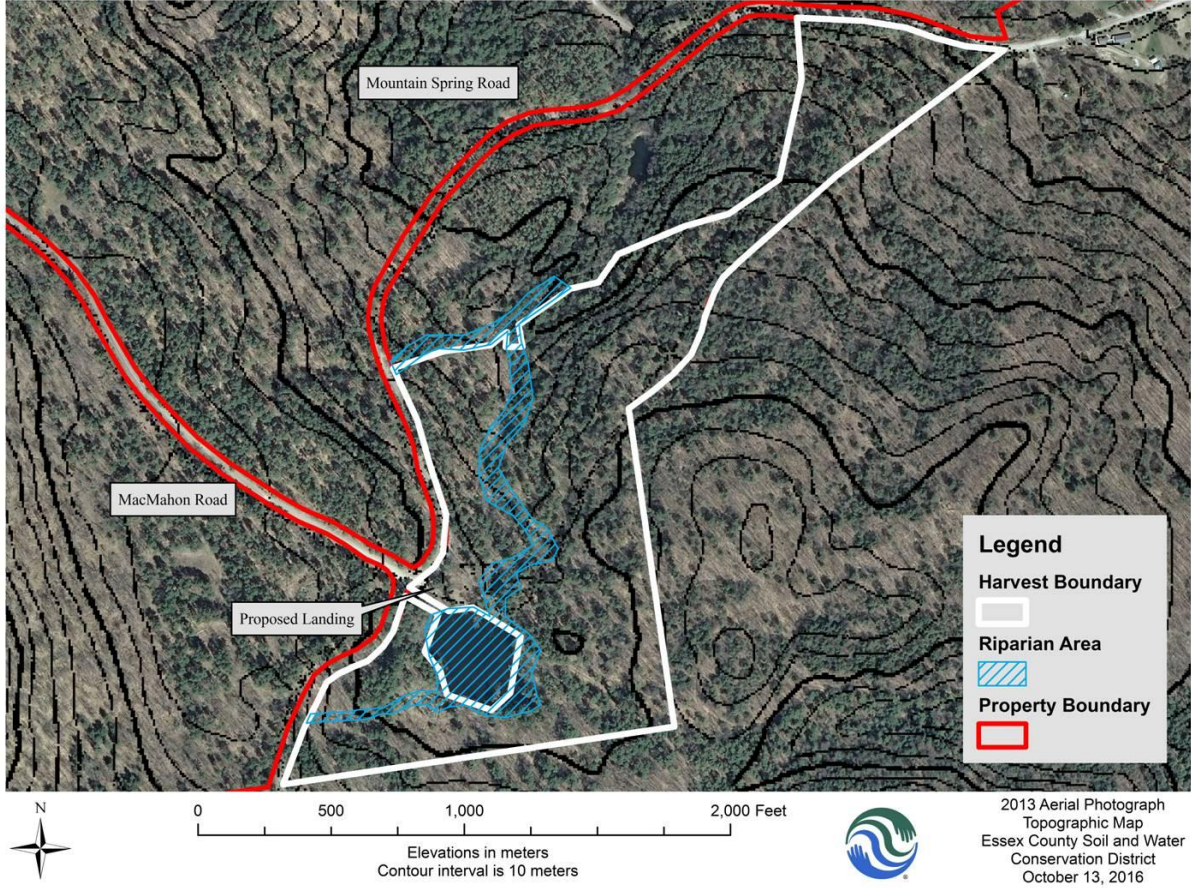
New York State Best Management Practices (NYS BMPs), which can be found at [http://www.dec.ny.gov/docs/lands\\_forests\\_pdf/dlfbmpguide.pdf](http://www.dec.ny.gov/docs/lands_forests_pdf/dlfbmpguide.pdf), shall be followed during and at completion of the job, including water bars.

# Town of Westport, NY





Town of Westport, NY



Compartment: 1  
 Acres Marked: 44  
 Location: Town of Westport, Mountain Spring Road

Paint Color: Orange  
 By: Essex County Soil and Water Conservation District  
 Crew: L. Benedict

Landowner: Town of Westport, NY  
 Date Marked: Summer 2016  
 Log Rule: International 1/4"

**Estimated Saw Timber Volumes In Board Feet By DBH Class**

Species	10	12	14	16	18	20	22	24	26	28	30	32	34+	Totals
<b>White Pine</b>														
Volume	70	555	428	1,604	2,572	10,226	13,542	14,102	10,088	21,778	25,929	13,118	19,254	133,266
# Marked	2	10	5	9	11	29	31	25	15	24	21	12	11	205
<b>Red Oak</b>														
Volume	0	146	413	309	735	2,041	2,249	1,868	725	0	2,626	988	0	12,100
# Marked	0	3	6	2	4	8	8	4	1	0	3	1	0	40
<b>Sugar Maple</b>														
Volume	0	218	320	413	326	374	484	0	0	0	574	0	0	2,709
# Marked	0	5	6	5	3	2	2	0	0	0	1	0	0	24
<b>Paper Birch</b>														
Volume	0	45	289	276	507	0	0	0	0	0	0	0	0	1,117
# Marked	0	1	4	4	3	0	0	0	0	0	0	0	0	12
<b>Ash</b>														
Volume	0	0	125	0	0	0	0	0	0	0	0	0	0	125
# Marked	0	0	2	0	0	0	0	0	0	0	0	0	0	2

<b>Volume by DBH</b>	70	964	1,575	2,602	4,140	12,641	16,275	15,970	10,813	21,778	29,129	14,106	19,254	149,317
<b>Total Marked</b>	2	19	23	20	21	39	41	29	16	24	25	13	11	283
<b>% of Total Volume</b>	0.05%	0.65%	1.05%	1.74%	2.77%	8.47%	10.90%	10.70%	7.24%	14.59%	19.51%	9.45%	12.89%	100%

Estimates as used herein shall be used as a reference base only; not a guarantee. Timber is offered "as is".



Compartment: 1  
Acres Marked: 44  
Location: Town of Westport, Mountain Spring Road  
Landowner: Town of Westport, NY  
Date Marked: Summer 2016

Paint Color: Orange  
By: Essex County Soil and Water  
Conservation District  
Crew: L. Benedict  
Log Rule: International 1/4"

*Estimated Cordwood Volumes*

<i>Species</i>	<i>Cordwood<sup>1</sup></i>	<i>Topwood<sup>2</sup></i>	<i>Total Cordwood<sup>3</sup></i>
<b>White Pine</b>			
Green Tons	178	37	<b>215</b>
# Marked	85	205	<b>290</b>
<b>Mixed Hardwoods</b>			
Green Tons	75	20	<b>95</b>
# Marked	230	78	<b>308</b>
<b>Eastern Hemlock</b>			
Green Tons	94	0	<b>94</b>
# Marked	150	0	<b>150</b>
<b>Aspen and Basswood</b>			
Green Tons	40	0	<b>40</b>
# Marked	45	0	<b>45</b>
<b>Total</b>			
Green Tons	387	57	<b>444</b>
# Marked	510	283	<b>793</b>

1. Volume in tons to a 4" top softwood and 5" top hardwood, exclusive of limbs.
  2. Topwood is the estimated cordwood ton volume in the tops of sawtimber trees, exclusive of limbs.
  3. Cordwood and topwood volume combined, exclusive of limbs.
- Estimates as used herein shall be used as a reference base only; not a guarantee. Timber is offered "as is".

# FORM CLASS 80

TABLE 23.—*Gross volume of tree, International 1/4-inch rule*

Tree diam- eter (Inches)	VOLUME (board feet) BY NUMBER OF USABLE 16-FOOT LOGS										
	1	1½	2	2½	3	3½	4	4½	5	5½	6
10.....	39	51	63	72	80	-----	-----	-----	-----	-----	-----
11.....	49	64	80	92	104	-----	-----	-----	-----	-----	-----
12.....	59	78	98	112	127	136	146	-----	-----	-----	-----
13.....	71	96	120	138	156	168	181	-----	-----	-----	-----
14.....	83	112	141	164	186	201	216	-----	-----	-----	-----
15.....	98	132	166	194	221	240	260	-----	-----	-----	-----
16.....	112	151	190	223	256	280	305	-----	-----	-----	-----
17.....	128	174	219	258	296	325	354	-----	-----	-----	-----
18.....	144	196	248	292	336	369	402	-----	-----	-----	-----
19.....	162	222	281	332	382	420	457	-----	-----	-----	-----
20.....	181	248	314	370	427	470	512	546	580	-----	-----
21.....	201	276	350	414	478	526	575	616	656	-----	-----
22.....	221	304	387	458	528	583	638	685	732	-----	-----
23.....	244	336	428	507	586	646	706	761	816	-----	-----
24.....	266	368	469	556	644	708	773	836	899	-----	-----
25.....	290	402	514	610	706	779	852	922	992	-----	-----
26.....	315	436	558	662	767	849	931	1,008	1,086	-----	-----
27.....	341	474	606	721	836	925	1,014	1,100	1,185	-----	-----
28.....	367	510	654	779	904	1,000	1,096	1,190	1,284	1,368	1,453
29.....	396	551	706	842	977	1,080	1,184	1,289	1,394	1,491	1,588
30.....	424	591	758	904	1,050	1,161	1,272	1,388	1,503	1,613	1,723
31.....	454	634	814	973	1,132	1,254	1,376	1,497	1,618	1,740	1,862
32.....	485	678	870	1,042	1,213	1,346	1,480	1,606	1,733	1,867	2,001
33.....	518	724	930	1,114	1,298	1,442	1,586	1,722	1,858	2,005	2,152
34.....	550	770	989	1,186	1,383	1,537	1,691	1,838	1,984	2,144	2,304
35.....	585	820	1,055	1,266	1,477	1,642	1,806	1,965	2,124	2,291	2,458
36.....	620	870	1,121	1,346	1,571	1,746	1,922	2,093	2,264	2,438	2,612
37.....	656	922	1,188	1,430	1,672	1,858	2,044	2,230	2,416	2,600	2,783
38.....	693	974	1,256	1,514	1,772	1,970	2,167	2,368	2,568	2,761	2,954
39.....	732	1,031	1,330	1,602	1,874	2,087	2,300	2,507	2,714	2,920	3,127
40.....	770	1,086	1,403	1,690	1,977	2,204	2,432	2,646	2,860	3,080	3,300

**Source: U.S. Forest Service**

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**SAMPLE TIMBER SALE AGREEMENT CONTRACT**

**THIS AGREEMENT** made as of this \_\_\_\_\_ day of , \_\_\_\_\_ 2016,

**BETWEEN: Town of Westport**, a municipal corporation with offices located at 22 Champlain Avenue, Westport, New York, by its Town Council, (hereinafter designated as the “Seller”);

and

\_\_\_\_\_,  
(hereinafter designated as the “Buyer”).

**W I T N E S S E T H:**

**WHEREAS**, the Seller is the owner of certain real property located in the Town of Westport, Essex County, New York and has solicited competitive bids for the purchase of certain timber located on said property in accordance with “bidding specifications”, the same being attached hereto as Exhibit A and incorporated herein by reference; and

**WHEREAS**, the Buyer submitted the highest bid meeting specifications for the purchase of said timber, (a copy of which is attached hereto as Exhibit B and incorporated herein by reference) and the Seller desires to accept the same;

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements herein contained, the Seller and Buyer agree as follows:

1. Whenever the term “Buyer” is used in this agreement, such term shall include and apply to all employees, all officers, directors and agents, if any, of the Buyer.
2. Seller hereby sells to Buyer, and Buyer hereby agrees to purchase from Seller, the timber on the lands owned by Seller, all as more particularly described in Exhibit A.
3. (a) With regard to the timber being sold to the Buyer under this contract, in the event that all or a part of the timber is destroyed by a fire prior to the Buyer’s payment therefore, which fire is not caused directly or indirectly by the acts or omissions or negligence of the Buyer, then the price for such timber shall be reduced proportionately by the value of the destroyed timber as determined by the Seller’s foresters.  
  
(b) Notwithstanding any of the foregoing, payment for the timber must be made prior to the signing of this contract.  
  
(c) All sums due and payable hereunder shall be made payable to Town of Westport. In the event that this agreement is not executed by the Seller, all sums shall be returned to the Buyer.



4. All timber under this agreement shall be removed by **March 1, 2018**. All timber remaining on said premises after **March 1, 2018**, will be and shall remain the property of the Seller, and any and all payments which have been made thereon or theretofore, will be retained by Seller. All clean up activity shall be completed by the end of the contract period, **June 1, 2018**.
5. Buyer, prior to the cutting of any trees, shall procure the insurance required by Seller, as listed below as Exhibit C, hereto and shall furnish Seller with proof that such insurance has been obtained. Said insurance shall be maintained by Buyer for the duration of this agreement.
6. The Buyer shall have the right, so long as this contract shall remain in force, to enter the Seller's lands described herein for the purpose of performing this agreement as stated herein, provided that the Buyer complies with the following:
  - (a) Buyer shall at all times comply with all applicable federal, state, county and town laws, rules and regulations governing the performance and rendition of the operations of the Buyer under this agreement.
  - (b) Buyer shall, during the term of this agreement, obtain and keep in full force and effect any and all licenses, permits and certificates required by any governmental authority having jurisdiction over the rendition and performance of the operations of the Buyer under this agreement.
  - (c) Buyer shall perform and/or abide by the other terms contained herein and in any attachments or exhibits hereto.
  - (d) Buyer shall lop all felled conifer tree tops in accordance with New York State laws. Deciduous tops may be left unlopped to deter deer browsing.
  - (e) The sale area contains a number of existing skid trails. It is not mandatory to use a skid trail if safety dictates otherwise. Additional skid trails shall be located only with the approval of the Seller's foresters prior to timber harvesting in a given area.
  - (f) All new landings and truck access roads shall be located and mapped by the Buyer and the Seller's foresters and approved by the Seller's foresters in writing, before being cleared. Any unmarked trees located within said landings and/or roads shall be marked and their merchantable volumes estimated by the Seller's foresters using the same methods described in the bidding specifications attached to this agreement. Buyer shall then pay the Seller a lump sum amount for said trees at rates comparable to those used to formulate buyer's original bid, with such lump sum payments to be made to Essex County Treasurer within 30 days of their determination. No such trees shall be cut or removed without prior authorization of the Seller's foresters.
  - (g) Skid trails, haul roads and landings shall be graded and stabilized within two weeks of the end of the timber sale. This will be done to NYS BMP specification and may include and not limited to water bars, ditches, or grass seeding at the completion of the harvest if the Seller's foresters deem this necessary. If the sale is completed in winter, The Buyer will need to have NYS BMP's installed by the following May 31.
  - (h) Skidding and hauling may not be allowed during periods of excessively soft soil conditions, all as determined by the Seller's foresters.
  - (i) No logging debris shall be left in streams or within fifty feet of their banks. No logging debris shall be left within twenty feet of the property boundary.

- (j) All litter connected with the harvesting operation, such as cables, fuel and oil containers, wrappers, machinery parts, etc., shall be removed from the site by the Buyer upon completion of the harvest, or at the direction of the Seller's forester(s). No toxic chemicals shall be dumped on the lands of the Seller. The term 'toxic chemicals' as used herein includes, but is not limited to: fuels, hydraulic fluids, lubricating oils and other petro chemicals. If toxic chemicals are accidentally spilled, they shall be immediately cleaned up and removed from the Seller's property, along with any contaminated soil, by the Buyer or his/her agents.
- (k) All trees to be cut are marked with paint as described in the bidding specifications. Only those trees so marked or otherwise designated by the Seller's foresters shall be harvested.
- (l) Unmarked trees which are cut without prior approval of the Seller's foresters will be charged to the Buyer at the rate of three times the estimated market value, said value to be determined by the Seller's forester(s).
- (m) The falsification of evidence of the cutting of unmarked trees shall be considered theft, and will result in the forfeiture of the contract and all sums paid on account of the same, and the Buyer's performance deposit, in addition to other remedies provided by law or in equity.
- (n) Buyer shall use due care to prevent fires. The Buyer shall use his/her employees and equipment to extinguish any fires, started on their account, that is endangering the Seller's property described in this agreement. All fires shall be reported to the Seller and its forester as soon as possible. If fire is uncontrollable, the local fire department shall be notified immediately.
- (o) Buyer shall notify the Seller's foresters at least **three days** in advance of the beginning or cessation of any operations under this contract.
- (p) Buyer shall be solely responsible for insuring that no unmarked trees are cut or removed from lands located outside the timber sale area, and that the Buyer or his agents do not trespass upon any other lands.
- (q) Buyer shall be responsible for repairing any damages to ditches, stream crossings, roads, trails, or other improvements incurred from logging.
- (r) Buyer shall take care to prevent unnecessary injury to young growth and tree not designated for cutting. Residual stand damage should be maintained below 20%.

7. This contract may be immediately cancelled by the Seller if the Buyer fails or refuses to conform with the requirements of this agreement, or if at any time the Seller is of the opinion the Buyer is willfully violating any of the conditions of this agreement, or executing same in bad faith. Upon such default or cancellation, the Seller has the right to proceed to enforce the performance deposit posted by the Buyer in connection with this agreement, and shall have in addition such other remedies as shall be available at law or in equity.

8. The parties each acknowledge, covenant and agree that the relationship of the Buyer to the Seller shall be that of an independent contractor. The Buyer, in accordance with its status as an independent contractor, further covenants and agrees that it: (a) will conduct itself in accordance with its status as an independent contractor; (b) will neither hold itself out as nor claim to be an officer

or employee of the Seller; (c) will not make any claim, demand or application or any right or privilege applicable to an officer or employee of the Seller, including but not limited to: Worker's Compensation benefits, unemployment insurance benefits, social security coverage or retirement membership or credits.

9. Any liability for damage, destruction or restoration of private or public property and/or improvements occasioned by or the exercise of this contract shall be the sole responsibility of the Buyer. The Buyer shall defend, indemnify and hold harmless the Seller to the fullest extent allowed by law from and against any and all liability, suits, judgements, orders, causes of action, and claims, including but not limited to those for bodily injury, property damage, death, and reasonable attorney's fees, arising out of or in connection with the Buyer's negligence and/or its performance of, or failure to perform, this agreement.
10. The Buyer shall promptly advise the Seller of all damages to property of the Seller or of others, or of injuries incurred by persons other than employees of the Buyer, in any manner relating, either directly or indirectly, to the performance of this agreement.
11. The Seller shall have no liability under this contract to the Buyer or to anyone else beyond the funds appropriated and available for this contract.
12. This agreement may be terminated without cause by either party upon thirty days prior written notice, and upon such termination neither party shall have any claim or cause of action against the other, except for services actually performed and mileage expenses actually incurred prior to such termination. Notwithstanding the foregoing, this agreement may be immediately terminated by the Seller:
  - (a) for the Buyer's breach of this agreement, by serving written notice of such termination stating the nature of the breach upon the Buyer by personal delivery or certified mail, return receipt requested, and upon such termination either party shall have such rights and remedies against the other as provided by law; or
  - (b) upon the reduction or discontinuation of funding by the state or federal governments to be used in furnishing some or all of the work, labor and/or services provided for under this agreement, and upon such termination either party shall have any claim or cause of action against the other except for services actually performed and expenses (if the same are to be paid under this agreement) actually incurred prior to such termination.
13. The services to be furnished and rendered under this agreement by the Buyer shall be available to any and all residents of Essex County without regard to race, color, creed, sex, religion, national or ethnic origin, handicap, or source of payment, and under no circumstances shall a resident's financial ability to pay for the services provided be considered unless such consideration is allowed by state and/or federal law, rule or regulation.
14. The Buyer shall not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, age, disability or

marital status. In the event that this is a contract to be performed in whole or in part within the State of New York for (a) the construction, alteration or repair of any public building, or public work, (b) for the manufacture, sale, or distribution of materials, equipment or supplies, (c) for building service, the Buyer agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex or national origin:

- (1) discriminate in hiring against any citizen who is qualified and available to perform the work; or
- (2) discriminate against or intimidate any employee hired for the performance of work under this contract.

15. The Buyer shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter collectively "the Records") in accordance with the following requirements:

- (a) the Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter;
- (b) the County Auditor, State Comptroller, the Attorney General or any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the records during normal business hours at an office of the Buyer within the State of New York, or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purpose of inspection, auditing and copying.

The Seller shall take reasonable steps to protect from public disclosure any of the records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (I) the Buyer shall timely inform an appropriate County official in writing, that said records should not be disclosed; and (II) said records shall be sufficiently identified and designation of said records as exempt under the statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the Seller's right to discovery in any pending or future litigation.

- 16. The Seller shall have no liability under this contract to the Buyer or to anyone else beyond the funds appropriated and available for this contract.
- 17. Disputes involving this contract including the breach or alleged breach thereof, may not be submitted to binding arbitration, but must, instead, be heard in a court of competent jurisdiction within the State of New York.
- 18. This agreement may not be assigned, subcontracted, transferred, conveyed, sublet or otherwise disposed of in whole or in part, by the Buyer, without the prior written consent of the Seller, and any attempts to assign the contract without the Seller's written consent are null and void.
- 19. If this contract was awarded based on the submission of bids, the Buyer warrants, under penalty of perjury, that:



- (a) its bid was arrived at independently and without collusion aimed at restricting competition; and
- (b) at the time Buyer submitted its bid, an authorized and responsible person executed and delivered to the Seller a non-collusive bidding certificate on Buyer's behalf.

- 20. The Seller shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the Seller's option to withhold for the purposes of set-off any moneys due to the Buyer under this agreement up to any amounts due and owing to the Seller with regard to this contract, any other contract with any County department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the Seller for any other reason, including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The Seller shall exercise its set-off rights in accordance with normal County practices, including, in cases of setoff pursuant to an audit, the acceptance of such audit by the County Board of Supervisors or its designated representative.
- 21. This agreement may not be amended, modified or renewed except by written agreement signed by the Buyer and the Seller.
- 22. This agreement is the entire agreement between the parties, and the same shall be construed in accordance with the laws of the State of New York.

**IN WITNESS WHEREOF**, the parties hereto have set their hands and seals on the dates indicated below.

Dated:\_\_\_\_\_

By\_\_\_\_\_

Dated:\_\_\_\_\_

By\_\_\_\_\_

**BIDDING FORM (Exhibit B)**  
**For Marked Standing Timber**  
**ON LANDS OF TOWN OF WESTPORT, NY**  
**IN THE TOWN OF WESTPORT**

**Bid Opening:** 3:00 pm on Tuesday, November 22, 2016

Westport Town Hall  
22 Champlain Avenue  
Westport, NY 12993  
(518)962-4419

**Mail Bid To:** Town of Westport

22 Champlain Ave  
PO Box 465  
Westport, NY 12993

**NOTE:** Please mark the outside of envelope:  
**“DO NOT OPEN- SEALED TIMBER BID”**

I (we) have examined the marked standing timber for sale, and based on my (our) estimate of volume, quality and merchantability, bid the following amount for said timber:

**LUMP SUM BID FOR COMPARTMENT 1\*:** U.S. \$\_\_\_\_\_

**10% BID WITHDRAWAL DEPOSIT (ENCLOSED):** U.S. \$\_\_\_\_\_

**THIS BID IS GUARANTEED FOR 45 DAYS**

\*This bid amount is due at contract signing.

**BIDDER:**\_\_\_\_\_

**ADDRESS:**\_\_\_\_\_

\_\_\_\_\_

**TELEPHONE:**\_\_\_\_\_ **E-MAIL:**\_\_\_\_\_

**AUTHORIZED SIGNATURE:**\_\_\_\_\_

**PRINTED NAME AND TITLE:**\_\_\_\_\_

**CORPORATE SEAL** (if required)

(Include the signed non-collusive certification, to be found on following pages.)

**NON-COLLUSIVE BIDDING CERTIFICATION**

1. By submission of this bid, the undersigned bidder and each person signing on behalf of such bidder certifies and in the case of a joint bid each party thereto certifies as to its own organization — UNDER PENALTY OF PERJURY, that to the best of the undersigned's knowledge and belief:

(a) The prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;

(b) Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor; and

(c) No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

2. The undersigned acknowledges and agrees that a bid shall not be considered for award nor shall any award be made where any of the above have not been complied with; provided however, that if in any case the bidder cannot make the foregoing certification, the bidder shall so state and shall furnish with the bid a signed statement which sets forth in detail the reasons therefore. Where one or more of the above has/have not been complied with, the bid shall not be considered for award nor shall any award be made unless the political subdivision, public department, agency or official thereof to which the bid is made, or his designee, determines that such disclosure was not made for the purpose of restricting competition.

3. The undersigned also acknowledges and agrees that the fact that a bidder (a) has published price lists, rates, or tariffs covering items being procured, (b) has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or (c) has sold the same items to other customers at the same prices being bid, does not constitute, without more, a disclosure within the meaning of paragraph 1 above.

4. The undersigned further acknowledges and agrees that any bid hereafter made to any political subdivision of the state or any public department, agency or official thereof by a bidder which is a corporation or a limited liability company for work or services performed or to be performed or goods sold or to be sold, where competitive bidding is required by statute, rule, regulation, or local law, and where such bid contains the certification referred to in paragraph 1 of this certificate, shall be deemed to have been authorized by the board of directors of the bidder, and such authorization shall be deemed to include the signing and submission of the bid and the inclusion therein of the certificate as to non-collusion as the act and deed of the corporation or limited liability company.

Name of Bidder: \_\_\_\_\_  
(print full legal name)

Date Signed: \_\_\_\_\_ Signature: \_\_\_\_\_

Name of Person Signing Certificate: \_\_\_\_\_  
(print full legal name of signer)

Bidder is (check one): ☐ an individual, ☐ a limited liability partnership, ☐ a limited liability company,  
☐ other entity (specify): \_\_\_\_\_

### **Insurance Requirements (Exhibit C)**

*Public Liability Insurance* including all contractual liability for a minimum \$1,000,000/\$2,000,000 Vehicle Liability Insurance and *Workers Compensations Insurance*. Buyer shall furnish Owner's Agent with Certificate's of Insurance naming Town of Westport and Essex County Soil and Water Conservation District as additional insured.