



County Council

Meeting Date: October 12, 2021
Submitted by: Mark Brown, Woodlands Conservation Officer
SUBJECT: COUNTY FOREST; SALE OF TIMBER; PURDY AND PATTERSON TRACTS

BACKGROUND:

The County owns 1040 hectares of woodlands within 27 tracts. Council has established the following Vision for the County Forest: The Middlesex County Forest will be managed to ensure the ecological sustainability of the Middlesex County Forest and their associated natural heritage features and social and economic values through the utilization of an integrated ecosystem-based approach to management.

The County manages the County Forest including through a Council approved 20-year Management Plan and a 5-year Operational Plan. The Management Plan activities include Forest Stewardship, Conservation of Natural Heritage Woodlands, Sustainable Forest Management, Science & Education, and Recreation.

The Sustainable Forest Management activities within the County Forest include silvicultural management (timber harvest, regeneration, forest health improvement, and control of invasive species) as outlined in the Management and the Operational Plans. The management operations that are taking place now will, over the long term, improve the forest and provide a long term ecological and financial benefit.

The Purdy & Patterson Tracts are located within Southwest Middlesex and contain pine plantations that are scheduled to be selectively harvested. The thinning of the plantations will encourage the continued growth and health of the remaining trees. 730 cubic meters (M³) of white pine select harvest was marked by the Woodlands Conservation Officer to Good Forestry Practices for stand improvement.

ANALYSIS:

A Request for Tender W2021B was posted on the County's website, the Ontario Woodlot Association website, mailed and emailed to known logging contractors. All submissions were due on September 27, 2021 by 12:00pm and were opened at 1:00pm

with the Woodlands Conservation Officer, the County Clerk and the Director of Planning in attendance.

Tenders were received as follows:

Company	Amount
Townsend Lumber Inc.	\$63,250.00

The Woodlands Conservation Officer, County Clerk and Director of Planning reviewed the submitted Tender for completeness. The Tender was evaluated against an evaluation criteria list and the Woodlands Conservation Officer completed reference checks. It was concluded that the submitted Tender of Townsend Lumber Inc. met all mandatory requirements and represents good overall value for the County.

The County utilizes a standardized logging agreement to ensure that operations within the County Forest meet acceptable harvesting standards (minimum residual damage, etc) and to ensure technical requirements are satisfied (proof of insurance, etc).

FINANCIAL IMPLICATIONS:

County Council has adopted the following policy concerning silvicultural management revenue: That any funds realized from the sale of timber from County-owned woodlands, net of expenses required to prepare the woodlot for harvesting, be transferred to the woodlands reserve fund and be utilized to finance woodland capital projects for direct management costs.

ALIGNMENT WITH STRATEGIC FOCUS:

This report aligns with the following Strategic Focus, Goals, or Objectives:

Strategic Focus	Goals	Objectives
Connecting Through Infrastructure	Ensure communities are built on a sustainable foundation that is connected and thriving	Commit to a sound asset management strategy to maintain and fund critical infrastructure
Strengthening Our Economy	Encourage a diverse and robust economic base throughout the county	Attract visitors to Middlesex County

RECOMMENDATION:

That the tender submitted by Townsend Lumber Inc. in the amount of \$63,250.00 for Tender W2021B be accepted; and that the necessary By-law be presented to County

Council to authorize the Warden and the County Clerk to execute the attached Agreement.

Attachment: Agreement

AGREEMENT FOR PROFESSIONAL TIMBER HARVESTING SERVICES

MEMORANDUM OF AGREEMENT made this 12th day of October, 2021

B E T W E E N:

THE CORPORATION OF THE COUNTY OF MIDDLESEX
(hereinafter called the "County")

THE PARTY OF THE FIRST PART

- and -

Townsend Lumber Inc
(hereinafter called the "Logging Firm")

THE PARTY OF THE SECOND PART

Collectively hereinafter referred to as "the Parties"

WHEREAS the County is the registered owner of lands described as

- Part of Lot 12, Range 2N, Big Bend Road, geographic Township of Southwest Middlesex, Roll Number 390600105018300, otherwise known as the PURDY Tract of the Skunks Misery Forest and the lands described as
- Part of Lots 25,26, Concession 1, Centreville Drive, in the geographic township of Southwest Middlesex, Roll Number 390600101000600, otherwise known as the PATTERSON Tract of the Skunks Misery Forest (hereinafter "the Lands");

AND WHEREAS the County intends to proceed with the harvesting of marked timber on the Lands as outlined in County of Middlesex Tender #W2021B (hereinafter "the Project");

AND WHEREAS Middlesex County has requested and the Logging Firm agrees to provide the professional timber harvesting services required for the Project;

AND WHEREAS the County is a Municipal corporation governed by Warden and Council and is operated by administration, which is hereby authorized to administer this Agreement in its entirety, including, but not limited to decisions with respect to the operation and termination of this Agreement, in accordance with its provisions.

NOW THEREFORE WITNESSETH that for good and valuable consideration, including the mutual covenants contained herein, the receipt and sufficiency of which the Parties acknowledges as sufficient, the Parties do hereby agree as follows:

ARTICLE 1 - GENERAL CONDITIONS

1.01 Recitals

The above recitals are true and are incorporated into this Agreement.

Covenants

All obligations contained in this Agreement, even if not expressed specifically to be covenants, shall be deemed to be covenants.

1.03 Retainer

The County retains the professional timber harvesting services of the Logging Firm in connection with the Project. The Logging Firm agrees to provide the timber harvesting services (hereinafter "the Services") under the general direction and control of the County. The details of the Services are set out in Article 2 (2.01-2.06) of this Agreement.

1.04 Compensation

In addition to providing the Services, the Logging Firm shall provide payment to the County in the amount of Sixty Three Thousand, two hundred and Fifty dollars (\$63,250.00) (the "Payment"). The County in return for the Services and the Payment, shall allow the Logging Firm to take possession and ownership of the merchantable material resulting from the Project.

The County shall cash the certified cheque deposit (provided with the Tender submission) in the amount of \$20,000 31.62% of the Payment prior to the commencement of the Services. The Logging Firm will provide the remaining 68.38% of the Payment (\$43,250) by certified cheque prior to the commencement of the Services and within six (6) months from the date the tender is awarded to the Logging Firm by County Council.

The Logging Firm acknowledges that:

- a) possession and ownership of the merchantable material resulting from the Project is the only compensation owed to the Logging Firm, its employees and/or its subcontractors by the County and the County does not warrant any amount of profit to the Logging Firm, its employees and/or subcontractors; and
- b) the Logging Firm is fully responsible for any and all costs incurred by the Logging Firm, its employees and/or any of its subcontractors incurred to access, cut and remove the marked timber, including but not limited to the costs for equipment, materials, labour, overtime, overhead, vehicle use, travelling and living expenses, telephone charges, transmission, printing, reproductions, photography, tender preparation, meetings, special delivery and/or express charges, the cost of providing and maintaining site offices.

1.05 Staffing and Methods

The Logging Firm shall:

- a) perform the Services required by this Agreement;
- b) employ only competent staff and subcontractors* who at all times will be under the supervision of a senior member of the Logging Firm's staff;
- c) ensure that its employees and subcontractors*:

- i. perform the Services to the degree of care, skill and diligence of a professional logger/tree harvesters;
 - ii. are at all times, in compliance with all Federal, Provincial and Municipal laws, statutes, regulations and by-laws and codes of conduct relevant to the cutting and sale of timber;
 - iii. without limiting 1.05(c)(ii) above, take no action that is contrary to the County's Forest Operational Plan 2012-2016 or the County's Woodlands Management Plan 2002-2021; and
- d) be fully responsible for one hundred percent (100%) of the work undertaken by any and all of its employees and sub-contractors*.

**Only subcontractors listed on the List of Subcontractors on the completed Tender Response Form shall be allowed to work on the Project, as outlined in Section 1.11 of this Agreement.*

1.06 Ownership and Vesting of Timber Property

The County and the Logging Firm hereby agree that once timber is cut by the Logging Firm, all ownership in the timber shall vest with the Logging Firm immediately when cut, and once cut, shall no longer be the property of the County, and will be at the risk of the Logging Firm.

The Parties further agree that at the end of the Project, the Lands and all uncut timber thereon remains the property of the County. Further, the ownership of any cut and/or piled wood which is left on the Lands shall revert back and to and vest with the County and may be resold by the County with no refund being owed to the Logging Firm.

1.07 Changes, Alterations and Additional Related Services

With the consent of the Logging Firm, the County may in writing and at any time after the execution of the Agreement, delete, extend, increase, vary or otherwise alter the Services required to be performed pursuant to this Agreement. In the event that any of the Services are deleted, extended, increased, varied or otherwise altered, the Parties shall cause this Agreement to be amended accordingly.

Any compensation owed to the County by the Logging Firm for the cutting of any extra trees, if agreed to, shall be based on the amount of the bid in the Logging Firm's Proposal reduced to per cubic metre and applied to the extra trees accordingly. Payment would be required to be received by the County within two (2) months of the County's invoice date.

1.08 Termination and Damages

1.08.01 Termination by County Without Cause

The County may at any time and without cause, terminate the Services of the Logging Firm for any reason by providing notice to the Logging Firm. Upon receipt of notice of termination from the County, the Logging Firm shall cease work immediately and perform no further services other than those reasonably necessary to close out its services. In the Services of the Logging Firm are terminated by the County on a without cause basis, the Logging Firm shall be entitled to ownership of the merchantable material cut up to the date and time of the termination and to a

refund of the portion of its Payment to the County representing the merchantable material unable to be cut by the Logging Firm.

In the event the County terminates the services of the Logging firm without cause, no compensation other than the compensation described above shall be owed by the County to the Logging Firm and the Logging Firm does hereby fully release the County, its employees and/or Councillors from any and all claims, actions, losses, expenses, costs or damages of every nature and kind whatsoever resulting from the termination.

1.08.02 Breach by Logging Firm

Stop Work and Possible Termination

In the event the Logging Firm breaches any term of this Agreement, the County may order all work to cease and/or the Agreement may be terminated at the election of the County, without any compensation owed being owed by the County to the Logging Firm.

Funds Retained; Additional Damages Available

If this Agreement is terminated by the County as a result of a breach by the Logging Firm, the County shall retain the full amount of the Payment and such retention by the County shall not limit or bar the County's ability to seek additional compensation for damages. The Logging Firm acknowledges that the retention of Payment by the County in the event of breach by the Logging Firm constitutes at least partial compensation for the cost of delay and administrative costs associated with administering an additional request for tender and is not a penalty.

Ineligibility to Contract Possible

In the event the Logging Firm breaches this Agreement, it may at the election of the County, be ineligible to contract with the County further for a period of time determined by the County.

Abandonment of Project by Logging Firm

In addition to and without limiting any other provision of this Agreement and subject to section 1.07 of this Agreement, in the event the Logging Firm prior to the completion of the Services and without the written consent of the County, breaches this Agreement by either:

- a) ceasing performance of the Services; or
- b) dissolving as a corporation; or
- c) ceasing operations;

this Agreement shall terminate as of the earliest date upon which the Logging Firm either ceases performance the Services, dissolves, or ceases operations. In the case where the Logging Firm ceases performance, dissolves or operations as indicated above, the County shall retain the full amount of Payment. The Logging Firm acknowledges that the retention of Payment by the County under the circumstances above constitutes compensation for the cost of delay and administration an additional tender and is not a penalty.

Additional Damages in Event of Article 2 Breach

In addition to and without limiting any other provision of this Agreement, in the event that the Logging Firm fails to adhere to the requirements contained within the entirety of Article 2 (2.01-2.06) of this Agreement, the Logging Firm shall pay to the County the following additional amounts, which the Logging Firm acknowledges constitutes compensation for lost resources and/or services required to be engaged by the County to rectify the breach and does not constitute a penalty:

- a) the sum of \$500.00 for each unmarked tree which is cut down, destroyed or damaged by the Logging Firm, its employees or its subcontractors;
- b) the additional sum of \$2.00 for each piece of merchantable timber taken from an unmarked tree;
- c) the sum of \$50.00 for each lodged tree remaining on the Lands;
- d) the sum of \$10.00 for each high stump remaining on the Lands; and
- e) the sum of \$68.00.00 for each tree not felled which was marked for cutting.

1.09

Liability and Indemnification

The Logging Firm acknowledges and agrees that while it is present on the Lands and performing the Services, it will be the primary occupier of the Lands and that it shall prevent all unauthorized persons from coming onto the Lands and from being injured thereon. In addition, it acknowledges, as indicated in Section 1.06 that it shall be the owner of all cut timber once it is cut. The Parties acknowledge that despite of the County being the owner of the Lands, in no event shall the County be responsible for any liability arising out of or that is in any way related to:

- a) any bodily injury, death or property damage or any incidental, indirect, special or consequential damages to anyone for any claim, demand or action against the County, its Councillors, officers, employees, agents or consultants and/or against the Logging Firm, its employees and/or subcontractors which in any manner arises out of or are any manner related to:
 - i) this Agreement;
 - ii) the execution of Services by the Logging Firm its employees and/or subcontractors;
 - iii) damages incurred while the Logging Firm, its employees and/or subcontractors are providing the Services and are the primary occupiers of the Lands; and/or
 - iv) damages incurred as a result of the Logging Firm, its employees and/or subcontractors being in possession of timber.

Without limiting the foregoing, the Logging Firm hereby agrees to release, indemnify, defend and hold harmless the County and each of its Councillors, officers, and employees from and against any and all suits, judgments, claims, demands, expenses, actions, causes of action, duties, assessments, fees, penalties, liabilities, losses and costs (including, without limitation, legal expenses and for any and all liability for injuries to persons (including death) or damages to property, however caused, which in any manner arises out of or are any manner related to:

- i) this Agreement;
- ii) the execution of Services by the Logging Firm its employees and/or subcontractors;
- iii) damages incurred while the Logging Firm, its employees and/or subcontractors are providing the Services and are the primary occupiers of the Lands; and/or
- iv) damages incurred as a result of the Logging Firm, its employees and/or subcontractors being in possession of timber.

1.10 Liability Insurance

The Logging Firm, at all times while retained with respect to the Project, shall have in place, pay for and maintain:

- 1) a Commercial General Liability Insurance policy on an occurrence basis for an amount not less than Five Million dollars (\$5,000,000.00) which includes the County as additional insured with respect to the Logging Firm's operations, acts and omissions relating to its obligations pursuant to this Agreement, such policy to include non-owned licensed automobile liability, personal injury, property damage, contractual liability, owners' and proponents' protective products and completed operations, contingent employers liability, cross liability and severability of interest clauses. Such insurance coverage shall not be subject to a deductible limit in excess of two thousand dollars (\$2,000.00); and
- 2) Professional Errors and Omissions coverage for potential errors and omissions arising from the provision of the Services pursuant to this Agreement in an amount not less than Two Million dollars (\$2,000,000.00) exclusive of interest and legal costs, underwritten by an insurer licensed to conduct business in the Province of Ontario, which includes the County as additional insured. The policy providing such coverage is to be in force during the term of this Agreement and renewed for three (3) years after the termination of this Agreement. The post-termination insurance covenant shall survive the termination of this Agreement.

A certificate of insurance evidencing renewal of the coverage is to be provided each and every year. In the event the policy contains an Insured vs. Insured exclusion, the exclusion must be amended to allow for claims against the named insured by the additional insured. If the policy is to be cancelled or non-renewed for any reason, ninety (90) days notice of said cancellation or non-renewal must be provided to the County. The County has the right to request that an Extending Reporting Endorsement be purchased by the Consultant as its sole expense; and

- 3) Automobile Liability coverage for all owned licenced motor vehicles subject to a limit not less than Five Million dollars (\$5,000,000.00) inclusive per occurrence for bodily injury, death and damage to property including loss of use thereof. The policy providing the above coverage shall include the County as additional insured and shall not be subject to a deductible in excess of two thousand dollars (\$2,000.00).

- 4) The insurance provided for above shall preclude subrogation claims by the insurer against anyone insured thereunder. At any time requested by the County, the Logging Firm shall provide the County with proof of insurance. The Logging Firm shall not change, amend or cancel the above noted insurance policies in any manner, unless the County consents, in writing.

1.11 No Contracting other than with Listed Subcontractors

The Logging Firm and any person, firm or corporation associated with the Logging Firm, including but not limited to its subsidiaries, employees and subcontractors, shall not contract and/or tender any of the work of the Project to anyone other than the subcontractors specifically listed in its Tender Response Form as part of its Proposal (***Schedule "A"***) and the Logging Firm covenants that it shall obtain from its subcontractors agreements in writing between itself and all of its subcontractors confirming that its subcontractors will not subcontract any work on the Project unless consent is obtained from the County. The Logging Firm agrees to provide copies of the aforementioned agreements to the County upon request.

1.12 Assignment

Neither party may assign this Agreement without the prior consent in writing of the other.

1.13 Approval by Other Authorities

Where the work of the Logging Firm is subject to the approval or review of an authority, department of government or agency other than the County, such applications for approval or review are the full responsibility of the Logging Firm. When the Logging Firm obtains approval of an authority, department of government or agency other than the County, it will provide the County with a copy of such approval(s).

1.14 Tender/Project Coordinator and Inspection/Stoppage by County

The Tender/Project Coordinator for the County with respect to the Project shall be:

Mark Brown RPF
Woodlands Conservation Officer
County of Middlesex
399 Ridout Street North, London, ON N6A 2P1
(519)434-7321, ext. 2253, mbrown@middlesex.ca

The Tender/Project Coordinator or his/her official designate shall review/monitor all work required and shall have authority to stop any work contemplated whenever such stoppage, in his/her sole opinion, may be necessary to coordinate any of the work described in this Agreement or to ensure the proper execution of this Agreement.

The Tender/Project Coordinator or his/her designate has the right at all reasonable times to inspect or otherwise review the Services being performed and the Lands.

The Tender/Project Coordinator or his/her official designate shall have the authority to reject all work which in the sole opinion of the Tender/Project Coordinator or his/her official designate, does not conform to the requirements of this Agreement or in the sole opinion of the Tender/Project Coordinator is otherwise substandard, flawed or unsuitable for the County's purposes.

In the event that questions or a disputes arise with respect to execution of the Services or with respect to the interpretation of the requirements of this Agreement, the Tender/Project Coordinator or his/her official designate shall have the final authority to decide all such questions, the opinion of the Tender/Project Coordinator shall prevail, and his/her decision will be deemed final by the Parties.

1.15 Dispute Resolution

Subject to Section 1.14 of this Agreement, in the event of an unresolved dispute, all remedies available at law shall be available to the Parties.

1.16 Time

The Logging Firm shall perform the Services expeditiously to meet the requirements of the County and shall complete the Services by October 18, 2022, or such other date agreed to by the County in its sole discretion (through the Tender/Project Coordinator or his/her official designate), taking into consideration any reasonable delay due to weather.

ARTICLE 2 – THE SERVICES

All of Article 2 (2.01-2.06), make up the Services required to be performed by the Logging Firm.

2.01 Cutting and Removal

The Logging Firm shall cut down all marked sawlog and fuelwood trees and remove the merchantable material therefrom, as expressed in the RFT, which is attached hereto as ***Schedule "B"*** and forms a part of this Agreement.

In particular, the marked trees include the following numbers of particular species and estimated volume of merchantable material:

PURDY TRACT			
Species	# of Trees	Average Diameter (cm)	Estimate Volume (M3)
Eastern White Pine	564	28 cm	360 M3
Total	564		360 M3
PATTERSON TRACT			
Species	# of Trees	Average Diameter (cm)	Estimate Volume (M3)
Eastern White Pine (Compartment A)	112	39.5 cm	135 M3
Eastern White Pine (Compartment B)	81	25 cm	32 M3
Eastern White Pine (Compartment C)	48	36 cm	49 M3
Eastern White Pine (Compartment D)	122	41 cm	154 M3
Total	363		370 M3
Totals both Tracts	927		730 M3

2.02 Marked Trees

The Logging Firm specifically agrees, subject only to section 2.03 of this Agreement, that it shall only cut and remove the marked sawlog and fuelwood trees as agreed to in section 2.01 of this Agreement. Trees marked for removal as potential sawlog material are marked by an orange dot at eye level on both sides of the tree as well as with one orange mark at the base. Trees marked for removal as fuelwood are marked by an orange slash at eye level on both sides of the tree.

2.03 Dead Trees

The parties agree that the Logging Firm may, at its discretion, remove dead trees if they possess a safety threat, however, such is a courtesy only and dead trees are not included in the tally of trees included in section 2.01 above. Dead trees are marked with an orange 'X'.

2.04 Start Date, No Cutting Window and Completion Date

The Logging Firm agrees that it:

- 1) shall begin performance of the Services as soon as October 18, 2021;
- 2) shall not engage in any cutting whatsoever between April 1st, 2022 and August 1st, 2022 ("No Cutting Window"), unless authorized by the County in writing;
- 3) shall complete the Services by October 18, 2022, subject only to extensions in time which may or may not be provided by the County in its sole discretion in consideration of delays due to weather.

2.05 Additional Specific Requirements

2.05.1 Prior to Commencement of Work

Prior to commencing any work on the Project, the Logging Firm shall:

- 1) agree with the Tender/Project Coordinator on the method of felling, forwarding and skidding;
- 2) allow all of the its equipment to be inspected and approved by the County;
- 3) notify the County of any work on the Project, including the filing of any Intent to Harvest and/or the posting of any public notice sign (that the County will provide) on-site;

2.05.2 When Completing the Services

At all times when completing the Services, the Logging Firm shall:

- 1) perform the Services to the degree of care, skill and diligence of a professional logger/tree harvester and carry out operations in a workmanlike manner;
- 2) ensure that on hand there is one shovel and one axe for every two persons employed, as a precaution in the event of fire;
- 3) not cut any tree that is not one of the marked sawlog and fuelwood trees referred to in section 2.01 or is not a dead tree pursuant to section 2.03, without obtaining the prior consent of the Tender/Project Coordinator. In the event the Logging Firm does cut any tree that is not a marked sawlog or fuelwood tree that is not a dead tree, the Logging Firm confirms that such would be a breach of this Agreement;
- 4) be aware of and cause all of its employees, agents and/or subcontractors to be aware of all property boundaries marked on the Map, attached as **Schedule "C"**, which forms a part of this Agreement;
- 5) keep the gates on the Lands, if any, closed and locked at all times when entering onto the Lands and to prevent entry by unauthorized persons;
- 6) confirm with the County that all marked trees are able to be felled onto the Lands;

- 7) fell all trees onto the Lands and to not fell any tree or any part thereof onto property other than the Lands;
- 8) conduct careful logging practices which shall minimize damage to the residual stand and developing regeneration of trees;
- 9) fell lodged trees prior to non-lodged trees;
- 10) ensure that no marked trees felled remain lodged on the Lands;
- 11) cut all marked trees and slash all tree tops down to at least 1.7 metres above ground;
- 12) cut all marked trees so that the remaining stumps retain at least a portion of the butt mark and do not exceed 30 cm. in height;
- 13) use all skid trails and landing sites, which have been marked on the Lands and on the Map (*Schedule "C"*) and keep same clear of logging debris;
- 14) keep all roads, trails and water courses free of logging debris, garbage and litter;
- 15) maintain all trails in a manner acceptable to the Tender/Project Coordinator and his/her official designate;
- 16) ensure roads are passable at all times;
- 17) report to the Tender/Project Coordinator of his/her official designate the portion of the Services completed to date at any time requested by the Project Coordinator or his/her official designate;
- 18) ensure that smoking occurs only in designated areas and where fire hazard conditions would not make timber harvesting dangerous;
- 19) in the event of fire, immediately notify the closest fire department and take all reasonable steps to control and extinguish the fire without placing its employees and/or subcontractors in undue danger;
- 20) cease operations if weather conditions are likely to lead to excess damage and/or if rutting is excessive;
- 21) cease operations immediately and for the period specified by the Project Manager and his/her designate in the event the County for any reason notifies the Logging Firm to suspend its operations; and
- 22) cease all operations on October 18, 2022, unless the work period for the Project is extended in writing by the County.

2.06 Worker Safety and Worker Insurance

Without limiting section 1.5(c)(ii), when performing the Services, the Logging Firm shall:

- 1) only use employees and/or subcontractors who:
 - a. are qualified in cutter-skidder operator competency-based training standards;
 - b. are aware of all hazardous substances that may be in use at the place of work; and
 - c. who are required at all times when performing the Services to wear all appropriate personal protective equipment;
- 2) maintain and enforce a consistently high level of health and safety health and safety management systems;
- 3) where the provisions of Ontario's *Occupational Health and Safety Act* ("OHSA") apply to the Services to be provided by the Logging Firm, assume all of the responsibilities and obligations imposed upon a "constructor" and/or "employer" under OHSA;
- 4) carry out its work and ensure that its subcontractors carry out all work in a manner that is in conformity with OHSA;
- 5) ensure that all of its employees, subcontractors and subcontractors' employees are instructed as to their requirements under OHSA;
- 6) be fully responsible for any health and safety violation which may occur in relation to the provision of the Services; and
- 7) in the event the County or any of its Councillors, officers or employees are made a party to any charge under the OHSA in relation to any OHSA violation arising out of the Logging Firm's or a subcontractor's performance of the Services pursuant to this Agreement, the Logging Firm agrees that it shall indemnify and save harmless the County and all of its Councillors, officers or employees from any and all charges, fines, penalties, and costs that may be incurred by the County, its Councillors, officers or employees.
- 8) at any time at the request of the County, submit proof of fulfilment of all the covenants in 2.06(1, 2, 4 and 5) above;
- 9) possess and be able to produce at the request of the County a satisfactory certificate from the Workplace Safety Insurance Board ("WSIB") confirming that all assessments or compensation payable to the WSIB have been paid and that its workers and the workers of all subcontractors have WSIB coverage; and
- 10) pay to the appropriate provincial Board/Commission all assessments and levies owing to the Board/Commission with respect to its performance of the Services pursuant to this Agreement and the Logging Firm does hereby acknowledge that any unpaid assessments or levies shall be the sole responsibility of the Logging Firm.

ARTICLE 3 – GENERAL PROVISIONS

3.01 Notices

All notices under this Agreement shall be in writing and may be delivered:

- a) personally or by courier;
- b) by prepaid registered mail; or
- c) by facsimile; or
- d) by e-mail or equivalent electronic means of transmission, if a hard copy of the notice is delivered by one of the three methods of delivery referred to in section 3.01(a-c) above.

Any notice shall be delivered to the persons and addresses as follows:

Townsend Lumber Inc.	The Corporation of the County of Middlesex Planning Department
1300 Jackson Side Road,	399 Ridout Street North
Tillsonburg, Ontario N4G 4G7	London, ON N6A 2P1
Attn: Mike Penner Forestry Representative	Attn: Mark Brown RPF Woodlands Conservation Officer, Tender/Project Coordinator
Phone: 519 842 7381 Cell: 519 688 1426	Phone: 519-434-7321 ext. 2253 Cell: 519 719 8147
Fax No: 519 842 6422	Fax No: 519-434-0638
Email: mpenner@townsendlumber.com	Email: mbrown@middlesex.ca

Any notice delivered to the Party to whom it is addressed will be deemed to have been given or made and received on the day it is delivered at that Party's address, provided that if that day is not a business day (business day meaning any day excluding a Saturday, Sunday or statutory holiday in the Province of Ontario) then the notice will be deemed to have been given or made and received on the next business day. Any notice transmitted by facsimile, e-mail or other functionally equivalent electronic means of transmission will be deemed to have been given or made and received on the day on which it is transmitted; but if the notice is transmitted on a day which is not a business day or after 4pm (local time of the recipient), the notice will be deemed to have been given or made and received on the next business day.

3.02 Waiver of Rights

Any waiver of, or consent to depart from the requirements of any provision of this Agreement shall be effective only if it is in writing and signed by the party giving the waiver, and only in the specific instance and for the specific purpose for which it has been given.

The County's rights pursuant to this Agreement shall not in any manner be prejudiced, even if the County has overlooked or condoned any non-compliance with the terms and conditions of this Agreement by the Logging Firm. No failure on the part of the County to exercise, and no delay in exercising, any right under this Agreement shall operate as a waiver of such right.

No single or partial exercise of any right provided for herein by either party shall preclude any other or further exercise of such right or the exercise of any other right.

3.03 Entire Agreement, Modifications, Severability

This Agreement includes the provisions of this Agreement, the Logging Firm's Proposal for Services ("the Proposal"), attached as *Schedule "A"*, the Request for Proposal W2013A ("the RFT"), attached as *Schedule "B"*, and a map of the Lands, Trails and Landing Sites ("the Map"), attached as *Schedule "C"*, all of which shall be read together in the forming of this Agreement. In the event there is a conflict between the provisions of this Agreement and its schedules, the provisions of this Agreement shall prevail.

The Parties acknowledge that this Agreement, including its schedules, constitute the entire Agreement between the Parties with respect to provision of the Services by the Logging Firm and when read together (this Agreement taking precedence in the event of conflict with its schedules), supersede(s) all prior representations, warranties, agreements, and understandings, oral or written, between the Parties with respect to the Services. This Agreement may not be modified except in writing signed by the Parties. In the event any element of this Agreement is later held to violate the law or regulation, that element alone shall be deemed void and all remaining provisions of this Agreement shall remain and continue in force.

3.04 Voluntary Enforceable Agreement

The Parties warrant that this Agreement is voluntary, that neither party is under any legal disability and that each party has had an opportunity to seek the advice of legal counsel with respect to this Agreement.

The Logging Firm agrees that the County has the legal right and ability to enforce the said provisions of this Agreement hereunder as against it to the extent of its obligations as established herein and that it is estopped from pleading or asserting otherwise in any action or proceeding.

3.05 Counterparts

This Agreement may be executed by the parties in separate counterparts, each of which is, once so executed and delivered, shall be an original, but all such counterparts held together constitute one and the same instrument.

3.06 Applicable Law

This Agreement shall be governed by, and interpreted and enforced in accordance with, the laws in the Province of Ontario and the laws of Canada, as applicable.

[ONE (1) SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF the Parties hereto have affixed their respective seals over the hands of their respective proper officers duly authorized in that behalf on this ____ day of _____, 2021:

**THE CORPORATION OF THE
COUNTY OF MIDDLESEX**

Per: _____
Cathy Burghardt-Jesson, Warden

Per: _____
Marci Ivanic, Clerk

We have authority to bind the Corporation

Address for Service: 339 Ridout Street North, London Ontario N6A 2P1

Townsend Lumber Inc.

In the presence of:

Per: _____
Name: _____
Title: _____

Signature: _____
Name: _____

Per: _____
Name: _____
Title: _____

I/We have authority to bind the Corporation

Address for Service: 1300 Jackson Side Road, Tillsonburg, Ontario, N4G 4G7

Schedule “A” – Logging Firm Proposal

(To be inserted in final document)

Schedule “B” – Request for Tender W2021B

(To be inserted in final document)

Schedule "C" – Map of the Lands, Trails and Landing Sites



