

**SPECIAL CALLED
CITY COUNCIL MEETING AGENDA
1705 MAIN STREET, DAPHNE, AL
JULY 21, 2014
BUSINESS MEETING
5:30 P.M.**

1. CALL TO ORDER

2. ROLL CALL/INVOCATION / PLEDGE OF ALLEGIANCE

**3. RESOLUTION 2016-53. Approval of a Timber Sales Agreement with
Mobile Forest Products, Inc., Daphne Sports
Complex**

4. ANYTHING ELSE DEEMED NECESSARY

5. ADJOURN

**CITY OF DAPHNE
CITY COUNCIL**

ROLL CALL

CITY COUNCIL:

COUNCILWOMAN CONAWAY	PRESENT____	ABSENT____
COUNCILMAN LAKE	PRESENT____	ABSENT____
COUNCILMAN FRY	PRESENT____	ABSENT____
COUNCILMAN SCOTT	PRESENT____	ABSENT____
COUNCILMAN LEJEUNE	PRESENT____	ABSENT____
COUNCILWOMAN PHILLIPS	PRESENT____	ABSENT____
COUNCIL PRESIDENT RUDICELL	PRESENT____	ABSENT____

MAYOR:

MAYOR HAYGOOD	PRESENT____	ABSENT____
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CITY CLERK:

REBECCA HAYES	PRESENT____	ABSENT____
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CITY ATTORNEY:

JAY ROSS	PRESENT____	ABSENT____
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Resolution 2016-53

Approval of a Timber Sales Agreement with Mobile Forest Products, Inc., Daphne Sports Complex

WHEREAS, Ordinance 2012-48 sets forth an allocation of Lodging Tax proceeds that may be used for certain recreational grounds capital Items; and

WHEREAS, the City of Daphne has selected three design firms and three locations for new recreation facilities to be constructed within the City; and

WHEREAS, the firm of Hutchinson, Moore & Rauch, LLC and Lose and Associates have been contracted to design the new recreational facilities located on the City's Park City Property known as Daphne Sports Complex; and

WHEREAS, during the design process Hutchinson, Moore & Rauch, LLC and Lose and Associates have determined that there is value in the timber and forest products located on the property that will be required to be cleared prior to construction; and

WHEREAS, by having the extents of construction of Daphne Sports Complex cleared prior to projecting bidding will lower construction costs and expedite the project timeline; and

WHEREAS, Southeastern Natural Resources, Inc. (Art Dyas), Forestry Product Broker, has evaluated the property and determined that the brush (woody vegetation) can be removed at no cost to City and the Timber can be harvested and sold at fair market value; and

WHEREAS, Southeastern Natural Resources, Inc. (Art Dyas) has match the City with Mobile Forest Products, Inc. as the harvester/buyer for the timber and forest products located on the property; and

WHEREAS, any net proceeds from the sale of timber for the property can be applied to the project construction;

NOW THEREFORE BE IT RESOLVED by the City Council of the City of Daphne that:

- 1.) Southeastern Natural Resources, Inc. (Art Dyas) shall work with City Personnel and Design Professionals to identify and determine the timber and forest products to be harvested; and
- 2.) Authorize the Mayor to enter into the attached Sales Agreement with Mobile Forest Products, Inc., and execute any other documents required for the harvesting and sale of timber and forest products located on the property; and
- 3.) That all net proceeds from the sale of timber for the property be applied to the project construction.

APPROVED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF DAPHNE, ALABAMA, THIS _____ DAY OF _____, 2016.

ATTEST:

Dane Haygood, Mayor

Rebecca A. Hayes, City Clerk

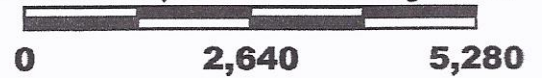
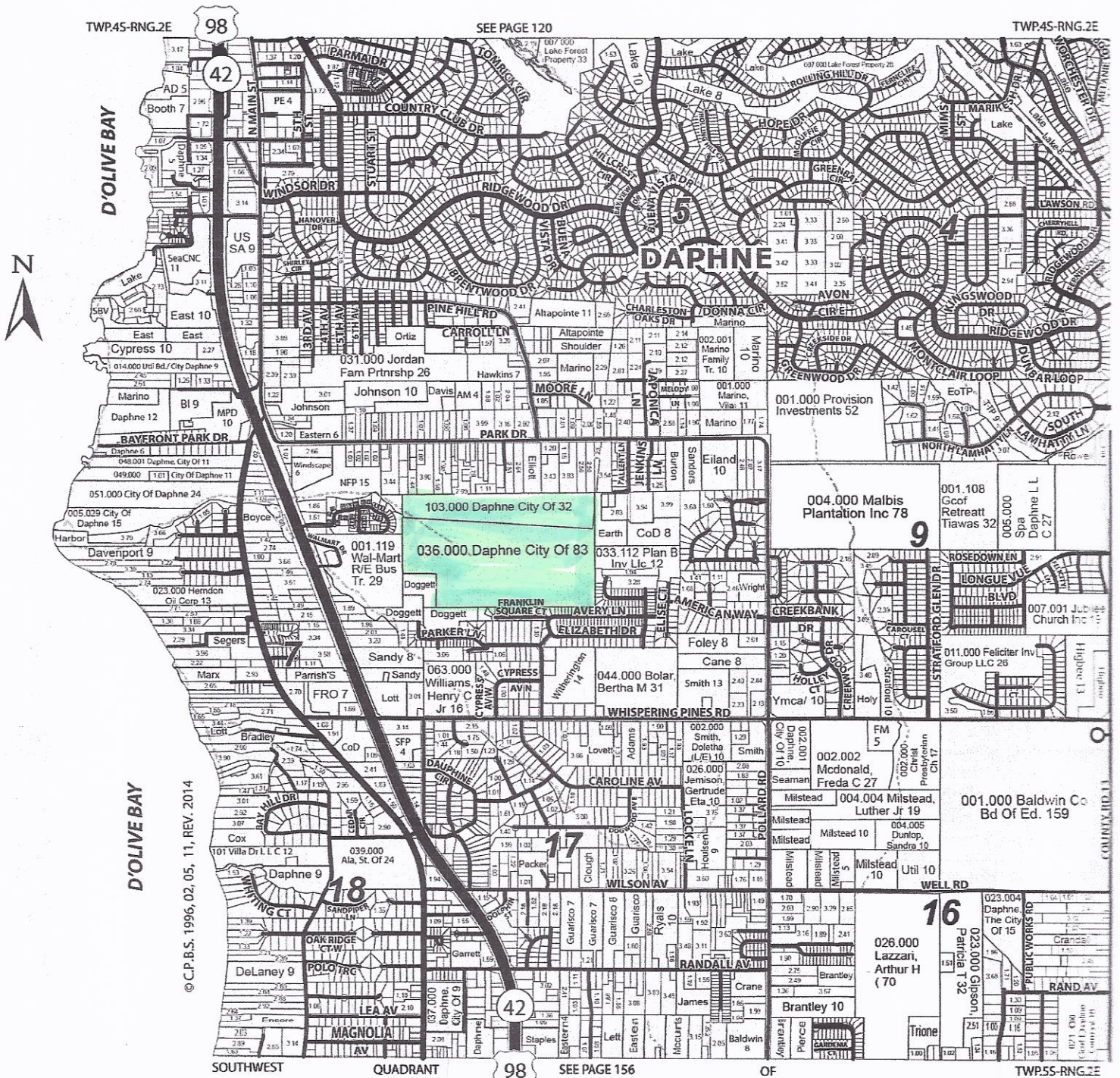


EXHIBIT A



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TIMBER SALE AGREEMENT

THIS TIMBER SALE AGREEMENT ("Contract") is entered into as of this ____ day of , July, 2016, ("Effective Date") by and between The City of Daphne, ("SELLER"), and Mobile Forest Products, Inc. ("PURCHASER").

WHEREAS, SELLER has the rights to certain standing timber; and PURCHASER has inspected and desires to harvest the timber.

NOW, THEREFORE, in consideration of the premises and agreements contained herein and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, SELLER and PURCHASER agree as follows:

1. **Definitions.**

(a) "Land" or "Lands" means the area of approximately 116 (+/-) acres of real property located in Baldwin County, Alabama, depicted and/or described on Exhibit "A" attached hereto and incorporated herein by this reference.

(b) "Designated Timber" means all trees, logs or parts of logs standing or lying upon the Lands designated or marked by SELLER to be harvested .

2. **License Grants.**

(a) Designated Timber. SELLER grants the exclusive license and right to cut all Designated Timber on the Lands and agrees to sell (if applicable) such Designated Timber to PURCHASER, and PURCHASER agrees to sever, purchase (if applicable), and remove the Designated Timber on the Lands according to the terms in this Contract.

(b) Access. SELLER grants to PURCHASER access to the Lands at any and all times during the Term and further grants permission to use all roads owned or controlled by SELLER or that SELLER has the right to grant PURCHASER the use of within the Lands or adjacent thereto, when such roads are necessary for ingress and egress, and, with SELLER's prior written permission, the right to construct new roadways on the Lands or erect temporary structures upon the Lands (i.e. bridges), all only to the extent necessary for performance under this Contract.

(c) Seller's Rights. SELLER and its representative and assigns shall have the right to go upon the Lands and to perform any acts or operations thereon that will not unreasonably interfere with the rights of the PURCHASER under this Contract; and SELLER shall continue to have the full right to use, occupy, sell, lease or otherwise enjoy or dispose of any said Lands or any other timber or forest products thereon (other than the Designated Timber). PURCHASER, in the exercise of the rights herein granted, shall not in any way interfere with the use by SELLER of said Lands. This Contract is subject to any rights previously granted or hereafter granted by SELLER to lessees, contractors or agents of SELLER, other than rights granted in the

Designated Timber, and to any easements which now as may exist over, upon or across the Lands, all of which PURCHASER shall not interfere with.

3. **Title.** Title and risk of loss to the Designated Timber passes to PURCHASER upon severance of the Designated Timber. Prior to severance, all risk of loss to the Designated Timber remains with SELLER.

4. **Advance Payment.** N/A

5. **Price.** PURCHASER agrees to cut and remove all timber and brush at no cost to Seller. Seller will receive no payment for the woody vegetation removed by Purchaser.

Timber to be cut will be designated by SELLER'S representative, S. E. Natural Resources, Inc.

6. **Payment; Scale Tickets.** N/A

7. **Purchaser Obligations.**

(a) **Permits.** PURCHASER shall prepare, apply for, obtain and maintain in good standing any and all permits required from applicable governmental bodies for PURCHASER'S performance under this Contract and shall provide a copy of all permits to SELLER. SELLER shall provide any reasonable assistance needed to obtain any permits on the Lands.

(b) **Trespass.** PURCHASER, its employees, contractors and subcontractors, shall not commit any trespass outside of the Lands. PURCHASER shall not damage the Lands or cause damage to any other real property adjacent to the Lands. PURCHASER shall assume full responsibility and liability for any and all costs and losses associated with timber trespass, theft, and damage to property of SELLER, its affiliates or any third party.

(c) **Compliance.** PURCHASER shall during the Term comply with all applicable laws, ordinances, orders, directives, rules, regulations, permits and other requirements ("Laws") of any Federal, State or local governmental authority or agency, whether in force at the commencement of this Contract or enacted during the term of this Contract, including but not limited to, Laws relating to logging, forestry, fire prevention, hydrology, safety, environmental protection, threatened and endangered species and requirements for licensing or certification of

equipment or operations.

(d) Compliance with BMPs. PURCHASER agrees that cutting, skidding, loading and hauling shall in all respects comply with all Best Management Practices (“BMPs”) promulgated by the forestry commission or agency for the State of Alabama.

8. **Purchaser Performance.**

(a) Time is of the Essence. PURCHASER shall cut and remove all Designated Timber as defined herein. Time is of the essence in the performance of this Contract. Any and all Designated Timber not severed by the Expiration Date or any extensions granted by SELLER'S representative, shall be and remain the property of SELLER.

(b) Equipment. PURCHASER may bring onto the Lands and use such tools, wagons, carts, trucks, and equipment as are necessary for the performance of its obligations hereunder. Trucks, tractors and other equipment shall be parked to the side of the roads to allow through traffic at all times.

9. **Term.** The term of this Contract shall commence on the Effective Date and continue until October 1, 2016 (“Term”), unless earlier terminated as set forth herein or extended due to a Force Majeure (as defined below) with the consent of SELLER’s timber agent, Southeastern Natural Resources, Inc.

10. **Termination/Expiration.** In addition to any other right of termination in this Contract, termination may occur:

(a) if either PURCHASER or SELLER commits a material breach of this Contract and has not cured such breach within ten (10) days after notice of the breach; provided that SELLER shall have the right to immediately terminate this Contract if PURCHASER fails to make any payment required under this Contract within the time allowed for such payment; or

(b) immediately in the event of PURCHASER’s bankruptcy/insolvency, if PURCHASER (i) ceases to do business in the normal course, (ii) becomes or is declared insolvent or bankrupt, (iii) is the subject of any proceeding related to its liquidation or insolvency (whether voluntary or involuntary) which is not dismissed within ninety (90) calendar days, or (iv) makes an assignment for the benefit of creditors.

The date that this Contract expires or is terminated under this Section 10 or otherwise is the “Expiration Date”. Any right of PURCHASER to enter the Lands or to cut or remove any Designated Timber, shall terminate effective on the Expiration Date, unless a time extension has been granted by SELLER; and all right, title and interest in and to the standing Designated Timber shall remain vested in SELLER. PURCHASER agrees to remove all equipment from the Lands within thirty (30) days of the Expiration Date. In the event PURCHASER does not remove its equipment within the time specified, SELLER shall have the right to treat the equipment remaining on its property as abandoned property, remove it from the Lands, and sell the equipment on commercially reasonable terms. The proceeds of any sale of the equipment

shall be applied first to the cost of removal and sale of the equipment, then any balance remaining will be paid to PURCHASER.

11. **Representations and Warranties.** SELLER hereby represents and warrants to PURCHASER as set forth in the following subsections:

(a) **Authority.** SELLER has the power and authority to execute, deliver and perform this Contract and the transactions contemplated herein in accordance with the terms hereof.

(b) **Validity; Consents.** The execution and delivery by SELLER of this Contract and the due consummation of the transactions contemplated herein have been duly and validly authorized by all necessary actions on the part of SELLER and this Contract constitutes a valid and legally binding agreement of SELLER. Neither the execution and delivery of this Contract by SELLER nor the consummation by SELLER of the transactions contemplated herein result in the breach of, or the imposition of any lien on any assets of SELLER pursuant to, or constitute a default under, any indenture or bank loan or credit agreement, or other agreement or instrument to which SELLER is a party or by which it or any of its properties may be bound or affected. No consent, approval, authorization or action by any governmental authority or any person having legal rights against or jurisdiction over SELLER is required in connection with the execution and delivery by SELLER of this Contract or for consummation by SELLER of the transactions contemplated herein.

(c) **Title.** Seller owns marketable fee-simple title to the Lands and Designated Timber, subject only to matters of record which do not affect SELLER's rights to convey the Designated Timber and other rights granted hereunder.

(d) **Environmental Notices.** SELLER is not aware of and has not received any notice of any environmental laws, regulations, restrictions, orders or agreements that would prohibit PURCHASER from harvesting the Designated Timber from the Lands in compliance with BMPs and the terms hereunder. The presence of gopher tortoises on the Land (as described in Section 12(b) below) does not prohibit PURCHASER from harvesting the Designated Timber from the Lands in compliance with BMPs and the terms hereunder.

(e) **Access.** SELLER either (i) has legal access to all parcels of the Land or (ii) will obtain access agreements from third parties allowing PURCHASER to access any parcel or parcels of the Land which do not currently have legal access if those parcels are needed to satisfy the depletion of the Advance Payment.

12. **Environmental Conditions.**

(a) In the event that, cutting or removal of part or all of the Designated Timber is prevented by federal, state or local laws or regulations, including but not limited to, the Endangered Species Act, and if such restriction is not due to any act or omission on the part of PURCHASER, its agents or contractors, PURCHASER shall have no obligation to harvest the Designated Timber so restricted. Provided, however, that if such restriction is removed at such time as to allow PURCHASER to cut and remove the Designated Timber in a commercially

reasonable fashion prior to the Expiration Date, PURCHASER shall be obligated to timely sever the Designated Timber.

(b) At the time of the execution of this Contract, SELLER and PURCHASER are aware of the presence on the Lands of the following plant or animal species listed by the U.S. Fish and Wildlife Service as threatened or endangered under the Endangered Species Act: Gopher Tortoise (not listed in Baldwin County). If SELLER or PURCHASER discovers any other such listed threatened or endangered species on the Lands during the Term, it is agreed that actions to protect such species will be taken

13. **Felling and Bucking.** PURCHASER shall conduct all operations under this Contract in a workmanlike manner, and shall not unnecessarily damage trees not included as Designated Timber. For Designated Timber less than or equal to 12" in diameter at stump height, PURCHASER shall fell such Designated Timber at a point not more than 6" above the adjacent ground level, and for Designated Timber greater than 12" in diameter at stump height, PURCHASER shall fell such Designated Timber at a point above the adjacent ground level of not more than one-half the diameter at stump height. Butt rot or other stump defects may be left on the stump. The workmanlike manner more specifically shall include but not be limited to:

(a) Directional felling-insofar as possible, Designated Timber should be felled with the direction of the skid so as to prevent unnecessary turning of the logs.

(b) Skid trails and logging ramps shall be kept to a minimum number necessary for removal of Designated Timber.

14. **Roads.** PURCHASER, in all phases of construction and logging operations shall protect to the maximum extent all roads, bridges, trails, telephone lines, ditches, fences and other improvements, and if any such improvements are damaged by PURCHASER's operations under this Contract, PURCHASER shall restore the improvement immediately to a condition satisfactory to SELLER and without expense to SELLER. Existing roads used by PURCHASER shall be left in the same or improved condition following the harvesting operations or before the termination of this Contract, whichever is sooner. PURCHASER shall remove all tops and other logging debris from or in all ditches, roads and streams. PURCHASER is authorized to use roads, structures and improvements necessary in the operations hereunder, upon the Lands and upon other SELLER lands in the vicinity thereof, all at its own risk and provided that all such roads, structures and improvements shall be located, maintained and operated subject to the regulations of SELLER and all applicable laws and regulations. Such roads, structures and improvements on SELLER's lands shall become the sole property of SELLER at the termination of this Contract. All merchantable timber used in construction of bridges, roads and landings necessary to the cutting and removal of Designated Timber shall be cut and removed as provided for designated trees herein and paid for at the unit set forth in this Contract. SELLER makes no representations or warranties that any roads, bridges or other improvements on the Lands or any other property are safe or suitable for use by PURCHASER or those acting for or under PURCHASER, and all such parties may use any such roads, bridges or other improvements only at their own risk. No new logging roads shall be cut or opened by PURCHASER without the prior approval of the SELLER or its representative. No rubbish shall be left in the woods.

15. **Property Protection.**

(a) PURCHASER agrees to cut only the Designated Timber and to refrain from damaging, destroying or injuring timber or trees not to be cut and removed by PURCHASER. Boundaries of the cutting areas from which the Designated Timber is to be harvested will be marked or designated by SELLER'S representative and will be shown by SELLER to PURCHASER's representative having responsibility for harvesting operations.

(b) All trees not included in the Designated Timber which are unnecessarily damaged in the course of PURCHASER's operations shall be marked by SELLER or its representative, removed and paid for at the following rates which are considered to be fair compensation for the stumpage value, expense incurred on account of damage and future growth loss of the damaged trees: \$40.00 per standard cord for Pine Pulpwood; \$500.00 per MBF Doyle for Pine Sawtimber; \$50.00 per standard cord for Hardwood Pulpwood; and \$350.00 per MBF Doyle for Hardwood Sawtimber; \$800 per MBF Doyle for Pine Poles. Unnecessary damage will be considered as breakage to the main stem, uprooting or any abrasion, which results in damage to one-third or more of the circumference of the main stem, which could have been avoided in the course of logging operation.

(c) If any trees not included in the Designated Timber should be cut by PURCHASER, its contractors, employees or other representatives, PURCHASER shall be obligated to pay to SELLER liquidated damages for each of the undesignated trees at the following rates which are considered to be fair compensation for the stumpage value, expense incurred on account of the damage and future growth loss of the damaged trees: \$50.00 for each tree 11" and under in diameter; \$150.00 for each tree 12" to 17" in diameter; \$300.00 for each tree 18" to 25" in diameter; and \$400.00 for each tree greater than 25" in diameter. All diameters mentioned in this Section 15, refer to measurements at top of stump and include bark. SELLER in SELLER's sole discretion may waive such damages if SELLER shall deem that this cutting was necessary to the operation hereunder. PURCHASER shall pay SELLER damages for: (a) property corners moved or knocked out - \$1,000.00 and (b) witness trees cut - \$350.00 each.

(d) During the harvesting and removal of Designated Timber hereunder PURCHASER, its employees, contractors and subcontractors, shall at all times conduct its operations in a manner to prevent fire on the Lands. PURCHASER, its employees, contractors and representatives, shall make every reasonable effort to suppress fire on the Lands. PURCHASER shall comply with all federal, state and local laws and regulations pertaining to fire protection and suppression.

16. **Force Majeure.**

(a) Neither party shall be liable for any delay or failure to perform its obligations under this Contract due to an act of God, public enemy or act of nature, including but not limited to, war; prohibition by any governmental entity having a direct impact upon the timely performance of the work; aberrant weather conditions, abnormal rainfall, hurricane, flooding, or

ice storm; strikes by laborers at manufacturing mills or plants that PURCHASER is acquiring trees for re-sale and delivery; or strikes by workers engaged in tree harvesting, or strikes by railroad workers; restraint or enjoinder of PURCHASER by SELLER or a governmental agency in its operations of harvesting and removing Designated Timber from the Lands (collectively, "Force Majeure"). Such Force Majeure event shall not include changes in the fuel prices, market for timber or wood products or other economic conditions, or the financial condition of PURCHASER or any of its employees, contractors or subcontractors. No other events shall be considered Force Majeure.

(b) A party delayed by a Force Majeure event shall provide written notice to the other party within five (5) days, and shall include the nature, cause, and anticipated duration of the delay. The party affected by a Force Majeure event will make all reasonable efforts to restart performance as soon as possible. In the event the Force Majeure event continues for more than thirty (30) days following the written notice of same, the other party may terminate this Contract hereunder effective upon the date of the giving of such notice of termination and PURCHASER shall thereafter have no claim or demand whatsoever against SELLER in respect to the unperformed period.

17. **Indemnification.** Except to the extent caused by the negligence of an Indemnitee (as defined below), PURCHASER agrees to defend, indemnify and hold harmless SELLER, its officers, agents and employees (the "Indemnitees") from and against any and all claims, suits, actions, loss, damage, cost, expense (including attorneys' fees), or liability, of every character whatsoever, including but not limited to, any real or personal property damage or personal injury or death, arising out of or relating to (a) the negligent, willful or unauthorized acts of PURCHASER, its employees, contractors or subcontractors, (b) PURCHASER's obligations, or breach thereof, under this Contract, (c) any violations of or noncompliance with any laws, regulations, ordinances or permits; (d) any trespass outside of the Lands; or (e) fire or other hazard caused by PURCHASER, its employees, contractors or subcontractors. PURCHASER shall further indemnify and hold harmless SELLER from and against any lien of mechanics, materialmen, or laborers, arising out of or related to PURCHASER's performance of this Contract under the applicable lien laws of the State of Alabama.

18. **Taxes.** PURCHASER shall pay all severance taxes and all other taxes, licenses, and excises required by law to be paid on account of the timber felling and logging operations hereunder.

19. **Liens.** PURCHASER shall pay or cause to be paid promptly when due all just claims, debts and charges against PURCHASER or its contractors or subcontractors that might become a lien against the Lands and PURCHASER shall not suffer or permit any lien or encumbrance of any kind to be filed against or upon the Lands irrespective of whether the basis of the lien is a claim against PURCHASER or its contractor or subcontractor.

20. **Insurance.** During the Term, PURCHASER, at its own expense shall carry public liability insurance of not less than \$2,000,000.00 for the death or injury of one person, \$500,000.00 for the death or injury of each additional person in the same occurrence and \$500,000.00 for damage to property. Prior to commencement of any operations on the Lands,

and continuously during the Term, PURCHASER shall place on file with SELLER certificates of such insurance acceptable to SELLER. Such certifications shall contain provisions that the coverage afforded will not be cancelled or materially changed until at least 10 days prior written notice has been given to SELLER by insurer. PURCHASER will also maintain insurance that will protect it from claims under workman's compensation laws, disability benefit laws or other similar employer benefit laws.

21. **Independent Contractor.** PURCHASER is acting in the capacity of an independent contractor. The relationship of the parties under this Contract will not constitute a partnership or joint venture. Nothing herein shall be construed to create the relationship of employer and employee or principal and agent. PURCHASER will have no right, power or authority to act for SELLER or to represent or bind SELLER as to any matters. PURCHASER will not attempt to enter into any agreements, commitments, or incur any debt or liability of any nature in the name of or on behalf of SELLER. PURCHASER shall be solely responsible for the selection and supervision of its employees and the compensation, benefits, contributions and taxes, if any, of itself, its employees, contractors and subcontractors. PURCHASER agrees to furnish at its own expense all machinery, tools and equipment. PURCHASER agrees that it is solely responsible for all harvesting and delivery operations and reserves the right to conduct such operations in any manner it deems expedient. SELLER has no right or control over the hours PURCHASER works or the method or means by which PURCHASER accomplishes the work to be performed hereunder.

22. **Notice.** Any notice, request, demand, statement, approval or other communication under this Contract shall be in writing and shall be effective when actually delivered by hand delivery or email transmission or two (2) business days after being deposited in the United States mails, certified, return receipt requested. If directed to the other party to this Contract, such a notice shall be addressed to the addresses (and, in the case of an email transmission, the email addresses) set forth below, or to such other address (or email address) as one party may indicate by written notice to the other party:

For SELLER: The City of Daphne
 Attn: Dane Haygood, Mayor
 P.O. Box 400
 Daphne, AL 36526

Copy to: Southeastern Natural Resources, Inc.
 Attn: Art Dyas
 P.O. Box 650
 Montrose, Alabama 36559
 Email: adyas@msn.com

For PURCHASER: Mobile Forest Products, Inc.
 Attn: Robert Zukley
 1820 Hand Ave.
 Whistler, Alabama 36612
 Email: rzukley@mobileforest.net

In the absence of a written acknowledgment of receipt by the recipient, all notices given by email transmission shall also be given by mail or personal delivery as provided.

23. Dispute Resolution.

(a) Except as otherwise provided herein, the parties will attempt, in good faith, to resolve any question, dispute, misunderstanding, controversy or claim arising out of or relating to this Contract promptly by negotiation between designated representatives of the respective parties with authority to agree to a resolution. Either party may give the other party written notice invoking this dispute resolution section ("Notice of Dispute"). The representatives shall meet at a mutually acceptable time and place within twenty (20) days of the date of delivery of the Notice of Dispute, and thereafter as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the dispute.

(b) If the dispute has not been resolved within thirty (30) days of the initial meeting of the representatives (which may be extended by mutual written agreement), or if either party will not participate in such procedure, then either party may by written notice (the "Arbitration Notice") require that the dispute be resolved by binding arbitration. Any matter to be resolved by arbitration shall be resolved by a single arbitrator to be appointed for that purpose as follows:

(i) Within ten (10) days after delivery of the Arbitration Notice by either party to the other, the parties shall agree on an arbitrator.

(ii) If the parties fail to agree on an arbitrator within the time specified, the arbitrator shall be promptly appointed upon application of either party to the Arbitration Committee of the American Arbitration Association office in or for the city and state specified in subsection (iii) of this Section 23(b). The party making such application shall give the other party to this Contract written notice of the application.

(iii) The arbitrator shall proceed with due dispatch to define the problem, accept evidence, and reach a resolution. The proceedings shall be conducted in accordance with laws of the State of Alabama, and the American Arbitration Association Commercial Arbitration Rules, and each party shall be entitled to discovery to the same extent permitted under the Federal Rules of Civil Procedure. The arbitration proceeding(s) shall be held in Mobile, Alabama, or such other place as the parties may agree. The arbitrator, in issuing the award, shall be limited to accepting the position of either PURCHASER or SELLER only (straight choice/pendulum) and may not, pursuant to the terms of this Contract, issue any award which may be viewed as a compromise of or settlement between the positions set forth by each of the parties to the arbitration proceedings. The decision of the arbitrator shall be binding, final, and conclusive on the parties to this Contract. The award shall be in writing and delivered to the parties, and shall be in such form that a petition may be filed to confirm the award in any court or public records wherein a judgment may be sought to be enforced.

(iv) The expense of any arbitration shall be borne as the arbitrator may direct, in the arbitrator's judgment giving due weight in allocating expenses to the merit or lack thereof, in the claims and/or defenses presented.

(v) The arbitrator shall have no power to change any of the provisions of this Contract in any respect, nor shall (s)he have the power to make an award of reformation. The arbitrator is not empowered to award damages in excess of actual damage incurred. In no event shall any award include punitive, incidental or consequential damages, unless otherwise specifically contemplated in this Contract.

(c) The procedures specified in this Section shall be the sole and exclusive procedures for the resolution of disputes between the parties arising out of or relating to this Contract; provided, however, that a party may seek a preliminary injunction or other preliminary judicial relief if in its judgment such action is necessary to avoid irreparable damage. Despite such action, the parties will continue to participate in good faith in the procedures specified in this Section. All applicable statutes of limitation shall be tolled while the procedures specified in this Section are pending. The parties will take such action, if any, required to effectuate such tolling.

24. **Recordation.** The parties agree that this Timber Contract shall NOT be recorded in the public records; however, the parties agree that if requested by either party a memorandum notice of this Contract shall be prepared by the requesting party, executed by SELLER and recorded.

25. **General Terms.**

(a) **Assignment.** Neither this Contract, nor any rights or obligations hereunder, shall be assigned by PURCHASER without the express written consent of SELLER, which consent may be granted or withheld in SELLER's reasonable discretion. This Contract shall inure to the benefit of and bind all permitted successors and assigns of the parties hereto.

(b) **Governing Law.** The validity, interpretation and performance of this Contract shall be governed and construed in accordance with the laws of the State of Alabama.

(c) **Severability.** Each Section, clause, paragraph and provision of this Contract is entirely independent and severable from every other Section, clause, paragraph and provision. If any arbitrator, judicial authority or state or federal regulatory agency or authority determines that any portion of this Contract is invalid or unenforceable or unlawful, such determination will affect only the specific portion determined to be invalid or unenforceable or unlawful and will not affect any other portion of this Contract which will remain and continue in full force and effect. In all other respects, all provisions of this Contract will be interpreted in a manner which favors their validity and enforceability and which gives effect to the substantive intent of the parties.

(d) **Counterparts.** This Contract may be executed in any number of counterparts or by facsimile copies, all of which taken together shall constitute one and the same instrument, and any of the parties hereto may execute this Contract by signing any such counterpart.

(e) **Complete Contract.** This Contract, including all exhibits, constitutes the entire agreement between the parties with respect to the subject matter hereof. It supersedes all prior

communications of every kind between the parties. In the event of inconsistencies between this Contract and any exhibits, the terms and conditions of this Contract shall prevail. This Contract may not be modified except by a written amendment to this Contract and signed by both parties. All consents required must be in writing. The headings are for convenience purposes only and shall not be used in the construction or interpretation of this Contract.

[Signatures on following page]

The parties have executed this agreement the day and year first above written.

SELLER:

The City of Daphne

By:_____

Name:_____

Its: _____

PURCHASER:

Mobile Forest Products, Inc.

By:_____

Name:_____

Its: _____

Exhibit "A"
Lands

TOWNSHIP 5 SOUTH, RANGE 2 EAST

Portion of Sections 7 & 8 (see plat)