

**AGREEMENT FOR
SALE OF RECYCLED WOOD MATERIAL**

THIS AGREEMENT ("Agreement") is made and entered into by and between Lee County, a political subdivision of the State of Florida, hereinafter referred to as the "County" and Forestry Resources, LLC, a Delaware company authorized to do business in the State of Florida, whose address is One Liberty Plaza, 165 Broadway, 52nd Fl., New York, NY, 10006 and whose federal tax identification number is 59-2438601, hereinafter referred to as "Vendor."

WITNESSETH

WHEREAS, the County intends to purchase services for the sale of recycled wood material from the Vendor in connection with "Sale of Recycled Wood Material" (the "Purchase"); and,

WHEREAS, the County issued Solicitation No. B190404TJM on June 28, 2019 (the "Solicitation"); and,

WHEREAS, the County evaluated the responses received and found the Vendor qualified to provide the necessary services; and,

WHEREAS, the County posted a Notice of Intended Decision on August 7, 2019; and,

WHEREAS, the Vendor has reviewed the products and services to be supplied pursuant to this Agreement and is qualified, willing and able to provide all such products and services in accordance with its terms.

NOW, THEREFORE, the County and the Vendor, in consideration of the mutual covenants contained herein, do agree as follows:

I. PRODUCTS AND SERVICES

The Vendor agrees to diligently provide all services for the Purchase in accordance with the project Scope of Services made part of this Agreement as Exhibit A, attached hereto and incorporated herein. Vendor shall comply strictly with all of the terms and conditions of the Solicitation, a copy of which is on file with the County's Department of Procurement Management and is deemed incorporated into this Agreement to the extent that it does not conflict with the remainder of the Agreement.

II. TERM AND DELIVERY

A. This Agreement shall commence immediately upon the effective date and shall continue on an "an needed basis" for a one-year (1) period. Their may be an option to renew this Agreement upon the written approval of both

the County and the Vendor at the time of the renewal for three (3) additional one (1) year periods. The effective date shall be the date the Lee County Board of County Commissioners awarded the Solicitation to the Vendor

III. COMPENSATION AND PAYMENT

- A. Vendor shall not make any deliveries or perform any services under this Agreement until receipt of written authorization from the County. Vendor acknowledges and agrees that no minimum order or amount of product or service is guaranteed under this Agreement and County may elect to request no products or services. If the County authorizes delivery of products or performance of services, the County reserves the right to amend, reduce, or cancel the authorization in its sole discretion.

IV. METHOD OF PAYMENT

- A. The County will invoice the Vendor on a monthly basis for the services as described in Exhibit A (and the corresponding fees as described in Exhibit B that were provided during that invoicing period).
- B. Payment must be made from the Vendor to the County on a monthly basis by check or money order to " Lee County Solid Waste Division." Each check must be received by the fifteenth day of the following month for all materials delivered the previous month.

V. ADDITIONAL PURCHASES

- A. No changes to this Agreement or the performance contemplated hereunder shall be made unless the same are in writing and signed by both the Vendor and the County.
- B. If the County requires the Vendor to perform additional services or provide additional product(s) related to this Agreement, then the Vendor shall be entitled to additional compensation based on the Fee Schedule as amended to the extent necessary to accommodate such additional work or product(s). The additional compensation shall be agreed upon before commencement of any additional services or provision of additional product(s) and shall be incorporated into this Agreement by written amendment. The County shall not pay for any additional service, work performed or product provided before a written amendment to this Agreement.

Notwithstanding the preceding, in the event additional services are required as a result of error, omission or negligence of the Vendor, the Vendor shall not be entitled to additional compensation.

VI. LIABILITY OF VENDOR

- A. The Vendor shall save, defend, indemnify and hold harmless the County from and against any and all claims, actions, damages, fees, fines, penalties, defense costs, suits or liabilities which may arise out of any act, neglect, error, omission or default of the Vendor arising out of or in any way connected with the Vendor or subcontractor's performance or failure to perform under the terms of this Agreement.
- B. This section shall survive the termination or expiration of this Agreement.

VII. VENDOR'S INSURANCE

- A. Vendor shall procure and maintain insurance as specified in Exhibit C Insurance Requirements, attached hereto and made a part of this Agreement.
- B. Vendor shall, on a primary basis and at its sole expense, maintain in full force and effect, at all times during the life of this Agreement, insurance coverage (including endorsements) and limits as described in Exhibit C. These requirements, as well as the County's review or acceptance of insurance maintained by Vendor, are not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by Vendor under this Agreement. Insurance carriers providing coverage required herein must be licensed to conduct business in the State of Florida and must possess a current A.M. Best's Financial Strength Rating of "B or better." No changes are to be made to these specifications without prior written specific approval by County Risk Management. To the extent multiple insurance coverages and/or County's self-insured retention may apply, any and all insurance coverage purchased by Vendor and its subcontractors identifying the County as an additional named insured shall be primary.

VIII. RESPONSIBILITIES OF THE VENDOR

- A. The Vendor shall be responsible for the quality and functionality of all products supplied and services performed by or at the behest of the Vendor under this Agreement. The Vendor shall, without additional compensation, correct any errors or deficiencies in its products, or if directed by County, supply a comparable replacement product or service.
- B. The Vendor warrants that it has not employed or retained any company or person (other than a bona fide employee working solely for the Vendor), to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm other than a bona fide employee working solely for the Vendor, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award of this Agreement.

- C. The Vendor shall comply with all federal, state, and local laws, regulations and ordinances applicable to the work or payment for work thereof, and shall not discriminate on the grounds of race, color, religion, sex, or national origin in the performance of work under this Agreement.
- D. Vendor specifically acknowledges its obligations to comply with Section 119.0701, Florida Statutes, with regard to public records, and shall:
- 1) keep and maintain public records that ordinarily and necessarily would be required by the County in order to perform the services required under this Agreement;
 - 2) upon request from the County, provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law;
 - 3) ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law; and
 - 4) meet all requirements for retaining public records and transfer, at no cost to the County, all public records in possession of Vendor upon termination of this Agreement and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the County in a format that is compatible with the information technology system of the County.

IF THE VENDOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE VENDOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 239-533-2221, 2115 SECOND STREET, FORT MYERS, FL 33901, publicrecords@leegov.com; <http://www.leegov.com/publicrecords>.

- E. The Vendor is, and shall be, in the performance of all work, services and activities under this Agreement, an independent contractor. Vendor is not an employee, agent or servant of the County and shall not represent itself as such. All persons engaged in any work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to the Vendor's sole direction, supervision and control. The Vendor shall exercise

control over the means and manner in which it and its employees perform the work, and in all respects the Vendor's relationship and the relationship of its employees to the County shall be that of an independent contractor and not as employees of the County. The Vendor shall be solely responsible for providing benefits and insurance to its employees.

- F. The Vendor shall comply with the Vendor Background Screening Affidavit attached hereto and incorporated herein as Exhibit D

IX. OWNERSHIP OF PRODUCTS

It is understood and agreed that all products provided under this Agreement shall become the property of the County upon acceptance by the County.

X. TIMELY DELIVERY OF PRODUCTS AND PERFORMANCE OF SERVICES

- A. The Vendor shall ensure that all of its staff, contractors and suppliers involved in the production or delivery of the products are fully qualified and capable to perform their assigned tasks.
- B. The personnel assigned by the Vendor to perform the services pursuant to this Agreement shall comply with the terms set forth in this Agreement. If the services provided require use of specific key personnel, the personnel shall be agreed to by the County and Vendor. If the Vendor's key personnel have been predetermined and approved, through the Solicitation process or otherwise, any subsequent change or substitution to the personnel must receive the County's written approval before said changes or substitution can become effective.
- C. The Vendor specifically agrees that all products shall be delivered within the time limits as set forth in this Agreement, subject only to delays caused by force majeure, or as otherwise defined herein. "Force majeure" shall be deemed to be any unforeseeable and unavoidable cause affecting the performance of this Agreement arising from or attributable to acts, events, omissions or accidents beyond the control of the parties.

XI. COMPLIANCE WITH APPLICABLE LAW

This Agreement shall be governed by the laws of the State of Florida. Vendor shall promptly comply with all applicable federal, state, county and municipal laws, ordinances, regulations, and rules relating to the services to be performed hereunder and in effect at the time of performance. Vendor shall conduct no activity or provide any service that is unlawful or offensive.

XII. TERMINATION

- A. The County shall have the right at any time upon thirty (30) days' written notice to the Vendor to terminate this Agreement in whole or in part for any reason whatsoever. In the event of such termination, the County shall be responsible to Vendor only for fees and compensation earned by the Vendor, in accordance with Section III, prior to the effective date of said termination. In no event shall the County be responsible for lost profits of Vendor or any other elements of breach of contract.
- B. After receipt of a notice of termination, except as otherwise directed, the Vendor shall stop work on the date of receipt of the notice of termination or other date specified in the notice; place no further orders or sub-contracts for materials, services, or facilities except as necessary for completion of such portion of the work not terminated; terminate all vendors and subcontracts; and settle all outstanding liabilities and claims.
- C. The County's rights under this Agreement shall survive the termination or expiration of this Agreement and are not waived by final payment or acceptance and are in addition to the Vendor's obligations under this Agreement.

XIII. DISPUTE RESOLUTION

- A. In the event of a dispute or claim arising out of this Agreement, the parties agree first to try in good faith to settle the dispute by direct discussion. If this is unsuccessful, the parties may enter into mediation in Lee County, Florida, with the parties sharing equally in the cost of such mediation.
- B. In the event mediation, if attempted, is unsuccessful in resolving a dispute, the parties may proceed to litigation as set forth below.
- C. Any dispute, action or proceeding arising out of or related to this Agreement will be exclusively commenced in the state courts of Lee County, Florida, or where proper subject matter jurisdiction exists, in the United States District Court for the Middle District of Florida. Each party irrevocably submits and waives any objections to the exclusive personal jurisdiction and venue of such courts, including any objection based on forum non conveniens.
- D. This Agreement and the rights and obligations of the parties shall be governed by the laws of the State of Florida without regard to its conflict of laws principles.
- E. Unless otherwise agreed in writing, the Vendor shall be required to continue all obligations under this Agreement during the pendency of a claim or dispute including, but not limited to, actual periods of mediation or judicial proceedings.

XIV. STOP WORK ORDER

The County may, at any time, by written order to the Vendor, require the Vendor to stop all or any part of the work called for by this Agreement. Any order shall be identified specifically as a stop work order issued pursuant to this clause. This order shall be effective as of the date the order is delivered to the Vendor. Upon receipt of such an order, the Vendor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. The Vendor shall not resume work unless specifically so directed in writing by the County. The County may take one of the following actions:

1. Cancel the stop work order; or
2. Terminate the work covered by the order; or
3. Terminate the Agreement in accordance with provisions contained in Section XI.

In the event the County does not direct the Vendor to resume work, the stop work order may be converted into a notice of termination for convenience pursuant to Section XII. The notice period for such termination shall be deemed to commence on the date of issuance of the stop work order. In the event the County does not direct the Vendor to resume work within ninety (90) days, the Vendor may terminate this Agreement.

XV. MISCELLANEOUS

- A. This Agreement constitutes the sole and complete understanding between the parties and supersedes all other contracts between them, whether oral or written, with respect to the subject matter. No amendment, change or addendum to this Agreement is enforceable unless agreed to in writing by both parties and incorporated into this Agreement.
- B. The provisions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assignees of the parties hereto. A party to this Agreement shall not sell, transfer, assign, license, franchise, restructure, alter, or change its corporate structure or otherwise part with possession or mortgage, charge or encumber any right or obligation under this Agreement without the proposed assignee and/or party restructuring, altering or changing its corporate structure agreeing in writing with the non-assigning party to observe and perform the terms, conditions and restrictions on the part of the assigning party to this Agreement, whether express or implied, as if the proposed assignee and/or party restructuring, altering or changing its corporate structure was an original contracting party to this Agreement. Notwithstanding the foregoing provision, the Vendor may assign its rights if given written authorization by the County and claims for the money due or to become due to the Vendor from the County under this Agreement may be assigned to a financial institution or to a trustee in bankruptcy without such approval from the County. Notice

- of any such transfer or assignment due to bankruptcy shall be promptly given to the County.
- C. The exercise by either party of any rights or remedies provided herein shall not constitute a waiver of any other rights or remedies available under this Agreement or any applicable law.
 - D. The failure of the County to enforce one or more of the provisions of the Agreement shall not be construed to be and shall not be a waiver of any such provision or provisions or of its right thereafter to enforce each and every such provision.
 - E. The parties covenant and agree that each is duly authorized to enter into and perform this Agreement and those executing this Agreement have all requisite power and authority to bind the parties.
 - F. Neither the County's review, approval or acceptance of, nor payment for, the products and services required under this Agreement shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.
 - G. If the Vendor is comprised of more than one legal entity, each entity shall be jointly and severally liable hereunder.
 - H. When any period of time is referred to by days herein, it shall be computed to exclude the first day and include the last day of such period. When the period of time is fewer than three (3) days, it shall mean business days as defined by Lee County. If the period of time is greater than three (3) days, then it shall mean calendar days. For any period of time greater than seven (7) days, where the deadline falls on a Saturday, Sunday, or Lee County recognized holiday, the deadline will then fall to the next Monday or non-Lee County recognized holiday
 - I. Any notices of default or termination shall be sufficient if sent by the parties via United States certified mail, postage paid, or via a nationally recognized delivery service, to the addresses listed below:

Vendor's Representative:

Name: Mark West
Title: Manager / CEO
Address: 4353 Michigan Link
Fort Myers, FL
33916
Telephone: 239.334.7343
Facsimile: 239.334.2952
E-mail: mwest@themulchsoilco.com

County's Representatives:

Names: Roger Desjarlais Mary Tucker
Titles: County Manager Director of
Procurement
Management
Address: P.O. Box 398
Fort Myers, FL 33902
Telephone: 239-533-2221 239-533-8881
Facsimile: 239-485-2262 239-485-8383
E-Mail: rdesjarlais@leegov.com mtucker@leegov.com

- J. Any change in the County's or the Vendor's Representative will be promptly communicated by the party making the change.
- K. Paragraph headings are for the convenience of the parties and for reference purposes only and shall be given no legal effect.
- L. In the event of conflicts or inconsistencies, the documents shall be given precedence in the following order:
 - 1. Agreement
 - 3. Solicitation
 - 4. Vendor's Submittal in Response to the Solicitation

[The remainder of this page intentionally left blank.]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date last below written.

WITNESS:

Forrestry Resources, LLC

Signed By: Connie M. Dessenko

Signed By: Mark West

Print Name: Connie M. Dessenko

Print Name: Mark West

Title: CEO

Date: 10-25-19

LEE COUNTY

Assistant County Manager

BY: Christine Brady
Christine Brady

DATE: 10/31/19

APPROVED AS TO FORM FOR THE
RELIANCE OF LEE COUNTY ONLY:

BY: [Signature]
OFFICE OF THE COUNTY ATTORNEY

EXHIBIT A SPECIFICATIONS OR SCOPE OF SERVICES

VER 03-05-15

DETAILED SPECIFICATIONS FOR SALE OF RECYCLED WOOD MATERIAL

I. SCOPE OF SERVICES

The Lee County Board of County Commissioners (BoCC) desires to contract with a qualified Vendor for the sale of recycled wood material recovered from Solid Waste facilities. The County is requesting a price (per ton) of clean wood material as defined herein to include raw clean wood (unground) and rough ground. The County will deliver clean wood to a certified wood mulch processing Vendor within Lee County in accordance with all specifications, terms, and conditions herein.

Lee County recovers approximately 2,000 tons of clean recyclable wood annually from Solid Waste facilities. Lee County does not guarantee a minimum or maximum quantity of clean wood recovered during the contract period.

II. DEFINITIONS: RECYCLED WOOD TYPES

Raw Clean Wood (unground) shall be free of contaminants including pressure treated wood, pressure treated plywood, Oriented Strand Board (OSB), painted wood, metals (including truss metal connection plates), plastics, foam polyethylene Styrofoam and other non-wood debris. Nails and other small metal fasteners are acceptable in raw clean wood.

Rough Ground Wood shall have been ground using grates with no smaller than five (5) inch openings and shall be free of contaminants including pressure treated wood, pressure treated plywood, Oriented Strand Board (OSB), painted wood, nails, heavy staples, metals (including truss metal connection plates), plastics, foam polyethylene Styrofoam and other non-wood debris.

III. TECHNICAL SPECIFICATIONS

1. The County will recover recyclable wood from its Solid Waste Processing facilities and deliver to a Vendor's facility, which must be within 50 miles of the Lee County Solid Waste Division facility located at 10500 Buckingham Road, Fort Myers, FL 33905 as indicated in the Special Conditions.
2. The County will be responsible for all transportation costs during the term of the Agreement.
3. The County shall deliver material during normal business hours of the Vendor. The Vendor shall provide the County the delivery location and Hours of Operation.
4. The Vendor shall have the ability to receive a maximum of five 40yd roll-off containers, five days a week of Raw Clean Wood or two 48 foot trailer loads of Rough Ground Wood per week.
5. The Vendor shall accept the County's wood material during the entire term of the Agreement and may not stop services without a 30 days written notice and consent from the County.
6. Clean wood shall be free of contaminants upon delivery.
7. The Vendor may reject loads that do not meet the requirements of this Agreement; however, the Vendor agrees to work in good faith with the County to identify a remedy prior to rejection.
8. Recovered wood shall be weighed in and out at the truck scales.

IV. METHOD OF PAYMENT

1. Measure of wood sales shall be based on the tonnage of recyclable wood weighed in and out from Lee County's truck scale records.
2. The County will provide the Vendor will a copy of scale records for each load delivered to the Vendor.
3. The County will invoice the Vendor on a monthly basis.
4. Payment must be made from the Vendor to the County on a monthly basis by check or money order to "Lee County Solid Waste Division". Each check must be received by the fifteenth day of the following month for all materials delivered the previous month.

The checks will be delivered or mailed to:

Lee County Solid Waste Division
10500 Buckingham Rd.
Ft. Myers, Fl. 33905

End of Detailed Specifications Section

SPECIAL CONDITIONS

These are conditions that are in relation to this solicitation only and have not been included in the County's standard Terms and Conditions or the Scope of Work.

I. BID PRICES

Vendor shall bid per ton unit prices with two purchase options: (1) Raw Clean Wood (unground) and (2) Rough Ground Wood (5" minus) delivered by the County to the Vendor's wood mulch processing facility.

II. BASIS OF AWARD

As a revenue generating Agreement, the award of this bid shall be to the highest responsive, responsible Vendor per item meeting the requirements of the specifications and provisions set forth herein. The County retains the right to award this bid in whole or in part, whichever is in the best interest of the County. The County reserves the right to award to multiple Vendors.

Vendor(s) may bid on item 1 or item 1a or both. The County prefers a Vendor to bid on both options.

III. TERM:

The Vendor shall be responsible for furnishing and delivering to the Lee County requesting Department(s) the commodity or services on an "as needed basis" for a one-year (1) period. There may be an option to renew this contract as specified in the Scope of Work or specifications upon the approval of both the County and the Vendor at the time of the renewal for three (3), additional one (1) year periods.

IV. MINIMUM REQUIREMENTS

To be considered for award the Vendor must be located within 50 miles of the Lee County Solid Waste Division facility located at 10500 Buckingham Road, Fort Myers, FL 33905. The Vendor is requested to complete the minimum requirements form found herein to verify location requirements met.

End of Special Conditions Section

**EXHIBIT B
FEE SCHEDULE**

Item	Description	Unit of Measure	Cost Per Unit
1	Raw Clean Wood (unground)	Per Ton	\$10.00
1a	Rough Ground Wood	Per Ton	\$18.00

EXHIBIT C

Insurance Guide

VER0548-19

INSURANCE GUIDE

As all recycled wood material as indicated herein is to be purchased by the Vendor and delivered by the County to the Vendor's recycling facility-there is no insurance required at this time. Should the County need the Vendor to pick up the recycled wood materials at any time from our County facility insurance requirements would be required and would be provided to the Vendor at that time.

End of Insurance Guide Section

EXHIBIT D

VENDOR BACKGROUND SCREENING AFFIDAVIT



VENDOR BACKGROUND SCREENING AFFIDAVIT

Florida Statutes Chapter 435 governs required background screenings for any employees, contractors, subcontractors, or agents of the Vendor who will have contact with any vulnerable person, as defined by statute, or who otherwise are required to undergo a Level 1 or Level 2 background screening in accordance with Florida law.

The Vendor is responsible for ensuring that such required background screenings are conducted in accordance with Florida Statutes Chapter 435. Documentation of such completed background screenings must be maintained for a period of no less than five (5) years and are subject to audit by Lee County at any time during such five (5) year period.

Under penalty of perjury, I declare that I have read and understand the requirements stated above, and that all required background screenings shall be conducted in accordance with this affidavit. I further understand that there may be additional local, state, and federal regulations that may require background screening, and that the Vendor will be solely responsible for complying with such legal requirements. Furthermore, the Vendor shall indemnify and hold Lee County harmless from any and all claims or actions resulting from failure to comply with this affidavit.

Date: 10-25-2019

Mark West
Signature

STATE OF FL
COUNTY OF LEE

Mark West, CEO
Name/Title

On the date set forth above, the foregoing instrument was sworn to (or affirmed) and subscribed before me by the above-named person and in their stated capacity, and is either personally known to me or who has produce the following as identification: _____

[Stamp/seal required]

Connie M Dessenko
Signature, Notary Public

