

FOREST MANAGEMENT AGREEMENT

Between the

Board of Education

and the

Mississippi Forestry Commission

This contract is entered into between the **Mississippi Forestry Commission**, hereinafter referred to as MFC, and the _____ Board of Education, hereinafter referred to as the Board of Education pursuant to Section 29-3-45 of the Mississippi Code.

In consideration of the mutual premises and covenants contained herein, the parties hereto agree as follows:

A. SCOPE OF WORK The MFC agrees to provide delivery of the services and products described in Attachment A for the Board of Education. This agreement shall cover all forest products under the control of the Board of Education and located on sixteenth section or lieu lands, as specifically designated in Attachment B. All existing agreements for the general supervision and management of these lands are modified or superseded by the terms and provisions of this contract, and only the terms of this contract shall govern.

B. PERIOD OF PERFORMANCE The period of performance of this contract shall begin upon final signing of each party, and shall continue until the end of June 30, 2012 unless an extension is mutually agreed upon.

C. DUTIES OF PARTIES; BREACH The parties agree to perform the duties identified below for the entire period of performance of this contract.

(1) The MFC shall:

(a) create a forest management plan for each area identified in Attachment B, implement the tasks listed in Attachment A based upon need, update this plan each year as necessary, and provide the updated plan to the Board of Education no later than July 1 of each year;

(b) create a harvest schedule for each area identified in Attachment B, update this schedule as necessary and no less often than once during the contract period, and provide the updated cutting schedule to the Board of Education no later than July 1 of such year after a schedule update;

(c) furnish to the board of education a detailed proposed annual budget by July 1st of each year;

(d) provide an annual report to the Board of Education no later than July 1 of each year which states all expenses incurred during the previous fiscal year and other pertinent information;

(e) prior to taking any unapproved action resulting in a direct cost to the board of education, seek prior written approval of that action from the Board of Education;

(f) provide reports to the board of education on forms agreed to by the parties;

(g) upon execution of this agreement, begin managing the areas identified in Attachment B; and

(h) perform all other duties placed upon it by this contract or Mississippi law.

(2) The Board of Education shall:

(a) upon presentation of an itemized bill for actual expenses incurred, promptly consider and pay for the work performed by the MFC or its subcontractors as identified below;

(b) upon disagreement with the MFC concerning the time of cutting and harvesting of forest products, or implementation of silvicultural practices promptly make an appeal under §29-3-45(1)(c) of the Mississippi Code;

(c) perform all other duties placed upon it by this contract or Mississippi law;

(d) endorse annual activity schedules as submitted no later than August 31st of the fiscal year in which the scheduled activity will occur.

(3) The failure to perform any duty specifically identified in this contract will constitute a breach of this agreement. The Board of Education and the MFC agree that the duties identified herein are reasonable, necessary and proper for the performance of their obligations under Mississippi statutory law.

For those activities identified in Attachment A that require the services of a third party vendor, the MFC agrees to facilitate a contractual arrangement between a private vendor and the Board of Education to perform those activities under the supervision of the MFC.

D. COMPENSATION The Board of Education agrees to compensate the MFC for the actual expenses it incurs (in accordance with Section 29-3-47 of the Mississippi Code) in the performance of the work selected and described herein, in the method provided in Attachment A during the period of performance.

MFC invoices shall be submitted to the Board of Education for payment. The MFC will contemporaneously provide a courtesy copy of such invoices to the Secretary of State's Office. They may be mailed to the attention of the Public Lands Division at P.O. Box 136, Jackson, MS 39205 or provided by other means agreeable to the Secretary of State and the MFC. Compensation shall be made in the form of checks or intergovernmental transfer made payable to "Mississippi Forestry Commission" and mailed to State Forester, Mississippi Forestry Commission, 301 N. Lamar St, Ste 300, Jackson, Mississippi, 39201-1404.

All payments will be tendered within 30 days upon receipt of an approved invoice.

The books and records of MFC, as they may apply to this agreement or 16th Section Public School Trust Lands, will be made available upon request at the MFC's or the Secretary of State's regular places of business, for audit by personnel authorized by Secretary of State or the Board of Education. Additionally, financial records, supporting documents and other records pertinent to this contract shall be retained by MFC for a period of three (3) years from the date of submission of the final expenditure report. The period of access and examination described above for the records which relate to (1) litigation or settlement, or (2) costs and expenses of this

contract as to when exception has been taken by any of the organizations named above shall continue until such litigation, claims or exceptions have been disposed.

E. AVAILABILITY OF FUNDS AND EXPENDITURE APPROVAL It is hereby agreed by the MFC, and the Board of Education that the continuance of this contract shall be based upon availability of funds. No legal liability on the part of the MFC or the Board of Education, for any payment may arise for performance under this contract beyond the period of performance aforementioned. The MFC shall receive notice, in writing by the board of education, if funds are not available.

The Board of Education further agrees that if the actual expenses incurred by the MFC in the performance of this contract exceed the amount held in the forestry escrow account by the Board of Education, the deficiency will be made up from any contributions to the escrow account or from revenue generated by any timber sales occurring over the term of this contract. If such contributions and revenue are not sufficient to reimburse the MFC for actual expenses incurred in any year under the term of this contract, then the MFC may elect to recover such expenses or a portion of such expenses in future years.

F. KEY PERSONNEL The State Forester shall be designated as the MFC Project Leader for the work set forth herein and shall be responsible for the conduct of the work by the MFC.

G. CONTROL OF PROJECT The MFC through its Project Leader or his designee, will maintain continuing communication with a designated liaison for the Board of Education.

The MFC's Project Leader is not authorized to change any element of this contract. All changes shall be consummated by formal written amendment signed by the authorized signatory of both parties to this contract.

H. ACCESS TO DATA AND INVOICES The MFC shall provide access to data collected by the MFC (including the computer programs and licenses required to retrieve the data if needed) and invoices pertaining to the forest management practices and disposition of forest products occurring or located on public trust land.

I. INDEPENDENT PARTIES MFC will be acting as an independent party in the performance of this work and MFC will be responsible for official actions of their respective employees or agents in the scope of their official employment. MFC, by State law, maintain worker's compensation insurance covering all their employees.

It is not intended that the board of education or MFC would become liable to third parties by virtue of this agreement, nor does the Board of Education or MFC waive, hereby, any immunity they may have, including sovereign immunity and immunity arising under the 11th Amendment of the United States Constitution.

J. MODIFICATION/TERMINATION Modification, changes or amendments to this contract may be made upon mutual agreement of the parties hereto. However, any change,

supplement, modification or amendment of any term, provision or condition of this contract must be in writing and signed by the parties hereto.

K. DISPUTES Any dispute concerning a question of fact arising under this contract shall be resolved pursuant to Section 29-3-45 of the Mississippi Code.

L. APPLICABLE LAW This agreement shall be construed in accordance with the laws of the State of Mississippi and venue for the resolution of any dispute shall be the Chancery Court of any district where the real property is located. All parties expressly agree that under no circumstances shall any party be obligated to pay the attorney's fees or the costs of any legal action to any other party.

If any term or provision of this contract is prohibited by the laws of the State of Mississippi, or declared invalid or void by a court of competent jurisdiction, the remainder of the contract shall be valid and enforceable to the fullest extent permitted by law.

M. WAIVER Failure of any party hereto to insist upon strict compliance with any of the terms, covenants and conditions thereof shall not be deemed a waiver or relinquishment of any similar right or power hereunder at any subsequent time or of any other provision hereof, nor shall it be construed to be a modification of the terms of this contract.

N. CONFLICT OF INTEREST The MFC shall notify the Board of Education of any potential conflict of interest resulting from the representation of or service to other clients. Any potential conflict of interest of MFC will be resolved in accordance with state law and regulations.

O. SUBCONTRACTS The MFC must obtain the written approval of the Board of Education before subcontracting any portion of this contract. No such approval by the Board of Education of any subcontract shall be deemed in any way to provide for the incurrence of any obligation of the Board of Education in excess of the terms of this contract.

Written approval may be provided by the Board of Education through the approval of a forestry management plan or annual itemized budget which contains line items for all anticipated expenses.

P. THIRD PARTY ACTION NOTIFICATION The MFC shall give the board of education prompt notice in writing of any action or suit filed, and prompt notice of any claim made against the MFC by any entity that may result in litigation related in any way to this contract.

Q. CONFIDENTIAL INFORMATION In the event any party receives notice that a third party requests divulgence of confidential or otherwise protected information and/or has served upon them a subpoena or other validly issued administrative or judicial process ordering divulgence of confidential or otherwise protected information, the party shall promptly inform the other parties and thereafter respond in conformity with such subpoena to the extent mandated by state or federal law. This section shall survive the termination or completion of this contract.

R. CAPTIONS The captions or headings in this contract are for convenience only, and in no way define, limit or describe the scope or intent of any provision or section of this contract.

S. SPECIAL TERMS AND CONDITIONS It is agreed and understood by the parties to this contract that there are no special terms or conditions.

T. NOTICE Any notice required or permitted to be given under this contract shall be in writing and sent by certified United States mail, postage prepaid, return receipt requested, to the following:

To the MFC:
State Forester
Mississippi Forestry Commission
301 N. Lamar St, Ste 300
Jackson, MS 39201-1404

To the Board of Education:
President

_____, MS _____

All parties agree to promptly notify each other of any change of address.

U. SECRETARY OF STATE The Board of Education acknowledges and understands that as part of the MFC's responsibility pursuant to §§29-3-45 and 29-3-49, the MFC will advise and consult with the Mississippi Secretary of State's Office concerning the forest management plans and practices to be performed on 16th Section lands. A copy of the agreement between the MFC and the Secretary of State's Office is attached hereto as Attachment "C."

V. STATUTORY OBLIGATION Nothing in this agreement shall be deemed to transfer, waive, limit or abrogate the duties, obligations and liabilities of the parties as required by Mississippi law.

APPROVAL

School District Approval

MFC Approval

President,

School District

Charlie Morgan
State Forester

Superintendent,

School District

ATTACHMENT A

MFC School Trust Land Services:

I. Administrative Services: Actual cost

A. Planning

Management Plan Development & Updating

Annual Work Plan Development

Harvest Scheduling/Planner

Forest Practices Scheduling

Develop/Maintain/Update Geographical Information System specific for School Trust Lands to include:

- 1) Create and maintain property boundary information for all School sections by school board
- 2) Create and maintain all forest stands and non-forest areas information located on all school sections
- 3) Record and maintain stand and site information for each stand and area feature on all school sections
- 4) Schedule and update forestry practices for each stand feature for all school sections *including but not limited to*; harvesting, regeneration, stand improvements, road maintenance, fire lane establishment and maintenance, boundary line maintenance.
- 5) Maintain an historical archive file for each activity completed on a school section
- 6) Provide Secretary of State current status file as information is updated
- 7) Develop and Maintain a Planning, Reporting and Mapping System within GIS for tracking all Activities scheduled and monitoring all activities started and completed on school trust lands including revenues and financial reports in GIS system

B. Monitoring Services Provided

Forestry Services Compliance Checks

Survival Checks

C. Tracking Services Provided

Reports and Analysis

D. Forest Protection

Annual insect, disease, invasive species flights

E. Technical Assistance

F. Vendor Services & Contract Administration

- G. Annual/Periodic Property Services
 - Boundary Line Maintenance
 - Ground Recon
 - Annual Aerial Recon
 - Maintenance on access and main roads
 - Fires Lanes – maintenance
 - Permanent Fire Breaks – maintenance

II. Timber Sale Services: Actual cost

- Provide harvest schedule to BOE
- Maintain Timber Price Service currently Forest2Market
- Timber Sale marketing analysis for each sale
- Preparation of sale, advertisement, prospectus, consultation with BOE,
- Supervise each timber sale thru completion of contract
- Provide timber sale update report and contract completion report for each sale to BOE
- Timber Security Audits by MFC personnel
- Timber Volume Audits for harvest, salvage, and damage appraisals

III. MFC Vendor Services: Actual cost*

As scheduled in Management Plan. Fees based on recovering actual cost for each service provided including supervision costs and agency overhead.

- Tree Planting
- Release
- Site-Prep
- Burning; site-prep, silvicultural, mitigation, fuel reduction
- Vegetative Control Treatment
- Pest/Disease Control Treatment
- Invasive Species Control Treatment
- Fertilization
- Pruning
- Construction of new roads, fire lanes, and permanent fire breaks

* MFC may not be vendor on all scheduled activities.

ATTACHMENT B
(Lands to be managed under this agreement)