

Forestry Contracts

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Cost-effective forestry requires a wide range of activities which employ specialized equipment and skills. Many nonindustrial landowners are not equipped to perform these activities themselves and must hire a vendor with the manpower and equipment to do the job. These activities can include chemical or mechanical site preparation (FSA5002, *Site Preparation Methods for Establishing or Re-establishing Pine Stands*), prescribed burning (FSA5009, *Why We Burn: Prescribed Burning as a Management Tool*), cull tree removal, tree planting (FSA5007, *Storing, Handling and Planting Southern Pine Seedlings*) and stand thinning (FSA5001, *Improve Your Pine Stand by Thinning*) or harvesting.

In the past, agreements sealed by a simple hand-shake were common in the forestry business, but in our increasingly litigious society, hand-shake agreements are dangerous.

Many forestry activities require paying or receiving modest to large sums of money. Mistakes or misunderstandings can be costly in both time and money. Both the landowner and the vendor or buyer need the protection provided by a well-written contract.



Figure 1. At one time, forestry agreements were sealed with a handshake. This is no longer a wise practice.

A well-written contract protects both parties in two ways. First, it spells out in detail the responsibilities of each party. If the contract is used properly, i.e., read and understood, then each party knows what the other will expect and what to expect in return. Secondly, the contract provides written documentation of the terms to which the parties agreed. Should a disagreement arise later, rather than relying on fallible memory, both parties can refer to the written contract to determine exactly what agreements were made at the onset of the project.

Many vendors and timber buyers will have standard contracts written to cover the services they provide. When these contracts adequately protect your interests, they can be used; however, remember that they were written to protect the vendor or timber buyer, not you. Before signing the contract, read it carefully to make sure it protects your interests. If you are paying a significant sum for the service or receiving a significant sum from a timber sale, have the contract reviewed by an attorney and a consulting forester BEFORE you sign it. Once you sign the contract, you are legally obligated to follow it, even if it causes you harm. Assume the vendor is hiding something if he discourages you from having the contract reviewed.

Although each forestry activity will require a unique contract, all of the

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contracts will have similarities. All of the contracts need to cover the same basic information along with some information unique to the activity. This fact sheet discusses the sections and provisions that should be included in forestry contracts. Use it as a guide to writing contracts or to reviewing contracts provided by vendors. Remember that some special circumstances will require additional provisions.

Writing contracts is a complex task. Inexperienced landowners should enlist the aid of a professional forester to ensure that all aspects of the forestry operation are covered and an attorney to ensure that the language of the contract protects the landowner. The landowner also should hire a professional forester to monitor compliance with the terms of the contract.

Contracts Versus MOAs

First, make sure the contract is labeled as a contract instead of as a memorandum of agreement. Contracts and memoranda of agreement are not the same thing. Contracts provide greater legal protection because contracts are legal documents while memoranda of agreement are not. If the document describes an “exchange of value,” i.e., the two parties are exchanging things of value (money for services), the document is a contract and should be labeled as such.

Define the Parties

The parties to the contract should be stated clearly. Make sure your legal name and address are included in the contract. The legal name and address of the vendor or buyer should also be included. The form of the vendor’s name will depend on the vendor. Some vendors are individuals, some are individuals “doing business as” (dba) a business name and some are corporations. Make sure the vendor’s name and address are written accurately.

Dates

The contract should clearly define the time period it covers. It should have a start date and an end date. In some cases, the contract may define provisions for extending the period of the contract.

Location

The contract should clearly define the location and boundaries of the site where the activity is planned. At a minimum, the contract should include a legal description of the work site. In the interest of clarity, the contract should also describe the current

appearance of the boundaries. Statements such as “the county road” or “the fence at the edge of the pasture” provide clear visual clues to the boundary location. Maps depicting the work site and adjacent features can be attached to the contract. If the project area surrounds sites which should not be treated, those areas should be clearly identified in the contract.

Best Management Practices

All forestry contracts should contain a clause stating that the vendor or timber buyer will adhere to Arkansas’ Best Management Practices. At the time of this writing, state best management practices are voluntary; however, they could become mandatory in the future. Best management practices are guidelines which help foresters and land managers protect water quality and the future productivity of soils. Make sure contractors protect your soils and water.

Landowner Agents

Many landowners hire a consulting forester to supervise timber sales and silvicultural practices. When this is the case, the contract should state that the consulting forester is authorized to act on behalf of the landowner in matters related to the contract.

Silvicultural Practices

The specific practice to be applied to the site should be spelled out very clearly and in great detail; however, the contractor should be given enough “wiggle room” to resolve unexpected situations. Just a statement such as “the contractor will plant trees on 40 acres” is not adequate. The specific procedure used to treat the site should be defined along with the desired result. Procedures for reviewing the quality of the work should be specified as well. Each silvicultural practice has its own set of procedures which should be defined in the contract. Those are discussed below.

Tree Planting Operations

At a minimum, the contract should define the tree species to be planted, the number of trees to be planted, the area in acres, tree spacing and the method by which the trees will be planted. Number of trees traditionally is expressed as number of trees per acre, but total number of trees is acceptable if the size of the planting area is known and clearly spelled out in the contract. Tree spacing is specified as distance between rows and distance between trees within a row. Planting method, usually machine planting or hand planting, should be clearly defined.

The contract should state that trees will not be planted under adverse conditions such as very cold or hot days, very windy days, in very dry soils or on flooded sites. Payment should be spelled out clearly as a lump sum or as a charge per tree or charge per acre.



Figure 2. Planting contracts should specify whether the site will be planted by hand or by machine.

Other factors may need to be defined in the contract. Some situations require special planting methods or tools. Those should be clearly defined if appropriate. If you plan to provide the seedlings or if you want the seedlings to come from a particular source or nursery, state this clearly in the contract. Otherwise, the contractor will purchase seedlings at his discretion. If you plan to check quality of the planting job, and you or your forester should, procedures for assessing the planting job should be spelled out in the contract, as well as remedies for substandard planting. If the contractor is to inspect his own work, proof of inspection in the form of seedling counts should be required by the contract.

Mechanical Site Preparation

The contract should clearly state the site preparation technique which will be used as well as the equipment which will be used in the treatment. The contract should clearly state the treatment acreage and adverse site conditions under which treatments will not be applied. The contract should state the cost of the treatment as a lump sum or in terms of charge per machine hour, clock hour or per acre.

Chopping

Chopping contracts should state the number of passes across the site which will be made with the

chopper drum. Under some circumstances, such as on steeply sloped sites, the orientation of the passes on the landscape should also be defined.

Ripping

Ripping contracts should state the depth to which soil will be ripped and spacing of the rip lines. If the site is sloped, the contract should state the orientation of the plow lines or state that the site will be ripped along the contour. Ripping rocky sites under very dry conditions should be prohibited to reduce the risk of starting fires.



Figure 3. Ripping contracts must be carefully written to minimize the risk of site damage.

Shearing

Shearing contracts should specify the minimum height above soil surface at which stumps should be cut. Most shearing contracts also should specify the maximum diameter of stumps which can remain uncut. The contract should specify whether residual trees should be removed or left standing.

Root Raking

Root raking contracts should specify what is to be raked, whether stumps and tops or tops only. If the site is sloped, the contract should define the orientation of the windrows or state that debris will be windrowed along the contour to minimize soil erosion.

Disking

Disking contracts should specify whether the entire site will be disked or whether the site will be disked in strips. If the site will be disked in strips, the contract should specify the spacing and width of the strips. On sloped sites, the orientation of the strips on the landscape should be specified.

Bedding

Bedding contracts should specify the height, spacing and orientation of the beds. The contract should state that beds will be oriented along the contour on sloped sites. When bedding is intended to improve drainage, the contract should specify the orientation of the beds with that goal in mind. The contract should also state that the contractor will keep the bedding plow free of debris during operation. Debris hung in the plow prevents the plow from properly shaping the beds and may result in piles of nonsoil material in the beds. Any features, such as fire lanes or roads, which should not be bedded should be noted in the contract.

Chemical Site Preparation

Chemical site preparation is a complex treatment, so chemical site preparation contracts are also complex. Several things must be specified in detail. First, the herbicide must be specified. The herbicide should at least be identified by name of the active ingredient. Specifying the product by trade name will give the landowner more control over what product is used. Tank mixes are used often in forestry. In these cases, each of the herbicides should be specified.

Method of application must be specified in the contract. If a herbicide is applied improperly, it will not work as intended. The contract must specify whether the herbicide will be broadcast, banded or applied to specific target plants. Equipment used to apply the herbicide must also be defined in the contract. The contract must specify whether the herbicide will be applied to the soil, as a foliar spray on vegetation, as a basal bark application or injected into the tree trunk.

Application method usually will be specified on the herbicide label.

Rate of application must be specified. The form of the rate will depend on how and to what the herbicide is applied. For broadcast applications, rates may be pounds, ounces or gallons per acre. Rates for directed applications may specify a number of granules or a volume per spot or per plant. If the herbicide is to be injected into the tree trunk, the rate may be stated as number of hacks or injections per inch of tree circumference.



Figure 4. Herbicide application contracts should require the contractor to read and follow label directions.

Basal bark applications may not specify a rate but only state that the lower 1 to 2 feet of the trunk will be sprayed to the point of wetness.

Instructions for herbicide handling and application are printed on the herbicide label. Strict adherence to these instructions is required by law. Contracts for herbicide application should contain a clause stating that the contractor will follow all label directions. This will provide some defense for the landowner should an accident occur due to negligence on the part of the contractor.

Herbicide drift can be a serious problem with broadcast applications. Contractors can manage drift by identifying nearby sensitive crops and spraying on days when the wind is blowing away from sensitive crops. The contract should contain a clause stating that the contractor is responsible for preventing herbicide drift.

Chemical site preparation contracts should define payment terms. This will most often be stated as a lump sum or in terms of dollars per acre.

Prescribed Burning

Prescribed burning has several uses, so contracts should be carefully tailored to the treatment goal. The fire must be tailored to the weather conditions the day of the fire to accomplish the intended goal. This requires flexibility, especially in starting point for the fire and in ignition pattern. Prescribed burning cannot be safely conducted during very dry or windy weather and cannot be conducted during very wet weather. For this reason, ample time should be allowed for the contractor to find a suitable day to burn. Allow the contractor at



Figure 5. Prescribed burning contracts should specify who bears responsibility for escapes.

least two years to complete the burn if this will not disrupt other schedules.

One use of prescribed fire is for site preparation. The main goal of burning for site preparation is to clear the site of brush and logging debris. Since site preparation is a precursor to tree planting, the contract should specify a completion date which will not interfere with planting trees on schedule. The contract also should recognize that weather conditions may not allow the contractor to complete the job on schedule.

Prescribed fire is also used to improve wildlife habitat and to reduce wildfire hazards. Objectives of the burn should be clearly stated in the contract. Since objectives may determine burning season, burning season should be specified in the contract. Hazard reduction and habitat improvement fires are not as urgent as site preparation fires, so more time can be allowed for the contractor to find appropriate conditions for burning.

Prescribed burning contracts should define payment terms and schedules. This will most often be stated as a lump sum or in terms of dollars per acre.

Timber Sale Contracts

Timber sales often involve a large income for the landowner; therefore, contracts governing timber sales should be very carefully written. It is especially important to describe which trees the landowner is selling. The trees may be identified as all of a certain species, all over or under a certain diameter or all trees marked with a certain color paint. When trees are being sold by diameter, the contract should state whether the diameter is at breast height (standard in forestry) or at stump height. Log rules for estimating timber volume should also be specified. On many sites, it will be in the landowner's best interest to specify where skid trails may be routed and logging decks located.

Timber sale contracts should also specify arrangements for payment. Payment might be made as a lump sum before the contractor begins harvest or might be based on weight of logs delivered to a mill. It usually is best to specify lump sum payment before the harvest begins, but this is not always practical. If payment is calculated periodically based on volume or weight of timber removed, the contract should clearly specify procedures for tracking how much timber will be removed. The landowner may want to specify to which mills timber will be sold so he can verify the volume or weight of timber sold from his land.

Timber sale contracts should contain a clause stating that the landowner does not guarantee the advertised timber volume and encouraging buyers to verify the volume for themselves. Such a clause protects the landowner from hidden defects in trees and from poor or wasteful cutting practices of some buyers. When the timber sale is part of a thinning, the contract should specify penalties for excessive damage to residual trees.

More information on timber sales and sale contracts is available in FSA5014, *What Should I Know About Selling My Timber?* Additional information and sample contracts are also available on the Arkansas Forestry Commission web site (www.forestry.state.ar.us) under the *Manage Your Forest* link.

Tree Ownership

Timber buyers will want to be assured the seller has the right to sell the trees. Trees which have been sold cannot be sold to another timber buyer until the first contract expires. Mortgages may also affect the landowner's ability to sell timber. Timber sale contracts should contain a clause stating the landowner has the full legal right to sell the trees. The contract should also describe any encumbrance or mortgage which might affect the sale or should state that no encumbrances or mortgages exist.

Debris and Waste Removal

Timber thinnings and harvests generate quite a bit of debris, mostly in the form of tree tops. Usually debris is left where it falls. The contract should require that the timber buyer remove all debris from



Figure 6. Thinning and harvest operations generate substantial debris.

roads and streams. The contract should also require that any debris falling onto neighboring properties should be removed. Under some special circumstances, the contract might require that all debris be removed from the site, but this will impact the sale price of the timber.

Timber thinnings and harvests also generate waste in the form of empty containers, packaging, used motor oils, etc. The contract should specify that these items will be removed from the site. Some equipment operators carelessly drain used motor oil and other fluids onto the ground during equipment maintenance. The contract should contain a clause prohibiting this practice.

Hazards

Known safety hazards on the landowner's property, especially within the project area, should be identified in the contract. (They also should be clearly marked on the site.) When a contractor signs a contract describing hazards, he acknowledges he is aware of the hazards. This adds a measure of protection for the landowner.

Payment Schedules

Service contracts should address when and how the landowner will pay the contractor. Timber sale contracts should address when the buyer will pay the landowner. Contracts may require a lump sum payment or may require partial payment when certain parts of the project are completed. Penalties for late payments, if any, should be specified.

Liabilities

Contracts should address liabilities for accidents which could occur while the work is in progress.

Damage On-Site

The contract should contain a statement that the contractor will bear the cost of repairing damage to culverts, fences, trees, etc., caused by his operations. Most contractors will want to see a statement that they will not be liable for damage caused by the landowner.

Damage Off-Site

The contract should contain a statement that the contractor will bear the cost of repairing damage to neighboring properties caused by his operations. Most contractors will want to see a statement that they

will not be liable for damage caused to neighboring properties by the landowner.

Insurance Requirements

The contract should contain a statement requiring the contractor to carry worker's compensation insurance to cover any injury to his own employees. Contractor employees who are not covered by worker's compensation insurance could hold the landowner liable for injuries. The contract also should require the contractor to carry general liability insurance.

Employment Law

To protect the landowner from legal liabilities, the contract should contain a clause requiring the contractor to comply with all applicable state and federal employment laws and regulations.

Dispute Resolution

Sometimes disputes arise over interpretation of contracts or whether the contract has been fulfilled. Forestry contracts should contain procedures for arbitrating disputes to reduce the chance of disputes landing in court.



Figure 7. Disputes occur. Contracts should contain procedures for resolving disputes.

Amendments

Projects don't necessarily go as planned. Unforeseen circumstances can arise which require changing terms of the contract. Forestry contracts should contain a section which addresses procedures for amending the contract.

Subcontractors

Under some circumstances, it may be appropriate to include a clause prohibiting the contractor from subcontracting part or all of the project. Without such a clause, the contractor may be able to hire as subcontractors vendors who are unacceptable to the landowner.

Premature Contract Termination

As in all of life, unexpected things occur. Sometimes these events prevent the contractor from completing a job or require the landowner to change

his plans. Contracts should contain provisions for terminating projects. These provisions should not be seen as an invitation to terminate a contract if something better comes along, but should be viewed as a tool for managing unforeseen problems.

The contract should specify how the parties to the contract will notify each other of planned termination. Contact information for each party should be specified as well as length of advance notice if required. If early termination entails penalties, those penalties should be specified. The contract should state whether partial payment can be made; and, if so, how the size of the payment will be determined.

Performance Bonds

Under some circumstances, the landowner may want to require a performance bond to help assure the work will be completed according to the contract and in a timely fashion. When performance bonds are required, the amount and conditions under which the bond will not be returned should be stated clearly in the contract.

Confidentiality

If the landowner wishes that details of the transaction be kept private, then the contract should state that the details of the contract will remain confidential.

Other Considerations

Include signature lines and signature date lines for the contractor, landowner and any necessary

witnesses. If you plan to have the document notarized, include a signature line for the notary.

Make sure each page of the contract is numbered. This will make it much more difficult for someone to add pages to or remove pages from the contract after it has been signed.

Conclusion

A well-written contract helps assure that the parties involved know what to expect from each other. It helps to eliminate unpleasant surprises and provides mutually acceptable means for resolving problems which may arise during the course of the project. Any forestry project which involves what you consider a significant sum of money should be covered by a contract. Many types of sample contracts are available on the internet. Some of these can serve as good guides for writing your own forestry contracts; however, there is not a good substitute for a review by a local forester and an attorney.

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