

Contracts for Woodland Owners and Christmas Tree Growers

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Without a properly written contract, small woodland owners and Christmas tree growers may find themselves in situations resulting in costly and time-consuming attempts at personal negotiations and the possibility of court battles. They might have avoided these complications if they'd known more about basic contract law before they became bound legally by a written or an oral contract. Knowing some basics about contracts also is very important in developing contracts that ensure the best results for managing your forest property. If the property stays in your family, your heirs will appreciate your sound management. This publication provides some basic principles of contract law as applied to planting, growing, maintaining, harvesting, and selling timber and Christmas trees. Several examples are provided to help apply these principles to make contracts, and contractual relationships, as efficient and effective as possible.

Note: Information in this publication is not intended as legal advice. For legal advice, please contact a qualified professional.

What is a contract?

A contract is an agreement that:

1. Describes a promise or set of promises between two parties
2. Stipulates that the performance of these promises is a duty
3. Provides for a remedy if one or both parties breach (break) these promises

Unilateral and bilateral—an important distinction

Contracts may be either *unilateral* or *bilateral*. Unilateral contracts have only one promise. They are formed with an exchange of an act (a performance) for a promise.

Example 1.

Sandy, a log buyer for a mill, offers (promises) to pay Wilbur, a woodland owner, \$500 per MBF (thousand board feet) for logs delivered at the mill. Sandy has a unilateral contract with Wilbur. When—and if—Wilbur delivers the logs, his act will simultaneously form the contract and perform his duty under it. Sandy then will be obligated to perform his duty, which is to pay Wilbur.

Unlike the unilateral contract, a bilateral contract is formed by the exchange of a promise for a promise. For example, sales contracts for standing timber (stumpage) commonly are bilateral contracts.

Example 2.

Ollie, a timber owner, promises to sell a quantity of timber at a designated price to Greg, a buyer. In return, Greg promises to pay that price for the timber at some later, specified date. Ollie's promise is the offer, and Greg's is the acceptance. Upon acceptance of the offer and before delivery of any timber, a contract is formed under which both parties have a duty to perform in the future.

If a contract's wording doesn't make clear whether it's unilateral or bilateral, courts almost always have ruled it to be bilateral. Ollie, in Example 2, may think the offer is a unilateral contract and thus not legally binding before delivery. However, if the court rules that it's a bilateral contract, then Ollie has promised to deliver and is bound to do so from the time of the promise. Failure to deliver can result in a breach of the contract. If that happens, the timber buyer can sue if he cannot obtain logs from another source as cheaply as from Ollie.

Four basic requirements

Courts require these four elements for a valid contract:

1. *Agreement*—an offer by one party (the offeror) and an acceptance of the offer by the other party (the offeree)
2. *Capacity*—the legal competency to be a party to a contract
3. *Consideration*—in a bilateral contract, the giving of each promise for the other promise; in a unilateral contract, a promise for an act and an act for a promise
4. *Legality of purpose*—meets local, state, and/or federal laws

Agreement (offer and acceptance)

Agreement between parties consists of two parts: the offer by one party and the acceptance of the offer by the other party.

Agreement includes making the offer, terminating the offer, and accepting the offer.

Making the offer

A valid offer requires three conditions:

1. Proper communication of the offer
2. Clear intent to make the contract
3. Terms that are definite and certain

Proper communication The party making the offer (the offeror) must communicate it to the intended recipient (the offeree). The offer is not effective until the offeree receives it. If an intended recipient isn't aware of an offer, no contract can be created.

Intent to make a contract If all basic elements of a contract have been met and if woodland owners later say that they didn't really intend to make a contract, a court probably would enforce the contract if the offer were accepted.

Advertisements to buy logs, such as newspaper ads, generally are not considered to have the intent to form a contract—rather, they're invitations to recipients to make an offer. However, if the ad specifies the price the buyer will pay by some unit of measure, and limits the intended offerees with such language as "first come, first served," then intent to make an offer probably exists.

Generally, timber sales by auction aren't evidence of intent to make an offer. Most auctions are invitations to members of the audience to make offers until the auctioneer (the seller or the seller's agent) accepts or rejects a bid. However, if the auction sale is advertised as being "without reserve," then intent to make an offer exists, and the goods must be sold to the highest bidder.

Definite and certain terms Under the third condition for a bona fide offer, a contract for delivery of logs to a mill would include the price to be paid for the logs by quality (log grades or camp run), the approximate quantity to be delivered, the point and date of delivery, and the timing and method of payment.

However, in a sale of goods (including logs), even without price or delivery terms, a court can find that a contract exists because there was intent to contract, and the court can set such terms. Therefore, it's important for buyer and seller to discuss these terms and agree on them when

forming the contract. This avoids misunderstanding—and possibly a legal action in which the court determines some of the terms of the contract.

Terminating the offer

An offer may be terminated by several means. Before acceptance, either of the parties may terminate negotiations for a contract.

An offeror—for example, a woodland owner offering timber for sale—can terminate the offer by withdrawing it before the intended buyer has accepted. Note that the withdrawal (usually referred to as revocation) is effective only at the time it's communicated to the intended buyer (the offeree).

The major exception is when an offer is made to a large number of people through some public communication like a newspaper. Then, the offer may be terminated through the same means as it was made, even if the termination is not actually communicated to each offeree. In other words, an offer in the newspaper can be withdrawn in the newspaper, even if some intended offerees who saw the offer didn't see the withdrawal.

It's best to withdraw an offer by some quick and direct means of communication such as the phone or e-mail, because the withdrawal becomes effective when the offeree receives it. If you use the phone, as an added protection mail the offeree a note confirming the cancellation and include the time and date of your phone call. Save a copy of the note and obtain documentation from the post office of the time and date you mailed it and when the buyer received it. Ask for certified or registered mail, with a return receipt (this could be important evidence if a dispute goes to trial).

If you offer to sell timber from your woodland, be sure the offer includes a clearly stated time limit such as "10 days from [month, day, year]" or "by [month, date, year]." Do not say "10 days from this offer" or some other poorly defined time for the acceptance of the offer.

Include a clearly stated termination deadline in your offer. You always can revise it later. If no time limit is included, courts have held that a "reasonable" time limit prevails. This is a somewhat subjective

standard which could depend on the product offered for sale, the custom in the market, and (if necessary) a court's opinion of a "reasonable" time period.

If either party to the offer dies *before* acceptance, the offer is terminated automatically without communication to the other party. If either the offeror or offeree dies *after* acceptance of the offer, the estate of the deceased party must assume responsibility for fulfilling the terms of the contract (whether for goods or services).

If the "subject matter of the contract" is destroyed *before* acceptance by means over which neither party had control (for example, timber destroyed by fire), no contract is formed. If the subject matter is destroyed *after* the contract is made, a contract exists, but the rules are complicated as to who bears the loss.

Accepting the offer

For bilateral contracts, acceptance of an offer must be made by any means required in the offer. For example, if a woodland owner offering to sell timber requires acceptance by mail, no other means is acceptable.

If the offer doesn't specify a required means of acceptance, it's safest to use the same means to communicate the acceptance that the offerer used for the offer. If the offer was made by mail, accept it by mail. If it was made by phone or e-mail, reply by phone or e-mail and confirm by letter. Clearly defining the terms of the contract and getting both original signatures on a paper document may avoid a future lawsuit.

An offeree's acceptance of an offer usually is effective when the acceptance is dispatched if it's sent by the same means of communication as the offer. This is important because whether or not an offer is terminated depends on whether the offeree received the offeror's notice of termination before sending an acceptance.

Example 3.

Rick mails an offer to Chal to have Chal prune the lower limbs of Rick's Christmas trees for \$500. The offer

Clearly defining the terms of the contract and getting both original signatures on a paper document may avoid a future lawsuit.

states that Chal must accept within 10 days from the date of the letter, which is June 6. Chal receives the letter June 8. On June 10, Rick decides to withdraw the offer because he has found someone to do the job for \$400. He attempts to withdraw the offer quickly by sending a telegram. Meanwhile, Chal has decided to accept, and he drops a letter in the mailbox 1 hour before he receives the telegram. A contract has been formed, and Rick must either perform or breach the contract and pay Chal for any damages incurred if he can't get other work paying as well during that period. In some cases, Rick might have to pay even if Chal finds other work paying as well during that period.

Note that Chal may have difficulty proving he sent the letter of acceptance before he received the telegram. He can testify to it under oath; if a jury believes him, he'll win. When sending a letter of acceptance, send the letter "certified mail, return receipt requested" and ask the postal clerk to write the time on the receipt. This ensures a good record of the time it was sent.

For the occasional unilateral contract for services such as shearing Christmas trees, the offer to pay is "accepted" when the offeree finishes shearing the trees. For example, if a Christmas tree grower asks a shearer to shear his or her trees and the shearer says, "I don't know if I'll have time, but if I find time, I'll do it," the offer is for a unilateral contract. The shearer has made no promise, but acceptance occurs when the shearing is completed. No formal communication of intent is required to accept the terms of the offer.

Because acceptance of an offer under a unilateral contract means completing the act required by the offer, the offer can't be canceled once the act is completed—even if the grower doesn't know the shearing has occurred.

As a good business practice, it's better to restate the offer as an offer for a bilateral contract. In this situation, the Christmas tree owner should get the shearer's commitment (promise) to shear in return for the owner's promise to pay.

Capacity

The second element necessary for a valid contract is capacity. Minors and those who have been held insane by a court of law have no "capacity." They can neither enter into a contract nor be held liable for fulfilling their part of the bargain. Anyone employing individuals under age 18 should consult Oregon and federal laws regulating the employment of minors.

Woodland owners who hire young contractors to shear or prune Christmas trees or perform other contractual work should verify the age of the contractor before signing the contract. Otherwise, the minor can avoid the consequences of not fulfilling the contract by communicating an intent to cancel the agreement. If the underage contractor signs the contract, begins work, and then refuses to finish, losses may be recoverable in some circumstances.

The woodland owner can be protected by having an adult and the minor co-sign the contract as an obligation of both. The clause could be stated: "I, [adult's name] and [minor's name], jointly and severally promise to carry out the obligations. . . ."

Consideration

Consideration, the third requirement for a valid contract, is the giving up of a legal right. For formation of a unilateral contract, consideration is the exchange of one party's promise for the other party's act.

For bilateral contracts, both acts (performances) come after the contract has been formed by the two promises. The promises of a woodland owner to deliver logs and of a log buyer to pay for the logs constitutes consideration. If the woodland owner fails to deliver the logs, performance is lacking; but consideration has been exchanged, and the contract continues to be valid. In this situation, failure to deliver the logs breaches the contract, and the breaching party can be sued and made to pay damages to the other party.

In a contract for *service*, once consideration is exchanged and a valid contract is made, neither party may change the terms of a service contract without (a) obtaining the other party's consent, and (b) giving additional consideration.

Example 4.

Max, a tree cutter, contracted to harvest Christmas trees for 25¢ per tree for Charlotte. But after harvesting began and other contractors were difficult to find, he insisted on 30¢ per tree. If Charlotte agreed but later refused to pay the extra 5¢ per tree and Max sued for it, courts would rule that Charlotte is liable only for 25¢ per tree, even though she agreed to pay more. In this case, Max continued to do the same work promised in the original contract. There was no additional consideration offered by Max to match the additional price of 5¢ agreed to by Charlotte. As a result, only the original contract is enforceable.

However, in a contract for the *sale of goods* (for example, timber or logs), the terms may be changed without additional consideration so long as both parties consent to the change.

Whether the consideration exchanged is adequate is *not* a factor that determines the contract's validity. If a seller, for example, agrees to sell logs delivered at the mill for \$500 per MBF and then discovers that the current price is \$520 per MBF, the seller is bound by the contract price of \$500 per MBF.

If a buyer promises in a written contract to pay \$600 per acre for forestland and then discovers that the going market price is \$400 per acre, the buyer must pay \$600 per acre for the land, assuming the contract is valid in other respects.

If one party has misrepresented any of the contract's terms or has brought excessive pressure on the other party to enter the contract, the validity of the contract may be challenged. Misrepresentation could constitute legal fraud; excessive pressure could be legal duress. In either case, the "victim" might be able to sue for cancellation of the contract or compensation for any damages caused by the alleged fraud or duress. Even if the misrepresentation was innocent, the victim might be able to sue for cancellation.

Legality of purpose

A contract is not enforceable if it violates local, state, or federal law. For example, since 1981, Oregon has placed no limit on interest rates charged by banks, savings and loan institutions, and credit unions.

However, the law requires many other lenders to have a license before they have complete freedom to set an interest rate on loans of \$50,000 or less.

Wherever the law sets a maximum interest rate and the interest in a contract is above that legal rate, all interest (in some states, even the principal) may be forfeited. In Oregon, the interest is forfeited.

A contract may be valid at the time of its agreement but may become unenforceable if one party declares bankruptcy. A woodland owner

who sells logs to a mill under a contract may not be able to collect on the contract if the mill declares bankruptcy. Instead, the woodland owner has to make a claim in the bankruptcy action; this often leads to recovering only a small fraction of any amount owed under the contract.

Any contract that contains the four basic elements—agreement, capacity, consideration, and legality—may be a valid, enforceable contract, but it may not be a complete contract.

Other important contract terms

Any contract that contains the four basic elements—agreement, capacity, consideration, and legality—may be a valid, enforceable contract, but it may not be a complete contract. Other important elements may be needed to avoid misinterpretation during the performance of a sale or service. Table 1 (pages 11–13) lists some of these elements but is not an exhaustive list of elements in an enforceable contract.

Contracts' content varies depending on the nature of the sales transaction or provided service. Some of the items listed in Table 1 may not apply to a specific contract, but other items not listed may be essential.

Experienced woodland owners and forestry consultants strongly recommend that parties forming a contract choose a lawyer or lawyers experienced in issues associated

with the forest products industry to write a contract for the sale or purchase of forest products or for the hire of services. Ask other woodland owners for the names of lawyers who have written such contracts and who have satisfactorily demonstrated their experience in this area.

The cost of a well-written contract will vary depending on the complexity of the sale or service. Hiring a lawyer who already has this expertise to write a clear, concise contract may save you time, money, and a great amount of frustration.

Importance of written contracts

Occasionally, a participant in an oral contract will attempt to have the contract canceled based on the Statute of Frauds. All states, including Oregon, have adopted a form of this statute to govern the use of written and oral contracts.

In many, but not all, cases, contracts must be in writing to be enforceable. A written contract may be enforceable even if it does not contain all the terms intended by the parties. Providing enough basic terms *were* written down, and the party against whom the contract is being enforced *did sign* it, the other party can enforce the contract in a court.

Among the contracts that must be in writing to be enforceable, three kinds apply to forestry transactions.

1. Contracts for the sale of real property or an interest in real property. “Real property” includes forestland and property permanently fixed to the land, such as buildings. “An interest” in real property includes easements and leases for land or buildings for more than 1 year.
2. Contracts that can’t be performed within 1 year from the date of making the contract (not from the date of beginning of performance).
3. Contracts for the sale of goods for a total contract price of \$500 or more; for example, logs sold for a contract price of \$500 or more. In most states, including Oregon, standing timber to be cut by the buyer is classified as

goods (not real property) in a timber sale contract without the land.

Enforcement of an oral contract usually requires legal proceedings, which can be costly and time consuming. All things considered, it’s best to follow the general rule—put your contract in writing!

It’s very important that a written contract be carefully drafted and clearly written. The objectives of each contract should be written in language as free of “legalese” as possible, clearly stating the means for reaching the objectives. Sometimes, however, “legalese” is necessary because earlier court cases have clarified what particular legal terms or phrases mean, and using them is one way to avoid misinterpretation.

If any part of the contract is not well written (e.g., if it’s ambiguous) and is disputed in court, it’s usually interpreted against the party who drew up that part.

Cancellation (rescission) of contracts

The most common causes for canceling contracts probably are fraud and innocent misrepresentation; others are misunderstanding between the parties and duress or undue influence. In certain situations—even innocent misrepresentation—courts have ruled that intent didn’t exist and that one party (or, in the case of mutual mistake, either party) may request that the contract be canceled.

Proving fraud in a contract requires the party claiming injury to show that the alleged defrauder misrepresented a material fact (that is, one that might have changed the victim’s mind) and did so with the intent to deceive. The victim also must show (1) that it was reasonable to rely on the alleged defrauder’s misrepresentation, and (2) that he or she suffered an injury (usually a money loss, because the subject matter of the contract was worth less than represented). Fraud usually is difficult to prove.

If a seller of forestland knowingly misstates, for example, the number of acres of forestland in a tract or the volume of timber presently on the tract, the first test of fraud would be met. On the other hand, if these

statements were merely opinions, the test of misrepresentation of fact would not have been met to prove fraud.

The second test, proof of intent to deceive, is more difficult to establish. The plaintiff (victim) must prove that the person charged with fraud “knew or should have known” that the statement of fact was untrue when it was made.

Moreover, the victim of the alleged fraud must show justifiable reliance on the statement of fact when entering into the contract. If the alleged defrauder’s statement is easy to confirm, the victim should take reasonable measures to verify the information received from the alleged defrauder.

If the alleged defrauder can establish that he or she misrepresented the facts honestly and believed them to be true, the other party may sue for innocent misrepresentation and request the contract be canceled without award of damages. If the court allows cancellation, both parties are returned to their positions prior to the contract.

Remedies for breached contracts

Breach of contract is the failure, without a legally acceptable excuse, to perform any promise or to carry out any term of a contract. Assuming that (at a minimum) the four basic requirements have been met and that a valid contract exists, what happens if the contract is breached?

Breached contracts may take numerous forms, depending on the nature of the contract. For example, contracts to sell standing timber to be cut by the buyer might be breached by the following circumstances.

1. *On the part of the seller:*
 - a. Seller refuses to mark trees for harvest (assuming the contract calls for designating harvest trees)
 - b. Seller prevents buyer from entering the sale area
 - c. Seller has someone else remove the trees before buyer arrives to claim them
2. *On the part of the buyer:*
 - a. Buyer or buyer’s logger causes excessive damage to residual trees in violation of the terms of the contract

- b. Buyer fails to replant harvested areas according to the terms specified in the contract
- c. Buyer removes the trees and then pays less than the agreed price

Damages

What recourse does the buyer or seller have if the other party fails to keep a promise required by the contract? After all other avenues have been pursued, the injured party may file a lawsuit and ask for compensatory damages. If the court finds damages have occurred, it usually awards an amount calculated to replace the financial loss directly due to the breach of contract.

Attorney fees usually aren’t included in the award of court costs. An attorney fee may be added to the judgment if the contract provided that, in case of a dispute, the party winning in court had the right to claim a reasonable attorney fee from the losing party.

The court award is collected by finding assets owned by the losing party and having them legally taken to pay the judgment. But a judgment doesn’t guarantee payment. Some debtors do not have assets that are easy to find, and every debtor has the right to keep certain assets from a creditor. In Oregon, the assets a debtor may keep from a creditor include a stated amount for household furnishing, wearing apparel, jewelry and other personal items, and other assets too numerous to mention here.

Specific performance

If the product sold is unique (not replaceable with a similar product), the injured party might sue for specific performance. Suppose, for example, that Joe offered to sell noble fir Christmas trees to Elissa, but Joe delivered Douglas-fir Christmas trees instead. Elissa might ask the court for an order requiring specific performance—that is, requiring Joe to provide noble fir Christmas trees as promised in the contract.

Injunction

Occasionally, one of the parties to a contract will ignore a contract provision that’s

essential to the successful completion of the agreement. In this case, the other party could apply for an injunction to stop the operation until the first party complies with the agreement.

For example, a contract requires due care in avoiding injury to residual trees, and the seller believes the logger is not taking due care. The seller may be able to obtain an injunction from the court that forbids the logger from continuing to harvest the timber until the logger agrees to specific logging practices that will reduce logging damage to an acceptable level.

However, it's often better to include a provision in the contract allowing the owner to stop harvesting, based on his or her sole discretion that the buyer isn't complying with one or more terms in the contract.

Alternatives to litigation

If the parties to the contract agree, they can include a provision to use an alternative to litigation to resolve disputes. Two of the most common are arbitration and mediation. While there are significant differences between the two procedures, both tend to be faster and less expensive than litigation. One possible disadvantage is that a precedent will not be set in the event of future litigation on the same or similar issues.

Many commercial arbitration and mediation services are available. Two well-known organizations that provide both are the American Arbitration Association and the United States Arbitration and Mediation Association of Oregon (similar organizations are in other states).

Oregon forest practices laws

In addition to points covered in the previous sections, Oregon statutes relating to forest practices raise important issues. The most important are the Oregon Forest Practices Act & Rules (FPAR), the Eastern and Western Oregon Severance Tax Laws, and Forest Products Harvest Tax Law (FPHT).

What is these laws' effect on woodland owners' contracts for sales and services? Responsibility for meeting the acts' requirements is divided among the owner of the

forestland, the owner of the timber, and the forest operator. Any combination of these roles carries corresponding responsibilities.

Owner of forestland Under FPAR, the forestland owner has these obligations.

1. Meet the requirements for stocking of trees on forestland after logging (i.e., reforestation).
2. Maintain logging roads over the long term or meet the requirements for vacating unused roads.
3. Make certain that the owner's contractors fulfill these requirements.

Owner of timber The timber owner, when the timber is harvested, may have tax liabilities. (See *Federal Income Taxation for Woodland Owners: An Overview*, EC1526.)

1. If signed up for the Small Tract Forestland Option, eastern Oregon forestland owners currently pay \$3.03/MBF and western Oregon forestland owners pay \$3.89/MBF.
2. If forestland is part of the Oregon Forestland Program, no severance tax is assessed.
3. Forest products harvest tax, currently \$3.07/MBF on all forest ownerships (the first 25 MBF/year are exempt).

Forest operator Under FPAR, the forest operator, landowner, or landowner's representative (consultant) has these obligations.

1. Notify the state forester of intent to operate on forestland.
2. Meet forest protection requirements as specified in the FPAR rules for:
 - a. Preventing and suppressing fire
 - b. Preventing stream damage
 - c. Preventing damage to wildlife and aquatic habitat

To reduce costs, the landowner, timber owner, or forest operator sometimes shifts responsibility for requirements under FPAR and/or the severance tax or Forest Products Harvest Tax to one of the other parties. For example, the landowner may shift responsibility for reforestation to the timber buyer by including a clause in the timber sale contract requiring the buyer to meet or exceed reforestation requirements. However, the landowner can't shift the *accountability* for meeting these requirements, or for paying

either severance taxes or the Forest Products Harvest Tax.

For instance, if the contract between the landowner and the timber buyer or forest operator requires the timber buyer or operator to reforest a harvested area—but he or she fails to do so—the state forester can require the landowner to meet the reforestation standards of FPAR on the harvested area. In that event, a landowner who wanted to recover the cost of reforestation would have to sue the timber buyer or forest operator for breach of contract. Requiring a bond to back up the operator's pledge to complete reforestation can protect the landowner in this case.

After the operator files a "Notification of Operations" at the appropriate local office of the Oregon Department of Forestry, there's a 15-day waiting period before operations can begin. This gives the state forester's local representative (the stewardship forester) time to determine whether a site inspection or technical advice is needed to avoid potential problems, such as slides caused by road construction or damage to important wildlife habitat.

If, after reviewing the proposed operation plans, the stewardship forester finds special problems that the operations may cause, the forester can require special written plans stating how operations will be conducted to eliminate resource damage. This process may delay the operation.

Compliance with FPAR also may affect the amount of timber harvested or the cost of operations. In some cases, FPAR requires that timber be left for stream protection or wildlife habitat. In such cases, the volume harvested or price offered may not meet the owner's expectations.

It's important that the landowner, timber owner, and forest operator know the requirements of FPAR and be clear about their respective responsibilities. Understanding the provisions of the Oregon Forest Practices Act can substantially influence not only the drafting of a contract but also the mutual satisfaction of all parties and, potentially, the contract's legality.

Before beginning negotiations for a forest operation—harvesting timber, reforestation, precommercial thinning, or some other project—study the act carefully and consult with a stewardship forester.

You can get more information about the Forest Practices Act at your local office of the Oregon Department of Forestry, or write to the Department at 2600 State St., Salem, OR 97301. The local stewardship forester is an excellent source of information on the act and the regulations used to implement it. (See also *Oregon's Forest Practice Rules*, EC 1194.)

Other laws to consider

The Oregon Forest Practices Act and other Oregon laws are not the only laws that must be considered when you contract. The state and federal governments may at any time pass new laws or amend laws that could affect your contract. For example, the Endangered Species Act may prohibit cutting timber on parts of your land; if so, these areas would need to be considered when determining the contents of a timber contract.

An experienced lawyer should be aware of these types of law changes and any effects they may have on contracts. In addition, local offices of the Oregon Department of Forestry and the Oregon Department of Fish and Wildlife generally have current information about applicable state and federal requirements for fish and wildlife habitat protection that extends beyond what is explicitly covered in the Forest Practices Act & Rules.

Developing a satisfactory contract

Hire an experienced adviser

If you're inexperienced in writing contracts, you may need to hire an experienced consulting forester or legal adviser. In particular, absentee woodland owners should consider hiring experienced local consulting foresters to represent their interests in preparing an effective contract and supervising the operation to ensure fulfillment of contract terms.

Consulting foresters often have sample contracts that have worked well in similar situations for other woodland owners. Furthermore, an experienced consulting

forester can recommend lawyers who've been successful in writing forestry contracts particularly applicable for owners of small woodland properties. Sample contracts from

Sample contracts from a consulting forester should be reviewed by a lawyer before signing.

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After you've found a lawyer experienced in writing and/or reviewing contracts for forest operations, what can you do to reduce legal costs and still develop a good contract? First, before consulting the lawyer, list

the objectives you wish to achieve through the upcoming timber sale or service you intend to contract.

Next, list the key elements you need to accomplish each objective. Review this list carefully with your lawyer, adding or subtracting items as you explain and discuss your objectives.

After your lawyer drafts a contract, review it carefully, comparing the draft wording with your objectives and list of key elements, including those in Table 1. Note any omitted or unclear points in the contract and review these points with your lawyer.

Send the unsigned contract to the prospective buyer of the forest product or contractor of the service. After the other party returns it (perhaps with suggestions), review any suggestions with your lawyer and prepare the final document. Sign the contract and send it to your buyer or contractor for signature.

If repeatedly selling timber or contracting for the same services, a previous contract used for these occasions may be satisfactory. Nevertheless, always review the objectives of the new sale or service and make certain that the contract meets those needs.

Applicable laws can change, and so can your needs and objectives.

If experience shows that a previous contract was unsatisfactory, consult your lawyer regarding changes for improvement.

Furthermore, laws may change, requiring new provisions in your contract.

Using sample contracts

The following sample contracts and agreements are intended only for educational purposes. Appendix I is a sample logging contract. It contains most of the points set out in Table 1. Appendix II is a sample timber sale agreement. Appendix III contains a sample of a permanent, nonexclusive road-use agreement. Three main types of road-use agreements are permanent, temporary (sometimes called easement agreements), and reciprocal. While differing primarily in duration periods, each contains similar elements. Appendix IV is a sample forestry road easement.

Can you think of other provisions that might be required in your particular circumstances? Is the wording of the included provisions adequate? These are questions you must answer when you help draft a contract specific for your situation.

You can obtain other sample contracts from the Forestry Assistance Program, Oregon Department of Forestry, 2600 State St., Salem, OR 97301, or from service foresters at local ODF offices. These sample contracts are to be used by nonindustrial forestland owners as guides for developing contracts suitable for their specific needs.

Including sample contracts in this publication in no way signifies endorsement or applicability for the use of any or all parts of any of the contracts. Rather, the intent is to show some of the terms that you might expect to find in a contract for the sale of timber or management of forest property, and to help you become familiar with the language used in these types of agreements and the applicable legal requirements.

Remember that each contract must be tailored to the individual needs of the parties involved. No sample agreement can be guaranteed to cover all situations or to be consistent with the often-changing principles of law.

Table 1. Elements that may be needed in a sales or service contract for a woodland operation.

Item	Sales contract	Service contract
Location	Include a legal land description for every sale of standing trees (stumpage). Include a portion of a map outlining sale areas, following natural or survey boundaries. Mark these clearly and tag them on the area proposed for harvest. In the contract, include the method of marking the boundaries.	Include the same information, if location is important for fulfilling the service contract.
Term of the contract	State clearly the beginning and ending dates for the agreement. Provide a means for granting extensions, if unseasonable weather makes it too difficult to log or if logging would harm the property. A very important clause.	Include an ending date for completing the contract. Allow for extensions for unanticipated problems.
Operation on the property	Include a clause to either suspend or terminate the operation when the seller alone determines that there is a failure to follow the terms of the contract. This is another important clause.	A similar clause is needed in a service contract, to permit the buyer of the service to suspend or terminate the operation when the buyer alone determines that contract terms are not being followed.
Equipment permitted	Limit the kind of equipment used on the property according to the environmental conditions that affect the operation (slope, soil moisture, etc.).	For some service contracts (e.g., road building), similar clauses may be needed.
Forest Practices Act & Rules	Require adherence to the directives of the Oregon Forest Practices Act and Administrative Rules (FPAR). In Oregon, the logging operator is responsible for meeting state forest fire regulations. However, the landowner may require additional measures. The contract should assign responsibility for payment of fire fighting costs and damages from fires caused by logging.	Require that FPAR and all other laws be followed.
Protection of the residual stand	Emphasize the importance of caring for “leave” trees, either in falling or in skidding. For a thinning or other silvicultural system requiring “leave” trees, establish penalties for cutting unmarked trees. Describe how trees are marked—for cutting, for the residual stand, or for the boundaries of a clearcut.	For some types of contracts (for example, for brush control using herbicides), specifications for reducing damage to the residual stand are important. For precommercial thinning, specify the spacing of “leave” trees.
Slash disposal	Include specifications for slash disposal from timber harvest.	If slash is produced in a service operation (such as road building), include specifications for slash disposal.

Table 1 (continued)

Item	Sales contract	Service contract
Roads, landings, bridges, culverts	<p>Specify location, construction standards, and maintenance of roads, landings, bridges, and culverts. Prepare these specifications in terms of future as well as present management objectives.</p> <p>Buyer should be required to repair damage to existing fences, bridges, and roads—or pay damages.</p>	<p>Include the same kind of information if applicable.</p>
Easements	<p>Establish whether the buyer or seller is responsible for obtaining, paying for, and maintaining necessary road access agreements.</p> <p>Make certain that the buyer of forest products or lessor of forestland has the right to enter and work on the property, including the right to remove forest products sold under contract.</p>	<p>Contract should specify the party responsible for obtaining, paying for, and maintaining rights-of-way needed to complete service contracts.</p> <p>The contractor must have the right to enter and work on the property.</p>
Risk reduction	<p>The contract should list the types and amounts of required insurance. Some kinds of insurance typically needed are:</p> <ul style="list-style-type: none"> a. General liability and motor vehicle b. Loggers' excess property damage c. Workers' compensation <p>Require proof of insurance and endorsements that require prior notice of any change or cancellation of the insurance.</p>	<p>Similar requirements apply to contracts for services.</p> <p>Request to be placed on policy as "additional named insured."</p>
Taxes	<p>Severance tax and Forest Products Harvest Tax</p> <p>Under Oregon law, the owner of the forest product at the time of harvest pays these taxes. However, responsibility for paying these can be shifted to another party in the contract. If that party fails to pay the tax, responsibility for the tax reverts to the owner of the forest product at harvest.</p>	<p>Responsibility for paying these taxes usually is not applicable in a service contract unless merchantable timber is harvested (e.g., in road construction).</p>
State and federal payroll, income, and other taxes	<p>The contract should state that the buyer agrees to pay all taxes associated with his or her operation on the sale except those specifically exempted by the contract.</p>	<p>A clause similar to that suggested for the timber sales contract should be included in the contract for services.</p>
Method of payment	<p>State how and when the buyer will pay for the stumpage or logs or other forest products.</p> <p>Provide a system for checking the quantity by grade of logs removed or delivered.</p>	<p>State how and when the contractor will be paid for his or her services.</p> <p>Include checks and controls to ensure that the quantity and quality of the work is satisfactory.</p>

Table 1 (continued)

Item	Sales contract	Service contract
Other essential legal provisions		
1. Resolution of disputes	Provide for arbitration of disputes if you don't want court action. (Arbitration usually is cheaper and faster than a trial, and you can select an expert as the arbitrator.) Provide for the payment of reasonable arbitration fees to the prevailing party. Arbitration usually—but not always—is final.	Include a similar clause for service contracts.
2. Mutual attorney fees	Whether there's an arbitration clause or not, provide for the payment of reasonable attorney fees to the party prevailing in any suit or action for breach of contract.	Include the same clause in a service contract.
3. Waiver of breaches	Include a clause that states that if the seller waives one breach or default of the contract, the waiver is not to be interpreted as giving permission for continued or future breach of the contract.	Include a similar clause for service contracts.
4. Liabilities	Require the buyer to keep all products harvested or timber purchased free from liens or attachments.	Require the contractor to keep all improvements to real property free from liens or attachments.
5. Severability	Include a clause that provides that if one or more provisions in the contract are illegal, the rest of the contract still is enforceable.	Use a similar clause here.
6. Notice	Provide for notice of breach, stating how notice will be delivered.	Include a similar provision in service contracts.
Signatures	Place the seller's and buyer's names, legal addresses, and signatures at the end of the contract. If you have an agent, show the agent's name and address. Include the date and place where the agreement was executed.	Similar information is needed in contracts between a buyer and seller of a service.

Appendix I. Sample Logging Contract

This agreement is entered into by and between _____, hereinafter referred to as Owner, and _____, hereinafter referred to as Logger.

Whereas, Owner has timberland in that portion of (*legal description*) _____

_____.

Whereas, Owner desires to have logged and removed from the above-described property all merchantable timber designated by _____ (*name*), an agent for _____ (*company or individual name*).

Whereas, Logger has represented to _____ that he is fully acquainted with the requirements of the Owner, that he understands this agreement; that he is competent and responsible; that he owns or controls the use of equipment adequate to perform the road construction, logging and decking, brush disposal and hauling herein contemplated.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS, CONDITIONS, AND AGREEMENTS HEREINAFTER CONTAINED, THE PARTIES DO AGREE AS FOLLOWS:

1. AREA: The parties understand and agree that the logging to be performed hereon shall be performed in that area known as that portion of Sec. __, Twp __, Rge. __, consisting of __ acres or thereabouts.
2. WORK AND LOCATION OF DELIVERY SITE: Logger agrees to handle all phases of logging, which shall include, among other activities, felling and bucking, yarding, loading, hauling and cleanup. Logs will be delivered to mills which are approved by Owner.
3. PROTECTION AND MAINTENANCE OF LOGGING ROADS AND IMPROVEMENTS: Logger shall be responsible only for work necessary in the immediate area he is logging. Logger shall water-bar all roads or trails or ditch skid trails used during the life of this contract. All roads shall be kept clear of logs and debris at all times.

Logger shall use all reasonable and necessary precautions to prevent damage to the main logging roads used during the life of this agreement and will repair any road damaged in the process of logging. Logger shall use for this operation only those roads designated by Owner.

Logger shall protect all fences, power lines, and other improvements. Damaged facilities shall be repaired or replaced at Logger's expense.

4. BRANDING OF LOGS: Before removing any logs from the designated area, Logger shall cause to have all logs branded in a legible manner with such brand or brands as may be designated by Owner. All timber upon the area in question and all logs produced therefrom shall at all times be and remain the property of Owner.
5. PAYMENT RATES AND ADVANCES: The parties understand that the rates to be paid to Logger are ___% of the value of the logs paid by the log buyer. Owner further agrees the log buyer may directly pay Logger his share of the proceeds.
6. SCALING: It is understood and agreed that all scaling and grading shall be performed by or certified by a certified third party and that payment shall be based on net scale.

7. MANAGEMENT—FIRE: Logger shall faithfully keep, perform and observe all requirements and obligations imposed by law with respect to the management, control and operation of forestlands or cutover lands, and with respect to logging generally. This shall further refer to all laws imposed by the State of Oregon. Logger shall exercise the highest degree of care to prevent fire from starting on or coming upon Owner's property. Logger shall use every possible effort at his own cost and expense to control, extinguish, and prevent the spread of any such fire. Logger shall immediately notify Owner's agent of any fire upon the area described in this agreement or adjacent property. Logger shall defend, indemnify, and hold Owner harmless from any and all costs and expenses or from any and all claims of damage to person or property of any third party arising out of Logger's failure to use every possible effort to prevent, control, or extinguish any such fire.

Logger shall provide all fire equipment specified by the State of Oregon. If the State of Oregon determines extra-hazardous fire conditions exist, Logger shall furnish any additional fire protection required by the State of Oregon.

8. INSURANCE: During the life of this agreement, including any extensions thereof, Logger shall carry and pay for the following minimum insurance amounts:

a. Public Liability Insurance:

Automobiles

Bodily Injury - \$1,000,000 Each Occurrence

Property Damage - \$1,000,000 Each Occurrence

Or Combined Single Limits - \$1,000,000

Exposures Other Than Automobiles Including Contractal and Completed Operations

Bodily Injury - \$1,000,000 Each Occurrence

\$1,000,000 Each Person

Property Damage - \$1,000,000 Each Occurrence

Or Combined Single Limits - \$1,000,000

Broad Form B Logging Property Damage

With Limits of Not Less Than \$2,000,000 Each Occurrence

Including \$300,000 Non-negligent Fire-fighting Coverage (IRS 477)

Owner shall be named as an additional insured on such policy or policies and shall be provided with certificate(s) of insurance evidencing such coverage no later than (date) _____. Owner shall be given at least 30 days written notice of any cancellation, expiration, or modification of such policy or policies.

1. Logger, in conducting operations under this agreement, shall fully comply with the Workers' Compensation Laws of the State of Oregon and maintain coverage not less than the amount required by law for each and every employee or agent under his/her direction or in any way associated with Logger's operation on Owner's property.

9. INDEPENDENT CONTRACTOR: Owner and Logger agree that during the life of this agreement and in accordance with its terms, Logger is an independent contractor and at no time, nor under any circumstances, shall Logger be considered an agent or employee of Owner. Logger shall be responsible for any loss, personal injury, death and/or other damages that may be done to or suffered by workers or other persons in connection with the operations to be carried out pursuant to this agreement and shall defend, indemnify, and hold harmless Owner against any claims of loss, injury, death, and/or damage made by any worker or other person associated with Logger. This shall apply to all incidents of such loss, injury, death, and /or other damages, including incidents of loss, injury, death, and/or damage for which either or both parties hereto may or shall be liable.

10. LIABILITY LIENS: Logger agrees that he will protect, indemnify, save, and hold Owner harmless from and against any and all liability of any kind and nature growing out of or in connection with this agreement. Logger will also protect all timber and logs from all liens, costs, or charges for labor, materials, or supplies, which may be incurred by Logger or anyone claiming under him in this operation.

11. ASSIGNMENT: Parties agree that Logger shall not assign or transfer his interest herein without first obtaining the written consent of Owner.

12. COMPLETION DATE: Parties agree that all logging contemplated, including necessary clean-up complying with Owner's specifications, shall be completed in full on or before (date) _____, unless extended in writing by Owner.

13. ATTORNEY FEES: If this agreement between Logger and Owner becomes a matter of litigation between the parties, the prevailing party shall be entitled to reasonable attorney fees and court costs in connection therewith.

14. BINDING ON HEIRS: Subject to the provisions contained herein, this agreement shall be binding upon the heirs, executors, administrators, successors, and legal representatives of the parties hereto.

15. TERMINATION—DEFAULT: The parties agree that either party may at any time, with or without any cause whatsoever, terminate this agreement by giving written notice of such termination to the other party at least 30 days prior to the date upon which said termination becomes effective. Upon the date of termination, Logger shall vacate the real property and remove all his appliances, tools, and equipment therefrom, and Owner may at once take possession of any and all parts of the real property upon which Logger may be operating and all standing and down timber thereon. If this agreement is so terminated by Owner prior to the time it is fully carried out by Logger, Owner shall pay Logger as follows:

- a. For all logs delivered under the terms of this agreement for which payment has not been made, Owner shall pay Logger the prices set forth in this agreement.
- b. Owner shall reimburse Logger for all reasonable expenses incurred by Logger prior to such termination in connection with any yarded timber on any area which has not been completed and entirely logged off at the time of such termination.

If this agreement is terminated by Logger, Owner shall make payment to Logger under the terms of subdivision a) of this clause, but Owner shall be under no obligation to Logger for any expenses referred to in subdivision (b) of this clause. Notwithstanding anything to the contrary herein above set forth, it is expressly understood that time and strict performance by Logger of all covenants and agreements herein contained are the essence of this agreement, and Logger shall be and remain liable to Owner for any breach of contract or violation of any and all terms of this agreement prior to the date of such termination. Therefore, Owner shall maintain all rights to pursue any remedy at law, or in equity, for such breach or violation.

If Logger is in default of any of the provisions of this logging agreement, Owner reserves the right to immediately shut down the operations of Logger while such noncompliance continues. If such default remains uncorrected for a period of 15 days after Owner's giving of written notice to Logger, then and in that event, Owner shall have the right to terminate this agreement and to invoke any remedies provided for herein or provided by law or in equity. Inasmuch as the amount of damages which may accrue due to Logger's default are difficult to ascertain and measure, it is herein provided that any moneys owed Logger that Owner shall have in its possession shall be retained as liquidated damages. However, such forfeitures of money shall not be deemed a remedy to the exclusion of any other remedies provided for herein or by law or in equity.

16. SUPERVISION AND MANAGEMENT: Logger understands that _____ is the designated representative of Owner with respect to all agreements, supervision, and decisions related to this agreement. Logger is solely responsible for supervision of his employees, agents, and subcontractors and management of their work.
17. NOTICE: Any written notice or communication given by one party to the other provided for in or concerning this agreement may be delivered to the Logger in person or to _____ (*name, typically of Owner*) in person or be delivered by being sent via certified mail to the party for whom intended, and shall be deemed served upon such party if sent by certified mail on the day following the day on which it is deposited in the United States Mail in any post office in the State of Oregon. Owner agrees to accept certified mail sent to _____ (*typically, address of Owner*). Logger agrees to accept certified mail sent to _____ (*typically, address of Logger*).
18. SAFETY: Logger agrees that he, his heirs, assigns, employees, and personnel so designated to fulfill the within agreement shall conduct their activities in a safe and workmanlike manner and shall cooperate in making it possible for Owner's agent to safely and economically scale and inspect the cutting, logging, construction, or other activities of Logger under this agreement.
19. CONTROL OF OUTPUT: The parties agree that at all times, Owner's agent shall direct and control the extent and quantity of logs to be delivered, the area in which Logger is to work, and the output of logs.
20. ADDITIONS TO AGREEMENT: The foregoing writing contains all the terms and provisions of the present agreement between the parties. Parties agree any additions, variations, extensions, or modifications to their agreement shall be in writing and signed by Owner and Logger. Any such changes shall be affixed to and made a part of this agreement.

IN WITNESS WHEREOF, the parties hereto have executed this agreement the day and year set opposite their signatures.

County, Oregon

DATE: _____

BY: _____
(signature)

DATE: _____

BY: _____
(signature)

Appendix II. Sample Timber Sale Agreement

Owner's Name and Address: _____
 Beginning Date: _____ Termination Date: _____

_____ (Owner's name) being the owner of timber on lands described herein and desiring to sell the described or designated trees, logs, or timber thereon subject to certain stipulations following, bargains and agrees with _____ (Purchaser's name), hereinafter called Purchaser, of _____ (Purchaser's full address).

Timber

Timber shall constitute standing trees, downed trees and logs, and portions of logs which are capable of being measured in cubic feet or board feet.

(depending on your objectives, choose one of the shaded paragraphs immediately below)

If thinning, trees designated for removal shall be marked with ____ (color) paint at DBH and at the base (below stump height) of the tree. All timber within the area designated by Owner, composing contract area, is situated in the sale area described below. Map IS/IS NOT attached as Exhibit "A."

If clear-cut, all timber shall be removed from designated area. All snag shall be felled if over 15 feet high unless heavily shaded or surrounded by young conifer trees. Purchaser shall make reasonable and honest effort to save young conifers during logging operation. All timber within the area designated by Owner, composing contract area, is situated in the sale area described below. Map IS/IS NOT attached as Exhibit "A."

Designated timber shall be sold for the following considerations:

(depending on your objectives, choose one of the shaded paragraphs immediately below)

The Stumpage rate **per ton** for chip logs shall be ____% (or \$ ____/ton) of the Mill Delivered Price.

The Stumpage rate **per thousand board feet (MBF)** for conifer sawlogs or better material shall be ____% (or \$ ____ MBF) of the Mill Delivered Price.

The Stumpage rate **per thousand board feet (MBF)** for hardwood sawlogs or better material shall be ____% (or \$ ____ MBF) of the Mill Delivered Price.

All checks and scale summaries shall be delivered to _____ (Owner's name and address).

If lump sum, Purchaser agrees to pay Owner as the total purchase price for the timber being sold hereunder, the sum of \$ _____.

All timber sold is under the terms and conditions of this contract. All timber within the area designated by Owner, composing contract area, is situated in the sale area described as follows:

Legal Land Description

Township _____ Range _____ Section _____ Subdivisions _____

Marketing

Logs shall be sold where deemed the best return to any of the following approved mills or markets or others to be agreed upon in writing from time to time, with instructions for stumpage money to be remitted directly to Owner according to the foregoing schedule:

Mill	Address	Type of logs
_____	_____	_____
_____	_____	_____

Insurance Requirements

Before commencement of any operations under this Agreement, Purchaser shall procure and continue to carry during the time period of this contract, including any extension of said contract, the following insurance, with the minimum amounts set forth:

A. Automobiles

Bodily Injury - \$1,000,000 Each Occurrence
Property Damage - \$1,000,000 Each Occurrence
Or Combined Single Limits - \$1,000,000

B. Exposures Other Than Automobiles Including Contractual and Completed Operations

Bodily Injury - \$1,000,000 Each Occurrence
\$1,000,000 Each Person
Property Damage - \$1,000,000 Each Occurrence
Or Combined Single Limits - \$1,000,000

C. Broad Form B Logging Property Damage,

With Limits of Not Less Than \$1,000,000 Each Occurrence
Including \$300,000 Non-negligent Fire-fighting Coverage (IRS 477)

D. Workers' Compensation:

Workers' Compensation Insurance from a responsible carrier shall be maintained. Further, Purchaser shall be covered by equivalent insurance if Purchaser is not a corporation. The insurance shall provide the schedule of employee benefits required by law. Corporate Purchasers shall provide such insurance for their officers and employees. Any and all independent contractors assisting Purchaser shall, at their own or at Purchaser's expense, provide similar insurance and agree to indemnify and hold Owner harmless from any and all claims arising out of the performance of this contract.

Certificates evidencing such insurance and bearing endorsements requiring ten days notice to Owner prior to any change or cancellation shall be furnished to Owner, prior to Purchaser's commencement of operations, for all required coverage.

Fire Precaution, Hazard Abatement, and Fire Fighting

A. **Fire Precaution and Fighting Fires**

Purchaser and his agents shall faithfully keep, perform, and observe all requirements and obligations imposed by law with respect to the management, control, and operation of forestlands or cutover lands and with respect to logging generally. This shall further refer to all laws imposed by the State of Oregon. Purchaser and his agents shall exercise the highest degree of care to prevent fire from rising on or coming upon the above-described area and real property. Purchaser and his agents shall use every possible effort at Purchaser's own cost and expense to control, extinguish, and prevent the spread of any such fire. Purchaser and his agents shall immediately notify Owner's agent of any fire upon the area described in this agreement or adjacent property. Purchaser and his agents shall defend, indemnify, and hold Owner harmless from any and all costs and expenses or from any and all claims of damage to person or property of any third party arising out of Purchaser and his agents' failure to use every possible effort to prevent, control, or extinguish any such fire. Purchaser and his agents shall provide all fire equipment specified by the State of Oregon. In the event of extra-hazardous fire weather as determined by the State of Oregon, Purchaser and his agents shall furnish, as may be required by the State of Oregon, additional fire protection.

B. **Slash Burning**

Slash burning normally is not necessary after thinning and other partial cutting practices. Slash burning is occasionally a necessary or desirable part of final harvest cutting and forest rehabilitation projects. If any spot or broadcast slash burning is considered to be necessary or desirable, it will be done only with the advice and consent of Owner and/or the local unit of the Oregon State Department of Forestry. Slash burning IS/IS NOT contemplated under this agreement. Purchaser bears sole responsibility to obtain all necessary permits from government agencies and to be legally responsible if burning is done as part of the logging operation. Purchaser further agrees to use utmost care to control, maintain, and limit the fire within the designated area and to follow all directives of any government agency involved with the burning.

C. Hazard Abatement and Maintenance

Purchaser agrees to perform certain work on the land that is the subject of this agreement—such as brush scarification, treating hardwood stumps with proper chemicals, preparation of helicopter landing sites, construction of necessary bridges, culvert repairs and installation, general road maintenance, falling of snags, construction of ponds and roads necessary for fire protection, razing old buildings, filling dry wells, and other activities which Owner may request.

The foregoing represents a partial list of those tree farm cultural, road maintenance, fire prevention, and hazard reduction activities which Owner may request Purchaser to perform or assist Owner to perform as part of Purchaser's obligations under this contract as an independent contractor.

Unless specifically stated otherwise, Purchaser's costs in connection with A, B, and C above shall not be reimbursed by Owner, it being understood that such costs were an element considered in arriving at the stumpage price for which the timber was sold under the terms of this agreement. Said work shall be performed by Purchaser as an independent contractor and not as an employee or agent of Owner.

General and Tax Liability

Purchaser and Owner agree to abide by all State and Federal laws and regulations and to pay all taxes arising from their operation.

Logging Methods

Logging shall be by tractor and/or tractor and arch. Land survey and corner monuments will be protected and preserved. The following guidelines are listed for logging methods:

1. Be sure where the timber to be logged is located. Avoid TRESPASS. Survey corners and any and all other property markers should be located. If there is any danger of these being destroyed, they should be marked with flagging or paint. Neighbors' fences should be protected.
2. Lay out roads and skid roads before cutting starts.
3. When building roads and skid roads, precede the bulldozer with a worker and power saw and cut windfalls to length, to be yarded out, not pushed through the reproduction. Avoid damage to residual trees.
4. Cut low stumps: Stump height in inches not to exceed one-third of the tree's DBH.
5. Use fern patches, brush areas, and old roads for road locations. Avoid going through reproduction and small poles. Even 1-year-old conifer reproduction is important.
6. Cut off large limbs before yarding to avoid swiping.
7. Keep skid roads to a minimum width.
8. Keep the landings to a minimum size.
9. When pruning, such as along roads, cut the limbs off at the branch collar.
10. Pile debris at landings so that it can be burned without damage to the surrounding reproduction and/or timber.
11. Fall all snags (regardless of size or height) that could reach roads or landings before using roads.
12. Operations on Owner's land will be confined to periods when erosion and soil compaction will not be accelerated (generally from April 1 to November 1).

Roads and Road Maintenance

Road Building No new roads will be built on the operating area without Owner's prior **written** approval.

Road Maintenance Purchaser or his agent will be required to maintain both rock and dirt roads in the operating area during this contract interval. Dirt roads will not be used when they will rut with pickup truck traffic. No yarding will be done when mud flows ahead of the yarding vehicle. After use of any dirt road or skid trail, water bars will be required every 100 feet or at a distance so as to prevent excessive erosion to road. All roads will be kept open unless currently being used in the logging process, and will be clear at the end of every working day.

Method of Payment

Purchaser shall order all buyers of his/her logs or lumber to pay Owner direct the stumpage money indicated in the first paragraph of this Agreement. This stumpage money is due on the first and fifteenth of each month for all logs delivered. All payments shall be based on net scale. Purchaser shall furnish Owner, by _____ (date and time), a summary and compilation by species, grade, and buyer, together with delivery tickets for all logs removed the preceding week.

Assignments

This agreement cannot be assigned.

Suspension

Owner has the option to suspend operations under this agreement when, in his/her opinion, extremely hazardous fire weather exists, or if some provision of this contract is not carried out.

Termination

This agreement shall terminate on ____ (date) unless cancelled sooner by either of the parties, provided that Purchaser shall have the right of first refusal if Owner desires to continue the agreement. Owner has the right to dictate a new price, terms, and other stipulations at that time.

Mutual Attorney Fees

In the event either party institutes suit or legal action to procure any remedy for any breach hereof, the prevailing party may recover from the other reasonable attorney fees in such suit or action and on any appeal.

Waiver of Breaches

No waiver of any breach or default shall operate or be construed to constitute a waiver of any subsequent breach or default.

Liabilities

Purchaser agrees to keep any and all logs and timber or other forest products subject to this agreement free from all liens or attachments while this agreement is in force. In the event of default, cancellation, forfeiture, or other termination of this contract, Owner shall remain vested with full title to all timber, logs, or other forest products including lumber on the premises described, or to any not paid for according to the terms of this agreement.

Rights-of-Way Fees

A. Fronts on public road, no right-of-way involved.

The parties have executed this _____ page agreement on the day and year set opposite their signature in _____ County Oregon

DATE: _____

BY: _____

Owner

DATE: _____

BY: _____

Purchaser

Exhibit "A"

Scale:

Legend (complete legal description)

Logging requirements (special requirements listed here)

THIS PUBLICATION IS OUT OF DATE.
For most current information: <http://extension.oregonstate.edu/catalog>

Appendix III. Sample Temporary Road Use and/or License Agreement

This Agreement is made and entered into on the ____ day of _____, 20__ by and between _____, hereinafter referred to as Licensor and _____, hereinafter referred to as Licensee.

WITNESSETH:

WHEREAS, Licensee is the owner of certain timber located in Township _____, Range _____, Section _____, Portion _____, Willamette Meridian, _____ County, Oregon, and desires access across the property of Licensor in order to remove said timber, and

WHEREAS, Licensor is willing to grant said access subject to the terms and conditions set forth herein,

NOW THEREFORE, the parties mutually agree as follows:

1. Licensor hereby grants to Licensee a nonexclusive license to use the existing road as shown on the attached Exhibit "A".
2. Licensee agrees to pay to Licensor for the right to use such a road a one-time lump sum road use fee of _____ (\$_____) before any hauling over said road commences.

3. If Licensor maintains such road, Licensee agrees to pay its pro rata share of the maintenance expense. Payment for such maintenance expense shall be based on Bureau of Land Management rates for long logs without recreation. This maintenance fee is payable *after* hauling operations. Licensee must show proof of volume hauled.

Maintenance expense shall include all expenditures reasonably necessary to place a road in a satisfactory condition for log hauling, to keep it in such condition, and to reasonably protect a road from adverse weather.

If Licensor does not maintain such road, Licensee shall maintain it and shall be entitled to recover pro rata maintenance expense from others who use the road for the removal of forest products.

4. When using such road, Licensee shall comply with all reasonable traffic regulations posted by _____ (*Licensor or his/her representative*). Such regulations shall be uniformly applicable to all users of the road, including but not limited to Licensor and Licensee.
5. All of Licensee's equipment operating upon such road shall be maintained in a good and safe operating condition and shall be operated cautiously so as to minimize accident hazards.
6. Licensor may suspend the use of such road during periods when the forests are closed by lawful authority. Licensor may also suspend the use of such road when continued use would cause excessive damage to such road. Any suspension will be applicable to all users of the road.
7. Licensee must obtain express written permission from Licensor before any of the following operations:
 - a. Removal of ice or snow
 - b. Construction of landings, or logging operations on to preexisting roads
 - c. Intentional obstruction of ditches or culverts
 - d. Crossing bridges with loads exceeding highway legal limits
 - e. Crossing bridges with cleated track equipment

8. Repairs made to correct damages due to unauthorized activities, including those in paragraphs 6 and 7 above, or repairs beyond those deemed normal and reasonable maintenance resulting from Licensee's operations, shall be considered extraordinary maintenance. Such extraordinary maintenance expenses shall be borne entirely by Licensee and shall be in addition to normal maintenance expenses in paragraph 3.
9. Licensor also grants Licensee the right to construct a temporary road in the location as shown on the attached Exhibit "A". Said road shall be water-barred and blocked following hauling operations. All logs developed during said construction shall be bucked to lengths specified by Licensor and decked at roadside locations convenient for loading.
10. When Licensee exercises any rights granted herein, it shall comply with all applicable laws, rules, and regulations of governmental authority relating to logging operations, log hauling and transportation, snag falling, fire prevention, and fire suppression and control. Licensee shall take every reasonable precaution to safeguard timber, immature forestlands, and other property of Licensor from fire.
11. When Licensee exercises any rights granted herein, Licensee shall first obtain comprehensive liability insurance covering all operations, including vehicles of the Licensee under this agreement in amounts of not less than the following:
 - a. Bodily injury—\$1,000,000 for injury to any one person; \$1,000,000 for any one occurrence
 - b. Property damage—\$1,000,000 for any one occurrence
 - c. Licensee shall also obtain a performance bond in the amount of \$_____ in favor of Licensor conditional upon faithful performance of this agreement

Such insurance policies shall be obtained from insurance companies who are duly authorized to do business in the State of Oregon and registered pursuant to Oregon statutes. Before exercising any of the rights granted herein, Licensee shall deliver to Licensor a certificate from the insurance company stating that such insurance is in force and the insurer will give Licensor ten (10) days' written notice prior to any cancellation or modification of such insurance, together with evidence that all automotive equipment to be used by Licensee is covered by such insurance.

12. Within 60 days after Licensee has ceased to use a road or right-of-way under the authority of this agreement, Licensee shall clean up and remove from such road or right-of-way all debris, refuse, and waste material which may have resulted from Licensee's use or operation. Further, Licensee shall repair any damage to Licensor's road resulting directly or indirectly from Licensee's use thereof. However, when Licensor is performing the maintenance of such road, Licensee shall not be required to repair any damage resulting from normal use of the road for removal of forest products. When Licensee is performing the maintenance, it shall leave the road in as good condition as when it first began to maintain it.
13. When using or constructing any road or segment of road under authority of this agreement, Licensee shall save and hold harmless Licensor and its employees from every claim, cost, damage, or expense of any kind or nature arising or growing out of any negligent or wrongful act or omission of Licensee.
14. If Licensee defaults in the performance of any of its obligations in this agreement and such default shall continue for a period of 60 days after written notice to cure such breach, Licensor may elect to terminate this agreement by giving written notice thereof to Licensee. However, if, as a result of a default, an emergency is created which endangers Licensor's timber, roads, or other property, Licensor may immediately suspend all rights granted herein during the period of default by giving written notice thereof to Licensee. The election by Licensor of the remedies provided for above shall be without prejudice to its right to institute legal or equitable proceedings against Licensee to obtain such other relief as provided by law.
15. Unless sooner terminated in accordance with paragraph 14, the term of this agreement shall be from the date hereof until _____ (date).

16. The rights granted hereunder are not assignable without the prior written consent of Licensor; however, such consent shall not be unreasonably withheld.

IN WITNESS WHEREOF, the parties have executed this agreement in duplicate originals on the day and year first above written.

_____ County, Oregon

Name _____

Name _____

Address _____

Address _____

By _____

By _____

Exhibit "A"

Scale:

Legend (complete legal description)

**THIS PUBLICATION IS OUT OF DATE.
For most current information:
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Appendix IV. Sample Forestry Road Easement

This Agreement, made and entered into this _____ day of _____, 20__, by and between _____, hereinafter called Grantor, and _____, hereinafter called Grantee.

WITNESSETH:

I

Grantor, for valuable consideration, the sufficiency and receipt of which is hereby acknowledged, grants and conveys to Grantee, its successors and assigns, a permanent nonexclusive forestry road easement forty (40) feet in width, being twenty (20) feet on each side of the centerline of a road located approximately as shown on the attached Exhibit "A," which by this reference is hereby incorporated herein (easement area). The aforesaid easement area crosses land owned by Grantor in _____ County, State of Oregon, as described in the attached Exhibit "B," which by this reference is hereby incorporated herein.

This easement is subject to all matters of public record that have been recorded before the recording of this easement.

II

The parties agree and acknowledge that the rights granted in this easement shall be subject to the following terms and conditions.

1. This easement is conveyed for the purpose of construction, reconstruction, use and maintenance of the above described road for the purpose of moving specialized logging equipment, logging trucks, or other equipment used for growing, harvesting, or managing timber on lands now owned by Grantee, as described in the attached Exhibit "C," which by this reference is hereby incorporated herein.
2. Grantor reserves for itself, its heirs, successors, and assigns, the right at all times for any purpose to cross and recross said road at any place on grade or otherwise, and to use said easement area in a manner that will not unreasonably interfere with the rights granted to Grantee herein.
3. Grantor may grant to third parties, upon such terms as it chooses, any or all of the rights reserved by it herein; provided such use shall not unreasonably interfere with the rights granted to Grantee.
4. The cost of road maintenance and resurfacing shall be allocated on the basis of respective uses of said road. When any party uses the road, the party shall perform or cause to be performed, or contribute or cause to be contributed, that share of maintenance and resurfacing occasioned by such use as hereinafter provided. During periods when the road is being used solely by one party, such party shall maintain that portion of the road so used to the standards existing at the time use is commenced. During periods when more than one party is using the road, or any portion thereof, the parties shall meet and establish necessary maintenance provisions. Such provision shall be written and include, but shall not be limited to:
 - a. The appointment of a maintainer, which may be one of the parties to this agreement or any acceptable third party, who will perform, or cause to be performed, at a reasonable and agreed upon rate, the maintenance and resurfacing of the road or the portion being used; and
 - b. A method of payment by which each party using the road, or a portion thereof, shall pay its pro rata share of the cost incurred by said maintainer in maintaining or resurfacing said road or portion thereof.For purposes of this agreement, maintenance is defined as the work normally necessary to preserve and keep the roadway, road structure, and road facilities as nearly as possible in their condition when the road is put into use or as hereafter improved.

5. Each party using any portion of the road shall repair, or cause to be repaired, at its sole cost and expense, any damage to the road beyond which it would cause through normal and prudent usage of the road.

Should inordinate damage to the road occur which is not caused by an authorized user of the road, the parties shall meet to agree upon the cost of replacement and/or repair, the party to undertake the replacement, and the shares of replacement cost to be borne by each user of the road. Grantee and its agents shall obey and comply with any laws and regulations concerning said road and exercise proper and prudent caution and care when using the road.

6. Unless the parties agree in writing to share the cost of improvements in advance of such improvements being made, such improvements shall be paid solely by the party improving the road.
7. Grantor reserves to itself all timber and other natural resources now on or hereafter growing or otherwise within the easement area.
8. Grantee may permit its respective contractors, licensees, lessees, purchasers of timber or other valuable materials, and their agents, hereinafter individually referred to as "Permittee" and collectively referred to as "Permittees," to exercise the rights granted to it herein; provided that when a Permittee plans to use any portion of said road for purpose of hauling timber or other valuable materials, such party shall notify Grantor at least fifteen (15) days prior to the commencement of use of said rights, advising of the portion of road to be used, the approximate dates, when such use will begin and end, and the approximate volumes of forest products or valuable materials to be hauled and forthwith upon the completion of such use notify Grantor.
9. Grantee and each of its Permittees, before using any of the road(s) for commercial purposes, shall:
 - a. Obtain and, during the time of such use, maintain a policy of liability insurance in form, substance, and amount satisfactory to Grantor, insuring Grantor and said Grantee against liability arising out of its operation, including use of vehicles, and naming the Grantee and Grantor as co-insureds.
 - b. Minimum amounts of insurance shall be:
 - Automobiles
 - Bodily Injury - \$1,000,000 Each Occurrence
 - Property Damage - \$1,000,000 Each Occurrence
 - Or Combined Single Limits - \$1,000,000

 - Exposures Other Than Automobiles including Contractual and Completed Operations
 - Bodily Injury - \$1,000,000 Each Occurrence, \$1,000,000 Each Person
 - Property Damage - \$1,000,000 Each Occurrence
 - Or Combined Single Limits - \$1,000,000

 - Broad Form B Logging Property Damage,
 - With Limits of Not Less Than \$1,000,000 Each Occurrence
 - Including \$300,000 Non-negligent Fire-fighting Coverage (IRS 477)
 - c. Deliver to each party here to a certificate from the insurer of said Grantee or Permittee which certifies that coverage, in not less than the above specified amounts, is in force and that, in the event of cancellation or modification of such coverage, the insurer will give each party thirty (30) days written notice prior to any cancellation or modification.
10. Grantee may not assign its rights and obligations under this Easement without the prior written consent of Grantor; and any such permitted assignment shall provide that the assignee will assume all obligations of the Grantee from and after the effective date thereof. Consent to assign shall not be unreasonably withheld upon transfer of title of lands owned by Grantor.
11. Grantee agrees to defend, indemnify, and hold harmless Grantor and its successors and assigns of and from and against all causes of action, litigation, cost, loss, liability, damage, and expense (including reasonable

attorney fees) for injury or death to persons, whosoever, and damage to or loss of property, to whomsoever belonging, including the respective contractors, agents, employees, and representatives of Grantor, arising out of or in any way connected with the use of the road and easement area by the Grantee, its respective contractors, agents, employees, or representatives.

12. If for a period of ten (10) years Grantee shall cease to use or preserve said road or any portion thereof for prospective future use, this easement shall automatically terminate without notice. If this occurs, Grantee and its successors and assigns agree that, upon Grantor's request, they shall quitclaim to Grantor or its successors in interest, form, and substance satisfactory to Grantor, all of Grantee rights, title, and interest that are granted by this easement.

IN WITNESS WHEREOF, the parties hereto have executed this instrument, in duplicate, to become effective as of the day and year first above written.

Date: _____

Date: _____

By: _____

By: _____

Title

Title

Witness*: _____

Witness*: _____

Title

Title

**NOTE: Witnesses are not necessary but can be helpful in the event of litigation.*

Exhibit "A"

Scale:

Legend (complete legal description)

Exhibit "B"

Scale:

Legend (complete legal description)

Exhibit "C"

Scale:

Legend (complete legal description)

For more information

Adams, Paul W., *Oregon's Forest Practice Rules*, EC 1194.

Elwood, Norman. *Federal Income Taxation for Woodland Owners: An Overview*, EC 1526.

Oester, Paul and Steve Bowers. *Measuring Timber Products Harvested from Your Woodland*, EC 1127.

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