

Service Agreement (Long Form)

This Service Agreement, hereinafter referred to as the **Agreement**, is made and entered into this ___ day of _____, 20__ by and between _____ hereinafter referred to as the **Owner**, and _____ hereinafter referred to as the **Contractor**. In consideration of the covenants and agreements herein contained, the Owner and Contractor hereby agree as follows:

1. Any notice to be given to either party, or payment to be made under this contract shall be sent to the following address.

Owner

(Name) _____ DBA *Land owner doing business as.....*
_____ *Tree Farm name or name of business*
_____ *Street or P.O. Address*
_____ *City, State, Zip*
() _____ *Home or Cell Phone #*

Contractor

(Name) _____ *Contractor or Representative*
_____ *Business Name*
_____ *Street or P.O. Address*
_____ *City, State, Zip*
() _____ *Business or Cell Phone #*

2. Work to be Performed.

(a) The Contractor shall perform in a diligent and workmanlike manner on the properties described in Exhibit A attached hereto and incorporated herein by reference all of the operations outlined and set forth on Exhibit B attached hereto and incorporated herein by reference. The property described in Exhibit A shall hereinafter be referred to as the Property and the operations and all matters incidental thereto described in Exhibit B shall hereinafter be referred to as the Work.

(b) Except as specifically provided to the contrary in Exhibit B, the Contractor shall provide everything necessary to perform and complete the Work described therein, including, without limitation, all labor, transportation, power, fuel, materials, and required fire protection to include: 500 gallon water trailer and fire tools as required by the Department of Natural Resources (DNR). If chain saws are used and the fire trailer is not required then those tools required by the DNR to accompany chain saw use, shall be provided and on site when the chain saws are in use.

(c) The Work shall always be performed to the reasonable satisfaction of the Owner and be conducted under the direction and/or the Owner and its designated representative.

(d) During the term hereof, the Contractor shall not allow hazardous materials, fuel products or rubbish to accumulate or be dumped or spilled on or about the Property. The Contractor shall remove or dispose of any hazardous materials, fuel products or rubbish in the manner provided by law or in a manner approved by the Owner's representative.

(e) The Contractor shall be allowed to hire and utilize Subcontractors to assist it and provide it with additional services needed for completion of the Work, provided, however, that any such Subcontractor shall be approved by the Owner in writing and any such Subcontractor shall sign this Agreement and agree to be bound by all terms, conditions and provision of this Agreement, including but not limit to any and all insurance requirements set forth in Section 8 hereof.

3. Terms of Contract.

The Contractor shall begin the Work on or about _____, 20__ and shall pursue the work diligently until completion. The Contractor shall fully complete the Work by not later than _____, 20__ upon which date this Agreement shall terminate. Any extension in said date shall be only as otherwise provided herein. Time is of the essence of this Agreement.

4. Contract Price and Payment.

The Owner shall pay the Contractor for the performance of Work hereunder in accordance with the provisions of Exhibit C attached hereto and incorporated herein by reference.

5. Investigation by Contractor of Property and Property Site.

The Contractor warrants and represents to the Owner that it has carefully examined all data available concerning the Property, has visited the Property, and is familiar with the physical condition of the Property and surrounding terrain, has fully informed itself of all conditions and limitations (including all laws, ordinances, and regulations) affecting this Agreement and the Work, and the Contractor has satisfied itself that it has the personnel, equipment and facilities necessary to complete performance of the Work. The Contractor has obtained certain information from the Owner; however, the Contractor has made its independent evaluation of such information and does not rely upon any warranties or conclusions of the Owner shown upon such information. Failure by the Contractor to comply with this representation to the Owner shall not relieve the Contractor from any of the obligations of this Agreement.

6. Relationship of Parties.

The Work shall be performed by the Contractor as an independent contractor (or any Subcontractor as an independent contractor), and the contractors employees shall at all times be under their direction and control. The Contractor shall have full power and authority to select the means, manner, and method of performing the Work without detailed control or direction by the Owner. The Contractor will receive directions from the Owner or the Owner's representative as to the end results to be accomplished, and the Contractor shall be responsible for directing its employees as to the manner and means of accomplishing the Work to be performed hereunder by the Contractor pursuant to good and workman like **stewardship** practices and any applicable laws, rules and regulations. Compliance by the Contractor, or its employees, with engineering directions, safety practices, maintenance instructions, or change orders issued by the Owner or the Owner's representative shall not affect the Contractor's status as an independent contractor and shall not relieve the Contractor of the obligations assumed by it under this Agreement. It is understood and agreed that the Contractor shall, and they hereby expressly assume and accept exclusive liability as an employer under the Industrial Insurance or Workmen's Compensation Act of the State of Washington, the Social Security Act, Unemployment Compensation Act, or any other federal, state, county or municipal acts or ordinances which in any way affect or relate to the relation of employer and employee. Contractor shall furnish the Owner with his registration numbers under any such acts, together with such other

evidence as the Owner shall require in regard thereto. Contractor shall be responsible for the collections and remittance of all taxes so levied, whether on the Contractor or persons employed by him, PROVIDED, HOWEVER, the Owner reserves the right to pay any or all of such taxes in the event of failure of Contractor so to do, and Owner may withhold a similar amount of payment to contractor. The Contractor agrees to reimburse the Owner for any and all payment they are forced to make for the Contractor.

7. Liens, Charges.

(a) The Contractor shall promptly pay all bills and expenses incurred by it in performance of the Work hereunder, including, without limitation, bills and expenses for labor, services, supplies, fuel, equipment, and materials. The Contractor shall not permit any lien or charge to be fixed, filed, or otherwise assessed against the Owner or the Property.

(b) In the event any such lien or charge is asserted or filed against the Owner, the owner of the Property, or the Property, the Contractor shall cause such lien or charge to be discharged promptly and shall notify the Owner in writing when this has been done. If at any time the Owner is informed of any such lien or charge for which, if established, the Owner, the owner of the Property, or the Property might become liable, the Owner shall have the right to retain out of any payment due or thereafter to become due the Contractor under this Agreement, an amount sufficient to discharge such lien or charge. The Contractor shall refund to the Owner all monies in excess of any payment due or to become due to the Contractor under this Agreement that the Owner pays in discharging such lien or charge.

If the owner finds the Contractor is in a lien situation to one of their suppliers, then the Owner may elect to issue checks payable to the Contractor, and the Supplier holding the lien, to ensure payment and avoid liens.

8. Indemnities, Performance Bond.

(a) The Contractor and any Subcontractor assumes all liability for and agrees to defend, indemnify, and save and hold harmless the Owner, its employees, agents, and subsidiaries, from any and all liens, claims, actions, costs, damages, or losses of any nature whatsoever arising out of any acts or omission or in any way connected with the Work, including without limitation:

(1) Bodily injury, sickness, and/or disease, including death at any time resulting from such bodily injury, sickness, and/or disease, sustained by any person including but not limited to employees of the Owner, of the Contractor, or of a Subcontractor;

(2) Damage to or loss of real or personal property including but not limited to timber, logs, seedlings or boughs or other property of the Owner;

(3) Laborers', mechanics', and material men's liens, and all other liens and charges, of every character whatsoever; and

(4) Attorney's fees of any nature incurred by the Owner to defend or otherwise protect or assert its rights herein in the event it feels it's in its best interest to do so. Compliance by the Contractor or any Subcontractor with any liability insurance requirements otherwise provided for in this Agreement shall not relieve the Contractor or any Subcontractor of any obligation hereunder.

(b) In the nature of a bond for the performance of the Work and satisfactory completion of this Agreement,

the Contractor agrees that the Owner shall retain (*dollar or percentage figure, usually a percent*) _____ . This sum shall be retained by the Owner to guarantee performance and completion of the Work to the satisfaction of the Owner. When the Work has been completed to the satisfaction of the Owner, the balance of the monies held shall be paid to the Contractor; however; the Owner may retain said monies as an offset for any monies due the Owner by the Contractor hereunder.

(c) Contractor's assignment of all or a portion of the Work to any Subcontractor or securing any Subcontractor's signature to this Agreement shall not result in releasing Contractor from responsibilities for any and all liens, claims, actions, costs, damages, or losses of any nature whatsoever arising out of any of the acts or omission or in any way connected to the Work, including but not limited to all of the those occurrences outlined in subsection (a) (1), (2), (3) and (4) above.

9. Insurance.

10. (a) Contractor: Prior to commencing the Work or any operations contemplated hereunder, Contractor shall procure and during the term of this Agreement shall maintain at Contractor's own cost, Loggers Broad Form P.D. as well as comprehensive general/public liability, automobile/motor vehicle liability, and property damage insurance with an insurance Owner acceptable to the Owner with limits of not less than \$ **2,000,000.00** for accidental death and injury to one person, **\$2,000,000.00** for accidental death or injury to one or more persons in one occurrence, and **\$ 1,000,000.00** for damage to property. Such insurance shall cover all risks arising directly or indirectly out of the Work or Contractor's operations hereunder and shall include an endorsement naming the Owner an additional insured and covering the liability assumed by Contractor under this Agreement. A certificate evidencing such insurance and bearing endorsement requiring ten (10) days written notice to the Owner prior to any change or cancellation thereof shall be furnished to the Owner by Contractor prior to Contractor commencing the Work hereunder.

(b) Whenever an employee of the Contractor or any Subcontractor suffers an occupational injury or an occupational disease because of the Work performed under this Agreement, and such injury or disease is required by the industrial insurance or workman's compensation laws of the state of Washington to be reported to the proper governmental agency or authorities, immediate notification and, a copy of such report shall be furnished promptly by the Contractor or Subcontractor to the Owner.

11. Inspection, Testing.

(a) The Contractor shall provide and maintain safe access to, proper facilities for, and cooperate in the inspection, testing, and sampling by the Owner or the Owner's representative of all portions of the Work and the results of the Work.

(b) If laws, ordinances, governmental rules, and/or regulations require any part of the Work to be inspected and/or tested, the Contractor shall promptly perform the inspection and/or tests so required or allow duly authorized persons to perform the inspection and/or tests so required.

12. Contemporaneous Rights on Property.

The Contractor agrees that the Owner may, during the progress of the Work, place and install or cause to be placed and installed on the Property structures, equipment, and materials, and may carry on, either

directly or through other contractors, such other operations as it may deem desirable for its own purposes, before the completion of the various parts of the Work; provided, however, that such use of portions of the Property shall not substantially interfere with the Work of the Contractor, and the Contractor further agrees that such placing and installation of structures, equipment and material shall not in any way evidence the completion of the Work or any portion of it, nor shall such installation be deemed or construed to signify the Owner's acceptance of the Work or any part thereof.

13. Authority of the Owner's Representative.

The Owner shall have the right to have a representative present during all phases of the Work. The Owner's representative is hereby designated as _____. The Owner reserves the right to change the designation of its representative from time to time.

The Owner's representative shall have the right by giving written notice to the Contractor from time to time, to delegate his responsibilities to other representatives of the Owner in connection with specific portions of the Work. The Owner's representative is hereby given authority, on behalf of the Owner, to give approval, or to take action to the extent necessary for the orderly and expeditious prosecution of the Work, but shall not have authority to amend or modify this Agreement. The parties agree that no changes in the Work shall be made unless pursuant to a written order from the Owner authorizing the change, and stating the lump sum or unit price to be paid or deducted for same, and the Contractor agrees that it will not make any claim for extra compensation based on any changes not so authorized in writing by the Owner. In addition to his duties and authorities specified in this Paragraph and elsewhere in this Agreement, the Owner's representative shall have authority to suspend the Work whenever he deems such action necessary due to weather conditions, fire hazards, safety hazards or to secure the proper performance of the Work or Contractor's obligations under this Agreement.

14. Delays Attributable to the Owner or Other Contractor.

In the event that the Contractor should be delayed in the completion of the Work by reason of any act or omission of the Owner or of another contractor employed by the Owner at the Property, the time within which the Work is to be completed shall be extended by the period of such delay, but the Contractor hereby waives all claims for damages by reason of such delay.

15. Force Majeure.

Neither party shall be liable to the other for failure to perform its obligations hereunder if and to the extent that such failure to perform results from causes beyond its reasonable control (financial difficulty shall not be considered a cause beyond a party's control), all of which causes herein are called "force majeure", including, but not being limited to, strikes, lockout, or other industrial disturbances; civil disturbances; fires; unsuitable climatic conditions; acts of God; acts of a public enemy; compliance with any regulation, order, or requirement of any duly authorized governmental body or agency; or inability to obtain transportation or necessary materials in the open market. The party unable to perform as a result of force majeure promptly shall notify the other of the beginning and ending of each such period, and the Owner shall compensate the Contractor in accordance with the provisions of Exhibit C for all Work performed by the Contractor hereunder, up to the date of the beginning of such period. If any period of force majeure continues for 30 days or more, either party shall have the right to terminate this Agreement upon 10 days prior written notice to the other party by certified mail or hand delivery after the above period of force majeure.

16. Compliance with the Law.

(a) All necessary permits and licenses shall be obtained by the Contractor, with the exception of permits and licenses which are required to be in the Owner's name, in which case the Contractor shall assist the Owner in obtaining the same.

(b) The Contractor shall give all necessary notices, shall pay all fees and taxes required by law, and shall comply with all laws, ordinances, governmental rules, and regulations relative to the Work or to the preservation of the public health and safety, including, without limitation of the foregoing, the Washington State Forest Practice Act and all rules and regulations promulgated there under.

17. Covenants of Contractor

(a) Notice of Unsafe Conditions. The Contractor and any Subcontractor agrees to use due care in the performance of the Work, and that whenever any provisions set forth in this Agreement for any part of the Work is, in its opinion, faulty or at a variance with any rules or ordinances applying to the Work, or are such as will, if followed, results in pecuniary loss to the Owner, or in any damage or loss to persons or property, it will instantly stop work on the portion affected thereby and will notify the Owner in writing of such opinion, and in what respect it considers the provisions are faulty or at a variance as aforesaid, and the Contractor will not proceed with the part of the Work so affected until it has received a written order from the Owner's representative directing what is to be done and when to proceed.

(b) Job Safety. The Contractor and its employees and any Subcontractors shall abide by all safety, fire and other laws or rules in force on the Property, including compliance with the Occupational Safety and Health Act (OSHA), the Washington Division of Safety and Health (DOSH), and any other state or local laws, rules, ordinances or regulations relating to the prevention and suppression of fires and the possession and maintenance of fire fighting manpower, tools and equipment.

(c) Site Security. It is the understanding of the parties hereto that the Owner shall not be responsible for loss of or damage to the equipment or property of the Contractor or any Subcontractor(s), if any, from any cause. The Contractor shall furnish at its expense whatever watchmen it finds necessary to adequately protect its interests. Gates if present will be kept closed and locked after operating hours and to the extent practical during operating hours.

(d) Access Roads. The Owner shall obtain permission, where required, for right of way or access roads, and the Contractor and any Subcontractor shall use only such roads as are designated by the Owner. The Contractor and any Subcontractor shall keep closed and locked gates required by the Owner to be kept closed and locked and Contractor shall insure that its employees, agents or representatives shall not lose, break or misuse any of the keys or locks furnished by the Owner. The Contractor and any Subcontractor and their employees, agents or representatives shall have access to the Property and/or the Owner's land only for the purpose of carrying out their responsibilities under this Agreement. Any other entry by Contractor or any Subcontractor or their employees, agents or representatives shall be considered a violation of this Agreement.

(e) The Contractor and any Subcontractor agrees to conduct all of its operations including maintenance and operation of equipment in a manner to minimize the risk of fire and the risk of damage to the Property and the environment.

18. Assignment and Subcontracting.

The Contractor shall not assign or subcontract any part of this Agreement without the written consent of the Owner, nor shall the Contractor assign any monies due or to become due to it hereunder without the written consent of the Owner. The Contractor shall impose on the permitted Subcontractors under its charge the same responsibilities which Contractor assumes by the terms and condition of this Agreement. The Contractor agrees that it will be fully responsible to the Owner for the acts and omissions of any Subcontractors and of persons either directly or indirectly employed by any Subcontractors. This Agreement shall not be transferable by operation of law.

19. Termination for Convenience.

(a) The Owner may terminate this Agreement at any time, regardless of whether the Contractor is in default, by giving at least ____ days' prior written notice to the other, specifying that termination is being made under the provisions of this Paragraph and specifying the effective date of termination.

(b) Upon the termination of this Agreement prior to completion of the Work, the Owner shall pay the Contractor for that part of the Work completed to the date of termination, at the rate and in the manner set forth in Exhibit C, and shall not be required to pay any further sum to the Contractor except as may be otherwise specifically provided herein.

20. Termination for Default of Contractor.

(a) The Owner may terminate this Agreement at any time by giving ten (10) days written notice to the Contractor specifying that termination is being made under the provisions of this Paragraph and specifying the effective date of termination, if

- 1) The Contractor refuses or fails to supply enough properly skilled workmen or equipment or materials of the proper quality or quantity to perform the Work;
- (2) The Contractor should fail in any respect to prosecute the Work with sufficient promptness and diligence;
- (3) The Contractor fails to make timely payments to its labor, any Subcontractors, material men, or suppliers;
- (4) The Contractor or any Subcontractor should disregard laws, ordinances, governmental rules or regulations, or should repeatedly disregard instructions of the Owner's representative which are consistent with this Agreement; or
- (5) The Contractor should be guilty of a substantial violation of any provisions of this Agreement.

(b) In the event of such termination,

(1) On the termination date, the Owner shall take possession of the Property and all things thereon for which the Contractor is entitled to receive payment under the provisions of this Agreement and thereafter may complete the Work, or cause the Work to be completed, by whatever means the Owner deems

expedient;

(2) The Contractor shall promptly transfer and assign to the Owner, in accordance with the Owner's instructions, all improvements and things for which the Contractor is entitled to receive payment under the provisions of this Agreement, and the Contractor shall return to the Owner all information furnished by the Owner in connection with the Work, together with all data developed by the Contractor under this Agreement; and

(3) The Contractor shall not be entitled to receive any further payment under this Agreement until the Work is fully finished and the Owner shall have the right to deduct from any balance due the Contractor under this Agreement the amount of damage incurred by the Owner through the Contractor's default, including the cost of completing the Work. In the event the amount of damage exceeds the balance due hereunder, the Contractor shall pay to the Owner the amount of such excess.

(c) The rights of and remedies of the Owner set forth in this Paragraph shall not be exclusive and are in

21. Notices

(a) Any notices to be given the Owner hereunder shall be given by mailing the same by certified or registered mail to the Owner addressed as follows: _____, and by oral or telephone communication to the Owner's representative.

(b) Any notice to be given to the Contractor hereunder shall be given by mailing the same by certified or registered mail to the Contractor addressed as follows: _____

22. Governing Law.

The validity, interpretation, and performance of this Agreement shall be governed by the law of the State of Washington and in the event of a lawsuit involving this Agreement, venue shall be proper only in _____ County Courts, unless otherwise agreed by the parties.

23. Entire Contract, Modification, and Waiver, Survival of Obligations.

(a) This agreement sets forth the entire Agreement between the Owner and the Contractor and any Subcontractor with respect to the subject matter hereof and supersedes all prior negotiations and dealings, including but not limited to letters of intent, pertaining to the subject matter hereof

(b) No change in, addition to, or waiver of any of the provisions of this Agreement shall be binding upon either party unless in writing signed by an authorized representative of each party. No waiver by either party of any breach by the other party of any of the provisions of this Agreement shall be construed as a waiver of any subsequent breach, whether of the same or of a different provision in this Agreement.

(c) The rights and obligations of the parties hereunder shall survive the expiration of the term of this Agreement or any termination of this Agreement.

24. Severability.

In the event any provision of this Agreement conflicts with the law under which this Agreement is to be

construed or if any such provision be held invalid by a court with jurisdiction over the parties, this Agreement shall be construed to give effect to the remaining provisions thereof

23. Contract Headings.

All headings of the Paragraphs of this Agreement have been inserted for convenience of reference only, are not to be considered a part of this Agreement, and shall in no way affect the interpretation of any of the provisions of this Agreement as witness whereof the parties have caused this agreement to be executed on the day and year first set forth above.

In witness whereof the parties have caused this agreement to be executed on the day and year first set forth above.

_____ the OWNER

BY _____

It's _____ Dated: _____

_____ the CONTRACTOR

BY _____

It's _____ Dated: _____

Exhibits

Exhibit A: Legal Description

Write down entire legal description or attach to contract _____

County Assessor Parcel Number(s) _____

Approximate or actual number of acres _____

Exhibit B: Scope of Work (Tell what each party is responsible for)

- Owner: Get easements, FPA, supply trip tickets, sorts and markets and if not owner then who will do it;
- Lump Sum Timber Sale: landowner doesn't care about sorts, # of loads, etc. Can cut out all that is not vital.
- Contractor: supply enough machines and men to do a proper job, keep all operations legal, follow all Labor and Industry regulations and any other government agency such as Washington Dept. of Natural Resources.

Exhibit C: Payments (how the contractor is to be paid).

- Not important if the payment is made as a Lump Sum Timber Sale.
- Specify the mechanics of all payments. Will a CPA be employed to make the payments?
- Is the contractor to use log tickets and if not how are load to be marked;
- How is the mill to make log payments? Logger and trucker to get X dollars per MBF and landowner the remaining, or land owner get all money and then pay logger and trucker?
- Are there extra fees for logger to use their equipment to non-contracted work such as piling debris, building fire line, road maintenance, etc?
- If a PCT operation is the payment based on acres thinned or an hourly labor rate;

The actions of payment need to be hashed out with your attorney and well spelled out. Add a clause that "Within two weeks of conclusion, the parties will meet to review billing statements, etc. etc. to correct any discriptions".

Exhibit D: Detailed map

- Show ownership boundaries, are the property lines surveyed, if so how are they marked, and how are the property corners marked If not surveyed then who is responsibility for having it done.
- Show contracted unit boundaries, easement routes, and ground you do not want the contractor to be on;
- Tell how those boundaries are flagged, color of ribbon(s), frequency, any other markings;
- Show neighbor property and any easement issues over neighbors;
- Is there proper County or State easement and if required County haul permits in place.