



OREGON FOREST RESOURCE TRUST  
*Sharing Together In Tomorrow's Forest*

"STEWARDSHIP IN FORESTRY"

**FOREST RESOURCE TRUST CONTRACT AND  
DECLARATION OF RESTRICTIVE COVENANTS  
AND EQUITABLE SERVITUDE**

**Parties:** The Forest Resource Trust  
By the State Forester  
Oregon Department of Forestry  
2600 State Street  
Salem, OR 97310  
(503) 945-7368  
**Trust**

**and** Name  
Address  
**Landowner**  
Phone

**RECITALS**

The parties agree that the purpose of this Contract is to establish a healthy, productive Forest Stand within the Project Area that directly benefits Landowner, to create carbon offsets benefiting the Trust and to provide environmental, social and economic benefits to the State of Oregon.

Landowner owns real property (the Real Property) located in \_\_\_\_\_ County, Oregon. The Real Property is more particularly described in attached Exhibit A. The Real Property contains a project area (the Project Area) consisting of \_\_\_\_\_ acres of underproducing forestlands.

Landowner has made application for Forest Resource Trust funds to implement forestation of the Project Area in accordance with the Project Plan.

The State Forester, on behalf of the Trust, has approved the Project Plan.

## AGREEMENT

In consideration of the terms, conditions and covenants herein, and for other valuable consideration, the parties agree as follows:

### 1. Administrative Rules

In addition to the express terms of this Contract, Landowner is bound by the administrative rules with respect to the Trust, OAR 629-22-0030 through 629-22-0700, and OAR 629-610-0070, as those rules existed at the time of execution of this Contract. Copies of those rules are attached as Exhibit C and incorporated herein by this reference.

### 2. Definitions

As used in this Contract, terms shall have the definitions provided in OAR 629-22-0040 as supplemented by the following additional definitions:

**Actual trust cost** – The portion of incurred costs paid by the Trust.

**Approved consulting services** – Services identified in the Project Plan to be provided by a resource management professional.

**Approved practices** – The schedule and manner of site preparation, tree planting, moisture conservation, seedling protection, and release practices identified in the Project Plan.

**Budgeted cost** – The expected cost identified in the Project Plan for payment by the Trust of an approved practice or an approved consulting service.

**Carbon offsets** – Carbon offsets are credits registered or used, transferred or sold to comply with air quality or other greenhouse gas mitigation measures for the purpose of compensating for emissions of carbon dioxide from other sources such as the burning of fossil fuels for energy production. Carbon offsets are not considered to be a forest product as defined in OAR 629-22-040(7).

**Catastrophe** -- An event or circumstance beyond the Landowner's control, resulting in all or part of the Forest Stand being incapable of producing the harvest revenues to make repayment of Actual Trust Cost plus interest as required by paragraph 11. A catastrophe may be caused by insects, diseases, fire or other casualties and accidents; or storms, floods, droughts or other unusual environmental conditions.

**Direct cost payment** – The disbursement in accordance with the Project Plan of Trust funds in the form of a two-party check payable jointly to Landowner and to either 1) a provider of services or a provider of supplies as payment for the completion of approved practices conducted to the satisfaction of the State Forester or 2) a resource management professional for the completion of approved consulting services performed to the satisfaction of the State Forester.

**Incurred costs** – The actual expenditures made for the approved practices and the approved consulting services described in the Project Plan or for practices and consulting services otherwise approved by the Trust.

**No Salvage Value** – Means forest products remaining within portions of the Forest Stand affected by a catastrophe have no economic value or insufficient economic value such that any salvage operation resulting in the Harvest Type 1 or Harvest Type 3 operation would meet the provisions of OAR 629-610-0070.

**Provider of services** – An individual, business, or other entity that has the knowledge, skills, equipment, and ability to plan, conduct or supervise approved practices described in the Project Plan.

**Provider of supplies** – An individual, business, or other entity that provides supplies used to implement the approved practices described in the Project Plan.

**State Forester** – Means the State Forester as defined in ORS 526.031 or any successor thereto.

**Unapproved costs** – Incurred costs related to approved practices or approved consulting services that 1) were not budgeted for payment by the Trust under the terms of the Project Plan or 2) were not completed to the satisfaction of the State Forester.

### 3. Landowner's Warranty

Landowner warrants that Landowner is a nonindustrial private forestland owner with less than 5,000 acres of forestland or up to 15,000 acres of low site forestland in Oregon. Landowner warrants that there is legal access to the Real Property and the Project Area for forest management purposes. Landowner further warrants that the direct cost payments provided in the Project Plan will not cause Landowner to have received funds contrary to the provisions of OAR 629-22-0100(4).

### 4. Project Plan

The Project Plan specifies the approved practices and approved consulting services for the reforestation of the Project Area. The Project Plan includes the time schedule and estimated cost for the approved practices and the approved consulting services. The total Budgeted Cost for the project is \$\_\_\_\_\_. In the event the Project Plan is modified pursuant to paragraph 15, the Project Plan as amended shall be considered the Project Plan. A copy of the Project Plan is attached as Exhibit B and is incorporated herein by this reference.

## 5. Access by State Forester

The State Forester is granted access to the Real Property to monitor, evaluate or certify as complete the approved practices and performance of the Project Plan and to inspect the Project Area for compliance with this Contract.

## 6. Carbon Offsets

- (a) All carbon offsets accruing from the Forest Stand are the property of the Trust and shall remain the property of the Trust even after the termination of this Contract, and can be registered or transferred by the Trust at any time.
- (b) The State Forester is responsible for measuring and monitoring the amount of carbon offsets accruing to the Forest Stand. Landowner shall cooperate with the Trust as requested by the State Forester to complete the registration or transfer of accrued offsets.
- (c) The State Forester acting for the Trust, is the exclusive agent for marketing or transferring carbon offsets owned by the Trust as provided in subsection (a).
- (d) Landowner's right to harvest and sell the forest products from the Forest Stand is not limited or affected by this paragraph.
- (e) Notwithstanding paragraphs 7 and 11, the Trust's ownership of carbon offsets already transferred and the Trust's rights to future carbon offsets yet to accrue to the Forest Stand survive the termination of this Contract.

## 7. Life of the Contract

Unless Landowner has breached this Contract, and except as provided in paragraph 6, Landowner's obligations and the Trust's obligations under this Contract shall terminate on **[200 years from sign date]** or, at such earlier time, as any of the following events occur:

- (a) The Landowner makes full payment as described in paragraph 11; or
- (b) The State Forester pursuant to paragraph 13 notifies the Landowner that the Landowner's and the Trust's obligations under this Contract are terminated.

## 8. Landowner Project Management Obligations

- (a) Landowner shall implement the Project Plan. The standard for Landowner's performance is the establishment of a Forest Stand that is Free-to-Grow at the minimum tree stocking standards set forth in paragraph 9. Landowner is responsible for the performance of all approved practices and the use of all

approved consulting services required by the Project Plan. As determined pursuant to paragraph 12, Landowner shall also implement the contingent approved practices and contingent approved consulting services necessary to establish the Forest Stand as Free-to-Grow at or above the minimum tree stocking standards set forth in paragraph 9. As determined pursuant to paragraph 12, Landowner shall also undertake any additional practice or obtain any additional consulting service necessary to meet Landowner's performance standard. If the need for the additional practice or service arises from factors outside the control of Landowner, the cost will be eligible for inclusion in the Project Plan pursuant to paragraph 15, subject to the availability of funds. Otherwise, the additional cost is the responsibility of the Landowner.

- (b) Landowner shall report any adverse changes in the condition of the Forest Stand, or adverse changes to the Real Property that could affect the Forest Stand, to the State Forester.
- (c) Landowner shall notify the State Forester following the completion of an approved practice. If the notice includes a request for direct cost payment by the Trust, Landowner shall also submit all invoices for the incurred costs of services and materials used to complete all or part of the approved practice and for any applicable approved consulting services. ***A copy of a daily chemical application record shall accompany all invoices and requests for payment for herbicide or other chemical applications.*** Landowner's contributions of labor, materials owned prior to the execution of this Contract, or capital equipment such as vehicles, road surfacing, culverts, sprayers, saws, shovels, planting hoes, or safety equipment are not eligible for direct cost payment. Upon receipt of a direct cost payment, Landowner shall ensure prompt payment to the party listed on the check that is entitled to the payment.
- (d) Landowner has no obligation to harvest forest products from the Forest Stand.
- (e) Landowner shall comply with forest practices standards required by state and federal law. Landowner shall also comply with any higher standard established by this Contract or the Project Plan. Landowner shall notify the State Forester before commencing any forest operation.

## 9. Tree Stocking Standards

The following are the minimum tree stocking standards for the Forest Stand:

- (a) From Planting through Certification as Free-to-Grow – The minimum tree stocking standard for the Project Area is, on average, **(330 or 175)** Free-to-Grow seedlings per acre, or an equivalent combination of seedlings, saplings and poles, and larger trees as determined by the State Forester pursuant to OAR 629-610-0020(7).

- (b) After Certification as Free-to-Grow – After the Forest Stand is certified as Free-to-Grow, the tree stocking standard for the Project Area is to meet or exceed the Forest Practices Act's tree stocking standards set forth in OAR 629-610-0020. Landowner is encouraged to maintain stocking above this standard.

#### **10. Trust Obligations – Direct Cost Payments**

- (a) Upon receipt of notice from Landowner of completion of an approved practice or service, or part of a practice or service, the State Forester shall review the completed practice or service, or part of a practice or service, within 14 days, or within such other reasonable time period as necessitated by the completed practice or service.
- (b) If satisfied, the State Forester shall inform the Landowner. If the Landowner's notice includes a request for payment of incurred costs, the State Forester shall submit all approved invoices to the Trust administrator for direct cost payment by the Trust.
- (c) If not satisfied, the State Forester, Landowner, the resource management professional, if there is one, and the provider of the services or supplies (Provider) shall meet to discuss what steps are necessary to redo the approved practice or service to the satisfaction of the State Forester. If the State Forester determines that the necessity for additional work is not the fault of either Landowner or Provider, the cost of corrective measures or repeating the practice or service may be eligible for inclusion in the Project Plan pursuant to paragraph 15, subject to the availability of funds. In the absence of an amendment to the Project Plan, the unapproved costs are the responsibility of Landowner and Provider to be apportioned between them in accordance with the terms of their agreement.
- (d) The Trust will process the direct cost payment within 30 days of receipt of State Forester approval of the incurred cost.

#### **11. Monies Payable to the Trust by Landowner**

Except for obligations arising under paragraph 6, Landowner may terminate all other obligations under this Contract at anytime during the life of the contract by repaying the Actual Trust Cost plus interest.

- (a) The State Forester shall calculate the amount due by using the Actual Trust Cost with annual interest at the rate of 4 percent. Interest is simple, prorated to the nearest full month, and for each direct cost payment, begins on the date that the direct cost payment was made to the Landowner.

- (b) When there is a partial harvest of forest products from the Forest Stand at any time during the life of the contract, the landowner must make payment of 50 percent of the net receipt, until the Actual Trust Cost plus interest are paid.
- (c) When there is a final harvest of forest products from the Forest Stand, the landowner must make full repayment of the Actual Trust Cost plus interest attributable to that portion of the Forest Stand so harvested, or the remaining amount of the Actual Trust Cost plus interest, or the total of all net receipts; whichever is the lowest.
- (d) Partial repayments of trust funds shall be applied first to the Actual Trust Cost and then to the accumulated interest, until the Actual Trust Cost plus interest are paid.

## **12. Project Progress and Trust Certification as “Free-to-Grow”**

The State Forester shall inspect the Project Area at reasonable intervals to review the progress under the Project Plan and to determine if the Forest Stand can be certified as Free-to-Grow.

- (a) If the State Forester determines the Forest Stand is not Free-to-Grow, the State Forester shall confer with Landowner or the resource management professional, if any, regarding what contingent approved practices or contingent approved consulting services or any additional practices pursuant to paragraph 15 are necessary to achieve Free-to-Grow status. The State Forester’s determination on what practices are necessary to achieve Free-to-Grow status shall be binding on Landowner unless Landowner elects to proceed with mediation pursuant to paragraph 14.
- (b) If the State Forester determines the Forest Stand is Free-to-Grow, it shall be so certified.

## **13. Trust Assumption of Financial Risk Associated with Catastrophe**

When requested by Landowner, the State Forester shall assess whether adverse changes reported pursuant to paragraph 8(b) constitute a catastrophe. If the State Forester determines that a catastrophe has occurred, the State Forester shall notify the Landowner and:

- (a) If the catastrophe occurred prior to Free-to-Grow certification, Landowner, the resource management professional, if there is one, and the State Forester shall confer to determine whether all or part of the project can be continued. If the project can be continued, the Trust must make an election of whether or

not to continue the project.

- (i) If the Trust elects to continue the project or any portion thereof, any corrective activities necessary to restore the project or portion thereof to its status prior to the catastrophe are the financial responsibility of the Trust and will not be treated as Actual Trust Cost under the terms of this Contract.
  - (ii) If the Trust elects to proceed with only a portion of the project, the Actual Trust Cost plus interest shall be reduced by that portion of the Actual Trust Cost plus interest attributable to that portion of the project not continued.
  - (iii) If the project cannot be continued or if the Trust elects not to proceed with the project, the State Forester shall notify the Landowner that the Landowner's and the Trust's obligations under this Contract are terminated as if the entire Forest Stand has been destroyed by a catastrophe leaving no salvage value.
- (b) If the catastrophe occurred after Free-to-Grow certification, the State Forester shall determine if all or a portion of the Forest Stand has been destroyed leaving no salvage value.
- (i) If the entire Forest Stand has been destroyed leaving no salvage value, the State Forester shall so certify and notify Landowner that the Landowner's and the Trust's obligations under this Contract are terminated except for the obligations arising under paragraph 6.
  - (ii) If part but not all of the Forest Stand has been destroyed leaving no salvage value, the State Forester shall reduce the Actual Trust Cost plus interest by that portion of the Actual Trust Cost plus interest attributable to those portions of the Forest Stand destroyed leaving no salvage value. The State Forester shall adjust the Forest Stand boundary to reflect the remaining Forest Stand capable of producing harvest revenues sufficient to make repayment of trust funds as specified in paragraph 11 of this Contract.
  - (iii) If all or the portion of the Forest Stand affected by the catastrophe has salvage value from the forest products, and the landowner elects to salvage the forest products,
    - (A) Any net revenue receipts from the salvage operation are subject to the partial harvest repayment provisions in paragraph 11(b) of this Contract;
    - (B) The State Forester shall reduce the Actual Trust Cost plus interest by the amount of the Actual Trust Cost plus interest attributable to those

portions of the Forest Stand salvaged and not recovered by the repayment provision in subsection (b)(iii)(A) of this paragraph; and

- (C) The State Forester shall adjust the Forest Stand boundary to exclude contiguous areas salvaged that are a Harvest Type 1 or Harvest Type 3 operations.
- (iv) If the landowner elects not to salvage the forest products or not to salvage a portion thereof, the Actual Trust Cost plus interest shall be reduced by the Actual Trust Cost plus interest attributable to that portion of the Forest Stand damaged by the catastrophe. The State Forester shall make no adjustment to the Forest Stand boundary for the portion of the Forest Stand not salvaged.

#### **14. Mediation**

In the event the parties to this Contract become involved in a dispute regarding any of the terms, conditions, performance, or any obligations under this Contract, and if the dispute cannot be settled through negotiation, the parties shall submit to mediation prior to the commencement of arbitration or litigation. The mediator shall be an individual mutually acceptable to both parties, but in the absence of agreement each party shall select a temporary mediator and the temporary mediators shall jointly select the permanent mediator. Each party will pay its own costs for the time and effort involved in mediation. The cost of the mediator shall be split equally between the two parties. Both parties agree to exercise best efforts and act in good faith to resolve all disputes in mediation. Participation in mediation is a mandatory requirement of both the Trust and the Landowner. The schedule and time allowed for mediation will be mutually acceptable. The parties agree to comply with statutes and administrative rules governing the confidentiality of mediation, if any, in existence at the time of the mediation.

If mediation is unsuccessful, the parties agree to proceed immediately to nonbinding arbitration under the same terms for the payment of costs and the selection of the arbitrator that applied to mediation. A party choosing to reject the arbitration award must do so in writing directed to the other party and mailed within 30 days of the date the award was received by that party. The award of the arbitrator will otherwise be final and binding. No resort shall be had to litigation until the mediation and arbitration process set out herein has been exhausted. No statute of limitations or notice period shall be affected

by this dispute resolution process, except that a decision of the Trust shall not be considered "final" for the purposes of ORS 183.480 until rejection of an arbitration award by the Trust.

#### **15. Contract Amendments**

All amendments to this Contract must be in writing, signed and dated by the executing parties. An amendment providing for a change in the total Budgeted Cost under this Contract must be acknowledged before a notary. Amendments to the Project Plan that will not increase the total Budgeted Cost under this contract only need to be acknowledged by the Landowner and the Trust in writing. At any time, the Landowner or the Trust can request that any amendments to the Project Plan be in writing, signed and dated by the executing parties.

In the event the parties execute an amended contract, for all purposes, the amended contract will be deemed to have been executed on the date of execution of the original contract.

#### **16. Breach of Contract Provisions**

The following shall constitute a breach of this Contract:

- (a) Trust Breach. Failure of the Trust to perform any obligation required by this Contract within 30 days after notice of necessary performance by Landowner.
- (b) Landowner Breach.
  - (i) Nonpayment. Failure of Landowner to make any payment due under this Contract within the time allowed.
  - (ii) Change to non-forest use. Conversion of any portion of the Project Area to a non-forest land use.
  - (iii) Misinformation. Falsity in any material respect of any of the representations, warranties or covenants of Landowner contained herein or any representation, warranty or information furnished to the State Forester in connection with this Contract. It is also an event of default if Landowner, during the project approval process, gives materially false or inaccurate information or statements to the State Forester (or fails to provide the State Forester with any material information) in connection with the Project Plan or eligibility of the Real Property or the Landowner for Trust funds.

- (iv) Other Obligations. Failure of Landowner to perform any obligation required by this Contract within 30 days after notice of necessary performance by the State Forester.
- (v) Other Defaults. The sale or transfer of possession of the Real Property or any part thereof in any manner by Landowner, whether by deed, contract of sale, lease or similar agreements, without an express assumption of the obligations of this Contract and the prior written notification to the State Forester.

## 17. Remedies for Breach of Contract

- (a) Landowner's Remedy. In the event of a breach of Contract by the Trust, Landowner's exclusive remedy is to seek specific performance of the Trust's Contract obligations through mediation pursuant to paragraph 14.
- (b) Trust Remedy. In the event of a breach of Contract by Landowner, the Trust's remedies are as follows:
  - (i) Prior to certification by the State Forester that the Forest Stand is Free-to-Grow, the Trust's sole remedies for Landowner's breach of this Contract, are either:
    - A) Liquidated damages from Landowner in the sum of all Actual Trust Cost plus interest.
    - B) Specific performance of Landowner's obligations under this Contract, however, the total cost of performance must not exceed the sum of all Actual Trust Cost plus interest.
  - (ii) After certification by the State Forester that the Forest Stand is Free-to-Grow, in addition to any other remedies which may be available to Trust as a result of Landowner's breach of this Contract, the State Forester may assign a liquidated and delinquent account, as defined by the Oregon Accounting Manual, to the Department of Revenue or to a private collection agency.
  - (iii) After certification by the State Forester that the Forest Stand is Free-to-Grow, in addition to any other remedies which may be available to the Trust as a result of Landowner's breach of this Contract, if at any time forest products are harvested and, in breach of this Contract, Landowner fails to pay the sums due the Trust, the Trust shall be entitled to liquidated damages in the form of a breach penalty. The breach penalty shall include a reasonable administrative fee to recover the cost of collection services and other related costs as described in ORS 293.231 through ORS 293.250.

- (iv) Landowner acknowledges that any breach of contract entitles the State Forester to execute a statutory lien under ORS 526.735 to 526.775 in the form of the Notice of Lien (Exhibit D). In the event that the statutory lien is executed, at the request of Landowner, the Trust will release from the lien forest products generated outside the Project Area.

**18. Covenant**

The Trust and Landowner hereby declare their specific intent that the agreements, covenants, reservations and restrictions set forth herein shall be deemed covenants running with the Real Property as well as constituting an equitable servitude with respect to the Real Property in favor of the Trust and shall pass to and be binding upon Landowner's successors in title to the Real Property; provided, however, that on termination of the Landowner's obligations as provided in paragraph 7, said covenants, reservations, and restrictions shall expire except those provisions with respect to carbon offsets. Each and every contract, deed, or other instrument hereafter covering or conveying the Real Property or any portion thereof shall conclusively be held to have been executed, delivered, and accepted subject to such covenants, reservations, and restrictions, as well as the equitable servitude regarding same, regardless of whether such covenants, reservations, restrictions or equitable servitude are set forth in such contract, deed or other instruments.

**19. Entire Contract**

This Contract and the attached Exhibits constitute the entire agreement between the parties. No waiver, consent, modification, termination, or change of terms of this Contract shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification, or change, if made, shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Contract. Landowner, by signature of its authorized representative, hereby agrees to be bound by the terms and conditions of this Contract.

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## **20. No Waiver**

Any forbearance by Trust in exercising any right or remedy hereunder or otherwise afforded by applicable law, shall not be a waiver or preclude the exercise of any right or remedy hereunder. Waiver of strict performance of any provision of this Contract, including but not limited to acceptance of late payments, shall not be a waiver of or prejudice Trust's right to require strict performance of the same provisions without notice in the future or of any other provisions. Any waiver of performance of any provisions of this Contract must be in writing.

## **21. Notice**

Any notice to Landowner provided for in this Contract shall be given by delivering it or by mailing it by first class mail unless applicable law requires use of another method. The notice shall be directed to the address indicated on the first page of this Contract or any other address Landowner designates by notice to the State Forester. Notice mailed to Landowner will be effective upon mailing. Any notice to the State Forester shall be given by first class mail to the State Forester's address stated herein or any other address the State Forester designates by notice to Landowner. Notice to the State Forester will be effective upon receipt by the State Forester. Any notice provided for in this Contract shall be deemed to have been given to Landowner or the State Forester when given as provided in this section.

## **22. Additional Documents**

Landowner shall execute, acknowledge, and deliver a notice of lien, a memorandum of contract, and such further instruments as Trust may, from time to time, require so as to establish and maintain the lien identified in paragraph 17(b) (iv) or the covenant established by paragraph 18.

## **23. Payments to the Trust**

Payments by Landowner to the Trust shall be made payable to the State Forester and shall reference the Forest Resource Trust and the contract number for this Contract. Payments shall be sent by first class, priority or overnight mail, or delivered to the State



**Forest Resource Trust**

By the State Forester by: \_\_\_\_\_

Date: \_\_\_\_\_

Printed Name:

Title:

State Of Oregon            )  
  ) ss:  
County of \_\_\_\_\_)

On the date stated above, the foregoing instrument was acknowledged before me by  
The Forest Resource Trust by the State Forester by \_\_\_\_\_.

\_\_\_\_\_  
Notary Public for Oregon

