

Contracts Services

# FARMING FOR SUCCESS

OR  
THE STORY OF JOE FARMER



**Oregon State**  
University

# Welcome

**Joe Elwood**

**Jasmina Milic**

# Joe Farmer

Hello

My name is Joe Farmer.

The bird is Cordelia.

I own a 60 acre chicken farm.

I raise chickens for meat and  
eggs.

I sent my good friends Joe and  
Mina to Nashville to tell you  
my story.

# It all started with chickens

# Lots of Chickens

# Joe Brewer

- Joe Brewer is a childhood friend
- We are practically twins
- Joe brews and sells high quality beer at a local brewpub

# The Plot

- I enjoy the beer that Joe Brewer serves at his brewpub.
- Joe Brewer enjoys chicken.
- We should make a deal.

# The Agreement

- 100 Chickens
- 25 Cases of Beer
- We shook on it
- I gave the 100 chickens to Joe Brewer
- And then



# Waiting

# Still Waiting

# And Finally

# WHAT THE...

I Was...Well...Not Happy

Luckily I have an AMAZING  
Attorney

LAW OFFICE  
OF  
MEDANA

# What I Learned

- Between all the yelling from my attorney, I learned the following:
  - Contracts are Important
  - A detailed statement of work is important
  - Both should be in writing and signed by both parties.

# My Big Heart


- Because I don't want anyone else subjecting themselves to a truck full of cheap domestic lager, I sent my AMAZING attorney and her friend to tell you how to prevent this from happening to you.



# Contract Basics

- Definition – An agreement between two or more parties creating obligations that are enforceable or otherwise recognizable at law.
- Contracts define the terms of the agreement in a manner that makes those terms enforceable by law. A contract removes the he said/she said questions.
- \*contract (“K”)

# Elements of a Contract

- Offer
  - Acceptance
-  = Mutual Assent
- Consideration
  - No Available Defenses (we will not discuss)

# Offer

- A promise to do or refrain from doing some specified thing in the future in exchange for something else that would cause a reasonable person to believe that acceptance would create a binding agreement.

Simple way: “Joe Farmer to Joe Brewer: I will give you 100 chicken for 25 cases of beer...”

What we see in Ks: “University will provide to Company A 100 activation codes for *Class*. In exchange Company A will pay to University a fee of \$20,000. This amount is based on a rate of \$200 per access code.”

# Acceptance

- Agreement to all terms proposed in the offer without modification.
- No edits to terms agreement (signature)

# Mutual Assent

- The process by which parties express their intention to be bound by an agreement. Usually in the form of offer and acceptance.
- Is determined by an objective standard (did words or conduct manifest a present intention of the parties to enter into a K?)

# Consideration

- Something bargained for and exchanged between the parties for the benefit of one or the detriment of the other.
- Quid pro quo
- In example
  - “Company getting access codes to *Class*”
  - “University is getting monetary compensation”

# How to Draft Effective Contracts

- Clarity...clarity...clarity
- Template
- Public v. private
- Conflicting terms
- Reasons for not agreeing to terms (prior planning)
- Compliance

### **3. Representations and warranties**

Each party represents and warrants to the other party that all representations and warranties set forth in the Agreement, except all reference in the Agreement to “this Agreement” (or words or phrases of similar meanings) shall be deemed to be reference to this Amendment and the Agreement as amended hereby.



**Joe Farmer**

- I have chickens
- I want beer
- Here are the chickens
- Thanks for the beer



**Joe Brewer**

- I have beer
- I want chickens
- Here is the beer
- Thanks for the chickens





Joe Farmer

- I have a pregnant cow
- I want beer
- Hold my cow until the calf arrives
- Thanks for the beer



Joe Brewer

- I have beer
- I want the calf
- Here is the beer
- The calf arrives
- Here is your cow, thanks for the calf



**Joe Farmer**

- I want more beer
- I don't have chickens to spare. I was hungry. However, I can raise more.



**Joe Brewer**

- I want more chickens
- I don't have any beer, you drank it all, but I can make more.

# You Guessed It

# Statement of Work

What/Why/How....

# What is a Statement of Work (SOW)

- It is a central piece of the K
- K has little or no meaning in the absence of SOW
- WHY?
  - Because it is the tool parties to the K use to communicate their responsibilities, expectations, requirements, outcomes, etc. required to complete a specific project
  - It is usually in the body of the K, but can be anywhere (all throughout or as an attachment)
  - It is a formal document and must be agreed by all parties involved

# Writing SOW

- Not complicated
- Does need some time and thought put into it
- Should tell a story: starting with “who” and “why” to “how” and “what,” and followed by “when” and “how much”

# How to...

- Think of who will read the K (parties, judge, third-party, etc.)
- What do parties want people to know about K
- How detailed information should be
- What is potential risk to watch for
- What is the outcome

# Writing...

- Plan and organize
  - Brainstorm the pieces and outline, or
  - Create a checklist
- Be clear
  - The SOW must contain an appropriate level of detail so all parties clearly understand what work is required/duration of the work involved/what the deliverables are/what is acceptable
- Concise and free of redundancy
- Short sentences in present tense (easy to interpret; think of audience and who will read the K)
- Active voice
- Able to amend/extend



# Elements of SOW

- Background Information/Summary
- Objective
- Scope of Work
- Timeline/Schedule
- Payment Terms
- Place of Performance/Location
- Applicable Standards and Guidelines
- Acceptance Criteria
- Acronyms and Definitions

# Briefly Elements...

- **Background Information/Summary (Who)**
  - Full legal name of the parties
  - Parties' background info related to the project (what A has that B needs)
  - A general description of the work and what will party gain by the work
- **Objective (Why)**
  - Reason for cooperation/why the parties perform the work and solution for the work
    - “JF and JB (collectively, the “Parties”) have a long standing relationship exchanging livestock for beer. The Parties wish to continue this mutual beneficial business relationship. The Parties are entering into this Agreement to establish the business relationship for future exchanges of livestock for alcohol.”
- **Scope of Work (How and What) – Example on the next slide**
  - A brief statement of what parties expect to accomplish as a result of their cooperation
  - Highlights of what is and what is not included in the scope
    - Responsible Parties/ Deliverables/Tasks

# Scope of Work Example

## **B. Scope of Work**

The Parties agree to enter into a business relationship as follows:

- Joe Farmer will provide Joe Brewer one (1) calf every year by the end of July pursuant to the following requirements:
  - Calves will be vaccinated pursuant to the Department of Agriculture vaccination schedule
  - Calves will be less than a year in age
  - Calves will be one of the following breeds: Holstein, Jersey, or Guernsey
  - Calves will be female
  - Calves will be delivered to 1001 Hop Road, Corvallis, OR 97330. Delivery costs are the responsibility of Joe Farmer.
- Joe Brewer will provide Joe Farmer with two (2) cases of beer on the first of every month pursuant to the following requirements:
  - A case of beer will consist of 24 twelve fluid ounce bottles or 18 sixteen fluid ounce bottles
  - The alcohol content of the beer will be between 5.5 % ABV and 8.0% ABV
  - The beer delivered between March and August of each year will be an American-Style India Pale Ale as defined by the Brewer's Association.
  - The beer delivered between September and February of each year will be Classic Irish-Style Dry Stout as defined by the Brewer's Association.
  - The beer will be delivered to 1001 Rooster Avenue, Corvallis, OR 97330. Delivery costs are the responsibility of Joe Brewer.

# Briefly Elements...

- **Timeline/Schedule (When)**
  - Timeline for the work NOT the K
  - Defines the time period over which the work will occur
  - Important to define the period of performance since this is a variable in the work's cost
  - If the work cannot be completed within the set period of time, parties will need to modify the SOW to reflect the change, which will affect the cost
- **Payment Terms**
  - Details regarding cost for the work/method of payment/currency/cancelation and refund policy
- **Place of Performance**
  - Where the work will be performed
  - Important in case the customer requires the contractor to work at the customer's site and to clarify any equipment or work space that will be provided
- **Applicable Standards and Guidelines**
  - (unique guideline, permits, certification, license, etc.)
- **Acceptance Criteria**
  - Define when is the work acceptable/how it will be accepted/who is authorized to accept
- **Acronyms and Definitions**
- **This is not an exclusive list; some elements will apply, some not; or you may need additional elements not listed here – all depends on the nature of the K**

# Now...

- Let's put it in work...
- Oh-Oh...here comes JF
- Video 1



# What is JF asking us to do for him?

- Help with PO form
- To sell eggs to his friend
- But do we have everything?
- Let's see....

# JF Request #1



# JF Request #1

# Request #1

- Finished Agreement
- Intentionally left blank
  - Overhead projector



# JF Request #2

JF wants us to help him with TSA

But:

Do we have all facts?

What are we missing?

Let's see...

# JF Request #2

# JF Request #2

# Request #2

- Finished Agreement
- Intentionally left blank
  - Overhead projector





# JF Request #3

JF wants us to study abroad

But:

Do we have all facts?

Do we have applicable laws?

What are we missing?

Let's see...

# JF Request #3

# JF Request #3

# Request #3

- Finished Agreement
- Intentionally left blank
  - Overhead projector

# Interactive...

This is what usually happens and how we receive requests

- Barely any info
- Incomplete

Numerous emails back and forth

Still no improvements...

# Ensuring to receive info for SOW

- What do we do to make it better?
  - Meetings (in-person)
    - Get to know people you will work with daily
    - Explain why you need info and how to get it to you and in what format
  - Follow ups
    - Is the current process working?
    - What needs to be changed?
  - Intake forms
    - Any instrument that will help other party to provide you with sufficient information re SOW
    - But...don't request just any information; only what is essential and you cannot get it any other way
- Does it help?
  - Yes!
  - Signing
  - Efficient and timely execution of K

# Discussion: OSU Best Practice

- Joe tells how it helped him
  - Procurement examples
- Mina tells how it helped her
  - Contract Services examples

# General Tips

Remember that SOW must clearly communicate what you expect from the parties

- Plain language - because all that matter is what is written on the paper (“four corners”)
  - No need to say “This agreement is by and between...” when you can say “This agreement is between...” or “in most cases” when you can say “usually”
  - Ask for clarification
- Be specific, but not restrictive
  - Accurate expectations within the scope (anything outside is a new scope)
  - “but I thought you meant...” or “when we talked about it before, we agreed...” – this will not cut it because nothing but what is written on the paper matters
  - Leave room for alternative approach and flexibility
- Be Consistent.
  - If you are identifying quantities use numbers only vs. letters and numbers (“contractor will prepare alternatives analysis for 3 alternatives...” vs. for three (3) alternatives.”)



# General Tips

- Reduce legalese and archaic terms
  - difficult to translate in a plain language and in a foreign language
  - Serves no purpose
  - Miguel de Cervantes said “But do not give it to a lawyer’s clerk to write, for they use a legal hand that Satan himself will not understand.” Thomas Jefferson had his lawyers to write in a manner that others [non-lawyers] could understand.
  - Legalese may complicate intention of the parties.
    - Use “must” instead of “shall” if that is intended. Say what you mean. Don’t assume!
      - “Contractor should pay University for all services...”
      - “Contractor must pay University for all services...”
- Avoid abbreviations unless defined and used consistently
  - Boring yes, but will eliminate legal trouble
- Keep it brief!

# Joe Farmer is Awesome

- Joe signs