



Forestry, Fire and State Lands Facility and Land Use Agreement

Contract # _____

Incident Name: _____
Incident Number: _____
Resource Order #: _____

1. CONTRACTING PARTIES: This contract is between the following agency of the State of Utah:
Department Name: Natural Resources; Division Name: Forestry, Fire and State Lands, referred to as (STATE), and the following OWNER:

Name (Owner / Business)

Address

City State Zip

- LEGAL STATUS OF OWNER
- Sole Proprietor (Individual)
 - Non-Profit Corporation
 - For-Profit Corporation
 - Partnership
 - Government Agency

Contact Person _____ Phone # _____ Cell # _____

Email: _____ Vendor # _____ Commodity Code # _____

2. FEDERAL FORM W-9. Request for Taxpayer Identification Number and Certification Attached Not Required

3. Tax identification number for owner is on file with the Utah State Forestry Office. EIN or SS#: _____

4. GENERAL PURPOSE OF CONTRACT: The general purpose of this contract is to provide:

5. PROCUREMENT: This contract is entered into as a result of a pre-approved authorization; Limited Purchasing Delegation (from the Division of Purchasing) # **LPD191**.

6. CONTRACT PERIOD: Effective Date: _____ Termination Date: _____ unless terminated early or extended in accordance with the terms and conditions of this contract.

7. DESCRIPTION OF LAND/FACILITIES: Address or specific location. If street or highway address is unavailable, use distance from nearest city, crossroads, or other significant landmark. The local description of how to get to the land/facilities is also acceptable.

8. ORDINARY WEAR AND TEAR: Ordinary wear and tear is based on the customary use of the land/facilities, and not the use resulting from the incident.

9. RATE: For each _____ that the land/facilities are used, the State will pay the rate of \$ _____ per _____, or provide consideration as follows: _____. Ordinary wear and tear is included in the rate. The minimum amount guaranteed to be paid under this agreement shall be \$ _____, and/or not to exceed NTE \$ _____, regardless of the length of use. Payment shall be in accordance with the incident Agency payment procedures. Payment for a lesser period shall be prorated based on a month being 30 days and rounded to the nearest dollar.

10. UTILITIES AND SERVICES:

The above rate includes utility charges for the following:

- GAS ELECTRICITY WATER TOILET SUPPLIES
- JANITORIAL SERVICES & SUPPLIES TRASH REMOVAL SEPTIC/ SEWER SERVICE
- EXISTING TELECOMMUNICATIONS. EXISTING INTERNET / WIRELESS WI-FI.

The above rate excludes utility charges.

The STATE will pay to the owner the sum determined due by the STATE based on: _____.

11. RESTORATION: Restoration beyond ordinary wear and tear. (check only one)

The above sum includes STATE restoration of land/facilities. Restoration shall be performed to the extent reasonably practical. Restoration work includes: _____.

The above sum excludes restoration of land/facilities. Reasonable costs incurred by the owner in restoring land/facilities to their prior condition shall be submitted to the STATE.

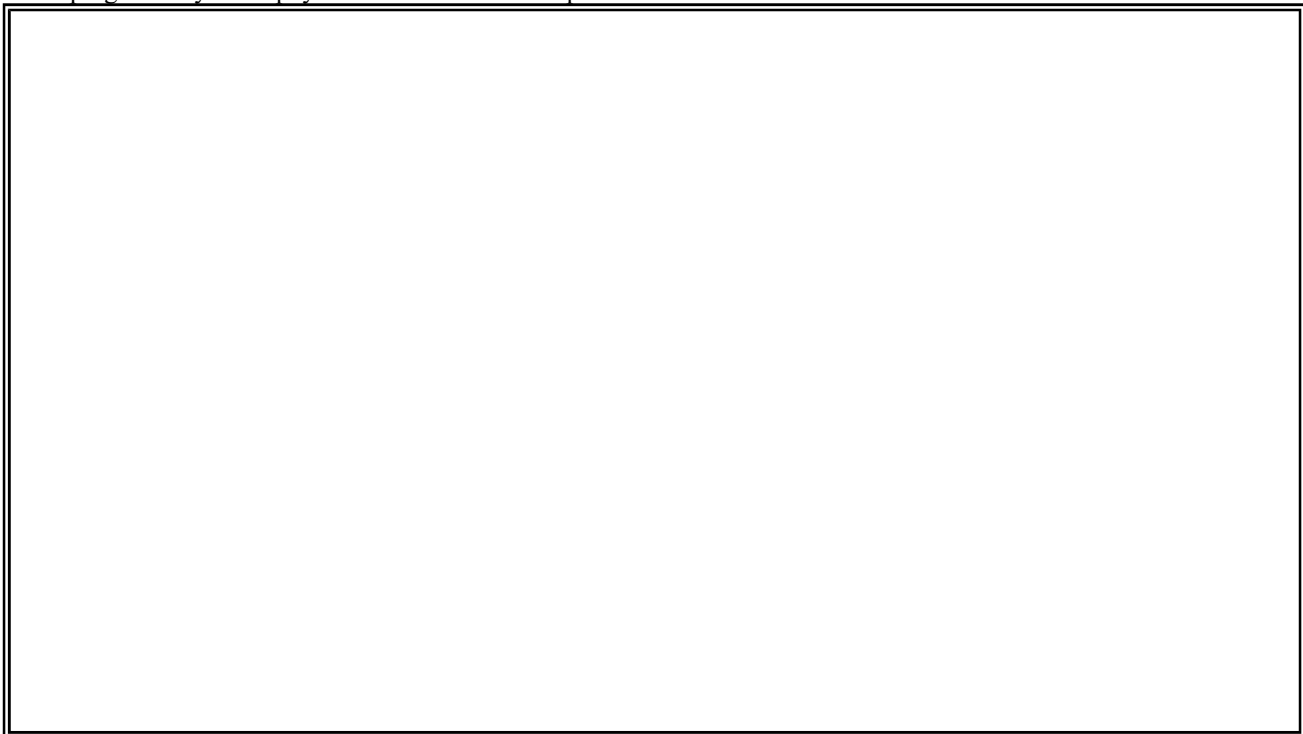
12. ALTERATIONS: The STATE may make alterations, attach fixtures or signs, erect temporary structures in or upon the land/facilities, install temporary culverts, trenching for utilities, which shall be the property of the STATE. Alterations will be removed by the STATE after the termination of the emergency use, unless otherwise agreed.

13. ORAL STATEMENTS: Oral statements or commitments supplementary or contrary to any provisions of this Agreement shall not be considered as modifying or affecting the provisions of this Agreement

14. CONDITION REPORTS: A joint pre and post-use physical inspection report of the land/facilities shall be made and signed by the parties; the purpose of the inspections shall be to reflect the existing site condition.

15. SPECIAL PROVISIONS:

16. SITE DRAWING: Show the land/facilities under agreement. Include buildings, roads, paved areas, utility lines, fences, ditches, landscaping and any other physical features which help describe the area.



ATTACHMENT B: PRE / POST- INSPECTION

PRE-USE INSPECTION: Description or photos or condition immediately prior the STATE's occupancy.

OWNER / OWNER'S AGENT SIGNATURE:

DATE:

CONTRACTING OFFICER'S SIGNATURE:

DATE:

PRINT NAME AND TITLE:

PRINT NAME AND TITLE:

POST-USE INSPECTION: Description of photos or condition immediately following the STATE's occupancy.

CALCULATIONS: _____ **UNITS x** _____ **RATE** **ADDITIONAL CHARGES:** _____

TOTAL AMOUNT DUE \$ _____ **STATE PURCHASE ORDER #:** _____

RELEASE OF CLAIMS STATEMENT: Contract release for and in consideration of receipt of payment in the amount shown in 'total amount due'. Contractor hereby releases the STATE from any and all claims arising under this agreement except as reserved in remarks.

REMARKS (cost adjustments /settlements /other):

OWNER / OWNER'S AGENT SIGNATURE:

DATE:

CONTRACTING OFFICER'S SIGNATURE:

DATE:

PRINT NAME AND TITLE:

PRINT NAME AND TITLE:

ATTACHMENT A: STATE OF UTAH STANDARD TERMS AND CONDITIONS FOR GOODS AND SERVICES

DEFINITIONS: The following terms shall have the meanings set forth below:

- a) **“Confidential Information”** means information that is deemed as confidential under applicable state and federal laws, including personal information. The State Entity reserves the right to identify, during and after this Contract, additional reasonable types of categories of information that must be kept confidential under federal and state laws.
 - b) **“Contract”** means the Contract Signature Page(s), including all referenced attachments and documents incorporated by reference. The term “Contract” shall include any purchase orders that result from this Contract.
 - c) **“Contract Signature Page(s)”** means the State of Utah cover page(s) that the State Entity and Contractor signed.
 - d) **“Contractor”** means the individual or entity delivering the Procurement Item identified in this Contract. The term “Contractor” shall include Contractor’s agents, officers, employees, and partners.
 - e) **“Custom Deliverable”** means the Work Product that Contractor is required to deliver to the State Entity under this Contract.
 - f) **“Procurement Item”** means a supply, a service, Custom Deliverable, construction, or technology that Contractor is required to deliver to the State Entity under this Contract.
 - g) **“Response”** means the Contractor’s bid, proposals, quote, or any other document used by the Contractor to respond to the State Entity’s Solicitation.
 - h) **“Solicitation”** means an invitation for bids, request for proposals, notice of a sole source procurement, request for statement of qualifications, request for information, or any document used to obtain bids, proposals, pricing, qualifications, or information for the purpose of entering into this Contract.
 - i) **“State Entity”** means the department, division, office, bureau, agency, or other organization identified on the Contract Signature Page(s).
 - j) **“State of Utah”** means the State of Utah, in its entirety, including its institutions, agencies, departments, divisions, authorities, instrumentalities, boards, commissions, elected or appointed officers, employees, agents, and authorized volunteers.
 - k) **“Subcontractors”** means a person under contract with a contractor or another subcontractor to provide services or labor for design or construction, including a trade contractor or specialty contractor.
 - l) **“Work Product”** means every invention, modification, discovery, design, development, customization, configuration, improvement, process, software program, work of authorship, documentation, formula, datum, technique, know how, secret, or intellectual property right whatsoever or any interest therein (whether patentable or not patentable or registerable under copyright or similar statutes or subject to analogous protection) that is specifically made, conceived, discovered, or reduced to practice by Contractor or Contractor’s Subcontractors (either alone or with others) pursuant to this Contract. Work Product shall be considered a work made for hire under federal, state, and local laws; and all interest and title shall be transferred to and owned by the State Entity. Notwithstanding anything in the immediately preceding sentence to the contrary, Work Product does not include any State Entity intellectual property, Contractor’s intellectual property (that it owned or licensed prior to this Contract) or Third Party intellectual property.
2. **GOVERNING LAW AND VENUE:** This Contract shall be governed by the laws, rules, and regulations of the State of Utah. Any action or proceeding arising from this Contract shall be brought in a court of competent jurisdiction in the State of Utah. Venue shall be in Salt Lake City, in the Third Judicial District Court for Salt Lake County.
 3. **LAWS AND REGULATIONS:** At all times during this Contract, Contractor and all Procurement Items delivered and/or performed under this Contract will comply with all applicable federal and state constitutions, laws, rules, codes, orders, and regulations, including applicable licensure and certification requirements. If this Contract is funded by federal funds, either in whole or in part, then any federal regulation related to the federal funding, including CFR Appendix II to Part 200, will supersede this Attachment A.
 4. **RECORDS ADMINISTRATION:** Contractor shall maintain or supervise the maintenance of all records necessary to properly account for Contractor’s performance and the payments made by the State Entity to Contractor under this Contract. These records shall be retained by Contractor for at least six (6) years after final payment, or until all audits initiated within the six (6) years have been completed, whichever is later. Contractor agrees to allow, at no additional cost, the State of Utah, federal auditors, State Entity staff, or their designees, access to all such records during normal business hours and to allow interviews of any employees or others who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Contract.
 5. **PERMITS:** If necessary Contractor shall procure and pay for all permits, licenses, and approvals necessary for the execution of this Contract.
 6. **CERTIFY REGISTRATION AND USE OF EMPLOYMENT “STATUS VERIFICATION SYSTEM”:** The Status Verification System, also referred to as “E-verify”, only applies to contracts issued through a Request for Proposal process, to sole sources that are included within a Request for Proposal, and when Contractor employs any personnel in Utah.
 - a. Contractor certifies as to its own entity, under penalty of perjury, that Contractor has registered and is participating in the Status Verification System to verify the work eligibility status of Contractor’s new employees that are employed in the State of Utah in accordance with applicable immigration laws.
 - b. Contractor shall require that each of its Subcontractors certify by affidavit, as to their own entity, under penalty of perjury, that each Subcontractor has registered and is participating in the Status Verification System to verify the work eligibility status of Subcontractor’s new employees that are employed in the State of Utah in accordance with applicable immigration laws.
 - c. Contractor’s failure to comply with this section will be considered a material breach of this Contract.
 7. **CONFLICT OF INTEREST:** Contractor represents that none of its officers or employees are officers or employees of the State Entity or the State of Utah, unless disclosure has been made to the State Entity.
 8. **INDEPENDENT CONTRACTOR:** Contractor and Subcontractors, in the performance of this Contract, shall act in an independent capacity and not as officers or employees or agents of the State Entity or the State of Utah.

9. **CONTRACTOR RESPONSIBILITY:** Contractor is solely responsible for fulfilling the contract, with responsibility for all Procurement Items delivered and/or performed as stated in this Contract. Contractor shall be the sole point of contact regarding all contractual matters. Contractor must incorporate Contractor's responsibilities under this Contract into every subcontract with its Subcontractors that will provide the Procurement Item(s) to the State Entity under this Contract. Moreover, Contractor is responsible for its Subcontractors compliance under this Contract.
10. **INDEMNITY:** Contractor shall be fully liable for the actions of its agents, employees, officers, partners, and Subcontractors, and shall fully indemnify, defend, and save harmless the State Entity and the State of Utah from all claims, losses, suits, actions, damages, and costs of every name and description arising out of Contractor's performance of this Contract to the extent caused by any intentional wrongful act or negligence of Contractor, its agents, employees, officers, partners, or Subcontractors, without limitation; provided, however, that the Contractor shall not indemnify for that portion of any claim, loss, or damage arising hereunder due to the fault of the State Entity. The parties agree that if there are any limitations of the Contractor's liability, including a limitation of liability clause for anyone for whom the Contractor is responsible, such limitations of liability will not apply to injuries to persons, including death, or to damages to property.
11. **EMPLOYMENT PRACTICES:** Contractor agrees to abide by the following federal and state employment laws, including: (i) Title VI and VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e), which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services on the basis of race, religion, color, or national origin; (ii) Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; (iii) 45 CFR 90, which prohibits discrimination on the basis of age; (iv) Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990, which prohibits discrimination on the basis of disabilities; and (v) Utah's Executive Order 2019-1, dated February 5, 2019, which prohibits unlawful harassment in the workplace. Contractor further agrees to abide by any other laws, regulations, or orders that prohibit the discrimination of any kind by any of Contractor's employees.
12. **AMENDMENTS:** This Contract may only be amended by the mutual written agreement of the parties, provided that the amendment is within the Scope of Work of this Contract and is within the scope/purpose of the original solicitation for which this Contract was derived. The amendment will be attached and made part of this Contract. Automatic renewals will not apply to this Contract, even if listed elsewhere in this Contract.
13. **DEBARMENT:** Contractor certifies that it is not presently nor has ever been debarred, suspended, proposed for debarment, or declared ineligible by any governmental department or agency, whether international, national, state, or local. Contractor must notify the State Entity within thirty (30) days if debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in any contract by any governmental entity during this Contract.
14. **TERMINATION:** This Contract may be terminated, with cause by either party, in advance of the specified expiration date, upon written notice given by the other party. The party in violation will be given ten (10) days after written notification to correct and cease the violations, after which this Contract may be terminated for cause immediately and subject to the remedies below. This Contract may also be terminated without cause (for convenience), in advance of the specified expiration date, by the State Entity, upon thirty (30) days written termination notice being given to the Contractor. The State Entity and the Contractor may terminate this Contract, in whole or in part, at any time, by mutual agreement in writing.

On termination of this Contract, all accounts and payments will be processed according to the financial arrangements set forth herein for approved and conforming Procurement Items ordered prior to date of termination. In no event shall the State Entity be liable to the Contractor for compensation for any Good neither requested nor accepted by the State Entity. In no event shall the State Entity's exercise of its right to terminate this Contract for convenience relieve the Contractor of any liability to the State Entity for any damages or claims arising under this Contract.
15. **NONAPPROPRIATION OF FUNDS, REDUCTION OF FUNDS, OR CHANGES IN LAW:** Upon thirty (30) days written notice delivered to the Contractor, this Contract may be terminated in whole or in part at the sole discretion of the State Entity, if the State Entity reasonably determines that: (i) a change in Federal or State legislation or applicable laws materially affects the ability of either party to perform under the terms of this Contract; or (ii) that a change in available funds affects the State Entity's ability to pay under this Contract. A change of available funds as used in this paragraph includes, but is not limited to a change in Federal or State funding, whether as a result of a legislative act or by order of the President or the Governor.

If a written notice is delivered under this section, the State Entity will reimburse Contractor for the Procurement Item(s) properly ordered and/or Services properly performed until the effective date of said notice. The State Entity will not be liable for any performance, commitments, penalties, or liquidated damages that accrue after the effective date of said written notice.
16. **SALES TAX EXEMPTION:** The Procurement Item(s) under this Contract will be paid for from the State Entity's funds and used in the exercise of the State Entity's essential functions as a State of Utah entity. Upon request, the State Entity will provide Contractor with its sales tax exemption number. It is Contractor's responsibility to request the State Entity's sales tax exemption number. It also is Contractor's sole responsibility to ascertain whether any tax deduction or benefits apply to any aspect of this Contract.
17. **WARRANTY OF PROCUREMENT ITEM(S):** Contractor warrants, represents and conveys full ownership and clear title, free of all liens and encumbrances, to the Procurement Item(s) delivered to the State Entity under this Contract. Contractor warrants for a period of one (1) year that: (i) the Procurement Item(s) perform according to all specific claims that Contractor made in its Response; (ii) the Procurement Item(s) are suitable for the ordinary purposes for which such Procurement Item(s) are used; (iii) the Procurement Item(s) are suitable for any special purposes identified in the Contractor's Response; (iv) the Procurement Item(s) are designed and manufactured in a commercially reasonable manner; (v) the Procurement Item(s) are manufactured and in all other respects create no harm to persons or property; and (vi) the Procurement Item(s) are free of defects. Unless otherwise specified, all Procurement Item(s) provided shall be new and unused of the latest model or design.

Remedies available to the State Entity under this section include, but are not limited to, the following: Contractor will repair or replace Procurement Item(s) at no charge to the State Entity within ten (10) days of any written notification informing Contractor of the Goods not performing as required under this Contract. If the repaired and/or replaced Procurement Item(s) prove to be inadequate, or fail its essential purpose, Contractor will refund the full amount of any payments that have been made. Nothing in this warranty will be construed to limit

any rights or remedies the State Entity may otherwise have under this Contract.

18. **CONTRACTOR'S INSURANCE RESPONSIBILITY.** The Contractor shall maintain the following insurance coverage:
- Workers' compensation insurance during the term of this Contract for all its employees and any Subcontractor employees related to this Contract. Workers' compensation insurance shall cover full liability under the workers' compensation laws of the jurisdiction in which the work is performed at the statutory limits required by said jurisdiction.
 - Commercial general liability [CGL] insurance from an insurance company authorized to do business in the State of Utah. The limits of the CGL insurance policy will be no less than one million dollars (\$1,000,000.00) per person per occurrence and three million dollars (\$3,000,000.00) aggregate.
 - Commercial automobile liability [CAL] insurance from an insurance company authorized to do business in the State of Utah. The CAL insurance policy must cover bodily injury and property damage liability and be applicable to all vehicles used in your performance of Services under this Agreement whether owned, non-owned, leased, or hired. The minimum liability limit must be \$1 million per occurrence, combined single limit. The CAL insurance policy is required if Contractor will use a vehicle in the performance of this Contract.
 - Other insurance policies required in the Solicitation.

Certificate of Insurance, showing up-to-date coverage, shall be on file with the State Entity before the Contract may commence.

The State reserves the right to require higher or lower insurance limits where warranted. Failure to provide proof of insurance as required will be deemed a material breach of this Contract. Contractor's failure to maintain this insurance requirement for the term of this Contract will be grounds for immediate termination of this Contract.

19. **RESERVED.**

20. **PUBLIC INFORMATION:** Contractor agrees that this Contract, related purchase orders, related pricing documents, and invoices will be public documents and may be available for public and private distribution in accordance with the State of Utah's Government Records Access and Management Act (GRAMA). Contractor gives the State Entity and the State of Utah express permission to make copies of this Contract, related sales orders, related pricing documents, and invoices in accordance with GRAMA. Except for sections identified in writing by Contractor and expressly approved by the State of Utah Division of Purchasing and General Services, Contractor also agrees that the Contractor's Response will be a public document, and copies may be given to the public as permitted under GRAMA. The State Entity and the State of Utah are not obligated to inform Contractor of any GRAMA requests for disclosure of this Contract, related purchase orders, related pricing documents, or invoices.

21. **DELIVERY:** All deliveries under this Contract will be F.O.B. destination with all transportation and handling charges paid for by Contractor. Responsibility and liability for loss or damage will remain with Contractor until final inspection and acceptance when responsibility will pass to the State Entity, except as to latent defects or fraud. Contractor shall strictly adhere to the delivery and completion schedules specified in this Contract.

22. **ACCEPTANCE AND REJECTION:** The State Entity shall have thirty (30) days after delivery of the Procurement Item(s) to perform an inspection of the Procurement Item(s) to determine whether the Procurement Item(s) conform to the standards specified in the Solicitation and this Contract prior to acceptance of the Procurement Item(s) by the State Entity.

If Contractor delivers nonconforming Procurement Item(s), the State Entity may, at its option and at Contractor's expense: (i) return the Procurement Item(s) for a full refund; (ii) require Contractor to promptly correct or replace the nonconforming Procurement Item(s); or (iii) obtain replacement Procurement Item(s) from another source, subject to Contractor being responsible for any cover costs. Contractor shall not redeliver corrected or rejected Procurement Item(s) without: first, disclosing the former rejection or requirement for correction; and second, obtaining written consent of the State Entity to redeliver the corrected Procurement Item(s). Repair, replacement, and other correction and redelivery shall be subject to the terms of this Contract.

23. **INVOICING:** Contractor will submit invoices within thirty (30) days of the delivery date of the Procurement Item(s) to the State Entity. The contract number shall be listed on all invoices, freight tickets, and correspondence relating to this Contract. The prices paid by the State Entity will be those prices listed in this Contract, unless Contractor offers a prompt payment discount within its Response or on its invoice. The State Entity has the right to adjust or return any invoice reflecting incorrect pricing.

24. **PAYMENT:** Payments are to be made within thirty (30) days after a correct invoice is received. All payments to Contractor will be remitted by mail, electronic funds transfer, or the State of Utah's Purchasing Card (major credit card). If payment has not been made after sixty (60) days from the date a correct invoice is received by the State Entity, then interest may be added by Contractor as prescribed in the Utah Prompt Payment Act. The acceptance by Contractor of final payment, without a written protest filed with the State Entity within ten (10) business days of receipt of final payment, shall release the State Entity and the State of Utah from all claims and all liability to the Contractor. The State Entity's payment for the Procurement Item(s) and/or Services shall not be deemed an acceptance of the Procurement Item(s) and is without prejudice to any and all claims that the State Entity or the State of Utah may have against Contractor. The State of Utah and the State Entity will not allow the Contractor to charge end users electronic payment fees of any kind.

25. **INDEMNIFICATION RELATING TO INTELLECTUAL PROPERTY:** Contractor will indemnify and hold the State Entity and the State of Utah harmless from and against any and all damages, expenses (including reasonable attorneys' fees), claims, judgments, liabilities, and costs in any action or claim brought against the State Entity or the State of Utah for infringement of a third party's copyright, trademark, trade secret, or other proprietary right. The parties agree that if there are any limitations of Contractor's liability, such limitations of liability will not apply to this section.

26. **OWNERSHIP IN INTELLECTUAL PROPERTY:** The State Entity and Contractor each recognizes that each has no right, title, or interest, proprietary or otherwise, in the intellectual property owned or licensed by the other, unless otherwise agreed upon by the parties in writing. All Procurement Item(s), documents, records, programs, data, articles, memoranda, and other materials not developed or licensed by Contractor prior to the execution of this Contract, but specifically manufactured under this Contract shall be considered work made for hire, and Contractor shall transfer any ownership claim to the State Entity.

27. **OWNERSHIP IN CUSTOM DELIVERABLES:** In the event that Contractor provides Custom Deliverables to the State Entity, pursuant to this Contract, Contractor grants the ownership in Custom Deliverables, which have been developed and delivered by Contractor exclusively for the State Entity and are specifically within the framework of fulfilling Contractor's contractual obligations under this contract. Custom Deliverables shall be deemed work made for hire, such that all intellectual property rights, title and interest in the Custom Deliverables shall pass to the State Entity, to the extent that the Custom Deliverables are not recognized as work made for hire, Contractor hereby assigns to the State Entity any and all copyrights in and to the Custom Deliverables, subject to the following:

1. Contractor has received payment for the Custom Deliverables,
2. Each party will retain all rights to patents, utility models, mask works, copyrights, trademarks, trade secrets, and any other form of protection afforded by law to inventions, models, designs, technical information, and applications ("Intellectual Property Rights") that it owned or controlled prior to the effective date of this contract or that it develops or acquires from activities independent of the services performed under this contract ("Background IP"), and
3. Contractor will retain all right, title, and interest in and to all Intellectual Property Rights in or related to the services, or tangible components thereof, including but not limited to (a) all know-how, intellectual property, methodologies, processes, technologies, algorithms, software, or development tools used in performing the Services (collectively, the "Utilities"), and (b) such ideas, concepts, know-how, processes and reusable reports, designs, charts, plans, specifications, documentation, forms, templates, or output which are supplied or otherwise used by or on behalf of Contractor in the course of performing the Services or creating the Custom Deliverables, other than portions that specifically incorporate proprietary or Confidential Information or Custom Deliverables of the State Entity (collectively, the "Residual IP"), even if embedded in the Custom Deliverables.
4. Custom Deliverables, not including Contractor's Intellectual Property Rights, Background IP, and Residual IP, may not be marketed or distributed without written approval by the State Entity.

Contractor agrees to grant to the State Entity a perpetual, irrevocable, royalty-free license to use Contractor's Background IP, Utilities, and Residual IP, as defined above, solely for the State Entity and the State of Utah to use the Custom Deliverables. The State Entity reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use and to authorize others to use, for the State Entity's and the State of Utah's internal purposes, such Custom Deliverables. For the Goods delivered that consist of Contractor's scripts and code and are not considered Custom Deliverables or Work Product, for any reason whatsoever, Contractor grants the State Entity a non-exclusive, non-transferable, irrevocable, perpetual right to use, copy, and create derivative works from such, without the right to sublicense, for the State Entity's and the State of Utah's internal business operation under this Contract. The State Entity and the State of Utah may not participate in the transfer or sale of, create derivative works from, or in any way exploit Contractor's Intellectual Property Rights, in whole or in part.

28. **ASSIGNMENT:** Contractor may not assign, sell, transfer, subcontract or sublet rights, or delegate any right or obligation under this Contract, in whole or in part, without the prior written approval of the State Entity.
29. **REMEDIES:** Any of the following events will constitute cause for the State Entity to declare Contractor in default of this Contract: (i) Contractor's non-performance of its contractual requirements and obligations under this Contract; or (ii) Contractor's material breach of any term or condition of this Contract. The State Entity may issue a written notice of default providing a ten (10) day period in which Contractor will have an opportunity to cure. Time allowed for cure will not diminish or eliminate Contractor's liability for damages. If the default remains after Contractor has been provided the opportunity to cure, the State Entity may do one or more of the following: (i) exercise any remedy provided by law or equity; (ii) terminate this Contract; (iii) impose liquidated damages, if liquidated damages are listed in this Contract; (iv) debar/suspend Contractor from receiving future contracts from the State Entity or the State of Utah; or (v) demand a full refund of any payment that the State Entity has made to Contractor under this Contract for Procurement Item(s) that do not conform to this Contract.
30. **FORCE MAJEURE:** Neither party to this Contract will be held responsible for delay or default caused by fire, riot, act of God, and/or war which is beyond that party's reasonable control. The State Entity may terminate this Contract after determining such delay will prevent successful performance of this Contract.
31. **CONFIDENTIALITY:** If Confidential Information is disclosed to Contractor, Contractor shall: (i) advise its agents, officers, employees, partners, and Subcontractors of the obligations set forth in this Contract; (ii) keep all Confidential Information strictly confidential; and (iii) not disclose any Confidential Information received by it to any third parties. Contractor will promptly notify the State Entity of any potential or actual misuse or misappropriation of Confidential Information.

Contractor shall be responsible for any breach of this duty of confidentiality, including any required remedies and/or notifications under applicable law. Contractor shall indemnify, hold harmless, and defend the State Entity and the State of Utah, including anyone for whom the State Entity or the State of Utah is liable, from claims related to a breach of this duty of confidentiality, including any notification requirements, by Contractor or anyone for whom the Contractor is liable.

Upon termination or expiration of this Contract, Contractor will return all copies of Confidential Information to the State Entity or certify, in writing, that the Confidential Information has been destroyed. This duty of confidentiality shall be ongoing and survive the termination or expiration of this Contract.

32. **PUBLICITY:** Contractor shall submit to the State Entity for written approval all advertising and publicity matters relating to this Contract. It is within the State Entity's sole discretion whether to provide approval, which approval must be in writing.
33. **WORK ON STATE OF UTAH OR ELIGIBLE USER PREMISES:** Contractor shall ensure that personnel working on State of Utah premises shall: (i) abide by all of the rules, regulations, and policies of the premises; (ii) remain in authorized areas; (iii) follow all instructions; and (iv) be subject to a background check, prior to entering the premises. The State of Utah or Eligible User may remove any individual for a violation hereunder.

34. **CONTRACT INFORMATION:** During the duration of this Contract the State of Utah Division of Purchasing is required to make available contact information of Contractor to the State of Utah Department of Workforce Services. The State of Utah Department of Workforce Services may contact Contractor during the duration of this Contract to inquire about Contractor's job vacancies within the State of Utah.
35. **WAIVER:** A waiver of any right, power, or privilege shall not be construed as a waiver of any subsequent right, power, or privilege.
36. **SUSPENSION OF WORK:** Should circumstances arise which would cause the State Entity to suspend Contractor's responsibilities under this Contract, but not terminate this Contract, this will be done by formal written notice pursuant to the terms of this Contract. Contractor's responsibilities may be reinstated upon advance formal written notice from the State Entity.
37. **CHANGES IN SCOPE:** Any changes in the scope of the services to be performed under this Contract shall be in the form of a written amendment to this Contract, mutually agreed to and signed by both parties, specifying any such changes, fee adjustments, any adjustment in time of performance, or any other significant factors arising from the changes in the scope of services.
38. **PROCUREMENT ETHICS:** Contractor understands that a person who is interested in any way in the sale of any supplies, services, construction, or insurance to the State of Utah is violating the law if the person gives or offers to give any compensation, gratuity, contribution, loan, reward, or any promise thereof to any person acting as a procurement officer on behalf of the State of Utah, or to any person in any official capacity who participates in the procurement of such supplies, services, construction, or insurance, whether it is given for their own use or for the use or benefit of any other person or organization.
39. **ATTORNEY'S FEES:** In the event of any judicial action to enforce rights under this Contract, the prevailing party shall be entitled its costs and expenses, including reasonable attorney's fees incurred in connection with such action.
40. **TRAVEL COSTS:** If travel expenses are permitted by the Solicitation, then all travel costs associated with the delivery of Services under this Contract will be paid according to the rules and per diem rates found in the Utah Administrative Code R25-7. Invoices containing travel costs outside of these rates will be returned to Contractor for correction.
41. **DISPUTE RESOLUTION:** Prior to either party filing a judicial proceeding, the parties agree to participate in the mediation of any dispute. The State Entity, after consultation with Contractor, may appoint an expert or panel of experts to assist in the resolution of a dispute. If the State Entity appoints such an expert or panel, State Entity and Contractor agree to cooperate in good faith in providing information and documents to the expert or panel in an effort to resolve the dispute.
42. **ORDER OF PRECEDENCE:** In the event of any conflict in the terms and conditions in this Contract, the order of precedence shall be: (i) this Attachment A; (ii) Contract Signature Page(s); (iii) the State of Utah's additional terms and conditions, if any; (iv) any other attachment listed on the Contract Signature Page(s); and (v) Contractor's terms and conditions that are attached to this Contract, if any. Any provision attempting to limit the liability of Contractor or limit the rights of the State Entity or the State of Utah must be in writing and attached to this Contract or it is rendered null and void.
43. **SURVIVAL OF TERMS:** Termination or expiration of this Contract shall not extinguish or prejudice the State Entity's right to enforce this Contract with respect to any default of this Contract or defect in the Procurement Item(s) that has not been cured, or of any of the following clauses, including: Governing Law and Venue, Laws and Regulations, Records Administration, Remedies, Dispute Resolution, Indemnity, Newly Manufactured, Indemnification Relating to Intellectual Property, Warranty of Procurement Item(s), Insurance.
44. **SEVERABILITY:** The invalidity or unenforceability of any provision, term, or condition of this Contract shall not affect the validity or enforceability of any other provision, term, or condition of this Contract, which shall remain in full force and effect.
45. **ERRORS AND OMISSIONS:** Contractor shall not take advantage of any errors and/or omissions in this Contract. The Contractor must promptly notify the State of any errors and/or omissions that are discovered.
46. **ENTIRE AGREEMENT:** This Contract constitutes the entire agreement between the parties and supersedes any and all other prior and contemporaneous agreements and understandings between the parties, whether oral or written.
47. **ANTI-BOYCOTT ACTIONS:** In accordance with Utah Code 63G-27 et seq., Contractor certifies that it is not currently engaged in any "economic boycott" nor a "boycott of the State of Israel" as those terms are defined in Section 102. Contractor further certifies that it has read and understands 63G-27 et. seq., that it will not engage in any such boycott action during the term of this Contract, and that if it does, it shall promptly notify the State in writing.

(Revision Date: 7/20/2023)

ATTACHMENT B: GENERAL PROVISIONS

The intent of this agreement is to obtain Sanitation services for local and State fire suppression and all-risk incidents. This agreement may be used by Utah Federal agencies; however, **the payment agency is the state of Utah, Division of Forestry, Fire and State Lands.**

Since the needs of the STATE and availability of Contractor's resources during an emergency cannot be determined in advance, it is mutually agreed that, upon request of the STATE, the Contractor shall furnish the resources listed herein to the extent the Contractor is willing and able at the time of order. Due to the sporadic occurrence of Incident activity, the placement of any orders IS NOT GUARANTEED.

Rates include, but are not limited to, labor, equipment, operating supplies, materials, State and Federal taxes (including workers' compensation costs), insurance coverage, overhead, and profit, and any costs/fees necessary to ensure equipment/operators meet(s) the specified standards as well as the cost for transporting the resource to the incident.

Contractors shall be prepared to operate up to 16 hours per day. The Finance Unit will work in tandem with Fire Operations to ensure contract resources are not worked more than 16 hours. Working more than 16 hours per day violates the 2:1 work/rest safety guidelines and shall be mitigated. When working an average of more than 16 hours, a Contractor may request to negotiate an equitable adjustment through the Procurement Unit Leader or Contracting Officer. Shifts exceeding 16 hours shall be approved by the Incident Commander.

Resources furnished under this Contract may be operated and subjected to extreme environmental and/or strenuous operating conditions which could include but is not limited to unimproved roads, steep, rocky, hilly terrain, dust, heat, and smoky conditions. As a result, by entering into this agreement, the contractor agrees that what is considered wear and tear under this agreement is in excess of what the resource is subjected to under normal operations and is reflected in the rates paid for the resource.

ATTACHMENT C: CONTRACT CLAUSES, SCOPE OF WORK

SCOPE OF AGREEMENT

The Contractor is responsible for all equipment, materials, supplies, transportation, lodging, personnel, and supervision and management of those personnel, necessary to meet or exceed the Agreement specifications. The resources may be used in fire suppression and all-hazard incidents. The Incident Commander or responsible STATE Representative is authorized to administer the technical aspects of this Contract.

C 1. EQUIPMENT CONDITION: The Contractor shall provide dependable equipment that meets all applicable state and federal laws relating to motor vehicles and equipment. Condition of Equipment - All equipment furnished under this contract shall be in acceptable condition. Prior to incident use or anytime the resource is under hire, the STATE reserves the right to perform inspections to insure compliance with the Contract requirements.

If the resource does not pass inspection at the incident or designated inspection station, it is considered noncompliant. The Contractor may be given 24 hours or time frame designated by STATE representatives to bring the resource into compliance. If the resource does not pass inspection, no payment will be made for travel to the incident or point of inspection or return to the point of hire, or for the time that the resource was not available. The STATE reserves the right to reject equipment that is not in safe and operable condition. The STATE may allow the Contractor to correct deficiencies within 24 hours. Repeated failures at the pre-use incident inspection may be grounds for cancellation of the Contract. No payment for travel to an Incident or point of inspection, or return to the point of hire, will be made for equipment that does not pass inspection. No payment will be made for time that the equipment was not available.

C 2. TIME UNDER HIRE: The time under hire shall start at the time the equipment begins traveling to the incident after being ordered by the STATE, and end at the estimated time of arrival back to the point of hire after being released, except as provided in [C 7] of these General Clauses.

C 3. OPERATING SUPPLIES - include fuel, oil, filters, lube/oil changes. Even though it may specify that all operating supplies are to be furnished by the Contractor (*wet*), the STATE may, at its option, elect to furnish such supplies when necessary to keep the equipment operating. The cost of such supplies will be determined by the STATE and deducted from payment to the Contractor.

C 4. REPAIRS: Repairs to equipment shall be made and paid for by the Contractor. The STATE may, at its option, elect to make such repairs when necessary to keep the equipment operating. The cost of such repairs will be \$75 per hour, plus parts and will be deducted from payment to the contractor.

C 5. TIMEKEEPING: Time will be verified and approved by the STATE Agent responsible for ordering and/or directing use of each piece of equipment. Time will be recorded to the nearest quarter hour worked for daily/hourly rate, or whole mile for mileage.

C 6. PAYMENTS

a. Rates of Payments - Rates for equipment hired with Contractor Furnished operator(s) shall include all operator(s) expenses. Payment will be at rates specified and, except as provided in [C 7], shall be in accordance with the following:

1. **Work Rates** (hourly or mileage) shall apply when equipment is under hire as ordered by the STATE and on shift, including relocation of equipment under its own power.

ON-SHIFT: Includes time worked, time that equipment is held or directed to be in a state of readiness, and compensable travel (equipment traveling under its own power) that has a specific start and ending time.

2. **Special Rates** shall apply when specified.
3. **Guarantee.** For each calendar day that equipment is under hire for at least 8 hours, the STATE will pay not less than the guarantee amount shown. If equipment is under hire for less than 8 hours during a calendar day, the amount earned for that day will be not less than one-half the guarantee specified. The guarantee is not applicable to equipment hired under the Daily rate. Equipment under transport is time under hire and compensated through the Guarantee. If equipment is transported under its own power, it is compensated under the Work rate.
4. **Daily Rate** - Payment will be made on basis of calendar days (0001 – 2400). For fractional days at the beginning and ending of time under hire, payment will be based on 50 percent of the Daily Rate for periods less than 8 hours. Under the daily rate equipment may be staffed with or without operator.
 - (a) **Shift Basis (Portion of calendar day)**
 - 1) **Single Shift** - (SS) is staffed with one operator or one crew
 - 2) **Double Shift** - (DS) is staffed with two operators or two crews (one per shift). The DS rate will apply any calendar day the DS was under hire, including travel. There will be no compensation for a double shift unless a separate operator(s) and or crew(s) is/are ordered in writing for the second shift.

3) Agency personnel at the Section Chief Level may, by resource order, authorize a second operator or crew (Double Shift), if needed during the assignment.

b. **Method of Payment.** Lump-sum payment will normally be processed at the end of the emergency assignment. However, partial payment may be authorized as approved by the incident agency. Payment for each calendar day will be made for (1) actual units ordered and performed under Work or Daily, shift basis and/or Special rates or (2) the guarantee earned, whichever is the greater amount.

C 7. EXCEPTIONS

- a.) Daily Rate or Guarantee - No further payment under [C 6] will accrue during any period that equipment under hire is not in a safe or operable condition or when Contractor furnished operator(s) is not available for the assigned shift or portions of the assigned shift. Payment will be based on the hours the equipment was operational during the assigned shift, as documented on the shift ticket versus the designated shift, as shown on the Incident Action Plan.
- b.) If the Contractor withdraws equipment and/or operator(s) prior to being released by the STATE, no further payment under [C 6] shall accrue and the Contractor shall bear all costs of returning equipment and/or operator(s) to the point of hire.
- c.) After inspection and acceptance for use, equipment and/or furnished operator(s) that cannot be replaced or equipment that cannot be repaired at the site of work by the Contractor or by the STATE in accordance with [C 4], within 24 hours, may be considered as being withdrawn by the Contractor in accordance with Paragraph B above, except that the STATE will bear all costs of returning equipment and/or operator(s) to the point of hire as promptly as emergency conditions will allow.
- d.) No payment will accrue under [C 6] when the contractor is off shift in compliance with the mandatory "Work/Rest" and "Length of Commitment" provisions. As an option to rotating personnel, or taking a mandatory day off, without pay, the contractor may be released from the incident.
- e.) Deductions – Unless specifically stated elsewhere in this agreement the cost of any supplies, materials, or services, including commissary, provided for the Contractor by the STATE will be deducted from the payment to the Contractor.

C 8. SUBSISTANCE: When STATE subsistence incident camps are available, meals and bedding for Contractor's operator(s) will be furnished without charge. A campsite may be provided. The Contractor shall provide sleeping equipment such as tents or shelters, sleeping bags, etc.

C 9. LOSS, DAMAGE, OR DESTRUCTION:

(a) For equipment furnished **without** operator, the STATE will assume liability for any loss, damage or destruction of such equipment, except that no reimbursement will be made for loss, damage or destruction due to (1) ordinary wear or tear, (2) mechanical failure, or (3) the fault or negligence of the Contractor or the Contractor's agents or employees or STATE employee owned and operated equipment.

(b) For equipment furnished **with** operator, the STATE shall not be liable for any loss, damage or destruction of such equipment, except for loss, damage or destruction resulting from the negligence, or wrongful act(s) of STATE employee(s) while acting within the scope of their employment. The operator is responsible for operating the equipment within its operating limits and responsible for safety of the equipment.

C 10. CONTRACTOR'S RESPONSIBILITY FOR PROPERTY AND PERSONAL DAMAGES: Except as provided in [C 9], the Contractor will be responsible for all damages to property and to persons, including third parties that occur as a result of Contractor or Contractor's agents or employee fault or negligence. The term "third parties" is construed to include employees of the STATE.

C 11. DEDUCTIONS: Unless specifically stated elsewhere in this agreement the cost of any supplies, materials, or services, including commissary, provided for the Contractor by the STATE will be deducted from the payment to the Contractor.

C 12. PERSONAL PROTECTIVE EQUIPMENT: The STATE considers operators as fireline personnel who will use and wear specified articles of personal protective equipment.

C 12.1. The following mandatory items will be issued by the STATE, when not required to be furnished by the Contractor, to operators performing within the scope of this agreement:

- Clothing: (a) Flame resistant pants and shirts; (b) Gloves (*Either Nomex or chrome tanned leather*); (c) Hard hat; (d) Goggles or safety glasses.
- Equipment: (a) Fire shelter; (b) Headlamp; (c) Individual First-Aid Kit;
- Other items may be issued by the STATE.

C12.2 Operators shall wear the items of clothing issued and maintain the issued equipment in a usable and readily available condition. Upon completion of the contract assignment, all issued items of clothing or equipment shall be returned to the STATE. Deductions will be made for all STATE furnished protective clothing and equipment not returned by the Contractor.

C 13. COMMERCIAL MOTOR VEHICLES: All commercial motor vehicles must meet all DOT requirements. The regulations can be found at the following website:

www.fmcsa.dot.gov

C 14. CLAIM SETTLEMENT AUTHORITY: For the purpose of settling claims, the successor contracting officer is any contracting officer acting within their delegated warrant authority, under the clauses of this agreement, and limits set by the incident agency.

C 15. CHANGES TO CONTRACT: Changes to this contract may only be made by the original signing procurement official. If the original signing procurement official is not available and adjustments are deemed appropriate, a new incident only EERA shall be executed at the incident and shall be applicable **only** for the duration of that incident. The agreement will include name and location of the incident.

C 16. FIREARM – WEAPON PROHIBITION: The possession of firearms or other dangerous weapon (18 USC 930 (f) (2) are prohibited at all times while on Government Property and during performance of services, under this contract. The term dangerous weapon does not include a pocket knives with a blade less than 2 ½ inches in length or a multi purpose tools such as a leatherman.

C 17. WORK REST and LENGTH OF ASSIGNMENT: The Contractor is required to follow the work rest guidelines as established by the NWCG. Refer to website for the guidelines: www.nwcg.gov

To mitigate exceeding work/rest guidelines and manage the days of rest, the STATE has the option to:

- a. Request the Contractor to provide replacement personnel. Replacement personnel are subject to the work/rest guidelines and must arrive at the incident fully rested. The STATE will not pay transportation cost for replacement personnel.
- b. Release resources after a 14-day assignment.
- c. With the STATE's agreement, the contractor may choose to have their personnel remain at the incident base camp and not be placed on shift to allow proper rest. The time is not compensable when the Contractor is off shift in compliance with the length of assignment provisions.

C 18. CONSUMABLE GOODS

Contractor will be charged for Consumable Goods supplied by the STATE and used by the resource while Under Hire. The cost of all Consumable Goods, with the exception of those specifically listed below, shall be deducted from payment to the Contractor. At the STATE's discretion, the STATE may provide the following incidental consumable goods at no cost, if available: one-quart plastic canteens, plastic sheeting, replacement radio batteries and replacement headlamp batteries, as required while under hire.

C 19. ORDERING PROTOCOL FOR RESOURCES: This Agreement does not preclude the use of any Agency or Agency Cooperator owned resources before contract resources are mobilized under this Agreement.

Following an Agreement award, each host dispatch center will have a resource list showing the resources located within their Host Dispatch Zone or Geographic Area. Orders will be placed utilizing established dispatch procedures.

C 19.1 INFORMATION REQUIRED WHEN PLACING ORDERS.

C 19.1.1 At the time of acceptance of the assignment, the following information will be given to the Contractor:

- a. Resource Order Number.
- b. Incident Order Number and Name of Incident.
- c. Date and time to report to incident.
- d. Descriptive location of the designated site where the Contractor shall meet a STATE representative. map, if available.
- e. Incident contact phone number for further information.

C 19.2 DISPATCHING PROCEDURES

C 19.2.1 When receiving a dispatch call, the Contractor shall confirm their availability and ability to meet specified timeframes. If the Contractor cannot be reached or is not able to meet the time and date needed, the dispatcher may proceed with contacting the next resource. Contractor shall check in at the assignment at the time agreed upon when dispatched.

C 19.2.2 The STATE will estimate the travel time to and from the incident.

C 19.3 EMERGENCY INCIDENT DRIVING

The Contractor shall follow the driving regulations of no more than 10 hours behind the wheel in a day with one operator and 16 hours driving when there are two operators. The Contractor is responsible for complying with all other current Federal, State and Local driving regulations.

C 20. ORDER CANCELLATION: Order cancellation/en-route. If the order is cancelled after the resource order has been confirmed, and the resource is en-route, the resource is considered mobilized. Payment will be made by the payment agency.

C 21 INVOICING PROCESS – FIRE SUPPRESSION, ALL-HAZARD ACTIVITIES,

C 21.1 The resource shall have two copies of the Agreement with the resource order information for the assigned incident.

C 21.2 After each operational period worked, time will be verified and approved by the STATE Agent responsible for ordering and/or directing use the resource Time will be recorded to the nearest quarter hour worked. The STATE will verify the Contractor's time on an Emergency Equipment Shift Ticket (OF-297) (Attachment D). The STATE and the Contractor representatives will sign the OF-297 verifying the hours worked daily. Each operator's name shall be listed on the shift ticket.

C 21.3 The Finance Unit or designated representative will post the equipment time to an Emergency Equipment Use Invoice, Optional Form 286 (OF-286).

C 21.4 When the resource is released, the Finance Unit will close out the Invoice including estimated time for return travel.

C 21.5 The incident will submit a payment package including all signed originals of OF-286 (or commercial invoice), copy of this contract, copy of resource order, and transmittal sheet to the designated payment office. The Contractor will be given a copy of all payment documents at the incident.

C 22. INFORMATION TO BE PROVIDED BY CONTRACTOR AT CHECK-IN

The Contractor shall furnish a copy of the complete Contract to the Finance Unit.

C 23. CONTRACTOR'S REPRESENTATIVE

Unless otherwise designated, the operator shall be considered the Contractor's Representative for this Contract.

C 24. FIRST AID, MEDICAL COVERAGE AND EMERGENCY EVACUATIONS

C 24.1 The contractor is financially responsible for employee medical expenses and coverage. The STATE may provide first aid at the incident at no charge to the contractor. Any other medical expenses incurred will be the responsibility of the contractor. If contractor personnel become ill or are injured and incident transportation is not available, the STATE may evacuate or transport the injured/ill person(s) to a medical facility/hospital utilizing a commercial source (e.g. ambulance or air transport such as Lifeflight). Commercial transport costs will be the responsibility of the Contractor.

C 24.2 Contractor shall provide the operator(s) with an adequate supply of appropriate insurance forms, insurance ID card(s), and other necessary documents. Such documents shall accompany the injured/ill person(s) when the medical need arises.

C 25. INCIDENT BEHAVIOR

It is extremely important that inappropriate behavior be recognized and dealt with promptly. Inappropriate behavior is all forms of harassment including sexual and racial harassment. **Harassment in any form will not be tolerated.** Non-prescription unlawful drugs and alcohol are not permitted at the incident. Possession or use of these substances will result in the Contractor being released from the incident. During off-incident periods, personnel are responsible for proper conduct and maintenance of fitness for duty. Drug or alcohol abuse resulting in unfitness for duty will normally result in the Contractor being released from the incident. Sexual harassment is defined as unwelcome sexual advances, request for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

C 26. PERFORMANCE EVALUATIONS

The Contractor's performance can be documented on the Standard Contractor Performance Report which would be completed at the incident by the STATE representative supervising the work.