WILDFIRE

DNR PRE-SEASON APPLICATION AND AGREEMENT

A. Application Instructions

- **By submitting this application, Contractor agrees to all terms and conditions of this pre-season application and agreement upon being contacted for service by DNR.**
- Incomplete applications will not be accepted.
- Contractors who submit complete applications and comply with all of the agreement terms will be added to DNR's source list for Pre-Season Agreements.
- Contractor must complete the following:
  - Read and sign the Waiver and Release of Liability.
  - Read and sign the Application.
- NOTE: (1) The Waiver and Release of Liability and (2) the Application must be signed by a representative with the authority to act on behalf of the Contractor. Download, read and agree with the current years Washington State Wage & Equipment Rate Guide.
- Complete the linked Vendor Payee Registration Form with the Office of Financial Management (OFM). *It's the Contractor's responsibility to ensure registration with OFM. DNR cannot make payments unless the Contractor is registered in the system.
- **Submit the application to:**

DNR – Wildfire Division
ATTN: Lori Johnson
1111 Washington St SE,
Olympia, WA 98504-7307
Lori.johnson@dnr.wa.gov

B. Contractor Contact Information

Emtman Brothers Farms

13516 S Weger Rd.

Valleyford, WA 99036

13516 S. Weger Rd. Valleyford, WA Spokane County

Phone: 509-768-6549

Email: randy@emtmanbrothersfarms.com

Many incidents occur at night or on weekends. It is essential that we have a primary and alternate contact as well as a 24-hour phone number.

CONTRACTOR PRIMARY CONTACT	CONTRACTOR ALTERNATE CONTACT
Doug Goldsmith *Day Phone :* 509-993-4118*:* *Night Phone:* 509-993-4118 *Email address:* gfarms@air-pipe.com	Randy Emtman *Day Phone:* 509-768-6549 *Night Phone:* 509-768-6549 *Email address:* randy@emtmanbrothersfarms.com

AGREEMENT NO. Enter agreement number
#93-101060

C. Eligibility Information

1. RT-130 OPERATOR SAFETY TRAINING:

   YES ☒ NO ☐ * (Required for ALL operators going to the fireline.)

2. RT-130 OPERATOR SAFETY TRAINING ADMINISTERED BY:

   DNR ☒ MOU Training Provider ☐ Other: ☐ Click or tap here to enter text.

3. Attach certificates confirming insurance coverage in effect at the time of Contractor's execution of this Agreement. Insurance coverage required in this Agreement must be maintained in full force and effect during the term of the Agreement. Renewal certificates are to be submitted to DNR as appropriate during the term of this Agreement. At no time whatsoever shall the Contractor engage in work under this Agreement without the required insurance coverage in full force and effect.

   Please check the boxes below indicating these forms are attached.

   ☐ Commercial General Liability

   ☐ Business Auto Policy

   ☐ Employer's Liability ("Stop Gap") Insurance.

EMAIL FROM INSURANCE AGENCY WESTERN INSURANCE TAWNYA MEYERS

D. EQUIPMENT

Instructions: Please complete all blocks applicable to your equipment.

Resource Information	Attribute Values & Rates
Type of Equipment:	Dozer
Serial/VIN No.:	IT0650KXPCE227182
Class:	2B
Make:	John Deere
Model:	650K
Series / Year:	2012
GVW and Drive wheels:	Click or tap here to enter text.
State License No.:	Click or tap here to enter text.
Flywheel Horsepower:	104
Optional	Click or tap here to enter text.
Optional	Click or tap here to enter text.
Optional	Click or tap here to enter text.
DAILY RATE:	To be completed by agency

$1741

Resource Information	Attribute Values & Rates
Type of Equipment:	Tractor & Trailer
Serial/VIN No.:	Click or tap here to enter text.
Class:	Click or tap here to enter text.
Make:	Townmaster
Model:	T-40
Series / Year:	Click or tap here to enter text.
GVW and Drive wheels:	40,000 lbs (40 ton)
State License No.:	Click or tap here to enter text.
Flywheel Horsepower:	Click or tap here to enter text.
Optional	Click or tap here to enter text.
Optional	Click or tap here to enter text.
Optional	Click or tap here to enter text.
DAILY RATE:	To be completed by agency

$1,054

AGREEMENT NO. Enter agreement number

#93-101060

E. Accepting the Waiver and Release of Liability

CONTAINS A WAIVER AND RELEASE OF LIABILITY PLEASE READ CAREFULLY!

For and in consideration of employment as an independent contractor in fire suppression activities and logistical support, Emtman Brothers Farms **(CONTRACTOR/PRINT NAME)**, and his/her heirs/successors in interests, do hereby **RELEASE** and forever **HOLD HARMLESS AND INDEMNIFY** the State of Washington, Department of Natural Resources and its officers, agents, and employees, from any and all claims, damages, and causes of action that may arise out of CONTRACTOR'S employment as an independent contractor in fire suppression activities and logistical support.

WAIVER AND RELEASE OF LIABILITY

CONTRACTOR agrees that if CONTRACTOR engages in fire suppression activities or logistical support, CONTRACTOR does so at CONTRACTOR'S own risk. This includes, without limitation, CONTRACTOR'S employment as an independent contractor during fire suppression activities where there is the risk of injury to, death of, and property damage for, CONTRACTOR. CONTRACTOR agrees that all participation in these activities is voluntary and CONTRACTOR assumes all risk of injury and death to CONTRACTOR or CONTRACTOR'S contraction of any illness or medical condition that might result, or any damage, loss or theft of any personal property belonging to CONTRACTOR. CONTRACTOR agrees on behalf of himself/herself (and CONTRACTOR'S personal representatives, heirs, executors, administrators, agents, and assigns) to **RELEASE** and **DISCHARGE** the State of Washington, Department of Natural Resources and its officers, agents, employees, and programs from any and all claims, damages, and causes of action that may arise out of CONTRACTOR'S employment as an independent contractor in fire suppression activities or logistical support. This **WAIVER AND RELEASE OF LIABILITY** includes, but is not limited to, injuries which may occur as a result of (a) CONTRACTOR'S use of any equipment or tools, (b) claims of negligence, (c) CONTRACTOR suffering injury, death, or property damage during fire suppression activities, and (d) CONTRACTOR slipping and falling while in or on Department of Natural Resources' premises.

CONTRACTOR acknowledges that CONTRACTOR has carefully read this WAIVER AND RELEASE OF LIABILITY and fully understands that it is a RELEASE OF LIABILITY. CONTRACTOR is waiving any right that CONTRACTOR may have to bring a legal action to assert a claim against the State of Washington for the State's negligence.

PLEASE READ AND SIGN: I have read, understood, and accepted the conditions of the **WAIVER AND RELEASE OF LIABILITY** printed above.

Randy S. Emtman	RANDY S. EMTMAN	7/24/2020
CONTRACTOR'S SIGNATURE	**PRINT NAME**	**DATE**

F. Contractor Certifications

By checking each box and initialing, **Contractor (or designee) certifies** that he/she has read, understands, agrees, and accepts the terms/conditions as outlined.

☒ RSE (contractor initials)	I certify that I am **18 years** of age or older.
☒ RSE (contractor initials)	I certify that I **possess a current valid driver's license** for the type of vehicle/equipment being operated.
☒ RSE (contractor initials)	I certify that I **own, or have permission from the owner to operate**, the vehicle/equipment contracted under this Agreement.
☒ RSE (contractor initials)	I certify that the vehicle/equipment contracted under this Agreement is in **good working condition**.
☒ RSE (contractor initials)	I certify that the vehicle/equipment contracted under this Agreement is **properly licensed.**
☒ RSE (contractor initials)	I certify that I have the necessary wildland fire **safety training and/or qualifications** needed to operate a vehicle/equipment to perform or support fire suppression activities. This is evidenced through possession of a valid Incident Qualification Card or a wildland fire safety training document as outlined in RCW 76.04.181.
☒ RSE (contractor initials)	I certify that I have read, understand, accept, and agree to the content in its entirety within DNR's current years Washington State Wage & Equipment Rate Guide.
☒ RSE (contractor initials)	I certify that I will comply with all applicable laws, rules and regulations.

I certify, by signature below, that I have **read** this Agreement in its entirety, **understand, agree, and accept all of the terms and conditions** outlined within, that all of the information that I've **provided is true and correct**, and that I **am authorized to act** in the respective areas for matters related to this Agreement.

RANDY S. EMTMAN
Contractor Authorized Representative

PARTNER
Title

Randy S. Emtman
Signature

7/27/2020
Date

AGREEMENT NO. Enter agreement number
#93-101060

Form update date: 07.14.20

DNR AGREEMENT NO. 93-101060

This Agreement is entered into by the State of Washington, Department of Natural Resources, hereafter referred to as DNR/Agency, and Emtman Brothers Farms hereafter referred to as the Contractor.

PURPOSE: The purpose of this Agreement is to contract for equipment and services from the Contractor to be used for fire suppression activities when under the supervision of DNR recognized wildland fire personnel.

The Contractor is responsible for all equipment, materials, supplies, transportation, lodging, and trained/certified personnel necessary to meet or exceed the Agreement requirements to perform the work in a safe manner and to a professional standard. By entering into this Agreement with DNR to provide wildfire suppression resources, Contractor certifies and agrees that its equipment and operators will meet or exceed DNR's minimum specifications. Failure to comply with the terms and conditions of this agreement may result in demobilization from the incident.

The Contractor understands this Agreement will be used only when needed as determined solely by DNR. DNR is not obligated to use the Contractor. DNR is obligated to compensate the Contractor only if the Contractor is dispatched to a wildfire incident by DNR and the Contractor otherwise complies with all of the material terms of this Agreement. DNR reserves the right to dispatch resources based on closest forces, cost effectiveness, and other considerations and is not required to utilize the Dispatch Priority List (DPL) only when DNR is the jurisdictional/paying agency.

AUTHORITY: Under RCW 76.04.015 and RCW 76.04.181, DNR may enter into preemptive agreements with landowners and others who have firefighting capability that may be utilized in DNR wildland fire suppression efforts.

In consideration of the terms, conditions and covenants contained herein, or attached and incorporated herein by reference, the parties mutually agree as follows:

1.01 PERIOD OF PERFORMANCE: The period of performance of this Agreement shall begin on 7/27/2020, and end on 12/31/2023, unless extended by mutual agreement or terminated by the parties as provided herein.

2.01 THE CONTRACTOR SHALL:

a) When requested by DNR, promptly provide the requested personnel and equipment for fire suppression operations or to be on standby for such operations.
b) Ensure the personnel and equipment furnished under this Agreement meet the standards specified in this Agreement and as outlined in the current years' Washington State Wage & Equipment Rate Guide to accomplish the fire suppression activities as assigned.
c) Comply with the DNR Equipment Payment Provisions as outlined in the current years Washington State Wage & Equipment Rate Guide
d) Require the Contractor's personnel and equipment to be under the supervision of DNR recognized wildland fire personnel when engaged or supporting in fire suppression activities. Such personnel and equipment must remain under such supervision until DNR recognized wildland fire personnel release them from the assigned wildfire incident.
e) Ensure all personnel provided have training and qualifications for the work performed under this Agreement, evidenced by possession of a valid DNR safety and skills qualification document, or the equivalent as determined by DNR.
f) Ensure all personnel arrive at the Incident with the proper personal protective clothing and equipment (PPE) consistent with the criteria of WAC 296-305-07012 Personal protective clothing and equipment for wildland firefighting. The NFPA 1977, Standard Protective Clothing and Equipment for Wildland Firefighting, shall serve as a guideline for determining performance characteristics of this clothing. Contractor shall be responsible for ensuring the PPE is operable, used, and maintained in good repair throughout the duration of any assignment. PPE shall include:

1. Protective apparel
   A. Hardhat/helmet
   B. Upper torso shirt, Flame Resistant Aramid, and lower torso Flame Resistant Aramid (Nomex) Pants
   C. Gloves – Leather
   D. Goggles

2. Boots – Leather lace-up of sturdy construction, which shall extend upward a minimum of 8 inches above the top of the sole, which shall be slip resistant.
3. Fire Shelter – Must meet or exceed the United States Forest Services' Missoula Technology and Development Center (MTDC) design criteria and performance requirements for "new generation fire shelter.

g) Be responsible for any fines or penalties imposed upon the Contractor or the Contractors employees or equipment.
h) Bring this Agreement, including Attachments and any amendments, to the incident, and upon arrival at the incident, present these documents to the Incident Timekeeper or other point of contact provided by DNR.
i) Understand that equipment furnished under this agreement 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. The contractor agrees that what is considered wear and tear under these terms and conditions is in excess of what the equipment is subjected to under normal operations and is reflected in the rates paid for the equipment.

3.01 DNR SHALL:

a) Make available to Contractor, on the external DNR webpage the current years Washington State Wage & Equipment Rate Guide.
b) Provide dispatch instructions to the Contractor when assigned to fire suppression operations or when placed on standby.
c) Release the Contractor's personnel and equipment as soon as possible when no longer needed on standby or at a wildfire incident.
d) Provide safety training and certification to Contractor's personnel, or accept other certified training in lieu of DNR training, at DNR's sole discretion.

4.01 TRAINING/EXPERIENCE

a) Each person employed by the Contractor under this Agreement shall meet the following minimum requirements, and be able to provide evidence that employees meet the requirements upon request:

1. RT-130 Annual Fireline Refresher including fire shelter, as required.
2. Personnel shall be trained in accordance with agreement requirements.
3. Incident qualification card, as required.
4. Commercial Driver's License, as required.
5. All operators shall be able to operate the equipment safely up to the manufacturer's limitations.

b) DNR/Agency reserves the right to verify training at any time for all operators.

5.01 INDEPENDENT CAPACITY OF CONTRACTOR: The Contractor and its employees or agents performing under this Agreement are not employees or agents of DNR. The Contractor will not represent itself nor claim to be an officer or employee of DNR or of the state of Washington by reason hereof, nor will the Contractor make any claims of right, privilege or benefit which would accrue to such employee under Washington law.

6.01 RIGHT OF INSPECTION: The Contractor shall provide right of access to its facilities, equipment and personnel to DNR, any of its employees, or to any other authorized agent or official of the state of Washington or the federal government at all reasonable times, in order to monitor and evaluate performance, compliance and/or quality assurance under this Agreement.

7.01 VENDOR REGISTRATION: Contractor is required to register for a Washington Statewide Vendor Number through the Office of Financial Management. State of Washington Payee Registration must be completed at time of initial hire. Form and instructions found on the Washington State Office of Financial Management (OFM) webpage: https://ofm.wa.gov/it-systems/accounting-systems/statewide-vendorpayee-services

8.01 PAYMENT PROVISIONS: All equipment hired by the State will be paid according to the current year's Washington State Wage & Equipment Rate Guide or by a rate established on an Interagency Equipment Rental Agreement. Any changes in rates that exceed those established must be accompanied by written justification, addressed to the Incident Business Advisor and the Agency Administrator attached to the OF-286 as well as a copy filed in the doc box. If equipment is hired

under contracted rates, a copy of the contract must be attached to the OF-286 Emergency Equipment Use Invoice (EEUI).

9.01 STANDARD METHOD OF HIRE: The Contractor shall comply with the standard methods of hire, as outlined for each specific piece of equipment in the current years Washington State Wage & Equipment Rate Guide.

10.01 LICENSING, ACCREDITATION AND REGISTRATION: The Contractor shall comply with all applicable local, state and federal laws, licensing, accreditation and registration requirements or standards necessary for the performance of this Agreement.

11.01 SUBCONTRACTING: The Contractor shall not enter into subcontracts for any of the work contemplated under this Agreement without obtaining prior written approval of DNR. In no event shall the existence of the subcontract operate to release or reduce the liability of the Contractor to DNR for any breach in the performance of the Contractor's duties. This clause does not include contracts of employment between the Contractor and personnel assigned to work under this Agreement.

Additionally, the Contractor is responsible for ensuring that all terms, conditions, assurances and certifications set forth in this Agreement and all documents attached and incorporated by reference are carried forward to any subcontracts.

12.01 REMAIN OVERNIGHT ALLOWANCE (RON):

a) Contractors under this agreement are not paid per diem or lodging expenses to and from incidents.
b) When the incident cannot provide a campsite after the first shift worked, actual lodging expenses or the per diem locality rate published by OFM Statewide Accounting in the Washington State Administrative and Accounting Manual (SAAM), subsection 10.90. Rate map may be found at http://ofm.wa.gov/resources/travel.asp. Double occupancy of hotel rooms is required. Any associated lodging taxes are reimbursable as documented. Lodging receipts, as well as documentation by incident personnel that a campsite was not provided, shall be submitted as supporting documentation with payment documents.
c) When the incident cannot provide meals reimbursement for meals is based on per diem locality rates minus any government-provided meals. The maximum allowable meal rates may be found at the website above.
d) If the resource is allowed to return to its dispatch location during off-shift time, RON allowance is not authorized.
e) The maximum RON that shall be allowed is based on the number of operators or crewmembers shown on the shift ticket. Payment shall be included as an addition on the OF-286 Emergency Equipment Use Invoice.

13.01 INSURANCE: Before using any of said rights granted herein and at its own expense, CONTRACTOR shall purchase and maintain, or require its agent(s)/subcontractor to purchase and maintain, the insurance described below for the entire duration of this Agreement. Failure to purchase and maintain the required insurance may result in the termination of the Agreement at DNR's option.

All insurance provided in compliance with this Agreement shall be primary as to any other insurance or self-insurance programs afforded to, or maintained by, the State of Washington, Department of Natural Resources.

CONTRACTOR shall provide DNR with certificates of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements specified in this Agreement before using any of said rights granted herein. The description section of the certificate shall contain the Contract Number and the name of the DNR Project Manager. Contractor shall also provide renewal certificates as appropriate during the term of this Agreement.

CONTRACTOR shall include all subcontractors and agents as insured under all required insurance policies or shall provide separate certificates of insurance for each subcontractor or agent. Failure of CONTRACTOR to have its subcontractors and agents comply with the insurance requirements contained herein does not limit CONTRACTOR's liability or responsibility.

INSURANCE TYPES & LIMITS: The limits of insurance, which may be increased by State, as deemed necessary, shall not be less than as follows:

Commercial General Liability (CGL) Insurance: CONTRACTOR shall purchase and maintain commercial general liability insurance with a limit of not less than $1,000,000 per each occurrence. If such CGL insurance contains aggregate limits, the general aggregate limits shall be at least twice the "each occurrence" limit, and the products-completed operations aggregate limit shall be at least twice the "each occurrence" limit. All insurance must cover liability arising out of premises,

operations, independent contractors, products completed operations, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another party assumed in a business contract) and contain separation of insured (cross-liability) condition.

Employer's liability ("Stop Gap") Insurance: CONTRACTOR shall purchase and maintain employer's liability insurance and if necessary, commercial umbrella liability insurance with limits not less than $1,000,000 each accident for bodily injury by accident or $1,000,000 each employee for bodily injury by disease.

Business Auto Policy (BAP) Insurance: CONTRACTOR shall purchase and maintain business auto insurance and if necessary, commercial umbrella liability insurance with a limit of not less than $1,000,000 per accident, with such insurance covering liability arising out of "Any Auto". The policy shall be endorsed to provide contractual liability coverage and cover a "covered pollution cost or expense." CONTRACTOR waives all rights of subrogation against State for the recovery of damages to the extent they are covered by business auto liability or commercial umbrella liability insurance.

Industrial Insurance (Workers Compensation): CONTRACTOR shall comply with Title 51 RCW by maintaining workers compensation insurance for its employees. CONTRACTOR waives all rights of subrogation against State for recovery of damages to the extent they are covered by Industrial Insurance, employer's liability, general liability, excess, or umbrella insurance. CONTRACTOR waives its Title 51 RCW immunity to the extent it is required by its indemnity obligation under this Agreement.

ADDITIONAL PROVISIONS:

Additional Insured: The State of Washington, Department of Natural Resources, its officials, agents, and employees shall be named as additional insured by endorsement on all general liability, excess, and umbrella insurance policies.

Cancellation: DNR shall be provided written notice before cancellation or non-renewal of any insurance referred to therein, in accord with the following specifications.

a) Insurers subject to Chapter 48.18 RCW (Admitted and Regulated by the Insurance Commissioner): The insurer shall give the State 45 days advance notice of cancellation or nonrenewal. If cancellation is due to non-payment of premium, the State shall be given 10 days advance notice of cancellation.

b) Insurers subject to Chapter 48.15 RCW (Surplus Lines): The State shall be given 20 days advance notice of cancellation. If cancellation is due to non-payment of premium, the State shall be given 10 days advance notice of cancellation.

Insurance Carrier Rating: All insurance shall be issued by companies admitted to do business in the State of Washington and have a rating of A-, Class VII, or better. Any exception must be reviewed and approved by the DNR Risk Manager or the DNR Contracts Manager, in the Risk Manager's absence. If an insurer is not admitted to do business in the State of Washington, all insurance policies and procedures for issuing the insurance policies must comply with Chapters 48.15 RCW and 284-15 WAC.

Self-Insurance: If CONTRACTOR is self-insured, evidence of its status as a self-insured entity shall be provided to State. The evidence should demonstrate that CONTRACTOR's self-insurance meets all of the required insurance coverage of this Agreement to the satisfaction of State including the description of the funding mechanism and its financial condition. If the funding mechanism or financial condition of the self-insurance program of CONTRACTOR is inadequate, then State may require the purchase of additional commercial insurance to comply with this Agreement.

Waiver: CONTRACTOR waives all rights of subrogation against State for recovery of damages to the extent these damages are covered by general liability, excess, or umbrella insurance maintained pursuant to this Agreement.

14.01 NON-DISCRIMINATION: During the performance of this Agreement, the Contractor shall comply with all federal and state non-discrimination laws, regulations, and policies. In the event of the Contractor's non-compliance or refusal to comply with any non-discrimination law, regulation or policy, this Agreement may be rescinded, canceled or terminated in whole or in part, and the Contractor may be declared ineligible for further contracts with DNR.

15.01 INDEMNIFICATION: To the fullest extent permitted by law, Contractor shall indemnify, defend, and hold harmless the State, agencies of State and all officials, Agents and employees of the State, from and against all claims for injuries or

death arising out of or resulting from the performance of the contract. "Claim," as used in this contract, means any financial loss, claim, suit, action, damage, or expense, including but not limited to attorney's fees, attributable for bodily injury, sickness, disease, or death, or injury to or destruction of tangible property including loss of use resulting therefrom.

Contractor's obligations to indemnify, defend, and hold harmless includes any claim by Contractors' Agents, employees, representatives, or any Subcontractor or its employees.

Contractor expressly agrees to indemnify, defend, and hold harmless the State for any claim arising out of or incidental to Contractor's or any Subcontractor's performance or failure to perform the contract. Contractor's obligation to indemnify, defend, and hold harmless the State shall not be eliminated or reduced by any actual or alleged concurrent negligence of State or its Agents, agencies, employees and officials.

16.01 RECORDS MAINTENANCE: The Contractor shall maintain books, records, documents, data and other evidence relating to this contract and performance of services rendered and/or delivery of goods as described herein, including but not limited to accounting procedures and practices that sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this contract.

Contractor shall retain such records for a period of six years following the date of final payment. At no additional cost, these records, including materials generated under the contract, shall be subject at all reasonable times to inspection, review or audit by the Agency, personnel duly authorized by the Agency, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement.

If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

17.01 TERMINATION FOR CAUSE: The Agency may terminate this contract in whole, or in part, at any time after one (1) days' notice whenever it is determined that the contractor has failed to comply with the terms and conditions of the Contract. The Agency shall promptly notify the contractor in writing of the termination and the reasons for termination, together with the effective date of termination.

In the event of termination or suspension, the Contractor shall be liable for damages as authorized by law including, but not limited to, any cost difference between the original contract and the replacement or cover contract and all administrative costs directly related to the replacement contract, e.g., cost of the competitive bidding, mailing, advertising and staff time.

The Agency reserves the right to suspend all or part of the contract, withhold further payments, or prohibit the Contractor from incurring additional obligations of funds during investigation of the alleged compliance breach and pending corrective action by the Contractor or a decision by the Agency to terminate the contract. A termination shall be deemed a "Termination for Convenience" if it is determined that the Contractor: (1) was not in default; or (2) failure to perform was outside of his or her control, fault or negligence.

The rights and remedies of the Agency provided in this contract are not exclusive and are in addition to any other rights and remedies, provided by law.

18.01 TERMINATION FOR CONVENIENCE: Except as otherwise provided in this contract, the Agency may, by 10 calendar days written notice, beginning on the second calendar day after the mailing, terminate this contract, in whole or in part. If this contract is so terminated, the Agency shall be liable only for payment required under the terms of this contract for goods delivered or services rendered prior to the effective date of termination.

19.01 TERMINATION PROCEDURES: Upon termination of this contract, the Agency, in addition to any other rights provided in this contract, may require the Contractor to deliver to the Agency any property specifically produced or acquired for the performance of such part of this contract as has been terminated.

The Agency shall pay to the Contractor the agreed upon price, if separately stated, for goods or services accepted by the Agency, and the amount agreed upon by the Contractor and the Agency for (i) goods delivered or services rendered for which no separate price is stated, (ii) partially completed goods delivered or services rendered, (iii) other goods delivered or services rendered that are accepted by the Agency, and (iv) the protection and preservation of property, unless the

termination is for default, in which case the Agent shall determine the extent of the liability of the Agency. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" clause of this contract. The Agency may withhold from any amounts due the Contractor such sum as the Agent determines to be necessary to protect the Agency against potential loss or liability.

The rights and remedies of the Agency provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

After receipt of a notice of termination, and except as otherwise directed by the Agent, the Contractor shall:

a) Stop work under the contract on the date, and to the extent specified, in the notice;

b) Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the contract that is not terminated;

c) Assign to the Agency, in the manner, at the times, and to the extent directed by the Agent, all of the rights, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the Agency has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;

d) Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Agent to the extent Agent may require, which approval or ratification shall be final for all the purposes of this clause;

e) Transfer title to the Agency and deliver in the manner, at the times, and to the extent directed by the Agent any property which, if the contract had been completed, would have been required to be furnished to the Agency;

f) Complete performance of such part of the work as shall not have been terminated by the Agent; and

g) Take such action as may be necessary, or as the Agent may direct, for the protection and preservation of the property related to this contract, which is in the possession of the Contractor and in which the Agency has or may acquire an interest.

20.01 CONFLICT OF INTEREST: DNR may, in its sole discretion, by written notice to the Contractor, terminate this Agreement if it is found after due notice and examination by DNR, that there is a violation of the State Ethics Law, Chapter 42.52 RCW or any similar statute involving the Contractor in the procurement of, or performance under, this Agreement. In the event this Agreement is terminated as provided above, DNR shall be entitled to pursue the same remedies against the Contractor as it could pursue in the event of a breach of the Agreement by the Contractor. The rights and remedies of DNR provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law.

21.01 DISPUTES: Except as otherwise provided in this Agreement, when a dispute arises between the parties and it cannot be resolved by direct negotiation, either party may request a dispute hearing with the delegate authorized to act on behalf of the Commissioner of Public Lands (Agent).

a) The request for a dispute hearing must:

1. Be in writing;
2. State the disputed issue(s);
3. State the relative positions of the parties;
4. State the Contractor's name, address, and Agreement number; and
5. Be mailed to the Agent and the other party's (respondent's) Agreement manager within three (3) working calendar days after the parties agree that they cannot resolve the dispute.

b) The respondent shall send a written answer to the requester's statement to both the Agent and the requester within five (5) working calendar days.
c) The Agent shall review the written statements and reply in writing to both parties within 10 working days. The Agent may extend this period if necessary by notifying the parties.
d) The parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal.

Nothing in this Agreement shall be construed to limit the parties' choice of a mutually acceptable alternate dispute resolution method in addition to the dispute resolution procedure outlined above.

22.01 JURISDICTION/VENUE/ATTORNEYS' FEES: This Agreement shall be construed and interpreted under the laws of the state of Washington and the venue of any action brought under this Agreement shall be in the Superior Court of Thurston County. The Contractor, by execution of this Agreement, acknowledges the jurisdiction of the courts of the state of Washington in this matter. In the event of litigation or other action brought to enforce the terms of this Agreement, each party agrees to bear its own attorneys' fees and costs.

23.01 SEVERABILITY: If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision, and to this end the provisions of this Agreement are declared to be severable.

24.01 WAIVER: Waiver of any default or breach shall not be deemed a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this contract unless stated to be such in writing and signed by authorized representative of the Agency.

25.01 ASSIGNABILITY: This Agreement, and any claim arising under this Agreement, cannot be assigned or delegated by the Contractor either in whole or in part.

26.01 ENTIRE AGREEMENT: This document and Attachments hereto incorporated by reference contain all covenants, stipulations, and provisions agreed by both parties. No agent or representative of either party has authority to make, and the parties shall not be bound by or be liable for, any statement, representation, promise, or agreement not set forth herein, except for extension of the completion date. No changes, amendments, or modifications of the terms hereof shall be valid unless reduced to writing and signed by the parties as an amendment to this Agreement.

27.01 CONFORMANCE: If any provision of this contract violates any statute or rule of law of the state of Washington, it is considered modified to conform to that statute or rule of law.