



# WILDFIRE

## DNR PRE-SEASON APPLICATION AND AGREEMENT

### A. Application Instructions

- By submitting this application, the 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 and sign by a representative with the authority to act on behalf of the Contractor:
  - Read and Sign the Waiver and Release of Liability
  - Read and Sign the Application
  - Read and Sign the COVID-19 Contractor Vaccination Declaration
- NOTE: (1) The Waiver and Release of Liability (2) the Applications and (3) the COVID-19 Contractor Vaccination Declaration 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 Officer 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: Wildfire Preparedness Coordinator  
 1111 Washington Street SE  
 Olympia, WA 98504-7307

### B. Contractor Information

CONTRACTOR NAME Top Rail Construction LLC/Top Rail LLC		
CONTRACTOR ADDRESS PO Box 1105 6461 Lukes Lane,		
CITY Naches	STATE WA	ZIP 98937
PHYSICAL LOCATION OF EQUIPMENT 6461 Lukes Lane, Naches, WA		POINT OF HIRE & COUNTY Naches Yakima Co.
PHONE 509-952-4250		EMAIL toprailconstr@aol.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*

PRIMARY CONTRACTOR CONTACT	ALTERNATE CONTRACTOR CONTACT
PRIMARY CONTACT NAME Linda Lukehart	ALTERNATE CONTRACTOR NAME Dain Lukehart
DAY PHONE 509-952-4250	DAY PHONE 509-949-5666
NIGHT PHONE 509-952-4250	NIGHT PHONE 509-949-5666
EMAIL ADDRESS toprailconstr@aol.com	EMAIL ADDRESS toprailconstr@aol.com



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## C. Eligibility Information

1. RT-130 OPERATOR SAFETY TRAINING (required for all operators going to the fireline)
  - Y  N
2. RT-130 OPERATOR SAFETY TRAINING ADMINISTERED BY:
  - DNR  MOU  Training Provider  Other OTHER
3.  Attach certificate 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. INTIALS  
 Please make an X below indicating these forms are attached:
  - Commercial General Liability
  - Business Auto Policy
  - Employer's Liability ("Stop Gap") Insurance

4.  COVID VACCINE CERTIFICATION (SECTION F)  
 A completed COVID-19 Contractor Vaccination Certification is REQUIRED as part of this application. If a Contractor fails to submit the COVID-19 Vaccine Certification or is not able to perform in compliance with the Proclamation in whole or in part, the application will be deemed incomplete and therefore will not be accepted. INTIALS

## D. Equipment and Rates

Instructions: Please complete all blocks applicable to your equipment.

Do NOT include the following:

- ANY equipment under a USFS VIPR Agreement INTIALS
- ANY equipment NOT listed in the Washington State Wage and Equipment Guide INTIALS

Resource Information	Attribute Values & Rates	Resource Information	Attribute Values & Rates
Type of Equipment:	Dozer	Type of Equipment:	Backhoe
Description:		Description:	
Quantity:		Quantity:	1
Pumping?		Pumping?	
Delivery Charge:		Delivery Charge:	
Min/Delivery:		Min/Delivery:	
Max/Delivery:		Max/Delivery:	
Relocation Charge:		Relocation Charge:	
Service Truck Charge:		Service Truck Charge:	
Rate Type (Daily/hourly)?	DAILY SINGLE SHIFT	Rate Type (Daily/hourly)?	DAILY SINGLE SHIFT
RATE:	\$2820	RATE:	\$1064
If applicable complete the below fields:		If applicable complete the below fields:	
Serial /VIN No:	N8DC16070	Serial /VIN No:	JJG0274226
Class:	Type 2	Class:	
Make:	CASE	Make:	CASE



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Model:	1650L	Model:	580SL
Series/Year:	2010	Series/Year:	2001
GVW and Drive Wheels:	39,595	GVW and Drive Wheels:	13,283
State License No:		State License No:	
Flywheel Horsepower:	156	Flywheel Horsepower:	91
<b>Resource Information</b>	<b>Attribute Values &amp; Rates</b>	<b>Resource Information</b>	<b>Attribute Values &amp; Rates</b>
Type of Equipment:	Dump Truck	Type of Equipment:	Dump Truck
Description:	12 YARDS	Description:	14 YARDS
Quantity:		Quantity:	
Pumping?		Pumping?	
Delivery Charge:		Delivery Charge:	
Min/Delivery:		Min/Delivery:	
Max/Delivery:		Max/Delivery:	
Relocation Charge:		Relocation Charge:	
Service Truck Charge:		Service Truck Charge:	
Rate Type (Daily/hourly)?	DAILY SINGLE SHIFT	Rate Type (Daily/hourly)?	DAILY SINGLE SHIFT
<b>RATE: \$1,475</b>	<b>W/ OPERATOR</b>	<b>RATE: \$1,475</b>	<b>W/ OPERATOR</b>
If applicable complete the below fields:		If applicable complete the below fields:	
Serial /VIN No:	IFDYU90X9HVA22789	Serial /VIN No:	1XP9D29X6BP140490
Class:		Class:	
Make:	FORD	Make:	PETERBUILT
Model:	L9000	Model:	
Series/Year:	1987	Series/Year:	
GVW and Drive Wheels:	22,450	GVW and Drive Wheels:	17,070
State License No:	C9426J	State License No:	B79460A
Flywheel Horsepower:		Flywheel Horsepower:	
<b>Resource Information</b>	<b>Attribute Values &amp; Rates</b>	<b>Resource Information</b>	<b>Attribute Values &amp; Rates</b>
Type of Equipment:	WATER TRUCK	Type of Equipment:	END DUMP TRAILER
Description:		Description:	30 YARD
Quantity:	1,750 GAL.	Quantity:	
Pumping?		Pumping?	
Delivery Charge:		Delivery Charge:	
Min/Delivery:		Min/Delivery:	
Max/Delivery:		Max/Delivery:	
Relocation Charge:		Relocation Charge:	
Service Truck Charge:		Service Truck Charge:	
Rate Type (Daily/hourly)?	DAILY SINGLE	Rate Type (Daily/hourly)?	
<b>RATE: \$1,638<sup>00</sup></b>	<b>W/ OPERATOR</b>	<b>RATE:</b>	

NOT IN RATE GUIDE



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If applicable complete the below fields:		If applicable complete the below fields:	
Serial /VIN No:	1FDPF80C2SVA9113	Serial /VIN No:	1H4D03022FF031601
Class:	TYPE 3	Class:	
Make:	FORD	Make:	FRUENNHOFF
Model:	R800	Model:	
Series/Year:	1995	Series/Year:	1984
GVW and Drive Wheels:		GVW and Drive Wheels:	
State License No:	A83170E	State License No:	304YO/COMBO
Flywheel Horsepower:		Flywheel Horsepower:	



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**NOTE:** Page 6 is your Waiver and Release of Liability. Please print page 6 and sign the section for Waiver and Release of Liability. Next fill out the **Contractor Certifications** and **Contractor Authorized Representative** and sign. Then scan and email this back with the entire filled out Pre-Season Agreement.



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## 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, PRINT CONTRACTOR NAME TOP RAIL, LLC 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.

CONTRACTOR'S SIGNATURE <i>Linda Lukehart</i>	PRINT NAME <i>Linda Lukehart</i>	DATE <i>8-9-22</i>
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### 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		
<input checked="" type="checkbox"/>	INITIAL <i>LL</i>	I certify that I am 18 years of age or older.
<input checked="" type="checkbox"/>	INITIAL <i>LL</i>	I certify that I possess a current valid driver's license for the type of vehicle/equipment being operated.
<input checked="" type="checkbox"/>	INITIAL <i>LL</i>	I certify that I own, or have permission from the owner to operate, the vehicle/equipment contracted under this Agreement.



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<input checked="" type="checkbox"/>	INITIAL <i>LD</i>	I certify that the vehicle/equipment contracted under this Agreement is in good working condition.
<input checked="" type="checkbox"/>	INITIAL <i>LD</i>	I certify that the vehicle/equipment contracted under this Agreement is properly licensed.
<input checked="" type="checkbox"/>	INITIAL <i>LD</i>	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.

CONTRACTOR AUTHORIZED REPRESENTATIVE <i>Linda Lukehart / Top Rail LLC</i>	TITLE <i>Owner</i>
SIGNATURE <i>Linda Lukehart</i>	DATE <i>8-9-22</i>

## PROCLAMATION 21-14.2 – COVID-19 CONTRACTOR VACCINATION DECLARATION

Pursuant to Proclamation 21-14.2 – COVID-19 Vaccination Requirement, as now or hereafter amended by the Governor, ("Proclamation"), contractors who have goods, services, or public works contracts with a Washington state agency, including Department of Natural Resources (DNR), must ensure that their personnel (including subcontractors) who perform contract activities on-site comply with the COVID-19 vaccination requirements, unless exempted as prescribed by the Proclamation.

DNR Contract Number                      DNR CONTRACT NUMBER *93-103984*  
 Name of Contractor                              CONTRACTOR NAME *TOP RAIL CONSTRUCTION LLC*

I STATE YOUR NAME am an authorized representative of STATE YOUR ORGANIZATION NAME or an owner/sole proprietor.

**Note: An owner/sole proprietor is a type of business owned and run by one person**

I hereby certify, on behalf of the Contractor, as follows (check one):

CONTRACTOR HAS A COVID-19 CONTRACTOR VACCINATION VERIFICATION PLAN THAT COMPLIES WITH THE VACCINATION PROCLAMATION. Contractor:

- o Has reviewed and understands Contractor's obligations as set forth in Proclamation 21-14.2 – COVID-19 Vaccination Requirement, as now or hereafter amended;
- o Has developed a COVID-19 Vaccination Verification Plan for Contractor's personnel (including subcontractors) that complies with the above-referenced Proclamation;
- o Has obtained a copy or visually observed proof of full vaccination against COVID-19 for Contractor personnel (including subcontractors) who are subject to the vaccination requirement in the above-referenced Proclamation;
- o To the extent Contractor is an owner/sole proprietor, Contractor certifies that Contractor is fully vaccinated against COVID-19 or is unable to get vaccinated because of a medical exemption or a conflict between the vaccination requirement and their sincerely held religious belief, practice, or observance, as applicable.
- o Complies with the requirements for granting disability and religious accommodations for Contractor personnel (including subcontractors) who are subject to the vaccination requirement in the above-referenced Proclamation;
- o Has operational procedures in place to ensure that any contract activities that occur in person and on-site at Agency premises (other than only for a short period of time during a



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given day and where any moments of close proximity to others on-site will be fleeting – e.g., a few minutes for deliveries) that are performed by Contractor personnel (including subcontractors) will be performed by personnel who are fully vaccinated or properly exempted as required by the above-referenced Proclamation;

- Has operational procedures in place to enable Contractor personnel (including subcontractors) who perform contract activities on-site and at Agency premises to provide compliance documentation that such personnel are in compliance with the above-referenced Proclamation;
- Will provide to DNR, upon request, Contractor's COVID-19 Vaccination Verification Plan and related records, except as prohibited by law, and will cooperate with any investigation or inquiry pertaining to the same. For lease agreements, the notice may require the landlord to inventory all contracts where the contract requires workers to perform work on site and provide the inventory of contracts upon DNR's request.
- Agrees that it and its employees and subcontractors will comply with additional safety requirements as posted at DNR facilities/work sites when on site, such as taking and passing a health screen before entering, social distancing, submitting proof of a negative COVID-19 test, or wearing a face covering.

CONTRACTOR DOES NOT HAVE A COVID-19 CONTRACTOR VACCINATION VERIFICATION PLAN. Contractor does not have a current COVID-19 Contractor Vaccination Verification Plan and, Contractor would not be able to develop and provide a COVID-19 Contractor Vaccination Verification Plan to ensure that Contractor's personnel meet the COVID-19 vaccination requirements as set forth in the above-referenced Proclamation and provide the same to Agency within twenty-four (24) hours of such designation. [Note: Compliance with the Proclamation is mandatory. Contractors who are not able to perform in compliance with the Vaccination Proclamation will not be evaluated.]

PRINT FULL LEGAL ENTITY NAME OF CONTRACTED FIRM Top Rail Construction LLC	
SIGNATURE OF AUTHORIZED <i>Linda Lukehart</i>	DATE 6.9.22
PRINTED NAME OF PERSON MAKING CERTIFICATION FOR FIRM Linda Lukehart	
TITLE OF PERSON SIGNING CERTIFICATE Owner	
PRINT COUNTY AND STATE WHERE SIGNED Yakima / Washington	





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**Agency use only beyond this point.  
Agreement number and period of performance will be added in by Agency upon  
acceptance of this application and returned to contractor.**



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DNR AGREEMENT NO DNR AGREEMENT NO **93-103984**

This Agreement is entered into by the State of Washington, Department of Natural Resources, hereafter referred to as DNR/Agency, and **CONTRACTOR NAME** hereafter referred to as the Contractor.  
**TOP RAIL LLC**

**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:** **8/12/2022** **12/31/2025**  
The period of performance of this Agreement shall begin on **START DATE**, and end on **END DATE**, 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 290-305-07012 Personal protective clothing and equipment for wildland firefighting. The NFPA 1977, Standard Protective Clothing and Equipment for Wildland



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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 Contractor's 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.



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### 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



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- 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.



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**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.



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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.



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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.





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- 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 HARASSMENT:

Per RCW 43.01.135, Sexual harassment in the workplace, Agency Contractors hereby have access to DNR Policy PO01-007 Harassment Prevention: [https://www.dnr.wa.gov/publications/em\\_PO01-007\\_harassment\\_prevention.pdf](https://www.dnr.wa.gov/publications/em_PO01-007_harassment_prevention.pdf)

### 25.01 COVID-19 VACCINATION REQUIREMENT:

Pursuant to Proclamation 21-14.2 - COVID-19 Vaccination Requirement, as now or hereafter amended by the Governor ("Proclamation"), contractors who have goods, services, or public works contracts with a Washington state agency, including the Department of Natural Resources (DNR), must ensure that their personnel (including subcontractors) who perform contract activities on-site comply with the COVID-19 vaccination requirements of the Proclamation, unless exempted as prescribed by the Proclamation. Compliance with the Proclamation is mandatory. Contractor shall comply with the Proclamation.

### 26.01 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.

### 27.01 ASSIGNABILITY:

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

### 28.01 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.



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### **29.01 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.