

**STATE OF ALASKA**  
**CONDITIONS OF HIRE**  
EMERGENCY EQUIPMENT RENTAL AGREEMENT FORM OF-294

The State of Alaska, Department of Natural Resources, or any agency of the State of Alaska in an emergency response, will be referred to as the "State" in this document. The legal owner of the equipment or the individual that has the legal right to provide the equipment under the terms of this agreement will be referred to as the "Contractor."

**Scope of Work** – Since the equipment needs of the State and availability of Contractor's equipment during an emergency cannot be determined in advance, it is mutually agreed that upon request of the State the Contractor shall furnish the equipment listed herein to the extent the Contractor is willing and able at the time of order. The following personnel are authorized to place orders against this agreement: Dispatchers, Buying Team Members, Incident Management Team members, Contracting Officers, and Purchasing Agents. At time of dispatch, a resource order number will be assigned for a specific category, type, and class of equipment. The Contractor shall furnish the assigned resource order number upon arrival and check in at the incident. The Incident Commander or responsible State Representative is authorized to administer the technical aspects of this agreement. **Equipment furnished under a contractual agreement with the Division of Forestry may be subject to extreme environmental and/or strenuous operating conditions which could include, but are not limited to, damage from unimproved or narrow roads, steep, rocky, brushy, hilly terrain, dust, heat, and smoky conditions that could cause damage to equipment. As a result, the rates paid for the equipment include an additional allowance that is meant to cover expected wear and tear due to adverse conditions under which the equipment is likely to be operated. Wear and tear includes worn or cracked tire tread on the running surfaces; chips and scratches to the vehicle's painted and other surfaces; small dings and scratches to the bumpers. and surface chips and scratches to the vehicle's windshield, glass, and mirrors.**

When equipment is furnished to the State, the following clauses shall apply:

**CLAUSE 1. Condition of Equipment:** All equipment furnished under this agreement shall be safe and operable. The State reserves the right to reject equipment that is not safe or is in inoperable condition. The State may reject the primary equipment if the vendor provided transport equipment fails inspection. The State may allow the Contractor to correct deficiencies within 24 hours. 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.

**CLAUSE 2. Time Under Hire:** The time under hire begins at the time the equipment passes the pre-use inspection after being ordered by the State, and ends at the estimated time of arrival back to the point of hire after being inspected and released, except as provided in Clause 7 of the Conditions of Hire. The point of hire is normally where the inspection will occur. If equipment is mobilized at the direction of the State without an inspection, the incident commander or Section Chief shall determine the start time. If equipment is hired without an operator the inspection form shall be back-dated to when the state accepted possession of the equipment.

**CLAUSE 3. Operating Supplies:** As identified in Block 7, operating supplies include oil, lubricants, and lube/oil changes. Even though Block 7 may specify that all operating supplies are to be furnished by the Contractor, 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. **Fuel will be provided by the State, except for point-to-point hires (where Contractor provides fuel and rates have been adjusted accordingly).**

**CLAUSE 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 determined by the State and deducted from payment to the contractor.

**CLAUSE 5. Timekeeping:** Time will be verified and approved by the State agent responsible for ordering and/or directing the use of each piece of equipment. Time will be recorded to the nearest half hour for daily rate. Shift length is shown for all equipment furnished with an operator. Shift length is specified in the Incident Action Plan (IAP) or is determined by operations personnel on an incident or at the Area. On-shift time includes time worked, time that equipment is held or directed to be in a state of readiness, and compensable travel time that has a specific start and ending time.

## **CLAUSE 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 the rate specified and, except as provided in Clause 7, shall be in accordance with the following:

Special Rates shall apply when determined by the State. An example of a Special Rate are transport rates for heavy equipment.

Daily Rate shall apply for the vast majority of equipment hired by the State. Payment shall be made on basis of calendar days (0001-2400). For fractional days at the beginning and ending time under hire, payment will be based on 50 percent of the Daily Rate for periods less than 8 hours. To clarify, equipment initially hired after 1600 (4:00 pm) shall receive half the daily rate for the first day of hire, and equipment released back to the point of hire before 0800 (8:00 am) on the last day of hire shall receive half the daily rate for the final day of hire.

### 1. Shift Basis

- i. Single Shift - (SS) is staffed with one operator or one crew.
- ii. Double Shift - (DS) is staffed with two operators or two crews (one per shift). The DS rate will apply any calendar day the equipment was ordered as double shifted and was under hire, including travel. There will be no compensation for a double shift unless resource ordered as such and a separate operator or crew is provided.
- iii. Authorization/Documentation for Double Shift - written authorization at the Section Chief or Incident Commander level is required to authorize a second operator or crew (double shift) and the resource order will serve as documentation of the DS basis.

2. Special Rates shall apply when specified. Transport rates for vendor provided transports will be handled as a special rate and will be paid on a separate line on the equipment invoice. Additionally, when a lowboy/transport and another piece of equipment, such as a dozer, are hired, and both pieces of equipment use the same operator, daily payment for the lowboy/transport will be deducted by \$565 for a single shift and by \$940 for a double shift. On first and last day if equipment is under hire less than 8 hours the deduction will be reduced by half.

### 3. Guarantee NOT USED BY THE STATE OF ALASKA.

- 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 actual units ordered and performed.
- C. Corrections to Pay Documents: The State has the right to correct the invoice in case of accounting errors, or if a vendor chose the improper category, type, or class in OLAS for their equipment.

## **CLAUSE 7. Exceptions**

- A. No further payment under Clause 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/are 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 shown on the Incident Action Plan. If the equipment was not operational for the full shift, the deduction from the daily rate is calculated by converting the length of shift from the IAP to determine the hourly rate and deducting pay for the total hours the equipment was non-operational, i.e.,  $\text{daily rate} \div \# \text{ hours of shift in IAP} = \text{hourly rate to be deducted}$ .
- B. If the Contractor withdraws equipment and/or operator(s) prior to being released by the State, no further payment under Clause 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 that is non-operational and cannot be replaced or repaired/or furnished operator(s) by the Contractor or by the State in accordance with Paragraph B above, will be released, 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 Clause 6 when the Contractor is off-shift in compliance with the mandatory 2:1 work/rest ratio and 1 in 21 days off fatigue management provisions. As an option to rotating personnel, or taking a mandatory day off, without pay, the contractor may be released from the incident. See Clause 16.
- E. If equipment is reassigned from one incident to another, the maximum payment to a Contractor will be the daily rate. The incident releasing the equipment will pay for the final day for the equipment.
- F. Point-to-point hire for equipment, such as buses and transports will be paid at the daily rate for any mission that meets or exceeds 6 hours,  $\frac{1}{2}$  the daily rate when under hire for less than 6 hours.

**CLAUSE 8. Subsistence:** When State-subsisted incident camps are available, meals and bedding for Contractor's operator(s) will be furnished without charge. The State will furnish meals and lodging without cost if hotel/restaurant subsistence is the approved camp for incident personnel. Double occupancy of hotel rooms may be required. Contractors are not paid meals or lodging expenses to and from incidents.

**CLAUSE 9. Loss, Damage, or Destruction:**

- A. For equipment furnished under this EERA **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) wear or tear, (2) mechanical failure, (3) loss of use, or (4) the fault or negligence of the Contractor or the Contractor's agents or employees.
- B. For equipment furnished under this EERA **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 in a safe manner and is the final arbiter regarding situations under which the equipment is operated.

**CLAUSE 10. Contractor's Responsibility for Property and Personal Damages:** Except as provided in Clause 9, the Contractor will be responsible for all damages to property and to persons, including third parties, which 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.

**CLAUSE 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.

**CLAUSE 12. Personal Protective Clothing and Equipment:** The State considers operators as fireline personnel who will use and wear specified articles of personal protective equipment.

- A. 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:
  1. Clothing: (a) flame-resistant pants and shirts; (b) gloves (either Nomex or chrome-tanned leather); (c) hard hat; (d) goggles or safety glasses.
  2. Equipment: (a) fire shelter; (b) headlamp; (c) individual first aid kit.
  3. Other items may be issued by the State.
- B. Operators shall wear the issued clothing and maintain the issued equipment in a usable and readily available condition. Upon completion of the 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.

**CLAUSE 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](http://www.fmcsa.dot.gov).

**CLAUSE 14. Claims:** Filing a claim is the sole responsibility of the Contractor or the Contractor's insurance company. A claim must be filed with the State within 30 days after the equipment is released from an incident AND must have documentation that damage occurred while the equipment was on the incident and that said damages were the direct result of State employee negligence or that payment was incorrect. Other claims will not be considered. Claims for equipment being transported or for the transport equipment itself shall be handled by the insurance company of the Contractor responsible for providing the transport. Claims will not be accepted for equipment hired under the point-to-point method of hire.

**CLAUSE 15. Firearms – Weapon Prohibition:** The possession of firearms or other dangerous weapons (18 USC 930(g) (2)) is prohibited at all times while under hire, on State property, and during performance of services under this agreement. The term dangerous weapon does not include pocket knives with a blade less than 2 ½ inches in length or multipurpose tools such as a Leatherman®.

**CLAUSE 16. Work Rest and Fatigue Management:** The Contractor is required to follow the Division's fatigue management policies. This includes adhering to the work rest guidelines as established by Director Jahnke (Memo dated May 22, 2002):

- For every two hours of work or travel, provide 1 hour of rest and
- Personnel are required to take at least one day off within a 21-day period.

**CLAUSE 17. Harassment Free Workplace:** Contractors shall abide by Administrative Order 81, and Appendix A to Administrative Order 81, the State's prohibition to harassment and any other discriminatory practices.

**CLAUSE 18. Worker's Compensation:** The Contractor shall carry and maintain for all employees engaged in work under this agreement coverage as required under AS 23.30.045.

**CLAUSE 19. Performance and Direction of Work:** *The operator* has status of an employee of the Contractor and *is responsible at all times for the care and safe, efficient operation of equipment and may refuse to work in a situation exceeding the operator's ability or that of the equipment, or where the equipment may be damaged.* The operator must possess all necessary, valid drivers' licenses and any other certifications required by law. The operator receives work assignments from and performs work under general direction of State personnel. A performance evaluation will be completed for each operator or piece of equipment. The State may request removal and replacement of any operator(s) who, in the State's judgment, is incompetent, careless, or otherwise objectionable.

**CLAUSE 20. Commercial Liability Insurance:** The Contractor must carry adequate liability insurance to protect the Contractor and the State from loss arising from the performance for an order for service. The minimum amount of commercial liability insurance is \$300,000.00 combined single limit per occurrence. However for passenger-carrying buses, the minimum amount of commercial liability insurance is \$1 million combined single limit per occurrence. If the State hires a Contractor's stand alone transport equipment (a transport that may be used to move equipment owned by other vendors), the Contractor must have commercial motor carrier's insurance to cover the transport equipment and the equipment being hauled (\$1 million coverage, minimum). Insurance requirement is waived when equipment is provided without operator.

**CLAUSE 21. Permits and Responsibilities:** The Contractor shall, without additional expense to the State, be responsible for obtaining any necessary licenses and permits, and for complying with any Federal, State, and municipal laws, codes, and regulations applicable to the performance of the work. The Contractor shall also be responsible for all damages to persons and property that occur as a result of the Contractor's fault or negligence.

**CLAUSE 22. Debarment:** CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION (49 CFR Part 29): The bidder, offeror, certifies by submission of this proposal or acceptance of this contract/agreement, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. It further agrees by signature on this agreement, to include this clause without modification in all lower tier transactions, solicitation, proposals, contracts and subcontracts. Where the bidder/offeror/contractor or any lower tier participant is unable to certify to this statement, it shall attach an explanation to this agreement.

This form supersedes all previous versions which may be referred to in Block 16 of Form OF-294 Emergency Equipment Rental Agreement.

I certify that I have read and agree that I will be subject to the State of Alaska Conditions of Hire, the Emergency Equipment Rental Agreement, and the State of Alaska Equipment Rate Guide. This form supersedes all previous versions which may be referred to in Block 16 of Form OF-294 Emergency Equipment Rental Agreement.

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Contractor's / Authorized Agent's Signature

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Date

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Printed Name and Title

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Company Name