



BRITISH COLUMBIA

BC Wildfire Service

BC WILDFIRE SERVICE EQUIPMENT RENTAL AGREEMENT

THIS AGREEMENT DATED FOR REFERENCE THIS

Day of , 20

10005-20/

BETWEEN: AND

HER MAJESTY THE QUEEN in right of the Province of British Columbia, represented by the Minister of Forests, Lands and Natural Resource Operations & Rural Development

(Full Legal Name and Incorporation # where applicable)

(Mailing Address)

(Ministry Location)

(City, Province, Postal Code)

(Address)

(Phone No) (Cell No) (Fax No.)

(City, Province, Postal Code)

GST No. or Business No. (WorksafeBC Registration No.)

(Ministry Contact) (Phone No)

(E-Mail Address)

(E-Mail Address)

(the "Province")

(the "Contractor")

Referred herein to as "the Parties"

WHEREAS:

- A. The Province requires the use of firefighting equipment for the purpose of controlling forest fires and rehabilitating the forest.
B. The Contractor has agreed to rent to the Province on an "as and when" required basis, certain equipment (herein called the Equipment) on the terms and conditions contained herein.

In signing this Agreement the Contractor or Authorized Signatory certifies he/she understands the Conditions of this Agreement which includes Pages 1, 2, 3, 4, 5, the Schedule "A" attached to this document, and where applicable the Equipment Service Request.

The Parties have executed this Agreement as follows:

PROVINCE

CONTRACTOR

SIGNED AND DELIVERED on behalf of the Province by an authorized representative of the Province

SIGNED AND DELIVERED on behalf of the Contractor (or by an authorized signatory of the Contractor if a corporation)

(Authorized Representative/Expense Authority)

(Contractor or Authorized Signatory)

(PRINTED NAME of Authorized Representative/Expense Authority)

(PRINTED NAME of Contractor or Authorized Signatory)

(Date Signed - YY MM DD)

(Date Signed - YY MM DD)

READ CONDITIONS ON FOLLOWING PAGES

## DEFINITIONS:

**All Found Rate** means equipment and operator together with all costs and expenses for the work being undertaken.

**Point of Hire** means the location designated under Section 6.

**Marshalling Point** means the location where the operator(s) assemble at the start of each shift before commencing work.

**Point of Hire Standby** means the equipment and operator are available and ready for deployment within 30 minutes from their designated point of hire under Section 6.

**On Site Standby** means the equipment and operator are available within 5 minutes for work at the designated worksite.

**On Site Standby Less Operator** means the equipment is required to remain at the designated worksite but no operator is required.

**Mobilization and Demobilization** means transporting, loading and unloading the equipment between the point of hire and the worksite.

**Transport** means rental equipment being relocated to and from the point of hire or between various staging areas at the designated worksite.

**Operator Transportation** means travel by an equipment operator between staging areas or to and from the point of hire or marshalling point to a Ministry designated worksite where the equipment is located.

**Break** means a 30-minute unpaid meal break.

## CONDITIONS:

### 1. TERM OF AGREEMENT

- a) Unless otherwise agreed, the Term of this Agreement shall end on March 31<sup>st</sup> of the year following the date this Agreement is signed.
- b) The Province shall have the absolute right, at its sole discretion, to terminate this Agreement upon 48 hours notice (in writing) for any reason whatsoever, and in doing so:
  - i. Payment by the Province of all the monies then due and owing to the Contractor for the use of the Equipment under this Agreement shall discharge the Province from any and all liability to the Contractor under this Agreement; and
  - ii. the Province shall not be subject to any further liability under this Agreement.
- c) In the event the Contractor wishes to terminate this Agreement, the Contractor shall provide not less than 48 hours notice to the Province. Any such notice to be effective must be confirmed in writing and delivered to the Province's address specified on the first page of this Agreement.

### 2. EQUIPMENT RENTAL RATE

Rental Rates shall be as listed on the attached Schedule A or where there is not a schedule A attached to the agreement, the Rates specified in an Equipment Service Request. Unless otherwise indicated the rental rates are on an all found basis. All found rates in schedule A or in an Equipment Service Request will be adjusted each month based on a monthly fuel adjustment as determined under Section 4 below.

### 3. FUEL

Fuel for the Equipment shall be supplied and paid for by the Contractor.

- a) In the event the Contractor elects to obtain fuel from the Province the Contractor will be charged the actual cost to the Province of the fuel delivered;
- b) Where the amount of litres cannot be quantified by a fuel pump reading, the Parties or their authorized representatives will endeavor to reach agreement on the number of litres delivered and the amount will be recorded on the Daily Time Report or Weekly Time Report.

### 4. RATE ADJUSTMENTS

#### FUEL

- a) Fuel Adjustment Fuel prices are set using Natural Resources Canada "Weekly Average Wholesale (Rack) Prices for Regular Gasoline and Diesel". All prices include taxes, except Federal Goods and Service tax.
- b) Each month, BCWS will post an incremental fuel adjustment rate using the average of the previous month's weekly average rack rates for Prince George, Kamloops, and Nanaimo.

#### LIMITED INDEMNITY

- a) Hourly rate reductions shall be applied to situations where the machine is working or on standby at the designated worksite. No rate reduction should be made for point of hire standby or transport time. The reduction rates are as follows:
  - \$0.50 decrease for rental rates up to \$49.99
  - \$1.00 decrease for rental rates from \$50.00 to \$74.99
  - \$1.50 decrease for rental rates from \$75.00 to \$99.99
  - \$2.00 decrease for rental rates in excess of \$99.99

## 5. RENTAL RATE FOR STANDBY

The Province may require the Equipment to be available on a standby basis either at their designated Point of Hire or on site and the designated worksite or marshalling point, in which case the Contractor shall be paid as listed on the attached Schedule A or on the Equipment Service Request.

## 6. POINT OF HIRE, MARSHALLING POINT AND WORKSITE

- a) The point of hire shall be: \_\_\_\_\_
- b) A different marshalling point can be determined by the Province. E.g., Ministry supplied camp.
- c) The Equipment shall be used at a worksite designated by the Province.

## 7. WORKSITE ACCOMMODATIONS

- a) The Province may require Equipment Operators to stay in a specified fire camp or facility. A Contractor will not be charged room and board for its personnel when they are required by the Province to stay in a specified camp or facility.
- b) The Province will not reimburse the contractor when an equipment operator chooses not to stay in the specified fire camp or facility.

## 8. OPERATOR TRANSPORTATION

- a) When rental equipment remains at the designated worksite and the operator is required to travel to or from that worksite, the Province will compensate the contractor for operator travel.
- b) Travel compensation will be determined by the Province at rates in Schedule A or the Equipment Service Request and based on distance between the worksite and the designated Marshaling Point or the Point of Hire.

## 9. EQUIPMENT MOBILIZATION/DEMOBILIZATION

- a) Mobilization and demobilization costs shall be paid by the Province as per the Transport rate listed on the attached Schedule A or provided on the Equipment Service Request.
- b) Low bed allowances are all found rates when travelling to and from the point of hire.

## 10. OBLIGATION TO PROCEED

- a) The Contractor acknowledges that time is of the essence in any request to provide Equipment made under this Agreement.
- b) If and when the worksite is determined by the Province under Section 6(c) then:
  - i. if the Province requests the Contractor to provide Equipment to the worksite, the Contractor must, unless specified otherwise by the ministry contact, immediately and without delay after receiving such request confirm to the ministry contact whether or not it elects to proceed to the worksite; and
  - ii. any notice given under Section 10(b)(i) may be delivered orally by telephone to the specified number(s) on the first page of this Agreement or in person to the other party; and
  - iii. the Contractor shall not be subject to any liability for breach of this Agreement for not electing to proceed to the worksite; and
  - iv. once the Contractor advises the Province that it intends to supply the requested Equipment the Contractor shall be obliged to meet the Contractor's obligations under this Agreement; and
  - v. if the Contractor fails to observe, perform, or comply with any provisions of this Agreement or to otherwise meet its obligations under this Agreement, the Province may, in its sole discretion, in addition to any remedy available to it at law or equity, terminate the provision of services and Equipment (orally or in writing) to the Contractor and no claim may be made by the Contractor for any losses occasioned by that termination.
- c) The Province is not obliged to proceed with this Agreement at any time by determining a worksite and the Province shall not be subject to any liability for breach of this Agreement if the Province decides not to request provision of Equipment under this Agreement.

## 11. CONTRACTOR'S INDEMNIFICATION AND INSURANCE

- a) The Contractor shall indemnify and save harmless the Province, its employees and agents, from and against any and all losses, claims, damages, actions, causes of action, costs and expenses that the Province may sustain, incur, suffer or be put to at any time either before or after the expiration or termination of this Agreement where the same or any of them are based upon, arise out of or occur, directly or indirectly, by reason of any act or omission of the Contractor or of any agent, employee, officer, director or subcontractor of the Contractor pursuant to this Agreement, excepting always liability arising out of the independent negligent acts of the Province.
- b) The Contractor must provide, maintain and pay for:
  - i. Commercial General Liability insurance protecting the Province and the Contractor from and against any and all claims which may arise out of the Contractor's operations and handling of the Equipment during the rental period. The amount of such insurance shall not be less than \$2,000,000 inclusive of any one occurrence, and the Contractor shall provide the Province with evidence of such insurance prior to the commencement of work under this Agreement, and such evidence shall be in the form of a completed Province of British Columbia Certificate of Insurance and no other evidence shall be accepted.
  - ii. Automobile Liability insurance on all licensed vehicles owned by or leased to the Contractor and used by them in the performance of the services provided under this Agreement. Such insurance shall be for an amount not less than \$2,000,000 inclusive per occurrence. ICBC's confirmation of automobile insurance coverage in the form of a completed APV 47 or a copy of the vehicle insurance documents shall be used as satisfactory evidence of automobile liability insurance.
- c) The insurance policies, except for ICBC automobile liability insurance, must provide that the insurance must not be cancelled or materially changed so as to affect the coverage provided under the Agreement, without the insurer giving at least thirty (30) days prior written notice to the Province.
- d) If the insurance policies expire prior to the end of the Agreement Term, the Contractor must provide the ministry evidence of insurance renewal in the form of a completed Province of British Columbia Certificate of Insurance

or ICBC's APV 47 or a copy of the vehicle insurance documents as applicable, at least ten (10) days prior to the expiry date of the policies listed in this schedule.

- e) Failure to provide the required insurance documentation shall result in the termination of this Agreement.
- f) The Contractor must, without its obligations or liabilities and at its own expense, address the risk of physical loss and damage or both to the Equipment by either:
  - i. purchasing and maintaining throughout the term of this Agreement insurance against such physical loss or damage and providing evidence of insurance in the form of a completed Province of British Columbia Certificate of Insurance prior to commencing work under this Agreement or
  - ii. acknowledging the Equipment is uninsured and accepting the risk of such physical loss or damage personally or corporately as the case may be.

*Note: if the Contractor has elected not to insure the "Heavy" Equipment, the benefits under the Limited Indemnity provided under Section 11 are unavailable. There will be no deduction for the nominal cost of the Limited Indemnity from payments to the Contractor under this Agreement however the Province may prefer insured contractors when creating priority lists.*

- g) Subject to Section 12, the Province shall not be responsible for loss or damage occurring to the Equipment, regardless of how, when or where the damage occurs, and, by signing this Agreement, the Contractor relieves the Province and its employees from any and all responsibility for such loss or damage;
- h) The Contractor, in the event of any loss or damage, shall take reasonable steps to prevent further loss, including removal of the Equipment.

## 12. LIMITED INDEMNITY BY THE PROVINCE

Where the Contractor has insured the Heavy Equipment against loss or damage, and has provided evidence of such insurance to the Province as required by Section 11, the Province shall be liable to the Contractor for, and only for, direct loss or damage to Heavy Equipment caused by fire or upset while the Heavy Equipment is under the supervision or direction of the Province and being used for fire suppression and rehabilitation activities.

- b) In this Agreement, "Heavy Equipment" shall mean excavators, crawler tractors, skidders, rock trucks and muskeg transporters and may also include other tracked equipment on an excavator type carrier.
- c) The amount of loss or damage to the Heavy Equipment shall be based on the actual cash value of the Heavy Equipment at the time of the loss or damage, provided, however, that in no event shall the amount paid for the loss and damage exceed the cost of repair or replacement;
- d) In the event of a total loss of the Heavy Equipment, any salvage value shall be taken into account in calculating the final settlement;
- e) At the time of loss or damage, the indemnification shall in no event contribute until after all other insurance has been exhausted;
- f) Each claim under this provision shall be subject to a \$1000 deductible by the Province.

## 13. PAYMENT OF INVOICES

- a) The Contractor must submit invoices for every two-week working period.
- b) Invoices that do not cover a two-week period will be accepted as follows:
  - 1. At the end of a standby period; or
  - 2. After demobilizing from an incident.
- c) Invoices shall be based on the actual hours the Equipment is operated, an amount for mobilization and demobilization plus standby time where applicable, as recorded on the DTR's or WTR's signed by the Contractor or authorized representative and certified correct by the Province, multiplied by the applicable rates and subject to any deductions as may be otherwise provided in this Agreement;
- d) Invoice must list each piece of equipment separately and daily.
- e) Invoices must contain:
  - 1. Full Company legal name or Sole Proprietor's Full Legal Name Doing Business As
  - 2. Business address
  - 3. Phone/fax numbers (where applicable)
  - 4. Agreement number
  - 5. Business number (where applicable)
  - 6. GST number (where applicable)
  - 7. Invoice number
  - 8. Invoice date
  - 9. Description of services (including DTR or WTR numbers, where applicable)
  - 10. Incident/Project numbers
  - 11. Fuel adjustments (where applicable)
  - 12. Approved expenses per day (where applicable)
  - 13. Back up documentation (DTRs and/or WTRs)
  - 14. The calculation of any applicable taxes payable by the Province in relation to the Services provided under this Agreement and for the Billing Period as a separate line item.
- f) Subject to the performance and observance by the Contractor of the conditions set forth in this Agreement, the Province shall pay the amount of monies due to the Contractor in accordance with the Province's payment practices and the *Financial Administration Act*.
- g) Interest less than \$5.00 will not be paid, no interest will be paid unless and until an account is overdue by at least 61 days. The overdue period shall be calculated from the date the Province approves payment or the date the invoice is received (whichever is the later) to the date the cheque is printed by the Ministry of Finance and Corporate Relations.

#### 14. MISCELLANEOUS

- a) As there may be a difference in the *Revenue Act (Canada)* tariff status between machines acquired for logging and those acquired for construction and/or fire suppression activities the Contractor is hereby notified that this Agreement is subject to audit by the Customs and Excise Branch of Revenue Canada;
- b) The Contractor shall do the following:
  - i. At its own expense, obtain Workers' Compensation Board compensation coverage for itself, all workers and any shareholders, directors, partners or other individuals employed or engaged as a result of this Agreement;
  - ii. Comply with all the requirements of the *Workers' Compensation Act* and Regulations, and all pay assessments and levies made thereunder, and
  - iii. Upon request by the Province, provide proof of such compliance.
- c) All terms of this Agreement in favor of either party, and all rights and remedies of either party, either at law or in equity, shall, unless otherwise specifically provided for in this Agreement, survive the expiration or sooner termination of this Agreement;
- d) In the event that an issue arises concerning the interpretation of this Agreement or other aspect of the rental of the Equipment which the parties cannot resolve, then the matter shall be submitted to a single arbitrator pursuant to the *Commercial Arbitration Act* for determination.
- e) This Agreement is governed by and is to be interpreted and construed in accordance with, the laws applicable in British Columbia.