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**AVIATION PRICE AGREEMENT**

**Between the Montana Department of Natural Resources and Conservation Forestry Division, 2705 Spurgin Road, Missoula Montana, 59804 and**
**10 Tanker Air Carrier LLC**
**3201 University Blvd SE, Suite 102**
**Albuquerque NM 87103**

**AGREEMENT NUMBER: DNRC-FIRE2017-1049**

## 1. PURPOSE

The purpose of this Price Agreement is to establish general terms and conditions for aviation equipment and services in connection with fire suppression activities by the Montana Department of Natural Resources & Conservation (DNRC).

Requirements designated in this bid must be satisfied, or a functional equivalent bid submitted, which is acceptable to the State. Bidders who do not meet this criterion may be disqualified from further consideration. A bidder must state if they are unable or unwilling to meet any requirement. Inability or unwillingness to meet any requirement, in part or total, may be cause for disqualification of the entire response. Any exceptions taken by the bidder must be clearly identified on the bid forms.

## 2. FULLY OPERATED

This agreement requires that the Vendor's operations be conducted within FAA civil authorities and not as a Public Use Aircraft. The Vendor shall remain the operator of the aircraft at all times.

The Vendor, excepts as otherwise provided in this agreement, will furnish the aviation equipment and services in accordance with the specifications, terms and conditions of this agreement, and at the applicable accepted bid schedule prices including, the aircraft, pilots, other personnel, repairs, operating supplies, service facilities, and incidentals necessary to the operations of the aircraft. The flight rate will be considered a dry rate.

The Vendor is responsible to pay for all costs required for their operations under this solicitation. Charges incurred by the Vendor for landing fees and other approved incidentals are additional to the rates shown on the bid forms and shall be billed separately to the State. All charges will require signed, dated receipts for products or services billed.

The Vendor will be reimbursed by the state for the cost of aircraft fuel, with the cost being determined through one of two possible methods. Cost is computed either through individual signed receipts or through invoices submitted by the Vendor based on a calculation of the fuel consumption rate of the aircraft, the number of hours operated, and the average price of fuel for the billing period.

## 3. HOLD HARMLESS/INDEMNIFICATION

The Vendor agrees to protect, defend, and save the State of Montana, its elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, causes of action of any kind or character, including the cost of defense thereof, arising in favor of the Vendor's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed or omissions of services or in any way resulting from the acts or omissions of the Vendor and/or its agents, employees, representatives, assigns, subcontractors, except the sole negligence of the State of Montana, under this agreement.

# 4. REQUIRED INSURANCE

**4.1 General Requirements.** The Vendor shall maintain for the duration of the agreement, at its cost and expense, insurance against claims for injuries to persons or damages to property, including contractual liability, which may arise from or in connection with the performance of the work by the Vendor, its agents, employees, representatives, assigns, or subcontractors. This insurance shall cover such claims as may be caused by any negligent act or omission.

**4.2 Primary Insurance.** The Vendor's insurance coverage shall be primary insurance with respect to the State, its officers, officials, employees, and volunteers and shall apply separately to each project or location. Any insurance or self-insurance maintained by the State, its officers, officials, employees or volunteers shall be excess of the Vendor's insurance and shall not contribute with it.

**4.3 Aircraft Liability Insurance.** The Vendor shall purchase and maintain occurrence coverage of $150,000,000.

**4.4 Specific Requirements for Commercial General Liability Insurance.** The Vendor shall purchase and maintain occurrence coverage with combined single limits for bodily injury, personal injury, and property damage of $1,000,000 per occurrence and $2,000,000 aggregate per year to cover such claims as may be caused by any act, omission, or negligence of the Vendor or its officers, agents, representatives, assigns, or subcontractors.

The State, its officers, officials, employees, and volunteers are to be covered and listed as additional insured for liability arising out of activities performed by or on behalf of the Vendor, including the insured's general supervision of the Vendor; products, premises owned, leased, occupied, or used.

**4.5 Specific Requirements for Environmental Liability Insurance.** The Vendor shall purchase and maintain coverage of $1,000,000.

**4.6 Specific Requirements for Automobile Liability Insurance.** The Vendor shall purchase and maintain coverage with split limits of $500,000 per person (personal injury), $1,000,000 per accident occurrence (personal injury), and $100,000 per accident occurrence (property damage), OR combined single limits of $1,000,000 per occurrence to cover such claims as may be caused by any act, omission, or negligence of the Vendor or its officers, agents, representatives, assigns, or subcontractors. The State, its officers, officials, employees, and volunteers are to be covered and listed as additional insured's for automobiles leased, hired, or borrowed by the Vendor.

**4.7 Deductibles and Self-Insured Retentions.** Any deductible or self-insured retention must be declared to and approved by DNRC. At the request of DNRC either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the State of Montana, its officers, officials, employees, or volunteers; or (2) at the expense of the Vendor, the Vendor shall procure a bond guaranteeing payment of losses and related investigations, claims administration, and defense expenses.

**4.8 Certificate of Insurance/Endorsements.** The Vendor shall obtain and retain in force for the duration of this agreement, the following forms of insurance written by an insurance company having a Best's rating of A- or better and be licensed and admitted in Montana. The Vendor will ensure that a certificate of insurance from an insurer with a Best's rating of no less than A- indicating compliance with the required coverage has been received by DNRC, 2705 Spurgin Road, Missoula, MT 59804. The Vendor must notify DNRC immediately, of any material change in insurance coverage, such as changes in limits, coverage, change in status of policy, etc. DNRC reserves the right to require complete copies of insurance policies at all times. All policies shall be endorsed to include the State of Montana, its departments, agents, officials, and

employees as additional insured and shall protect the Vendor and the State of Montana from claims for damages for bodily injury, including accidental death, as well as for claims for property damages, which may fall within the scope of Vendors' obligations under this agreement. All policies shall contain waiver of subrogation coverage or endorsements. Failure of the DNRC to demand such certificate(s) or other evidence of full compliance with these insurance requirements or failure of the DNRC to identify a deficiency from evidence that is provided shall not be construed as a waiver of Vendor's obligation to maintain such insurance. Failure to maintain the required insurance may result in termination of this agreement.

**4.9 Compliance with the Workers' Compensation Act.** Vendor is required to comply with the provisions of the *Montana Workers' Compensation Act* while performing work for the State of Montana in accordance with sections *39-71-401, 39-71-405*, and *39-71-417, MCA*. Proof of compliance must be in the form of workers' compensation insurance, an independent vendor's exemption, or documentation of corporate officer status. Neither the vendor nor its employees are employees of the State. This insurance/exemption must be valid for the entire term of the contract. A renewal document must be sent to the Department of Natural Resources and Conservation, 2705 Spurgin Road, Missoula, MT 59804, upon expiration.

**4.10 Subcontractor Insurance.** The Vendor shall require all subcontractors utilized in performance of this agreement to provide certificates of insurance to the DNRC evidencing insurance coverage with the required additional insured endorsements as set forth in the preceding paragraphs.

**4.11 No Warranty Regarding Insurance Limits.** By requiring insurance herein, the DNRC does not represent that coverage and limits will necessarily be adequate to protect Vendor and such coverage and limits shall not be deemed as a limitation on Vendor's liability under the indemnities granted to the State of Montana in this agreement.

## 5. LIABILITY FOR DAMAGE TO EQUIPMENT

**5.1.** Security of the aircraft and Vendor-owned equipment shall be the responsibility of the Vendor regardless of whether the aircraft is operating from a remote alternate base point or the designated base point.

**5.2.** Any claim for damage, loss, or destruction of any item of equipment accepted under this agreement that occurs while said item of equipment is being used on authorized work will be considered under applicable laws and regulations. Under no circumstances will a claim be approved for damage, loss, or destruction of said equipment due to ordinary wear and tear or to which negligence on the part of the Vendor, his agent or employees contributed.

**5.3 Officials, Agents and Employees of the State Not Personally Liable.** In no event shall any official, officer, employee, or agent of the State of Montana be in any way personally liable or responsible for any covenant or agreement herein contained whether expressed or implied, nor for any statement, representation, or warranty made herein or in any connection with this agreement. This section shall not apply to any remedies in law or at equity against any person or entity that exist by reason of fraud, misrepresentation, or outside the terms of this agreement.

## 6. AIRCRAFT AND PERSONNEL CARDING

All aircraft and support vehicles shall be approved by the USFS or Department of Interior, OAS indicating they meet the standards and specifications of the current Federal Large Air Tanker Contract. Personnel will have a current interagency card issued by the USFS or Department of Interior, OAS. Any aircraft, support vehicle or person not having such approval or card will not be authorized for use under this agreement. All aircraft, support vehicles and personnel must meet the specifications of the current Federal Large Air Tanker Contract while operating under this agreement. A copy of the current federal

approval or card for all aircraft, support vehicles and personnel must be submitted with each vendor's bid.

## 7. ACCESS TO RECORDS

The Vendor agrees to provide the State of Montana, Legislative Auditor, or their authorized agent's access to any records necessary to determine contract compliance (*Section 18-1-118, MCA*).

## 8. NO GUARANTEE OF USE AND TIME UNDER HIRE

DNRC makes no guarantee of use during the term of this price agreement. DNRC personnel may utilize this price agreement at their discretion, and may opt to enter into other price agreements and/or use aircraft from other vendors, whichever is deemed by DNRC personnel to be in the best interest of the State of Montana. The time under hire shall start at the time the equipment begins traveling to an incident after being ordered by DNRC, and end at the estimated time of arrival back to the point of hire after being released from the incident by DNRC. DNRC may release the equipment and personnel described in this agreement from an incident at its discretion and/or based on resource needs. DNRC does not guarantee that it will utilize the equipment and personnel described in this agreement on an incident for a specific period of time.

## 9. PAYMENTS

Payment will be made at the rates shown in this Price Agreement. When a daily availability is charged the aircraft and support equipment along with all necessary personnel will be in a state of readiness for operations within a fifteen (15) minute notice (see *ATTACHMENT I - Payment Procedures*).

RATES: (This table is for example purposes only. Please only fill out and submit *Attachment A*)

| | Aircraft/Vehicle Make | Model | Registration or License # | Rental Cost per Hour (Aircraft) or Mileage (Fuel Servicing and/or Maintenance Vehicle) | Daily Availability * |
|---|---|---|---|---|---|
| 1 | Boeing | DC-10-30 | N612AX SN# 48290 | $25,500 for hours 1-2 $13,500 for hours 3-8 | 2 flight hour daily minimum |
| 2 | Boeing | DC-10-30 | N17085 SN# 47957 | $25,500 for hours 1-2 $13,500 for hours 3-8 | 2 flight hour daily minimum |
| 3 | Boeing | DC-10-30 | N522AX SN# 48315 | $25,500 for hours 1-2 $13,500 for hours 3-8 | 2 flight hour daily minimum |
| 4 | Boeing | DC-10-30 | N603AX SN# 48267 | $25,500 for hours 1-2 $13,500 for hours 3-8 | 2 flight hour daily minimum |

**The awarded Daily Availability Rate shall include all fixed and variable costs (depreciation, salaries, overhead, permanent shop facilities, etc.) incurred in providing continuous service exclusive of those costs directly attributed to actual flight.*

**9.1 Withholding of Payment**. The DNRC may withhold payments to the Vendor if the Vendor has not performed in accordance with this agreement. Such withholding cannot be greater than the additional costs to the DNRC caused by the lack of performance.

### 9.2 Method of Measurement and Basis of Payment for Flight.

Compensation for flight time will be paid at the bid flight rate.

Flight time will be measured in hours and tenths of hours, recorded by a direct reading, electronically-driven hour meter in each aircraft. If the hour meter becomes inoperative or inaccurate, the Pilot in Charge will use clock time of each takeoff and landing.

All flights will be recorded on a Daily Invoice; start and stop times must be recorded. Hour meter readings will be recorded in hours and tenths. Clock times must be converted to hours and hundredths. The Daily Invoice must be approved by an Aviation Manager at the conclusion of each day.

On days when the aircraft is flown, the pilot will be responsible for recording on the Daily Invoice the following:

1. Flight date.
2. Contract number/name.
3. FAA registration.
4. Contractor name.
5. Incident number and name.
6. Name of pilot.
7. Number of passengers, gallons of water dropped, and pounds of cargo delivered.
8. Location from which flight time for the day commenced and beginning of time.
9. Location at which flight time for the day ended and time flight ended
10. Flight rate
11. Any other items pertinent to the establishing the net sum earned by the Contractor (per diem, etc.)

Each Daily Invoice shall be completed and signed by the Pilot in Charge and the Aircraft Manager. Any erasures or other corrections shall be initialed by the Pilot in charge or the Aircraft Manager as appropriate.

## 10. COMPLIANCE WITH LAWS

The Vendor must, in performance of work under this contract, fully comply with all applicable Federal, State, or local laws, rules, and regulations, including, but not limited to, *the Montana Human Rights Act*, the *Civil Rights Act of 1964*, the *Age Discrimination Act of 1975*, the *Americans with Disabilities Act of 1990*, and *Section 504 of the Rehabilitation Act of 1973*. Any subletting or subcontracting by the Vendor subjects subcontractors to the same provision. In accordance with *Section 49-3-207, MCA*, the Vendor agrees that the hiring of persons to perform the contract will be made on the basis of merit and qualifications and there will be no discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing the contract.

## 11. REDUCTION OF FUNDING

The DNRC must terminate this agreement if funds are not appropriated or otherwise made available to support the State's continuation of performance of this agreement in a subsequent fiscal period (see *Section 18-4-313(4), MCA*).

## 12. CHOICE OF LAW AND VENUE

This agreement is governed by the laws of Montana. The parties agree that any litigation concerning this bid, proposal, or subsequent agreement must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana and each party shall pay its own costs and attorney fees (see *Section 18-1-401, MCA*).

## 13. SCOPE, ENTIRE AGREEMENT

**13.1 Agreement.** This Agreement consists of 7 numbered pages, Solicitation # as amended, and Contractor's response, as amended. In the event of a dispute or ambiguity arising between or among the documents, the order of precedence of document interpretation is the same order as this contract.

**13.2 Entire Agreement.** These documents are the entire agreement of the parties. They supersede all pri Agreements, representations, and understandings. Any Amendment or modification must be in a written agreement signed by all the parties.

**STATE OF MONTANA DEPARTMENT OF NATURAL RESOURCES**
**2017 AVIATION PRICE AGREEMENT**

The undersigned, having read all the agreements, together with any and all special provisions and specifications set forth, do agree thereto in every particular and will furnish the above at the prices stated. Further, the undersigned understands that this document shall constitute the entire price agreement between the undersigned and the Montana Department of Natural Resources and Conservation.

Date: **May 3, 2017**

Company: **10 Tanker Air Carrier LLC**

Phone: **(208) 258-0130**

Fax: **(760) 246-8118**

Mailing Address: **3201 University Blvd SE, Suite 102**
**Albuquerque New Mexico 87103**

Authorized Signature: Paulett Gibson

**ACCEPTED BY:**

MONTANA DEPARTMENT OF NATURAL RESOURCES & CONSERVATION

Date: 06/01/17

By: John R. Mangis

Title: Deputy chief

**AGREEMENT NUMBER: - DNRC-FIRE2017-1049**