

# AVIATION PRICE AGREEMENT

Between  
the Montana Department of Natural Resources and Conservation  
Forestry Division,  
2705 Spurgin Road, Missoula Montana, 59804

And

Aero Spray, Inc. dba Dauntless Air  
50 West Sorenson Ave. / PO Box 143  
Appleton MN 56208

**AGREEMENT NUMBER: DNRC-Fire-2021-0034-001**

## **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.

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.

Bid rates shall be listed as a "dry rate". Aircraft fuel costs are additional as described in Section 4.1 of the solicitation.

## **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 always remain the operator of the aircraft.

The Vendor, except 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.

A maximum of two Amphibious Water Scoopers may be fueled and loaded with one support vehicle and mobile mixing unit. Additional aircraft shall require a second fuel/service vehicle with personnel.

### **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 \$2,000,000.

**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 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 always reserves the right to require complete copies of insurance policies. 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/EXTENDED STANDY**

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. The daily availability period will be for nine (9) hours each day paid. If the aircraft has not been available for nine hours, then the daily availability rate will be reduced by one eighteenth (1/18) for each one half (1/2) hour below the nine (9)-hour minimum. If the aircraft is kept beyond nine (9) hours an additional extended stand by rate per hour will be paid for each pilot and support person kept with the aircraft and in a state of readiness (see ATTACHMENT B). The Vendor will not be compensated for Extended Standby when the aircraft is not available for immediate dispatch, except when authorized by the Procurement Officer.

**RATES: BID SUBMITTAL ATTACHMENT A**

	<b>Aircraft/Vehicle Make</b>	<b>Model</b>	<b>Registration or License #</b>	<b>Rental Cost per Hour (Aircraft) dry rate or Mileage/Daily (Fuel Servicing and/or Mixing Unit vehicle)</b>	<b>*Daily Availability</b>
1	Air Tractor	AT-802A Fire Boss	N1546H FB-201	\$4,290 (Dry Rate)	\$4,790
2	Air Tractor	AT-802A Fire Boss	N6159F FB-202	\$4,290 (Dry Rate)	\$4,790
3	Air Tractor	AT-802A Fire Boss	N8512L FB-203	\$4,290 (Dry Rate)	\$4,790
4	Air Tractor	AT-802A Fire Boss	N212FB FB-204	\$4,290 (Dry Rate)	\$4,790
5	Air Tractor	AT-802A Fire Boss	N10122 FB-205	\$4,290 (Dry Rate)	\$4,790
6	Air Tractor	AT-802A Fire Boss	N3072Y FB-206	\$4,290 (Dry Rate)	\$4,790
7	Air Tractor	AT-802A Fire Boss	N717DA FB-207	\$4,290 (Dry Rate)	\$4,790
8	Air Tractor	AT-802A Fire Boss	N3083R FB-208	\$4,290 (Dry Rate)	\$4,790
9	Air Tractor	AT-802A Fire Boss	N3085Q FB-209	\$4,290 (Dry Rate)	\$4,790
10	Air Tractor	AT-802A Fire Boss	N80166 FB-210	\$4,290 (Dry Rate)	\$4,790
11	Air Tractor	AT-802A Fire Boss	N825DA FB-211	\$4,290 (Dry Rate)	\$4,790
12	Air Tractor	AT-802A Fire Boss	N12DA FB-212	\$4,290 (Dry Rate)	\$4,790
13	Air Tractor	AT-802A Fire Boss	N779DA FB-214	\$4,290 (Dry Rate)	\$4,790
14	Air Tractor	AT-802A Fire Boss	N846DA FB-216	\$4,290 (Dry Rate)	\$4,790
15	Air Tractor	AT-802A Fire Boss	N802DA FB-217	\$4,290 (Dry Rate)	\$4,790

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



**RATES: BID SUBMITTAL ATTACHMENT B**

	<b>Aircraft/Vehicle Make</b>	<b>Model</b>	<b>Registration or License #</b>	<b>Extended Personnel Standby Rate (over 9 hours)</b>	<b>*Daily Availability Additional Equipment (retardant/mixing units etc.)</b>
1	2011 Dodge Ram	3500	3D6WF4CL6BG500100 LIC 3429PRA	\$50/hr. – Pilot \$50/hr. – Ground Support	
2	2013 Dodge Ram	3500	3C63RRGL9DG533447 LIC 3432PRA	\$50/hr. – Pilot \$50/hr. – Ground Support	
3	2017 Dodge Ram	3500	3C7WRSCL4HG615131 LIC 3433PRA	\$50/hr. – Pilot \$50/hr. – Ground Support	
4	2017 Dodge Ram	3500	3C7WRSCL2HG731637 LIC 3434PRA	\$50/hr. – Pilot \$50/hr. – Ground Support	
5	2018 Dodge Ram	3500	3C7WRTCL9HG71965 LIC 3435PRA	\$50/hr. – Pilot \$50/hr. – Ground Support	
6	2018 Dodge Ram	3500	3C7WRTCL6HG719769 LIC 3436PRA	\$50/hr. – Pilot \$50/hr. – Ground Support	
7	2018 Dodge Ram	3500	3C7WRSCL2JG104457 LIC 3437PRA	\$50/hr. – Pilot \$50/hr. – Ground Support	
8	2018 Dodge Ram	3500	3C7WRTCLXJG116281 LIC 3438PRA	\$50/hr. – Pilot \$50/hr. – Ground Support	
9	2018 Dodge Ram	3500	3C7WRTCL6JG306448 LIC 4156PRA	\$50/hr. – Pilot \$50/hr. – Ground Support	
10	2018 Dodge Ram	3500	3C7WRTCL2JG362953 LIC 4157PRA	\$50/hr. – Pilot \$50/hr. – Ground Support	
11	2018 Dodge Ram	3500	3C7WRTCL4JG362954 LIC 3938PRA	\$50/hr. – Pilot \$50/hr. – Ground Support	
12	2018 Dodge Ram	3500	3C7WRTCL6JG362955 LIC 3939PRA	\$50/hr. – Pilot \$50/hr. – Ground Support	
13	2019 Dodge Ram	3500	3C7WRTCL4KG534191 LIC 3431PRA	\$50/hr. – Pilot \$50/hr. – Ground Support	
14	2019 Dodge Ram	3500	3C7WRTCL0KG563526 LIC 6128PRA	\$50/hr. – Pilot \$50/hr. – Ground Support	
15	2020 Dodge Ram	3500	3C7WRTCL8LG199860 LIC 8174PRA	\$50/hr. – Pilot \$50/hr. – Ground Support	

*\*The awarded Daily Availability Rate shall include all fixed and variable costs (depreciation, salaries, overhead, fuel service/maintenance vehicles, 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 on an 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 Vendor (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 subject 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 9 numbered pages, Solicitation **DNRC-IFB-2021-0034** as amended, and Vendor'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 prior 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  
2021 AVIATION PRICE AGREEMENT

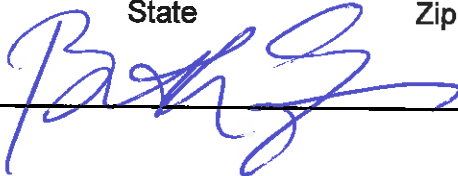
The undersigned, having read all the agreements, together with any and all special provisions and specifications set forth, do agree thereto in every particular and will furnish the above at the prices stated. Further, the undersigned understands that this document shall constitute the entire price agreement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

Date: 5/27/21

Company: AERO SPRAY INC DBA DRUMPTLESS WA

Phone: 320-297-9088 Fax: 320-297-9087

Mailing Address: 50 WEST SORANSON AVE. P.O. BOX 143  
APPALACHIA MT 56208  
City State Zip

Authorized Signature: 

ACCEPTED BY:

MONTANA DEPARTMENT OF NATURAL RESOURCES & CONSERVATION

Date: 06/04/2021  
By: John P. Monzio  
Title: Deputy Chief

SOLICITATION NUMBER: DNRC-IFB-2021-0034