

**GENERAL CLAUSES TO EMERGENCY USE AGREEMENT** between:  
**REQUESTOR (City of Dripping Springs (“City” or Emergency Services District No. 6 (ESD#6)  
or other City/ESD#6 approved requestor)  
and VENDOR  
for SERVICES / FACILITIES / EQUIPMENT / SUPPLIES / MANPOWER / ANIMALS**

**Liability:** Except in a case of reckless conduct or intentional, wilful, or wanton misconduct, a vendor is immune from civil liability for acts or omissions when providing goods and services for the emergency event only if: (1) said goods and services are requested by the governing body of the City, the chief of the fire department, or an emergency management director or coordinator designated for the City; and (2) **the vendor receives no more compensation than reimbursement for expenses incurred.** See Tex. Civ. Prac. & Rem. Code § 79.003

**Purpose:** Since the service / facility / equipment / supply / manpower / animal (“goods or services”) needs of the Requestor and availability of Vendor’s goods or services during an emergency cannot be determined in advance, it is mutually agreed that, upon request of the Requestor, the Vendor shall furnish the goods or service listed on the Emergency Use Agreement (“Agreement”) to the extent the Vendor is willing and able at the time of order.

**Authority:**

- The following personnel are authorized to place orders against this Agreement: any City staff member or City official; any ESD #6 official (e.g., Dispatchers, Buying Team Members, Finance Section Chiefs, Procurement Unit Leaders, Contracting Officers and Purchasing Agents).
- The responsible Requestor representative is authorized to administer the technical aspects of this Agreement.

**Notice to Vendor:**

- Equipment furnished under this Agreement may be operated and subjected to extreme environmental and/or strenuous operating conditions. As a result, by entering into this Agreement, the Vendor agrees that what is considered wear and tear under this Agreement is in excess of what the equipment is subjected to under normal operations and is reflected in the rates paid for the equipment.
- Heavy equipment must be accompanied by a trained operator at all times.
- This is an Evergreen contract that renews annually but can be cancelled with 90 days’ notice by either party.

**CLAUSE 1. Condition of Equipment/Facilities:**

All goods furnished under this Agreement shall be in acceptable condition. No payment will be made for time the goods were not available due to defects, etc.

**CLAUSE 2. Time Under Hire:** The time under hire shall start at the time the Vendor begins traveling to the incident after being ordered by the Requestor, and end at the estimated time of arrival back to the point of hire after being released, unless stated otherwise in this Agreement or any of its incorporated documents.

**CLAUSE 3. Operating Supplies:** Operating supplies include fuel, oil, filters, lube/oil changes, and food for animals. All operating supplies are to be furnished by the Vendor, but the Requestor may elect to furnish such supplies when necessary to keep the goods or services operating. The cost of such supplies will be determined by the Requestor and deducted from payment to the Vendor.

**CLAUSE 4. Repairs:** Repairs to goods or services shall be made and paid for by the Vendor. The Requestor may, at its option, elect to make such repairs when necessary to keep the goods or services functioning. The cost of such repairs will be determined by the Requestor and deducted from payment to the Vendor.

**CLAUSE 5. Timekeeping and Duration:**

- Time will be verified and approved by the Requestor agent responsible for ordering and/or directing use of each good or service. Time will be recorded to the nearest quarter hour worked for daily/hourly rate, or whole mile for mileage.
- Duration of use is for 72 hours, but can be extended via text or email to the Vendor’s main contact person listed on this Agreement.

**CLAUSE 6. Payments and Rates:**

- Rates for goods and services hired with Vendor-furnished operator(s) shall include all operator(s) expenses.
- Rates can increase 2.5% annually, but can’t go up during a response period.
- On-Shift: Includes time worked, time that equipment is held or directed to be in a state of readiness, and compensable travel (equipment traveling under its own power) that has a specific start and ending time.
- Daily Rate: includes 8 hours, but any time less than 8 hours worked shall be based on a pro rata basis.
- Method of Payment: Lump-sum payment will be processed at the end of the emergency assignment by the Requestor.

**CLAUSE 7. Exceptions:**

- No further payment will accrue during any period that good or service under hire is not in a safe or operable condition or is unavailable or when Vendor-furnished operator(s) is not available for the assigned shift or portions of the assigned shift.
- After inspection and acceptance for use, goods and/or furnished operator(s) that cannot be replaced or goods that cannot be repaired at the site of work by the Vendor or by the Requestor within 24 hours, may be considered as being withdrawn by the Vendor.
- No payment will accrue when the Vendor is off-shift in compliance with the mandatory state or federal work/rest labor laws. As an option to rotating personnel, or taking a mandatory day off, without pay, the Vendor may be released from the incident.

**CLAUSE 8. Meals / Lodging:** When Requestor subsistence incident camps are available, meals and bedding for Vendor's operator(s) will be furnished without charge. Requestor 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. Vendors are not paid per diem or lodging expenses to and from incidents.

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

(a) For goods furnished under this Agreement **without** operator, the Requestor will assume liability for any loss, damage or destruction of such goods, except that no reimbursement will be made for loss, damage or destruction due to: (1) ordinary wear or tear; (2) mechanical failure; or (3) the fault or negligence of the Vendor or the Vendor's agents or employees or Requestor employee owned and operated equipment.

(b) For goods furnished under this Agreement **with** Vendor operator, the Requestor shall **not** be liable for any loss, damage or destruction of such equipment or facility, except for loss, damage or destruction resulting from the negligence, or wrongful act(s) of Requestor employee(s) while acting within the scope of their employment. The operator is responsible for operating the goods within its operating limits and responsible for safety of the goods.

**CLAUSE 10. Vendor's Responsibility for Property and Personal Damages:** Except as provided in Clause 9, the Vendor will be responsible for all damages to property and to persons (including employees of the Requestor) that occur as a result of Vendor or Vendor's agents' or employees' fault or negligence.

**CLAUSE 11. Deductions:** Unless specifically stated elsewhere in this Agreement the cost of any supplies, materials, or services, including commissary, provided for the Vendor by the Requestor will be deducted from the payment to the Vendor.

**CLAUSE 12. Personal Protective Clothing and Equipment:** All Vendors shall wear appropriate clothing and protection as would be utilized by an ordinary reasonable Vendor for the service provided. Vendor shall request that Requestor provides said items, at the Vendor's expense, if Vendor cannot provide items for themselves. Deductions will be made for all Requestor-furnished protective clothing and equipment not returned by the Vendor, and appropriate deductions will be made based on condition of returned items.

**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. Claim Settlement Authority:** For the purpose of settling claims, the successor contracting officer is any contracting officer acting within their delegated warrant authority, under the clauses of this Agreement, and limits set by the incident agency.

**CLAUSE 15. Changes:** Changes to agreements may only be made by the original signing procurement Requestor official. If said official is not available and adjustments are deemed appropriate, a new agreement shall be executed at the incident and shall be applicable **only** for the duration of that incident.

**CLAUSE 16. Firearm – Weapon Prohibition:** The possession of firearms or other dangerous weapons (per 18 USC § 930 (f)(2)) are prohibited at all times while on Requestor Property and during performance of services, under this Agreement. The term “dangerous weapon” does not include a pocket knife with a blade less than 2 ½ inches in length or a multi-purpose tool such as a Leatherman.

**CLAUSE 17. Harassment Free Workplace:** Vendors shall abide by 29 CFR Part 1614, as amended. See [www.gpoaccess.gov](http://www.gpoaccess.gov)