

## INDEPENDENT CONTRACTOR AGREEMENT

**THIS AGREEMENT**, entered on this \_\_\_\_\_ of \_\_\_\_\_, \_\_\_\_\_ between \_\_\_\_\_, (hereinafter the "Company") and \_\_\_\_\_ (hereinafter the "Contractor").

### WITNESSETH

**WHEREAS**, on the \_\_\_\_\_ Day of \_\_\_\_\_, 20\_\_\_\_ Major Disaster Declaration \_\_\_\_\_ for the State of \_\_\_\_\_ and

**WHEREAS**, it is understood that the Major Disaster Declaration was caused by an \_\_\_\_\_ which affected \_\_\_\_\_ during \_\_\_\_\_, 20\_\_\_\_; and

**WHEREAS**, the Company has contracted to provide services necessary to provide disaster relief including, but not limited to, equipment and personnel; and

**WHEREAS**, the Contractor is a contractor which owns and controls equipment and personnel;

**NOW THEREFORE**, for and in consideration of the mutual promises contained herein, and other goods and valuable consideration, the parties agree as follows:

**1. Engagement.**

- a. The Company hereby engages Contractor as an Independent Contractor to perform the following services:
  - i. The provision of crews consisting of the appropriate equipment and personnel appropriate for the job assignments for disaster relief.
    - (1) The Contractor understands the makeup of the crews it provides will change from time to time, depending upon the task assignments.
    - (2) The Contractor agrees that its crews will have the equipment necessary for the disaster relief assigned to the crew.
    - (3) The Contractor agrees that its crews will consist of all personnel necessary to complete the disaster relief in a safe manner as quickly as possible.
  - ii. The Contractor shall exercise best efforts to complete those tasks described herein and otherwise reasonably contemplated, and shall perform all functions and duties in accordance with the rules and dictates prescribed by the Company, and shall further carry out the services specified herein, according to ordinary business customs and according to all relevant Federal, State and local laws and regulations.
  - iii. The provision of the equipment necessary to provide the services defined in Paragraph 1.a.i. If provided, said equipment is in the possession of and is the sole responsibility of the Contractor. The Contractor agrees to maintain the equipment so that it complies with all State and Federal regulations regarding the operation of the equipment.
  - iv. The provision of personnel necessary to provide the services defined in Paragraph 1.a.i. The Contractor agrees that all such personnel will have the necessary licenses to operate the equipment required to provide the services contemplated by this Agreement.

- v. It is agreed that the disaster relief services the Contractor is to provide pursuant to this Agreement shall encompass all services resulting from any Disaster Declaration for which the Company requires the services defined in paragraph 1.a.(i), where ever, and in what ever state or location, said disaster relief is required.
- 2. **Duration.** The parties hereto agree that either party may terminate this Agreement upon the following terms:
  - a. The Company may terminate this agreement immediately if the Contractor:
    - i. Violates the Company's rules and requirements,
    - ii. Fails to provide proof of insurance in compliance with this agreement, or
    - iii. Violates any State or Federal laws and regulations.
  - b. Either party may terminate this Agreement at any time.
- 3. **Compensation.** As compensation for providing the services described in Paragraph 1 above, Contractor shall publish a rate which shall be established on a task basis. It is understood that the flat rate will change from time to time, depending upon the relief tasks the Contractor is to provide. From time to time the Company may, at its discretion, advance payment to the Contractor prior to the time payment is otherwise due. If this occurs, the Contractor agrees that the Company will deduct all such advances, together with an applicable fee for making the advance, from amounts owned the Contractor when said amounts are due and payable. Notwithstanding any other provision herein, the Company has no obligation to pay any amount as the compensation described, herein, for work performed by the Contractor at any time before the Company receives payment for the Contractor's work from the funding source for the event described in the Disaster Relief Declaration. To the extent any payment is retained until completion of the entire work required, the Company will not be required to pay the Contractor to the extent of any such retained payment. The retained payment will be the ratio of any amounts unpaid (retained) by the entity which funds payment for the Disaster Relief to the total amount of payment owed the Company by such entity.
- 4. **Independent Contractor Relationship.** Any other provision of this Agreement to the contrary notwithstanding, this Agreement does not constitute a hiring by either party, nor does it constitute an Agreement of employment. The parties' intention is that Contractor be an Independent Contractor and not the employee of the Company, and that Contractor retain sole and absolute discretion in the manner and means of carrying out the services described in Paragraph 1 above. This Agreement shall not be construed as a partnership or joint venture, and neither party hereto shall be liable for any obligations incurred by the other party, except as expressly provided herein. Unless otherwise required by applicable law, the Company shall not withhold from Contractor's compensation any amounts for Social Security or Federal or State income taxes. Contractor recognizes that it is his or her legal responsibility to pay all applicable Federal and State income taxes (including estimated taxes), Social Security, Medicare and applicable Federal and State self-employment taxes.
- 5. **Expenses.** Contractor shall be responsible for all expenses incurred as a result of performing the services described in Paragraph 1 herein.
- 6. **Equipment.** All equipment, tools and materials required by Contractor to perform the services described in Paragraph 1 above shall be furnished by Contractor. Maintenance of the equipment is the sole responsibility of the Contractor, and the contractor agrees that

it will maintain the equipment in a manner which meets all State and Federal regulations for its operation.

7. **Employees of the Contractor.** Contractor shall provide all employees it deems necessary to perform the work. Contractor shall have full control over the conduct and control of its employees in the performance of the work. Contractor has the sole right to hire, discipline, discharge and instruct its employees as to matters encompassed in this Agreement. Contractor shall have the sole right to determine the amount and method of payment of any salary or wages to its employees, and shall be solely responsible for paying its employees and paying any and all taxes, insurances and benefits associated with their employment by Contractor. Contractor shall comply with any and all applicable laws concerning its employees including, but not limited to, requirements for unemployment compensation, Workers' Compensation, drug testing, payroll withholding, Social Security and income taxes.
8. **Identification.** The Company may require the Contractor to provide identification that it is providing services pursuant to this agreement. Any such identification, including any signs or numbering systems is within the sole discretion of the Company. While providing the services contemplated by this Agreement, the Contractor agrees to display any such identification, including signs required by the Company on the Contractor's equipment to comply with Company's requirements.
9. **Licenses.** The Contractor agrees that it has all required State and Federal licenses required to operate the equipment and provide the services contemplated by Paragraph 1.
10. **Indemnification.** Contractor agrees to indemnify, defend and hold harmless Company, its parents, subsidiaries, affiliates, officers, directors, employees and agents from any and all claims or damages including, but not limited to, those resulting from bodily injury, property damage, unpaid wages, unpaid bills for materials, fuel, rentals, services, taxes, licenses, permits, fines, insurance premiums, and legal fees and costs resulting from, or arising out of, Contractor's breach of its obligations, covenants or warranties hereunder, or in the performance of the work. Such obligation includes, but is not limited to, all claims, suits or demands whatsoever by any governmental authority, public utility or private party or person (including employees of Contractor) that any conduct by Contractor or its employees in relation to performance of this Agreement has caused death or injury to persons, or damage to property, including any injury or damages resulting from a violation of any applicable State or Federal law or regulation pertaining to environmental protection. As a remedy, but not the sole remedy, the Company may withhold payment owed to the Contractor to the extent of any such claims or damages including, but not limited to, those resulting from bodily injury, property damage, unpaid wages, unpaid bills for materials, fuel, rentals, services, taxes, licenses, permits, fines, insurance premiums, and legal fees.
11. **INSURANCE.** Contractor shall, solely at its expense, procure and maintain during the term of this Agreement, policies of insurance from an insurance company satisfactory to Company, providing full coverage for the operations of Contractor in performing the work, including, without limitation, (i) Workers' Compensation insurance and (ii) full bodily injury and property damage insurance for the operation of the tractor/ trucks and the trailers in the minimum amount of \$1,000,000.00. Company shall be named an additional insured with respect to the insurance policies applicable under this Paragraph. Contractor agrees to provide Company with evidence of such insurance, satisfactory to Company, before the beginning of the term. Contractor further agrees to furnish Company with a certificate or other document for each such insurance company which identifies Company as an additional insured and which contains a requirement that Company be notified by such insurance company thirty (30) days prior to any cancellation or reduction in coverage or

limits.

12. **Non-Disclosure of Confidential Information.** Contractor recognizes and acknowledges that confidential information may exist from time to time with respect to the business of the Company. Accordingly, Contractor shall not, during or after the term of this Agreement, disclose to any individual or entity any confidential information relating to the business of the Company. Further, Contractor shall not, without prior written consent of the Company, disclose information to any person, firm or company, whether or not a competitor of the Company, and shall, during or after the term of this Agreement, use his or her best efforts to prevent the publication or disclosure of any information concerning the business, business practices, method of sales, training, assets, accounts or finances of the Company's business, or any of the secrets, dealings, transactions or affairs of the Company including, but not limited to, trade secrets, costs, pricing practices, customer lists, financial data, employee information or information as to the organizational structure, which have or may come to his or her knowledge during or after the term of this Agreement, or previously, or otherwise. Contractor shall use his or her best efforts to cause his or her representatives, attorneys, accountants and advisors to whom information is disclosed to comply with the provisions of this Paragraph 13. At any time, the Company may reasonably request, and the Contractor shall forthwith surrender to the Company, all documents and copies of documents in their possession relating to the foregoing including, but not limited to, internal and external business forms, manuals, correspondence, notes, customer lists and computer programs, and Contractor shall not make or retain any copy or extract of the foregoing.
13. **Non-Impairment of Goodwill.** During and after the term of this Agreement, Contractor shall not disparage, in any manner or respect, the Company or the financial soundness and responsibility, personnel, or practices of the Company's business.
14. **Covenant Not to Compete.** The Contractor covenants that during the term of this Agreement, except as otherwise approved in writing by the Company, either directly or indirectly, with or without compensation, for itself or through or on behalf of or in conjunction with any person, persons, partnership, corporation or other entity, the Contractor shall not a) Divert or attempt to divert any business or customer of the Company to the Contractor or any competitor of the Company, by direct or indirect inducement or otherwise, or to do or perform, directly or indirectly, any other act, injurious or prejudicial, to the goodwill associated with the business of the Company; or b) Employ or engage, or seek to employ or engage, any person who is at that time employed or engaged by the Company, or otherwise directly or indirectly attempt to induce such person to leave its employment or engagement.

The Contractor covenants that for a period of twelve months after the later of the expiration or termination of the Agreement, or the date the Contractor ceases to be engaged by the Company in any manner, regardless of the cause of termination, except as otherwise approved in writing by the Company, the Contractor shall not, either directly or indirectly, for itself or through or on behalf of or in conjunction with any person, persons, partnership, corporation or other entity, engage in any act prescribed by the In-Term Covenant Not to Compete provision described herein.

15. **Independent Covenants.** The parties agree that each of the covenants contained in Paragraph 15 shall be construed as independent of any other covenant or provision of this Agreement. If all or any portion of a covenant in this paragraph is held to be unreasonable or unenforceable by a court or agency having valid jurisdiction in an unappealable final decision to which the Company is a party, the Contractor expressly agrees to be bound by any lesser covenant within the terms of such covenant that imposes the maximum duty

permitted by law, as if the resulting covenant was separately stated in and made a part thereof.

16. **Other Activities.** Contractor may engage in other activities for compensation during the term of this Agreement so long as those activities do not conflict with the responsibilities or limitations agreed to by Contractor herein.
17. **Interpretation of this Agreement.** The parties acknowledge that this Agreement is the product of mutual efforts by the parties and their respective agents. This Agreement shall be interpreted neither more favorably in favor of one party, nor less favorably in favor of another party.
18. **Entire Agreement.** This Agreement constitutes the entire understanding of the parties and supersedes all prior discussions, negotiations, Agreements and understandings, whether oral or written, with respect to its subject matter.
19. **Modification.** No change, modification or waiver of this Agreement shall be valid unless it is in writing and signed by all the parties who are bound by the terms of this Agreement.
20. **Severability.** If any provision of this Agreement is held invalid, unenforceable or void by a Court of competent jurisdiction, this Agreement shall be considered divisible as to such provision, and the remainder of the Agreement shall be valid and binding as though such provision were not included in this Agreement.
21. **Benefits and Binding Effects.** This Agreement shall be binding upon and shall operate for the benefit of the parties hereto and their respective executors, administrators, successors and assigns.
22. **Venue and Jurisdiction.** Should a lawsuit be necessary to enforce this Agreement, the parties agree that jurisdiction and venue are waived, and suit shall be brought in Marion County, Florida.
23. **Notices.** Any notice, demand, or other communication required or permitted by this Agreement must be in writing and shall be deemed to have been given and received:
  - a. If delivered by overnight delivery service or messenger when delivered; or
  - b. If mailed on the third (3<sup>rd</sup>) business day after deposition in the United States Mail, certified or registered postage pre-paid, return receipt requested; or
  - c. If faxed, telexed or telegraphed, twenty-four (24) hours after being dispatched by fax, telegram or telex, in every case, addressed to the party to be notified as follows:

If to Company:           Name                               : \_\_\_\_\_  
                                  Street Address                       : \_\_\_\_\_  
                                  City/State/Zip                        : \_\_\_\_\_  
                                  Telephone                             : \_\_\_\_\_  
                                  Facsimile                               : \_\_\_\_\_

If to Contractor:       Name                               : \_\_\_\_\_  
                                  Street Address                       : \_\_\_\_\_  
                                  City/State/Zip                        : \_\_\_\_\_  
                                  Telephone                             : \_\_\_\_\_  
                                  Facsimile                               : \_\_\_\_\_

- 24. **No Waivers.** The written waiver by any party of any other party's breach of any provision of this Agreement shall not operate nor be construed as a waiver of any subsequent breach, and the written waiver by any party to exercise any right or remedy shall not operate nor be construed as a waiver or bar to the exercise of such right or remedy upon the occurrence of any subsequent breach. All waivers under this Agreement must be in writing and signed by the parties hereto.
- 25. **Headings.** Headings in this Agreement are for convenience only and shall not be used to interpret or construe its provisions.
- 26. **Governing Law.** This Agreement shall be governed by the Laws of the State of Florida (without regard to the laws that might be applicable under principles of conflicts of law) as to all matters including, but not limited to, matters of validity, construction, effect and performance.
- 27. **Counterparts.** This Agreement may be executed in two or more parts, each of which shall be deemed an original, but all of which together shall be one and the same instrument.
- 28. **Facsimile Copy.** A facsimile copy of this Agreement, and any signatures affixed hereto, shall be considered for all purposes as originals.

**IN WITNESS WHEREOF**, the parties have executed this Independent Contractor's Agreement as of the day and year first above written.

Company: _____	By: _____ Signature of Contractor
By: _____ Operating manager	By: _____ Printed Name of Contractor
Dated: _____	Dated: _____