



SUBCONTRACT AGREEMENT

PARTIES TO SUBCONTRACT:

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|------------------------|-----|--|
| Hulcher Services Inc. | and | |
| 611 Kimberly Drive | | |
| P.O. Box 271 | | |
| Denton, TX 76202-0271 | | |
| Phone No. 940-387-0099 | | |
| Fax No. 940-387-0963 | | |

THIS AGREEMENT is made by and between **HULCHER SERVICES INC.** (hereinafter "HSI") and _____ (hereinafter "SUBCONTRACTOR"), either:

for a current and job specific project whereby HSI hires SUBCONTRACTOR and SUBCONTRACTOR agrees to provide the services, or services and materials, generally described as _____

_____ (sometimes for convenience collectively referred to hereinafter as the "WORK"), subject to all of the terms and conditions set forth hereinbelow; or

to constitute a "blanket agreement" pursuant to which HSI may, from time to time in the future, hire SUBCONTRACTOR to provide services, or services and materials, of the general nature(s) of _____

_____ as and when needed in connection with HSI's short notice, emergency response services for railroads and other industries, having established the terms and conditions as set forth hereinbelow to govern such future "WORK."

1. SUBCONTRACTOR agrees to furnish the machinery and equipment and/or the labor and/or the materials to accomplish the WORK as shown on each Purchase Order issued by HSI. A Purchase Order will be required for every job or project for which SUBCONTRACTOR is hired by HSI under this Agreement. The Purchase Orders will describe with specificity the rates for machinery, equipment, labor, and materials to be provided.



2. The term of this Agreement if job specific, or the term of the hiring of SUBCONTRACTOR by HSI under each Purchase Order issued pursuant to this Agreement if established as a blanket agreement, shall be the earliest of (a) the completion of HSI's specific project contract with HSI's customer (the "Customer"); (b) a determination by the Customer that the need for HSI's emergency response services have been completed; (c) in the case of emergency response work or other undefined projects (projects without predetermined fixed plans or specifications), the completion of the portion of the project to which the WORK pertains or is necessary; (d) the bankruptcy (voluntary or involuntary) of SUBCONTRACTOR; or (e) the breach of this Agreement by SUBCONTRACTOR. Unless otherwise agreed, compensation earned will be paid not more than 45 days from receipt of SUBCONTRACTOR's invoice submitted in conformance with HSI's Subcontractor Invoicing Procedures.

3. SUBCONTRACTOR represents and warrants it has experience and is fully qualified to perform the work or services described hereinabove, including having all required licenses or permits, and that all goods and materials to be supplied by SUBCONTRACTOR shall be of merchantable quality and be fit for the purpose described above, free from any defects and conforming with any specifications furnished by HSI; that SUBCONTRACTOR's machinery and equipment shall be in good working order, including its protective devices and apparatus suggested or required by its manufacturer or any governmental authorities having jurisdiction over the SUBCONTRACTOR or the work site; that SUBCONTRACTOR's employees shall be qualified, experienced, and capable; and that all work or services hired shall be timely completed in a safe, proper, and good workmanlike manner.

4. SUBCONTRACTOR shall protect, defend, and indemnify HSI and its representatives and the Customer from any and all claims, damages, losses, costs, suits, actions, including reasonable attorneys' fees, relating to any and all losses, injuries or damages sustained, or alleged to have been sustained, by any person, expressly including the employees of SUBCONTRACTOR, HSI, and the Customer, caused in whole or in part by the acts or omissions, including negligence or other acts of tort and violation of law, statute, ordinance of the SUBCONTRACTOR or anyone whomsoever directly or indirectly employed or retained by the SUBCONTRACTOR while engaged in any manner in the performance of work hired under this Agreement or arising from SUBCONTRACTOR's presence on or about the site of the WORK.

5. HSI shall indemnify SUBCONTRACTOR from all claims, damages, losses, costs, suits, actions, including reasonable attorneys' fees, relating to any and all losses, injuries or damages, including personal injury, property damage, or death of any person whomsoever,



including HSI's own employees, to the extent or in the proportion proximately caused by HSI's negligence or violation of law, statute, ordinance or regulation.

6. Each party agrees that to the extent permitted by law, its indemnification obligation undertaken hereby is expressly intended to include claims brought against the other by the indemnitor's employees, regardless of whether the indemnitor's direct liability to its own employee(s) may be established and/or limited and prescribed by the provisions of the applicable worker's compensation law or act. The parties further agree and acknowledge that nothing herein is intended to be construed or applied to entitle either to be indemnified from the consequences of its/his own negligence.

7. SUBCONTRACTOR shall be in practice and in fact an independent contractor, with HSI having no direct control or right of control over the manner or means of SUBCONTRACTOR performing its work or the supervision or directing of SUBCONTRACTOR's employees and agents. HSI shall only have the authority to define and prescribe the nature of the WORK and the results to be obtained for the Customer. SUBCONTRACTOR shall be solely responsible for compensation, benefits, contributions, deductions, and remittances of taxes applicable to its employees and agents, and shall indemnify and hold HSI harmless from any liability for any and all such taxes and contributions as well as penalties or interests for failure to make prompt payment thereof.

8. In consideration for HSI hiring SUBCONTRACTOR as a subcontractor, for the purpose of maintaining HSI customers' confidence in HSI, and in furtherance of HSI's responsibility to its customers for the timely and proper completion of the overall project for which SUBCONTRACTOR is hired by HSI to participate, SUBCONTRACTOR agrees and covenants not to solicit or contract with HSI's Customer for which SUBCONTRACTOR provides service as a subcontractor to HSI for a period of six months after the completion of services provided by SUBCONTRACTOR as a subcontractor to HSI for that customer, or the termination of the Subcontract Agreement between HSI and SUBCONTRACTOR relating to that specific customer or particular project, whichever is longer.

9. SUBCONTRACTOR shall not permit any lien to attach to the Customer's property in connection with the materials, services or labor provided by SUBCONTRACTOR hereunder, and in the event of any claim for such lien by any third parties, SUBCONTRACTOR shall provide a bond or other adequate and acceptable security against such lien or attachment and indemnify and save harmless both HSI and the Customer (or other owner of the premises on which the services are performed or to which the services relate) harmless against any and all loss, damage, liability, claims and costs resulting from such lien or attachment including the defense and removal or discharge thereof.



10. Without limiting SUBCONTRACTOR's liabilities or indemnification obligations set forth hereinabove in any manner, SUBCONTRACTOR shall maintain, during the term of this Agreement and the performances of any and all services hereunder, and for at least six (6) months thereafter, insurance of the following types and limits, and furnishing certificates thereof to HSI:

(a) Worker's compensation and employer's liability insurance in all jurisdictions where work may be performed under this Agreement in the amounts required in each such jurisdiction;

(b) Comprehensive general liability insurance including contractual liability endorsement as appropriate to cover liabilities assumed under this Agreement, with bodily injury and property damage combined single limit of \$1,000,000 per occurrence;

(c) Automobile liability insurance covering owned, non-owned, and hired motor vehicular equipment, with a bodily injury and property damage combined single limit of \$1,000,000 per accident;

All insurance shall: (1) provide a waiver of subrogation against HSI and its Customer; (2) include a requirement that the insurer provide HSI with thirty (30) days written notice prior to the effective date of any cancellation or material change in said insurance; and (3) with respect to (b) and (c) above, name HSI and the Customer as additional insureds with respect to the services performed hereunder.

11. HSI has policies with respect to drug and alcohol abuse and maintains a work place free from the effects of any type of drug or alcohol, and many of HSI's railroad and industrial customers have comprehensive policies and programs binding upon all contractors coming upon those Customers' premises with respect to drug and alcohol use and abuse. SUBCONTRACTOR agrees that upon receipt of written instructions from HSI, SUBCONTRACTOR shall order a drug test for any or all of its employees assigned to the work under this Agreement and shall promptly report the results to HSI, and replace any employee whose drug test result is positive. If by reason of union contract or by law, SUBCONTRACTOR cannot comply with the foregoing provision, SUBCONTRACTOR shall remove any employee from the job site requested to be removed by HSI or Customer for any reasonable suspicion/probable cause.

12. This Agreement shall be binding upon the successors and assigns of the respective parties and shall not be assigned by either without prior written consent of the other; in the event any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement shall be valid and binding. The terms and conditions of this Agreement shall be construed in accordance with the laws of the jurisdiction where the work is performed.



13. For a period of four years from the completion of WORK at each particular site or project provided pursuant to this Subcontract, SUBCONTRACTOR shall preserve its books and records relating to charges for labor, supplies, materials, and costs paid to third parties by SUBCONTRACTOR which underlie and support the amount(s) billed to HSI for WORK at a specific project or site. With reasonable advance written notice to SUBCONTRACTOR, HSI shall have the right, during normal business hours, during such four year period to audit SUBCONTRACTOR's books and records relating to WORK provided by SUBCONTRACTOR to HSI at the designated site(s) or project(s).

14. If the WORK is to accomplish a part of HSI's scope of work under a Prime Contract with the Customer which provides that SUBCONTRACTOR be required to comply with and be bound by the terms of that Prime Contract, or that any HSI subcontract incorporate the provisions of the Prime Contract by reference, a copy of all relevant portions of such Prime Contract and its applicable addenda, exhibits, schedules and specifications are either attached hereto if this Agreement is for a current and job-specific project, or shall be attached to appropriate Purchase Orders issued by HSI to SUBCONTRACTOR if this Agreement is made as a "blanket agreement" for the hiring of services prospectively, in each case to become a part of this Agreement as if restated in full.

15. Because many of HSI's Customers are Railroads, SUBCONTRACTOR shall be prepared to meet the following specific requirements when advised by HSI it is applicable whether or not provisions of the Prime Contract pertaining thereto is provided:

(a) Secure an exemption or waiver of any exclusion in SUBCONTRACTOR's Comprehensive General Liability Insurance Policy for work performed within 25 feet of railroad tracks.

(b) Register with the e-Railsafe Program and secure proper identification cards and/or photo i.d. badges for each employee who will be present on Railroad premises.

(c) Comply with Customer requirement (some industrial/chemical/refinery as well as Railroads) that prime contractors' and its subcontractors' employees complete that Customer's own safety training program.

16. This Agreement represents the entire agreement between SUBCONTRACTOR and HSI with respect to the identified project and customer specified, except for the Purchase Order(s) issued pursuant hereto and to be governed hereby, and supersedes all prior agreements and understandings whether written or oral. However, the terms of this Agreement may be amended or extended by a written supplement signed by both parties referring to this Subcontract Agreement and any particular term or condition hereof modified. This Subcontract Agreement and Purchase Orders issued pursuant to this Agreement are intended to be read, construed, and



applied harmoniously and to compliment one another; however in the event of conflict, the terms of this Agreement shall prevail.

SUBCONTRACTOR:

HULCHER SERVICES INC.

(Company Name)

(Signature)

(Signature)

(Type or Print Name)

(Type or Print Name)

(Title)

(Title)

Date: _____

Date: _____