

MASTER AGREEMENT
for
EQUIPMENT RENTAL and OPERATING PERSONNEL

This MASTER AGREEMENT is made and executed on this ____ day of _____, 20____,
by and between:

_____ (“Lessor”), and

_____ (“Lessee”), the

“Parties”.

In consideration of the mutual promises herein contained, Lessor and Lessee agree as follows:

- 1. Lease of Equipment.** Lessor agrees to furnish and deliver for the use of Lessee, from time to time and if then available, such of Lessor’s construction equipment, together with any accessorial equipment necessary or convenient thereto, in good, fair and merchantable condition (the “Leased Equipment”), as may be requested by Lessee. The Leased Equipment shall be identified in separate “Confirmatory Memoranda” (which may be styled as a *time ticket* or *work ticket* or as any other substantively equivalent document), which shall set out the rental rate or rates applicable to the lease and the minimum length of rental term, if any. The Parties agree that commercial terms of the Confirmatory Memoranda are incorporated by reference herein. The only terms or provisions of any Confirmatory Memoranda (or any *time ticket* or *work ticket* or substantively equivalent document) shall be Leased Equipment identification, rental rate, and/or minimum length of rental term. More than one Confirmatory Memorandum may apply to any item of Leased Equipment and, if so, all are incorporated herein by reference. No term or provision of any Confirmatory Memorandum shall vary the terms of this Master Agreement, or operate as a modification of any term set out herein.
- 2. Rental Term.** If the Confirmatory Memoranda applicable to an item of Leased Equipment does not set out a minimum length of rental term, then the rental term begins when the Leased Equipment is dispatched to Lessee’s designated construction or work site (Lessee’s “Project”) and ends upon return of the Leased Equipment to its point of origin.
- 3. Furnished Operating Personnel.** Lessor agrees to provide to Lessee experienced, trained and competent personnel to operate the Leased Equipment under the general supervision of Lessee, to accomplish a portion of Lessee’s work on the Project (“Furnished Operating Personnel”). Lessee agrees to provide experienced personnel to supervise operation of the Leased Equipment by Furnished Operating Personnel. Lessor warrants that the Furnished Operating Personnel are fully trained to use the Leased Equipment strictly and only in accordance with the manufacturer’s instructions, manuals, placards, and limitations. In particular, the Furnished Operating Personnel will not permit the rated load capacity of the equipment (in any configuration) to be exceeded; will not utilize counterweight in excess of the manufacturer’s specifications; and will not utilize a lifting device of any description including any type of connection, lug, sling, rope, eye, C-ring, chain, shackle,

hook or frame which has not been inspected prior to use and which is not currently certified for the load to be imposed in accordance with any and all applicable federal, state or industry standards of competent jurisdiction.

4. **Rental Rate and Payment.** Lessee agrees to pay the “Reasonable Rental Value” of the Leased Equipment including any Furnished Operating Personnel for the period of time the Leased Equipment is employed. Reasonable Rental Value is agreed to be determined by the “Rental Rate” set out in the Confirmatory Memoranda applicable to the Leased Equipment, or if none is set out therein, then the Rental Rate set out in Lessor’s published rates in effect at the time the Leased Equipment is delivered to the Project. The Rental Rate may include a statement of transportation or other accessorial charges. If Lessor has separately quoted Rental Rates to Lessee different than Lessor’s regular published Rental Rates, and the Confirmatory Memoranda applicable to the Leased Equipment does not set out any Rental Rate, then the Rental Rates separately quoted to Lessee shall apply. In addition to the Reasonable Rental Value, Lessee promises to pay the costs of collection, including reasonable attorneys’ fees, expert witness fees, and costs if a collection action is brought by Lessor. Invoices for payment of amounts due under this Master Agreement are due and payable 30 days after presentation.
5. **Indemnification.** Lessor agrees to indemnify, save harmless and defend Lessee from and against any and all claims, loss, cost or expense including reasonable attorneys fees, liability, suit or cause of action, award or judgment for bodily injury to any person including an employee of either Party hereto and specifically including Furnished Operating Personnel, or damage to property arising out of the act or acts, the failure to act, the negligence or conduct of any nature of the Furnished Operating Personnel, or Lessor, while in or upon the Project, including while operating the Leased Equipment. Lessor is not obligated to indemnify Lessee for the sole negligence or willful misconduct of Lessee, but Lessor’s obligation to indemnify and defend shall continue until the fact of such sole negligence or willful misconduct is finally established by a court of competent jurisdiction. The indemnification obligations of Lessor shall not be limited by the insurance coverage provided under Section 6 below.
6. **Commercial General Liability Insurance.** During the entire term of this Master Agreement, Lessor agrees to procure, carry, and provide for the benefit of Lessor and of Lessee (as an Additional Insured), policies of Commercial General Liability Insurance and excess insurance, in forms acceptable to Lessee, insuring Lessor’s liability including the Indemnification Obligation set out in Paragraph 5, above, with primary policy limits of \$1,000,000 (One Million Dollars) per occurrence. Excess coverage shall also be carried with limits of \$5,000,000 per occurrence. Prior to delivery of Leased Equipment under this Master Agreement, Lessor agrees to provide a certificate of the insurance required together with a copy of the “Additional Insured endorsement . The certificate of insurance will provide that no cancellation, change or alteration in coverage shall be made except upon 30 days prior written notice to Lessee. The insurance required hereby shall be primary insurance as respects all insureds. Insurance carried by Lessee shall be excess of the insurance required hereby.
7. **Workers’ Compensation Insurance: Furnished Operating Personnel.** During the entire term of this Master Agreement, Lessor agrees to carry and continue the workers’ compensation insurance specified by California Labor Code. The policy of workers’ compensation insurance provided and carried by Lessor shall contain an endorsement waiving subrogation as against any employer, including Lessee, having employees upon the Project.
8. **Return of Leased Equipment.** Lessor shall provide physical damage insurance for the Leased Equipment and hereby releases Lessee from all liability for any loss or damage to such Leased Equipment.

- 9. **Applicable Law.** This Master Agreement and its performance shall be governed by the laws of the State of California, including California law governing mediation and arbitration proceedings. Should any provision of this Master Agreement be invalidated in whole or in part by an authority of competent jurisdiction, such provision shall continue in effect only to the extent not invalidated. The remaining provisions shall remain in full force and effect.
- 10. **Notices.** Any notice pertinent to this Master Agreement (except Confirmatory Memoranda) shall be served personally or sent by certified mail with return receipt requested to:

_____ Lessor: _____ Lessee:

Confirmatory Memoranda may be exchanged by the custom established between the Parties, including by ordinary mail, fax, Email, or personal delivery at the Project.

- 11. **Form of Agreement.** This Master Agreement, when duly executed by the Parties, is the complete and integrated agreement of the Parties. Paragraph headings are for the ease of the reader, are not a part of this Master Agreement, and shall have no effect upon its construction or interpretation.
- 12. **Amendment or Modification.** No amendment or modification to this Master Agreement shall be binding on either Party unless by a writing, duly executed by both Parties. Waiver of performance of an obligation under this Master Agreement on one or more occasions shall not prejudice a Party's right to demand compliance thereafter.
- 13. **Duration of Agreement.** This Master Agreement shall continue in effect from the date it is made until canceled by either Party, by written notice to the other Party, given in the manner prescribed by Paragraph 11, above. If at the time of any notice of cancellation there is a transaction in Leased Equipment then in progress, cancellation of this Master Agreement will be effective upon conclusion of the transaction then in progress.
- 14. **Authority and Execution.** Each person executing this Master Agreement as representative of a Party warrants and represents that he or she has all requisite authority to sign this document and thereby bind their Party to its terms.

Accepted and Agreed for Lessor: _____ Accepted and Agreed for Lessee: _____

By: _____ By: _____

Its: _____ Its: _____