

**SANTA FE COUNTY  
PRICE AGREEMENT  
FOR LEASE OF HEAVY EQUIPMENT**

**THIS AGREEMENT** is made and entered into by and between Santa Fe County, New Mexico, a political subdivision of the State of New Mexico, (hereinafter referred to as the “**County**” or “**Lessee**”) and Golden Equipment Company, 721 Candelaria NE, Albuquerque, New Mexico 87107, who is authorized to do business in the State of New Mexico (hereinafter referred to as the “**Vendor**” or “**Lessor**”).

**IT IS MUTUALLY AGREED BETWEEN THE PARTIES:**

**1. DEFINITIONS**

- A. “**County**” shall mean the County of Santa Fe, New Mexico.
- B. “**Using Department or Department**” shall mean a Department, Commission or Board of Santa Fe County.
- C. “**Purchase Order**” shall mean a fully executed Purchase Order issued by the County Purchasing Department that specifies the items and services to be provided by the Lessor.
- D. “**Price Agreement**” means this indefinite quantity Price Agreement also referred herein as “Lease” which required the Lessor to furnish items to the Using Department which issues a Purchase Order.
- E. “**Rent**” means the payment of the Lessee to Lessor of money for the lease of heavy equipment covered by the accompanying schedule (Attachment A), purchase order or other Lease document.

**2. GOODS TO BE PROVIDED**

- A. **Purchase or Lease.** Attachment A of this Price Agreement is the listing of prices for the individual items of heavy equipment and lease pricing, showing the term of the lease and the monthly costs.
- B. **Goods Listed on Attachment A.** The County may issue Purchase Orders for the Lease of the items listed in Attachment A. Any item ordered by the County must be a listed item in Attachment A to this Price Agreement. All orders issued hereunder must bear both an order number and the number of this Price Agreement 2014-0032-PW/MS.
- C. **Quantities.** It is understood that this is an indefinite quantity Price Agreement and the County may lease any quantity of the item(s) in Attachment A on an as-needed basis. No guarantee or warranty is made or implied that any order for any definite quantity of item(s) be issued under this Price Agreement. The Lessor is required to accept the Purchase Order and furnish the item(s).
- D. **Specifications.** The items furnished under this Price Agreement shall meet or exceed the specifications provided in this IFB# 2014-0032-PW/MS including all supplemental terms or addenda. Orders issued pursuant to this Agreement must show the applicable Price Agreement items(s).

**E. Delivery and Billing Instructions.**

1. The Lessor shall deliver the items and services in accordance with the County's instructions. The Lessor shall also deliver, with the items or goods ordered, an invoice listing the order number and the Price Agreement number.
2. Whenever the Using Department does not accept any deliverable and returns it to the Lessor, all related documentation furnished by the Lessor shall also be returned.
3. A Using Department will inform the Lessor within five (5) business days that a deliverable is unacceptable by the Using Department.
4. The Lessor shall bear all risk of loss or damage with respect to returned equipment except for loss or damage directly attribution to the negligence of the County.
5. Unless otherwise agreed upon by the County (see Paragraph 30.B.5), the Lessor shall be responsible for the pick-up of returned items.
6. Time is of the essence for purposes of this Price Agreement. All damages resulting from late delivery, utilizing the delivery time frame set forth on Attachment A, shall be the responsibility of the Lessor. In the event of failure of the Lessor to delivery in accordance with its requirement, the Lessor shall be liable to the County for liquidated damages in the amount of \$100.00 per day the item(s) are delivered late.

**F. Delivery Tickets.** The Lessor shall provide the Purchase Order number, the delivery date, signature of acceptance by County, bill of lading, and all documentation associated with the leased equipment shall be provided to Santa Fe County.

**3. PAYMENT**

All payments under this Price Agreement are subject to the following provisions.

- A. Inspection.** Final inspection and acceptance of all items and services ordered shall be made at the destination. Items rejected at the destination for non-conformance with specifications shall be removed, at the Lessor's risk and expense, promptly after notice of rejection.
- B. Acceptance.** In accordance with NMSA 1978, Section 13-1-158, the Using Department shall determine if the items meet specifications, and may accept the items if the items meet specifications. No payment shall be made for any items until the items have been accepted in writing by the Using Department. Unless otherwise agreed upon between the Using Department and the Lessor, within thirty (30) days from the receipt of items, the Using Department shall issue a written certification of complete or partial acceptance or rejection of the items. The time period shall begin at the time of receipt of the final shipment when there are multiple shipments per purchase order. Unless the Using Department gives notice of rejection within the specified time period, the items will be deemed to have been accepted.

**C. Issuance of Orders.** Only written, signed and properly executed Purchase Orders are valid under this Price Agreement.

**D. Rent and Late Charges.** In consideration of its rights under this Lease, Lessee shall pay Lessor as follows:

1. At the conclusion of each month of possession and use after certification of the equipment, the rent amount identified in Attachment A shall be remitted to the Lessor.
2. Lessor shall submit a written request for payment to Lessee at the conclusion of each month of possession by Lessee of the equipment following certification of that equipment.
3. Within thirty (30) days of the issuance of a written request for payment, Lessee shall tender payment for the leased equipment used by Lessee.
4. In the event Lessee fails to tender payment within thirty (30) days of written request for payment, Lessee shall pay late payment charges of one and one-half percent (1.5%), until the amount due is paid in full.
5. In the event the Lessor breaches this Lease, Lessee may, without penalty, withhold any payments due Lessor for the purpose of set-off until such time as Lessee determines the exact amount of damages it suffered as a result of the breach.
6. Payment under this Lease shall not foreclose the right of Lessee to recover excessive or illegal payment.

**F. Tax Note.** Applicable gross receipts taxes or local option tax(es) shall be included on each invoice and shown as a separate item to be paid. The payment of taxes for any money received under this Price Agreement shall be the Lessor's sole responsibility and must be reported under the Lessor's federal and County tax identification number(s). If a Using Department is exempt from the New Mexico gross receipts tax or local option taxes for the transaction, the Using Department shall provide the Lessor with written evidence of such exemption(s).

#### **4. TERM**

This Price Agreement shall not become effective until approved in writing by all the parties as shown by their signatures below. The term of this Agreement shall be four (4) years at the prices and rates as indicated on Attachment A and as stated in this Price Agreement. There shall not be any automatic renewal of the term for this Price Agreement

#### **5. END OF LEASE**

Lessor shall be solely responsible for the cost of retrieving the leased equipment at the expiration of this Lease, unless termination results from the Lessee's breach in which case Lessee shall be responsible for the cost of returning the leased equipment to Lessor.

## 6. CANCELLATION

- A. The County reserves the right to cancel without cost to the County all or any part of any order placed under this Price Agreement if the items or deliverables fail to meet the requirements of this Price Agreement.
- B. The failure of the Lessor to perform its obligations under this Price Agreement shall constitute a default of this Price Agreement.
- C. The Lessor may be excused from performance if the Lessor's failure to perform the order arises out of causes beyond the control and without the fault or negligence of the Lessor, unless the County shall determine that the item, to be furnished by a sub-Lessor, is obtainable from other sources in sufficient time to permit the Lessor to meet the required delivery schedule.
- D. Such causes of excuse include, but are not limited to, acts of God or the public enemy, acts of the County or Federal government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather and defaults of sub-Lessors due to any of the above.
- E. The County may cancel all, or any part, of any order without cost to the County if the Lessor fails to meet material provisions of the order and the Lessor shall be liable for any excess costs incurred by the County that is associated with such default.

## 7. TERMINATION

- A. **For Convenience.** Consistent with applicable New Mexico laws, this Price Agreement may be terminated by the County, without penalty, at any time prior to the expiration date of this Price Agreement. County will provide at least twenty (20) days prior written notice to the Lessor of the date of termination. Notice of termination of this Price Agreement shall not affect any outstanding order(s) issued under this Price Agreement prior to the effective date of termination for convenience by the County.
- B. **For Cause.** Either party may terminate this Agreement for cause based upon material breach of this Agreement by the other party, provided that the non-breaching party shall give the breaching party written notice specifying the breach and shall afford the breaching party a reasonable opportunity to correct the breach. If, within thirty (30) days, after receipt of a written notice, the breaching party has not corrected the breach or, in the case of a breach which cannot be corrected in thirty (30) days, begin and proceed in good faith to correct the breach, the non-breaching party may declare the breaching party in default and terminate the Agreement effective immediately. The non-breaching party shall retain any and all other remedies available to it under the law.
- C. **Return of Equipment Upon Cancellation or Termination.** Termination of the Price Agreement also results in termination of the lease of any equipment in the County's possession. In the event of such early termination, as reflected in this section, Lessee shall immediately cease all use of equipment and shall immediately make arrangements with the Lessor or its designee to return the equipment to any designation within the continental United States (US)

designated by the Lessor. Any expenses or risks associated with returning equipment to Lessor shall be borne solely by Lessee if termination was for convenience. Such equipment shall be in good repair in the same condition as when received by Lessee, reasonable wear, tear and depreciation resulting from normal and proper use excepted.

## **8. AMENDMENT**

This Price Agreement may only be amended by mutual agreement of the County and the Lessor upon written notice by either party to the other. Any such amendment shall be in writing and signed by the parties hereto. Unless otherwise agreed to by the parties, an amendment shall not affect any outstanding Purchase Order(s) issued, by the County, prior to the effective date of the amendment.

## **9. ASSIGNMENT**

Lessor shall not sell, assign, pledge, transfer, or otherwise convey any of its rights or interests in this Price Agreement.

## **10. NON-COLLUSION**

In signing this Price Agreement, the Lessor certifies it has not, either directly or indirectly, entered into action in restraint of free competitive bidding in connection with its offer and this Price Agreement.

## **11. CONFLICT OF INTEREST**

The Lessor warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with any performance required under this Price Agreement. The Lessor shall comply with any applicable provisions of the New Mexico Governmental Conduct Act and the New Mexico Financial Disclosures Act.

## **12. APPROVAL OF LESSOR'S REPRESENTATIVES**

The County reserves the right to require a change in Lessor representatives if the assigned representatives are not, in the opinion of the County, serving the needs of the County adequately.

## **13. CONDITION OF PROPOSED ITEMS**

All proposed items to be delivered under this Price Agreement are to be new and of most current production, unless otherwise specified.

#### **14. SCOPE OF AGREEMENT, MERGER**

This Price Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof and all such covenants, agreements and understandings have been merged into this Price Agreement. No prior agreement or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Price Agreement. Additional terms and conditions mutually agreed upon for by the parties may be incorporated into this Price Agreement as an addendum.

#### **15. COMMERCIAL WARRANTY**

The Lessor agrees that the items furnished under this Price Agreement shall be covered by the most favorable commercial warranties the Lessor gives to any customer for such items, and that it rights the remedies provided herein shall extend to the County and are in addition to and do not limit any rights afforded to the County by any other clause of this Price Agreement. Lessor agrees not to purport to disclaim warranties of fitness for a particular purpose or merchantability and fitness for a particular purpose.

#### **16. ASSIGNMENT OF MANUFACTUER/SUPPLIER WARRANTIES AND LESSOR'S WARRANTIES**

To the extent permitted and so long as no event of default has occurred and is continuing, Lessor hereby assigns to Lessee, for the total term of any Lease as a result of this Price Agreement, all equipment warranties provided by a manufacturer/supplier in the applicable purchase documents.

- A. Lessee shall have the right to take any action appropriate to enforce such warranties provided such enforcement is pursued in Lessee's name and at its expense. In the event Lessee is precluded from enforcing any such warranty in its name, Lessor, as owner of the equipment, shall upon Lessee's request, take reasonable steps to ensure such warranties as costs to be borne by Lessor.
- B. All equipment covered by this Lease shall conform to the specifications, samples, or other descriptions furnished or adopted by the County, and shall be merchantable, fit for the purpose for which it is leased, of best quality and workmanship and free from all defects. All equipment delivered, pursuant to this Lease, shall conform to standards established for such goods and delivery in accordance with any applicable federal, state, or local laws and regulations.

#### **17. INSURANCE OF EQUIPMENT**

Commencing upon acceptance and continuing throughout the initial term, Lessee agrees to keep the equipment insured as Lessee's expense against all risks or loss from any cause, including without limitation, theft and damage. Lessee may self-insure against such risk provided the Lessor's interests are protected to the same extent as if the

insurance had been obtained by third party insurance carriers. Lessee will provide to Lessor proof of such coverage.

## **18. RECORDS**

During the term of this Price Agreement and for three (3) years thereafter, the Lessor shall maintain detailed records pertaining to the services or deliverables provided. These records shall be subject to inspection by the Using Department, the County and State Auditor and other appropriate County authorities. The County shall have the right to audit billings both before and after payment. Payment under this Price Agreement shall not foreclose the right of the Department to recover excessive or illegal payments.

## **19. APPROPRIATIONS**

The terms of this Price Agreement, and any orders placed under it, are contingent upon sufficient appropriations and authorization being made by the Board of County Commissioners for the performance of this Price Agreement. If sufficient appropriations and authorization are not made, this Price Agreement, and any orders placed under it, shall terminate upon written notice being given to the Lessor. The County's decision as to whether sufficient appropriations are available shall be accepted by the Lessor and shall be final.

## **20. NOTICE**

The New Mexico Procurement Code, NMSA 1978, Sections 13-1-28 through 13-1-199 imposes civil misdemeanor criminal penalties for its violation. In addition, the New Mexico criminal statutes impose penalties for bribes, gratuities and kickbacks.

## **21. INDEMNIFICATION**

The Lessor shall hold the County and its Departments, agencies and employees harmless and shall indemnify the County and its agencies and employees against any and all claims, suits, actions, liabilities and cost of any kind, including attorney's fees for personal injury or damage to property arising from the acts or omissions of the Lessor, its agents, officers, employees, or sub-Lessors. The Lessor shall not be liable for any injury or damage as a result of any negligent act or omission committed by the Using Department, its officers or employees.

## **22. THIRD PARTY BENEFICIARY**

This Price Agreement was not intended to and does not create any rights in any persons not a party hereto.

### **23. NEW MEXICO TORT CLAIMS ACT**

No provision of this Price Agreement modifies or waives any sovereign immunity or limitation of liability enjoyed by the County and its Departments or its “public employees” at common law or under the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1, et seq.

### **24. INSURANCE.**

- A. General Conditions. The Lessor shall submit evidence of insurance as is required herein. Policies of insurance shall be written by companies authorized to write such insurance in New Mexico.
- B. General Liability Insurance, Including Automobile. The Lessor shall procure and maintain during the life of this Price Agreement a comprehensive general liability and automobile insurance policy with liability limits in amounts not less than \$1,050,000 combined single limits of liability for bodily injury, including death, and property damage for any one occurrence. Said policies of insurance shall include coverage for all operations performed for the County by the Lessor; coverage for the use of all owned, non-owned, hired automobiles, vehicles and other equipment, both on and off work; and contractual liability coverage under which this Price Agreement is an insured contract. Santa Fe County shall be named an additional insured on the policy.
- C. Worker’s Compensation Insurance. The Lessor shall comply with the provisions of the Worker’s Compensation Act.
- D. Increased Limits. If, during the life of this Price Agreement, the Legislature of the State of New Mexico increases the maximum limits of liability under the Tort Claims Act (NMSA 1978, Sections 41-4-1 through 41-4-29, as amended), the Lessor shall increase the maximum limits of any insurance required herein.

### **25. CHOICE OF LAW**

This Price Agreement shall be governed by and construed in accordance with the laws of the State of New Mexico. The parties agree that the exclusive forum for any litigation between them arising out of or related to this Price Agreement shall be in the First Judicial District Court of New Mexico, located in Santa Fe County, New Mexico.

### **26. INVALID TERM OR CONDITION/SEVERABILITY**

The provisions of this Price Agreement are severable, and if for any reason, a clause, sentence or paragraph of this Price Agreement is determined to be invalid by a court or department or commission having jurisdiction over the subject matter hereof, such



invalidity shall not affect other provisions of the Price Agreement, which can be given effect without the invalid provision.

## **27. ENFORCEMENT OF AGREEMENT**

A party's failure to require strict performance of any provision of this Price Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by party or any of its rights under this Price Agreement shall be effective unless expressed and in writing, and not effective waiver by a party of any of its right shall be effective to waive any other rights.

## **28. SURVIVAL**

The Provisions of the following listed paragraphs shall survive termination of this Price Agreement: Delivery & Billing Instructions; Records; Indemnification; Applicable Law; and Survival.

## **29. NOTICES**

Either party may give written notice to the other party in accordance with the terms of this Price Agreement. Any written notice required or permitted to be given hereunder shall be deemed to have been given on the date of delivery if delivered by personal service or hand delivery or three (3) business days after being mailed.

### **To the Lessee:**

Santa Fe County Attorney  
102 Grant Avenue  
PO Box 276  
Santa Fe, NM 87504-0276

Santa Fe County Public Works  
Roads Division  
P.O. Box 276  
Santa Fe, NM 87504-0276

### **To the Lessor:**

Golden Equipment Company  
721 Candelaria Road NE  
Albuquerque, NM 87107

### 30. ORDER OF PREFERENCE OF DOCUMENTS; SUPPLEMENTAL TERMS AND CONDITIONS

These supplementary terms and conditions amend or supplement the Lessor's "Terms and Conditions and Lessor's "Equipment Long Term Rental Addendum" attached hereto as Attachment B and C, respectively. All provisions of this Price Agreement which are not so amended or supplemented remain in full force and effect.

#### A. Order of Preference of Documents, Resolving Discrepancies and Conflicts.

1. With respect to matters pertaining to contract management and administration procedures including equipment delivery and payment, the provisions of Price Agreement No. 2014-0032-PW/MS shall govern. In conflicts or discrepancies between this Price Agreement and the Lessor's Equipment Long Term Rental Addendum and Lessor's Terms and Conditions, the provisions of this Price Agreement shall take precedence.

#### B. Lessor's Terms and Conditions (Attachment B)

1. Paragraph I is inapplicable. The provisions of Paragraph 3 (**Payment**) of this Price Agreement shall apply.

2. Paragraph III, subpart (vi) is deleted in its entirety and replaced with the following:

(vi) assume the entire risk of loss of and damage to the Equipment and injury or death to persons which occurs while the Equipment is rented and in the possession of the Lessee under this Agreement.

3. Paragraph IX is deleted in its entirety.

4. Paragraph XIII, the first sentence is deleted in its entirety.

5. Paragraph XVIII applies when the term of Price Agreement No. 2014-0032 expires or Lessee notifies Lessor of an early termination pursuant to Paragraph 7.A (**Termination for Convenience**). The provisions of Paragraph 2.E.4 and 2.E.4 (**Delivery and Billing Instructions**) of this Price Agreement apply if equipment ordered by the Lessee and delivered by Lessor is determined to be unacceptable by the Using Department.

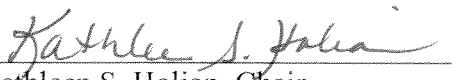
6. Paragraph XIX, the sentence "If after default, this Agreement is placed with an attorney for collection of unpaid rent or enforcement of any other right or remedy of Lessor, Lessee shall pay reasonable attorney's fees." is deleted in its entirety.

#### C. Lessor's Equipment Long Term Rental Addendum (Attachment C)

1. Pursuant to Paragraph 4 (**Term**) of this Price Agreement, the Commencement Date of the four (4) year term of this Price Agreement is the date of last signature by the parties hereto. The commencement date for the rental of each item of equipment shall be governed by the date of acceptance of the equipment by the Using Department and the Using Department may rent each item of equipment for a period not to exceed 48 months and at the rental rates stated in Attachment A.
2. Paragraph 1 (**Equipment**): The equipment that is the subject of this Price Agreement is the equipment listed on Attachment A.
3. Paragraph 4.B. (**Cab and Body**), the first sentence is deleted and replaced with:  
  
All decals (excluding manufacturer's original decals, Golden Equipment's decals, and the County's decals which are removed in a manner as not to damage the surface and whose removal may leave a distinct difference in paint brightness), permits, numbers, and other County signage must be removed from the equipment by the County in such a manner as not to damage the surface.
4. Paragraph 4.I (**Engine**) is deleted in its entirety and replaced with:  
  
The engine must be maintained in accordance with the manufacturer's recommendations. At the time of return, the engine shall have acceptable power based on industry standards related to the age of the machine and hours on the engine.
5. Paragraph 6 (Statute of Limitations), the reference to "six (6) months" is deleted and replaced with "one (1) year."

**IN WITNESS WHEREOF, the parties have executed this Price Agreement as of the date of execution by:**

**SANTA FE COUNTY**

  
Kathleen S. Holian, Chair  
Board of County Commissioners

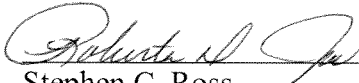
26 November 2013  
Date

**ATTEST**

  
Geraldine Salazar  
Santa Fe County Clerk


11-26-13  
Date

**APPROVED AS TO FORM**

  
\_\_\_\_\_  
Stephen C. Ross  
Santa Fe County Attorney

10/30/13  
\_\_\_\_\_  
Date

**FINANCE DEPARTMENT APPROVAL**

  
\_\_\_\_\_  
Teresa C. Martinez, Director  
Finance Department

11/1/13  
\_\_\_\_\_  
Date

**LESSOR GOLDEN EQUIPMENT COMPANY**

  
\_\_\_\_\_  
Signature

11-14-13  
\_\_\_\_\_  
Date

Michael Bohannon-VP  
\_\_\_\_\_  
Print Name and Title

**FEDERAL TAX I.D. NUMBER:** 85 0327399

**REVISED BID SHEET (CONTINUED)**

Equipment Information								
Unit Description	Bid Make	Bid Model	Lease Term (Months)	Lease Term (Total Hours)	Base Lease Payment (Annual)	Service*	Taxes (Applicable)	Program Cost
Loader Backhoe	Volvo	BL70BT4	48	4,000	\$10,006.32	\$1,715.00	Include ALL Applicable Taxes	Extended Cost (Annual)
Front End Loader			48					\$11,721.32/year
Backhoe								
Motor Grader	Volvo	G940B	48					
Loader	Volvo	L70G	48	6,000	\$19,723.80	\$3,850.00		
Pneumatic Roller	Volvo	PT125	48	6,000	\$11,953.84	\$2,935.00		\$23,573.80/year
Double Drum Roller	Volvo			2,400	\$8,338.44	\$895.00		\$14,893.84/year
Asphalt Paver	Volvo	DD140B	48					\$9,233.44/year
Single Drum Roller	Volvo	PF4410	48	2,400	\$16,435.56	\$1,738.00		\$18,173.56/year
	Volvo	SD75	48		\$52,931.88	\$1,980.00		\$54,911.88/year
				2,400	\$10,578.12	\$1,403.00		\$11,981.12/year

Bidder must provide specifications sheet on page 11

Bidder must provide specifications sheets and brochures for each piece of equipment offered in its bid

\* Santa Fe County reserves the right to maintain the leased equipment upon mutual agreement with awarded contractor.

Bidder will delivery equipment to Santa Fe County within 120-days ARO days of ARO.

## TERMS AND CONDITIONS

I. Lessee shall rent the Equipment for the term and at the rental herein provided and shall pay such rental when due irrespective of any claims, demands, defenses, set-offs, actions, suits or proceedings that it may have or assert against Lessor. Rental is due and payable in advance.

II. LESSOR MAKES NO WARRANTIES, EITHER EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING WITHOUT LIMITATION, THE CONDITION OF THE EQUIPMENT, ITS MERCHANTABILITY, OR ITS FITNESS FOR ANY PARTICULAR PURPOSE.

III. From the time the Equipment is shipped from Lessor's facility, until it is returned to Lessor's designated facility Lessee shall (i) use the Equipment solely in the conduct of its business; (ii) use the Equipment in a careful, proper and lawful manner; (iii) at its own expense, keep the Equipment in good repair, condition and working order and pay the cost of any and all parts and labor required for that purpose, using only parts manufactured or furnished by the manufacturer of the Equipment; (iv) not make any alterations of the Equipment; (v) promptly notify Lessor of any loss or damage to the Equipment; and (vi) assume the entire risk of loss of and damage to the Equipment and injury or death to persons, from any cause whatsoever arising under this Agreement.

IV. Lessee agrees that all equipment, attachments, accessories and repairs made to or placed upon the Equipment shall immediately become the property of Lessor without charge or setoff of any kind, and subject to the terms and conditions of the Agreement as if originally rented hereunder.

V. Lessor may, at its option require Lessee to provide, at the sole expense of Lessee, all risk insurance coverage on the Equipment for its full replacement value, and also such other insurance as Lessor may require, in amounts and under policies acceptable to Lessor, with loss payable to Lessee and Lessor as their respective interest may appear. Lessee shall furnish certificates of insurance evidencing such coverage. Each policy shall provide for thirty (30) days written notice to Lessor of the cancellation or material modifications thereof.

VI. Unless Lessee purchases damage waiver coverage as noted in paragraph seven (7) herein, Lessee is responsible for all damages to equipment including, but not limited to, the following: damage resulting from usage in violation of any of the terms of this Agreement; abuse, overloading, exceeding rated capacity, intentional damage, vandalism, disappearance, theft, shortage disclosed on inventory; infidelity of the lessee, his employees or person to whom the equipment was entrusted. Lessee is responsible for damage to tires or tubes of the equipment that have suffered blow-outs, bruises, cuts or other damage inherent in the use of the equipment. Lessee is responsible for any damages resulting from a lack of, or improper service and maintenance including, but not limited to, the failure to provide proper coolant and anti-freeze, brake, transmission and other fluids, lubrication, filters, oil and other normal servicing.

VII. IF Lessee, at the commencement of this Lease, purchases damage waiver coverage and pays the damage waiver charge ("DWC"), then subject to the limitations and exclusions below, then Lessee will not be responsible for accidental damage to the rented equipment noted on the face of this Rental Agreement. "Accidental Damage" is defined as damage to the Lessor's rental equipment which is caused by ordinary acts of the Lessee which are covered by the damage waiver coverage. Accidental damage does not include damage due to theft, burglary, conversion, intentional damage, misuse, or abuse of the rental equipment, mysterious disappearance or any damage to the rental equipment by improper, substandard or non-existent maintenance, care or repair of the rental equipment such as proper lubrication. If any such loss indicate a crime may have been committed, a further condition of this waiver is that you must file a report to the proper law enforcement agency and furnish us a copy. In addition, if you have insurance for the loss or damage, you shall exercise, and shall empower us to exercise, rights to obtain recovery and insurance, shall cooperate with the Lessor to obtain recovery and all insurance proceeds shall be given or to the Lessor. Coverage is null and void if equipment is used other than for its intended use. If you refuse the damage waiver, you must lease Lessor with a Certificate of Liability Insurance and a Certificate of Property Insurance naming the Lessor as a rider on your insurance which piece of equipment being rented and coverage for the full retail price.

Lessee shall not be liable for any direct, indirect, special or consequential damages or loss (i) resulting from the non-delivery, delivery, use, installation, use or operation of the Equipment or from any defects in, failures, malfunctions, repairs, replacements or alterations or (ii) without limitation, any other liability of any nature with respect to the Equipment, or this Agreement or any breach thereof.

Lessee shall indemnify and hold harmless Lessor, its directors, officers, employees, agents and representatives, from any and all claims, suits, proceedings, costs, expenses, damages and liabilities, including attorney's fees, arising out of, connected with, or resulting from, this contract, breach thereof, or arising out of, connected with, or resulting from the operation, maintenance, use or return of the Equipment; or if of, connected with, or resulting from any defect in or failure of the Equipment.

In the event of damage to or loss, destruction, destruction or theft of the Equipment or any part of it, Lessee shall pay to Lessor the full and true value of the Equipment at the time of such occurrence except to the extent that Lessor receives proceeds of insurance covering such loss. Such payment may, at Lessor's option, be applied (i) to repair such Equipment, or (ii) to afford Lessee a pro rated reduction in the rental attributable to the lost or damaged equipment, or (iii) to replace the Equipment with equipment of the same make and the same or later model.

Lessee may inspect the Equipment at all reasonable times.

XII. Lessee shall report and pay to the appropriate authority any and all license fees, registration fees, assessments, charges and taxes, including penalty and interest, assessed against said Equipment due to rental or use thereof and reimburse Lessor upon request for any such amounts assessed against Lessor by reason of the rental or use of said Equipment, except for taxes payable in respect of Lessor's income.

XIII. Lessee shall keep the Equipment at the address specified in this Agreement, and not remove it therefrom without the Lessor's prior written consent. Lessee shall not assign, sublet or pledge any of the Equipment or any interest in this Agreement, and any attempt to do so shall constitute an act of default hereunder.

XIV. The Equipment shall at all times remain personal property of Lessor regardless of the degree of its annexation to the real property and shall not be reason of any annexation to real property or personal property become a part thereof.

XV. All rights and obligations under this Agreement shall not be affected by any delay in shipment or delivery of the Equipment caused by any circumstances beyond the control of the parties, including but not limited to, Acts of God, fire, flood, war, shortages, allocations, government regulations, directions or requests, accidents, strikes, lockouts or concerted acts of workmen.

XVI. Lessee will procure, maintain and pay for workmen's compensation insurance upon employee operators of the Equipment, which may be required in any jurisdiction where such Equipment may be used or operated, unless Lessee shall have qualified as a self-insured. Therefore, if at any time such insurance shall not be in effect, Lessee may not, and will not, use or operate any item of Equipment for which such insurance shall not be in effect.

XVII. Lessee shall promptly notify Lessor of each accident involving any Equipment, including time, place, nature of the accident or damage, and such other information as may be known; advise Lessor of all correspondence, papers, notices, or documents received; aid in the investigation and defense of all such claims; and assist in the recovery of damage, from third parties liable thereof.

XVIII. Upon termination of this Agreement, Lessee will, at its own cost and expense, promptly return the Equipment to Lessor in the same conditions received, reasonable wear and tear and normal depreciation excepted.

XIX. If Lessee breaches its obligation to pay rent when due or any of the other terms of this Agreement, or if Lessee becomes insolvent or ceases to do business as a going concern, or if the Equipment or any part of it is abused, illegally used or misused, or if Lessee makes an assignment for the benefit of creditors, or if a petition in bankruptcy or for arrangement or reorganization is filed against Lessee, or if property of Lessee is attached or a receiver is appointed for Lessee or any of Lessee's property, or if Lessee is in default pursuant to the provisions of any other agreement by or between Lessor and Lessee, or whenever Lessor may deem the rents or Equipment insecure, the Lessee hereby authorizes Lessor to enter, with or without legal process, any premises where the Equipment may be and take possession thereof, or at the request of Lessor, Lessee will assemble the Equipment and make the Equipment available to the Lessor, in whole or in part as requested at such place or places designated by the Lessor. All remedies herein are cumulative and any or all thereof may be exercised in lieu of or in addition to any remedies at law, in equity or under statute. If after default, this Agreement is placed with an attorney for collection of unpaid rent or enforcement of any other right or remedy of Lessor, Lessee shall pay reasonable attorney's fees. Waiver of any default shall not be a waiver of any other or subsequent default.

XX. If the Equipment is exchanged or replaced with comparable equipment; if the rental term is extended; or if the Equipment is otherwise held beyond the rental term, all terms and conditions of this Agreement shall remain in full force and effect.

XXI. Any provision herein may be invalid under application law, or any governmental rule or regulation shall be deemed omitted, modified or altered to conform thereto.

XXII. Any alterations or modifications with respect to the Equipment that may at any time during the initial term of this Agreement, or any renewal term, be required to comply with any such applicable law of any governmental rule or regulation shall be at the expense of the Lessee.

XXIII. All notices required to be given hereunder shall be in writing and shall be deemed adequately given if sent by registered or certified mail to the other party at the address of other party as stated herein, or at such other place as either party may designate in writing to the other party.

XXIV. This document and any attachments hereto constitute the entire Agreement of the parties with respect to the subject matter hereof. No variation or modification of this document and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by both parties.

XXV. Severability. If any provision of this Agreement shall, for any reason, be held violative of any applicable law, and so much of this Agreement is held to be unenforceable, then the invalidity of such specific provision herein shall not be held to invalidate any other provision herein which shall remain in full force and effect.

XXVI. Prelien Notice. Notice is hereby given that Golden Equipment Company has contracted to provide or has furnished material to the above signed lessee, and has the right to file lien against said lessee and related entities if payments are not made within the terms as agreed in this document.



## EQUIPMENT LONG TERM RENTAL ADDENDUM

This addendum to rental contract # \_\_\_\_\_ entered into on the \_\_\_\_\_ day of \_\_\_\_\_, 2013 (Commencement Date) between Golden Equipment (Vendor) and Santa Fe County (County) is subject to the following terms and conditions:

**1. Equipment Description (Equipment):**

2013 Volvo G940 Motor grader  
Serial Number \_\_\_\_\_

**2. Agreement:**

- A. Notwithstanding any other provision in this agreement, Vendor agrees to rent the equipment listed above to the County for an amount equal to \$1,643.65 per month plus any applicable taxes.
- B. County agrees to an additional payment of \$19.72 per hour, for each hour in excess of 1,500 hours per year.
- C. This amount excludes all maintenance and repairs unless County procures a maintenance agreement with Vendor separate from this.

**3. Unit Condition**

In addition to any other requirements of this Agreement, County will, at its sole expense, maintain the Equipment so as to meet all of the following requirements: (I) Equipment will be preserved in good operating condition, repair and appearance in accordance with all manufacturer service requirements and warranties, ordinary wear and tear expected. (II) All parts of Equipment that may be worn out, lost, stolen, destroyed or otherwise rendered permanently unfit or unavailable for use shall be replaced with replacement and substitute parts and accessories that are original Equipment manufacture or from commercially reputable providers with similar or superior value, serviceability and warranty. If Vendor notifies County that the Equipment is not being maintained within the above standards, County will have 30 days from the agreement termination date to make the necessary corrections.

**4. Return of Equipment**

**A. Good Working Condition.** The Equipment will be in good condition, ordinary wear and tear expected and all original components or replacement components of similar value made by the same manufacturer will be intact and in good working condition, free of mechanical problems to any of its parts and accessories. Permanently installed attachments must remain with the Equipment unless a written exception is executed by each of Vendor and County. If attachments are removed, the Equipment must be returned to its original condition.

**B. Cab and Body.** All decals (except manufacturer's original decals and Golden Equipment's decals), permits, numbers, and other customer signage must be removed from the Equipment by the County in such a manner as not to damage the surface. Interior trim will be free of tears, cuts and burns, and no glass will be broken, chipped or cracked. There shall be no unrepaired damage to the exterior or interior materials that exceeds \$250 cumulative. The windshield seal must be free of visible gasket/adhesive material. All mechanical and electrical equipment including radios, heaters, and air conditioners must be in proper operating condition. Equipment returned will be cleaned and cosmetically acceptable, with all rust and corrosion properly removed. All material (ie. dirt, refuse, asphalt, gravel, ect.) must be properly removed from the Equipment and disposed of in accordance with all applicable federal, state, and local laws and regulations.

**C. Frame and Structural Members.** Frame and structural members, including, but not limited to, loader arms, buckets, frame rails, all ground engaging tools and attachments will be structurally sound, without breaks, bends, cracks or missing teeth.

**D. Systems.** Cooling, heating and lubrication systems will not be contaminated, and there shall be no leaking systems nor will any system be damaged by the failure to properly maintain fluids. All internal fluids such as lube oil and hydraulic fluids are to be filled at operating levels, all filter caps are to be secured and filters are to be changed using OEM filters. Batteries must be capable of holding a charge starting the Equipment and shall not have any dead cells or a cracked case.

**E. Tires and Brakes.** All tires shall be of the same original size, type and manufacturer (or similar quality manufacturer if the original manufacturer no longer produces tires of that type) as upon delivery to the buyer. The tires shall have no missing or damaged parts, gouges, or section repairs. All tires shall have a minimum of fifty percent (50%) remaining wear using standard measurement practices. The brake shall have at least fifty percent (50%) time remaining before the next overhaul or replacement as recommended by the manufacturer and/or published in standard maintenance manuals. No drums or braking components shall be damaged or cracked.

**F. Mechanical Drive Train.** If so equipped, the transmission/hydrostatic drive systems, including, but not limited to, differentials, planetaries, wet brake systems and final drives, will be in good condition and operate quietly without vibrations or leaks.

**G. Electronic Drive Train.** If so equipped, the electric drive system including, but not limited to, alternators, generators, control systems and motorized wheels shall have at least 50% time/wear remaining before the next overhaul or replacement as recommended by the manufacturer and published in standard maintenance manuals. The electric harness(es) must be in workable condition without any sectional repair. All gauges, senders and switches must be functional.

**H. Undercarriage.** If so equipped, the undercarriage (including sprockets, links, idlers, bogies, carrier and track rollers, pins, and bushings and track shoe/pads) shall have at least 50% time/wear remaining before the next overhaul or replacement as recommended by the manufacturer and published in standard maintenance manuals.

**Golden Equipment Company**

721 Candelaria NE, Albuquerque, New Mexico 87107

505-345-7811 / 505-345-0401 FAX

Attachment C

I. **Engine.** The engine must have been maintained in accordance with the manufacturer's recommendations, including overhauling the engine as required. At the time of redelivery, the engine must have at least 50% time remaining before the next overhaul or replacement as recommended by the manufacturer and/or published in standard industry testing to include (but not limited to) testing of the crankcase, manifold pressure, oil analysis and blowby test. All tests shall be performed by a manufacturer authorized service center.

J. **Booms.** If so equipped, all booms shall be straight and true within original manufacturer's specifications and tolerances. All standard rigging including sheaves, pendants, and fairleads necessary for industry standard lift crane and boom trucks shall be returned with Equipment.

K. **Hydraulic Equipment.** All hydraulic pumps, cylinders, valves, piping/tubing and hoses must be fully operational at rated capacity with no leaks, bent cylinders rods or worn out bushings/pins.

L. **Air Conditioning System.** All air conditioning systems and components including the compressor, evaporators, condenser, motor, lines and fittings must be operational and useable without leaks.

M. **ROPS/FOPS Structure.** The ROPS/FOPS structure shall have no damage or repairs whatsoever.

N. **Sheet Metal.** All sheet metal must be in operational condition without breaks and bends as provided when the Equipment was first delivered.

O. **Documents and Records.** Equipment will have title free and clear of all liens and encumbrances and will meet and conform to all applicable federal, state and local health and safety laws and requirements. If applicable Equipment will have appropriate ANSI inspection certificates, permits and other certification necessary to operate Equipment. Without limiting the foregoing, County shall maintain and provide to Vendor written records of preventative maintenance and repairs, indicating dates and hour meter readings to show when such maintenance or repair work was performed and verified by parts invoices.

P. **Inspections.** Not more than 45 days and not less than 30 days prior to the return of the Equipment, County will make the Equipment available so that the Vendor may conduct a "walk-around" appraisal. Inspections may be made by a Vendor's authorized maintenance representative or other qualified maintenance provider (acceptable to Vendor) to ensure the equipment conforms to the return provisions outlined herein. The results of the testing and appraisal with necessary reconditioning, documenting that the Equipment meets the return conditions required herein, are to be provided to the Purchaser thirty (30) days prior to the return of the Equipment.

6. **Statute of Limitations**

Any action by County against Vendor under this agreement shall be commenced within (6) six months after any such cause of action accrues.

7. **Choice of Law**

This Agreement shall not be effective until accepted by Vendor at its New Mexico headquarters and shall be governed by the substantive (and not choice of law or conflicts) laws of the State of New Mexico.

8. **Headings**

The headings at the beginning of sections of this Agreement are solely for convenience and do not modify any sections.

9. **Amendment or Modification**

No term or provision of this Agreement may be amended, waived, modified, discharged, or terminated orally, but only by an agreement in writing executed by the parties. By executing this Agreement, County agrees to be bound by the terms of this Agreement, to the extent applicable.

10. **Successors and Assigns**

All of the terms and provisions of this Agreement shall apply to, bind and insure to the benefit of the successors and assigns of County (but this shall not permit any assignment prohibited hereby) and Vendor. In the event County is composed of more than one party, the obligations, covenants, agreements and warranties contained herein as well as the obligations arising therefrom are and shall be joint and several as to each such party.

DATED: \_\_\_\_\_

COUNTY:  
Santa Fe County  
PO Box 276  
Santa Fe, NM 87505

VENDOR:  
Golden Equipment Company  
721 Candelaria NE  
Albuquerque, NM 87107

\_\_\_\_\_  
BY (SIGNATURE)

\_\_\_\_\_  
BY (SIGNATURE)

\_\_\_\_\_  
TITLE

\_\_\_\_\_  
TITLE

Golden Equipment Company  
721 Candelaria NE, Albuquerque, New Mexico 87107  
505-345-7811 / 505-345-0401 FAX

\_\_\_\_\_  
County Initials

\_\_\_\_\_  
Vendor Initials