

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

**THIS AGREEMENT** is made and entered into by and between Santa Fe County, New Mexico, a New Mexico political subdivision, (hereinafter "**County**") and **United Rentals (North America), Inc.**, 2707 Cerrillos Road, Santa Fe, NM 87507, a company authorized to do business in the State of New Mexico (hereinafter "**Vendor**").

**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 of Santa Fe County.
- C. "**Purchase Order**" shall mean a fully executed Purchase Document issued by the County Purchasing Department that specifies the items to be provided by the Vendor.
- D. "**Price Agreement**" means this indefinite quantity Price Agreement which required the Vendor to furnish items to the Using Department which issues a Purchase Order.
- E. "**Rent**" means the payment by the Using Department to the Vendor of money for the rent of equipment covered by the accompanying schedule attached hereto and incorporated herein (Attachment A), Purchase Order or other document.

**2. GOODS TO BE PROVIDED**

- A. **Rental.** Attachment A of this Price Agreement is the list of the daily, weekly and monthly rental fees for rental of individual items of heavy equipment and a description of the equipment specifications included in the rental fee, for all items that are the subject of this Price Agreement.
- B. **Goods Listed on Attachment A.** The Using Department may issue Purchase Orders for the rent of the items listed in Attachment A. Any item ordered by a Using Department must be an item listed on Attachment A. All orders issued hereunder must bear both an order number and the number of this Price Agreement (No. 2016-0199C-PW/RM).
- C. **Quantities.** It is understood that this is an indefinite quantity Price Agreement and the County may rent any quantity of the items listed on Attachment A. No guarantee or warranty is made or implied that any order for any definite quantity will be issued under this Price Agreement. The Vendor is required to accept the Purchasing Order and furnish the item when ordered.
- D. **Specifications.** The items furnished hereunder shall meet or exceed the specifications provided in the Information for Bidders No. 2016-0199-PW/RM including all Addenda. Orders issued pursuant to this Agreement must show the applicable Price Agreement item(s), number(s) and price(s).
- E. **Delivery and Billing Instructions.**
  - 1. The Vendor shall deliver the items in accordance with the Using Department's instructions and delivery time of any item shall be not be longer than 30 business days from the date of the Using Department's request for the item(s). Time is of the essence for purposes of this Price Agreement. In the event the Vendor fails to deliver an item of heavy equipment within the time designated above, the Vendor agrees to pay liquidated damages to the County in the amount of \$100.00 per

- business day beginning on business day 31. The Vendor shall also deliver, with the items ordered, an invoice listing the order number, price agreement number, bill of lading, and the serial number or other vehicle identification number for each item of heavy equipment. Destination charges are to be included in the rental prices.
2. Except for loss or damage directly attributable to the negligence of the Using Department, the Vendor shall bear all risk of loss or damage until the item(s) have been accepted by the Department.
  3. Whenever the Department does not accept any item and returns it to the Vendor, all related documentation furnished by the Vendor shall be returned.
  4. The Vendor shall bear all risk of loss or damage with respect to returned products except for loss or damage directly attributable to the negligence of the Using Department.
  5. Unless otherwise agreed upon by the County, the Vendor shall be responsible for the pick-up of the returned item(s).
- F. Delivery Tickets.** The Purchase Order number, Vendor's name, Using Department's name and location, and this Price Agreement number shall be shown on each packing and delivery ticket, package, bill of lading and/or other correspondence in connection with shipments of heavy equipment.
- G. Rental fee.** Prices listed in Attachment A, for each item, shall be the fee for rental of the items of heavy equipment.

**3. PAYMENT.** All payments under this Price Agreement are subject to the following provisions:

- A. Inspection.** Final inspection and acceptance of the item ordered shall be made at the destination. Item rejected at the destination for non-conformance with specifications shall be removed at the Vendor's risk and expense promptly after notice of non-acceptance or rejection.
- B. Acceptance.** In accordance with NMSA 1978, Section 13-1-158, the Using Department shall determine if the item meets specifications and will accept the item if the item meets specifications. No payment shall be made for any item until the item has been accepted, in writing, by the Using Department. Unless otherwise agreed upon, between the Department and the Vendor within 30 days from the receipt of items, the Using Department shall issue a written certification of complete or partial acceptance or rejection of the item. 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 item 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.
- E. Rent and Late Charges.** In consideration of its rights under this Price Agreement, the Using Department shall pay the Vendor as follows:
  1. At the conclusion of each month of possession and use after certification of the equipment, the rental fee identified in Attachment A shall be remitted to Vendor.

2. Vendor shall submit a written request for payment to the Using Department at the conclusion of each month of possession by the Using Department of the equipment following certification of that equipment.
  3. Within 30 days of the issuance of a written request for payment, the Using Department shall tender payment for the equipment rented by the Using Department.
  4. In the event the Using Department fails to tender payment within 30 days of written request for payment, the Using Department shall pay late payment charges of one and one-half percent (1.5%) per month, until the amount due is paid in full.
  5. Payment under this Price Agreement shall not foreclose the right of the Using Department to recover excessive or illegal payment.
- F. Taxes.** 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 Vendor's sole responsibility and must be reported under the Vendor's federal and County tax identification number(s). If the Using Department is exempt from the New Mexico gross receipts tax or local option taxes for the transaction, the Using Department shall provide the Vendor with written evidence of such exemption(s).

**4. TERM OF THIS AGREEMENT.** This Price Agreement shall be effective on the last date of signature by the parties hereto. The term of this Price Agreement shall be one year, unless earlier terminated. There shall not be any automatic renewal of the term of this Price Agreement. The County has the option to extend the term of this Agreement on the same terms and conditions stated herein for a term not to exceed four years in total.

**5. EXPIRATION OF A RENTAL PERIOD.** Vendor shall be solely responsible for the cost of retrieving heavy equipment at the expiration of a rental period, unless termination results from the Using Department's breach in which case the Using Department shall be responsible for the cost of returning the equipment to Vendor.

**6. CANCELLATION.**

- A. The County reserves the right to cancel all or any part of any orders placed under this Price Agreement, without cost to the County, if the item fails to meet the requirements of this Price Agreement.
- B. The failure of the Vendor to perform shall create a default pursuant to this Price Agreement.
- C. The Vendor may be excused from performance under this Price Agreement if the Vendor's failure to perform the order arises out of causes beyond the control and without the fault or negligence of the Vendor, unless the County shall determine that the item, to be furnished by a sub-vendor, is obtainable from other sources in sufficient time to permit the Vendor to meet the required delivery schedule and agreed upon pricing.
- 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-vendors due to any of the above.
- E. The County may cancel all, or any part, of any resulting order without cost to the County if the Vendor fails to meet material provisions of the order and the Vendor shall be liable for any excess costs, incurred by the County, associated with such a default.

**7. TERMINATION.**

- A. For Convenience.** Consistent with applicable New Mexico law, this Price Agreement may be terminated by the County at any time, without penalty. Unless some unforeseen circumstance(s) arise, which Lessee shall document, Lessee will provide 20 days advance written notice to the Vendor before the proposed date of termination. Notice of Termination of the Price Agreement shall not affect any outstanding order(s).
- 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 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 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 this Price Agreement also results in termination of the rental of any equipment in the County's possession. In the event of such early termination, as reflected in this section, the Using Department shall immediately cease all use of the equipment and shall immediately make arrangements with Vendor or its designee to return the equipment to Vendor at any destination within the continental United States designated by the Vendor. Any expenses or risks associated with returning equipment to the Vendor shall be borne solely by the Using Department if termination was for convenience by the Using Department. Such equipment shall be in good repair and in the same condition as when received by the Using Department, reasonable wear, tear and depreciation resulting from normal and proper use excepted.

**8. AMENDMENT.** Except for amendment affecting rental fees, this Price Agreement may be amended by mutual agreement of the County and the Vendor upon written notice by either party to the other. Amendments shall be in writing and signed by the parties hereto. An amendment to this Price Agreement shall not affect any outstanding Purchase Order(s) issued by the County prior to the effective date of the amendment.

**9. ASSIGNMENT.** Vendor shall not sell, assign, pledge, transfer, mortgage or otherwise convey part of its interest in this Price Agreement

**10. NON-COLLUSION.** In signing this Price Agreement, the Vendor 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. 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. Vendor shall inform the Using Department, prior to delivery of the item of equipment, if the item of equipment requested by the Using Department is not new and is used or is not of the most current production.

**12. COMMERCIAL WARRANTY.** The Vendor agrees that the items furnished under this Price Agreement shall be covered by the most favorable commercial warranties the Vendor gives to any customer for such items, and that the rights and 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 order. Vendor agrees not to purport to disclaim warranties of fitness for a particular purpose or merchantability.

**13. ASSIGNMENT OF MANUFACTURER/SUPPLIER WARRANTIES; EQUIPMENT SPECIFICATIONS; VENDOR'S WARRANTY.** To the extent permitted, Vendor hereby assigns to the Using Department, for the term of any rental of equipment under this Agreement, all equipment warranties, if any, that may be provided to Vendor's customers by the manufacturer/supplier of such equipment.

- A. The County shall have the right to take any action appropriate to enforce such warranties provided such enforcement is pursued in the Using Department's name and at its expense. In the event the Using Department is precluded from enforcing any such warranty in its name, Vendor, as owner of the equipment, may upon the Using Department's request, take reasonable steps to enforce such warranties at costs to be borne by Vendor only if such warranties are available to the Using Department as a customer.
- B. All equipment covered by this Price Agreement shall conform to the specifications, samples or other descriptions furnished or adopted by the County. All equipment delivered pursuant to this Agreement shall conform to standards established for such goods and delivery in accordance with any applicable federal, state or local laws and regulations.
- C. Vendor warrants that upon delivery of the equipment rented hereunder, the equipment will be in good working condition. If the equipment is not in good working conditions upon delivery, Vendor shall promptly repair or replace the equipment at Vendor's sole cost and expense. If the equipment requires repair or replacement during the rental period, Vendor will promptly repair or replace the equipment at Vendor's sole cost and expense; however, if the repair or replacement is necessary due to the Using Department's misuse or neglect, the County will be responsible for the cost of repair or replacement. EXCEPT AS SET FORTH HEREIN VENDOR DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE COUNTY'S RENTAL OF EQUIPMENT UNDER THIS AGREEMENT.

**14. INSURANCE OF EQUIPMENT.** Commencing upon acceptance and continuing throughout the initial term, the County agrees to keep the equipment insured at the County's expense against all risks or loss from any cause, including without limitation, theft and damage. The County may self-insure against such risk provided that the Vendor's interests are protected to the same extent as if the insurance had been obtained by third party insurance carriers. The County will provide Vendor proof of such coverage.

**15. RECORDS.** During the term of this Agreement and for three years thereafter, the Vendor shall maintain detailed records pertaining to the products delivered. These records shall be subject to inspection by the Using Department, the County and State Auditor and other appropriate County authorities. The Department shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the Using Department to recover excessive or illegal payments.

**16. 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 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 Vendor. The County's decision as to whether sufficient appropriations are available shall be accepted by the Vendor and shall be final.

**17. CONFLICT OF INTEREST.** The Vendor 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 Agreement. The Vendor shall comply with any applicable provisions of the New Mexico Governmental Conduct Act and the New Mexico Financial Disclosures Act.

**18. APPROVAL OF VENDOR REPRESENTATIVES.** The County reserves the right to require a change in Vendor representatives if the assigned representatives are not, in the opinion of the County, serving the needs of the County adequately.

**19. 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 Agreement. The terms and conditions of this Price Agreement shall have precedence and prevail in any conflict between the terms and conditions of this Price Agreement and a Purchase Order or the Vendor's RENTAL AGREEMENT ADDITIONAL TERMS AND CONDITIONS.

**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 felony penalties for bribes, gratuities and kickbacks.

**21. INDEMNIFICATION.** Vendor shall hold the County and its agencies and employees harmless and shall indemnify the County and its agencies and employees against any and all claims, suits, actions, liabilities and actual costs and reasonable attorney's fees for personal injury or damage to property arising from the negligent acts or omissions or willful misconduct of the Vendor, its agents, officers, or employees in the performance of services under this Agreement. Vendor 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 is 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 or its "public employees" at common law or under the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1, et seq.

**24. APPLICABLE LAW.** This Agreement shall be governed by the laws of the State of New Mexico.

**25. CHOICE OF LAW.** This 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 Agreement shall be in the state or federal district courts 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 Agreement is determined to be invalid by a court or department having jurisdiction over the subject matter hereof, such invalidity shall not affect other provisions of the 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 Agreement shall be effective unless express 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 following provisions shall survive termination of this Price Agreement: Delivery & Billing Instructions; Records, Indemnification, Commercial Warranty; Records; 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 business days after being mailed.

**To the County:**

Santa Fe County Attorney's Office  
102 Grant Avenue  
PO Box 276  
Santa Fe, NM 87504-0276  
505-986-6279 (voice)  
505-986-6362 (fax)

**To the Vendor:**

Attn: Gregory Winter, Branch Manager  
United Rentals  
2707 Cerrillos Road  
Santa Fe, NM 87507

Either party may change its representative or address above by written notice to the other in accordance with the terms of this Agreement.

**30. VENDOR'S ADDITIONAL TERMS AND CONDITIONS.** The County acknowledges that the Vendor has rental terms and conditions applicable to Vendor's customers. The Vendor has proposed a RENTAL AGREEMENT ADDITIONAL TERMS AND CONDITIONS, a copy of which is attached hereto as Attachment B, whose terms are acceptable in part but require the removal of other terms and conditions that the County cannot agree to, or that are inapplicable to the County, a governmental entity. The County and Vendor agree to modify the terms and conditions in Attachment B as follows. All other terms and conditions not specifically modified herein are incorporated as part of this Price Agreement.

Article 3. *INDEMNITY/ HOLD HARMLESS*, is deleted in its entirety.

Article 6. *USE OF EQUIPMENT*, the third sentence in subpart A. is deleted in its entirety.

Article 6. *USE OF EQUIPMENT*, subpart B. is deleted in its entirety.

Article 7. *DISCLAIMER OF WARRANTIES*. is deleted in its entirety.

Article 9. *RETURN OF EQUIPMENT/ DAMAGED & LOST EQUIPMENT*, is deleted in its entirety. **SEE 2.E.2, 2.E.4, 2.E.5 (Goods to be Provided); 3.A (Payment); 5 (Expiration of Rental Period); 6.E (Cancellation); 7.C (Termination) of Price Agreement No. 2016-0199C-PW/RM.**

Article 11. *LATE RETURN*, subpart "(c)" is deleted in its entirety.

Article 13. *DEPOSIT*, is deleted in its entirety.

Article 14. *PAYMENT*, is deleted in its entirety.

Article 17. *DEFAULT*, the provision "and hereby waives all claims for damages and losses physical and pecuniary, caused thereby and shall pay all cost and expenses incurred by United in retaking and repossessing;" is deleted.

Article 18. *CUSTOMER'S INSURANCE COVERAGE*, is deleted in its entirety.

Article 19. *NO ASSIGNMENT, LENDING OR SUBLETTING*, the third sentence is deleted.

Article 20. *ENTIRE AGREEMENT/ ONLY AGREEMENT*, is deleted in its entirety.

Article 21. *ORDER OF PRECEDENCE*, is deleted in its entirety.

Article 22. *OTHER PROVISIONS*, subparts B and D are deleted in their entirety.



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

**SANTA FE COUNTY**

Miguel M. Chavez  
Miguel M. Chavez, Chair  
Santa Fe Board of County Commissioners

Date: 7/12/16

**ATTESTATION:**

Geraldine Salazar  
Geraldine Salazar  
Santa Fe County Clerk

Date: 7-12-2016



**APPROVED AS TO FORM**

Gregory S. Shaffer  
Gregory S. Shaffer  
Santa Fe County Attorney

Date: 4-30-16

**FINANCE DEPARTMENT**

Carol H. Jaramillo  
Carol H. Jaramillo  
Finance Director

Date: 7/5/16

**VENDOR – United Rentals (North America), Inc.**

Gregory Winter 6-28-16  
Signature

\_\_\_\_\_  
Gregory Winter, Branch Manager

## Attachment A Listing of Prices

### Agreement No. 2016-0199C-PW/RM LEASE & SHORT TERM RENTAL OF HEAVY EQUIPMENT UNITED RENTALS

RENTAL EQUIPMENT:	RENTAL RATES:		
	DAILY	WEEKLY	MONTHLY
1. Wheel loader, 3-4 Cu. Yd.	670.47	1,684.63	4,427.58
2. Backhoe loader, extendahoe, enclosed cab, 4x4, 91 HP or better	377.49	1,127.83	2,546.23
3. Broom sweeper, enclosed cab, 8 foot brush	257.00	1,034.00	1,897.00
4. Excavator, 65 HP or better 12' dig depth or better	639.00	1,606.00	3,224.00
5. Double drum steel wheel, 2-4 ton with spray bar system	259.00	638.00	1,277.00
6. Double drum steel wheel, 4-6 ton with spray bar system	399.00	1,163.00	2,326.00
7. Pneumatic roller, 8-12 ton with spray bar system	N/A	N/A	N/A
8. Motor Grader, 200 HP or better	N/A	N/A	N/A
9. Dozer 130 HP or better	N/A	N/A	N/A
10. Skid steer loader, 80 HP or better	350.00	997.00	2,419.00
11. Tractor scraper, 18 Cu. Yd. pan self-loading	N/A	N/A	N/A
12. Asphalt reclaimers 350 HP or better	N/A	N/A	N/A

1. **DEFINITIONS.** "Rental Agreement" means this Rental Agreement, including the front and back pages of the Rental Agreement, as well as any Addendum attached hereto. "United" means the corporate subsidiary of United Rentals, Inc. identified on the first page of this Rental Agreement from whom the Customer has rented the Equipment. "Equipment" means any one or more of the items identified as such on the first page of this Rental Agreement and any accessories, attachments or other similar items delivered to Customer, including, but not limited to air hoses, electric cords, blades, welding cables, liquid fuel tanks and nozzles. "Customer" means the person or entity identified as such on the first page of this Rental Agreement or any representative, agent, officer or employee of Customer. "Store Location" means the United address in the upper left-hand corner on the first page of this Rental Agreement. "Rental Period" means the period of time between the "Date Out" and "Date Due In," set forth on the first page of this Rental Agreement, except that the Rental Period may terminate earlier as provided in Sections 17 and 22 hereof.

2. **AUTHORITY TO SIGN.** Any individual signing this Rental Agreement represents and warrants that he or she is of legal age, and has the authority and power to sign this Rental Agreement on their own behalf or for the Customer.

3. **INDEMNITY / HOLD HARMLESS.** TO THE FULLEST EXTENT PERMITTED BY LAW, CUSTOMER AGREES TO INDEMNIFY, DEFEND AND HOLD UNITED, AND ANY OF ITS RESPECTIVE OFFICERS, AGENTS, SERVANTS, OR EMPLOYEES, AND AFFILIATES, PARENTS AND SUBSIDIARIES, HARMLESS FROM AND AGAINST ANY AND ALL LIABILITY, CLAIMS, LOSS, DAMAGE OR COSTS (INCLUDING, BUT NOT LIMITED TO, ATTORNEYS' FEES, LOSS OF PROFIT, BUSINESS INTERRUPTION OR OTHER SPECIAL OR CONSEQUENTIAL DAMAGES, DAMAGES RELATING TO PROPERTY DAMAGE, BODILY INJURY, OR DAMAGES RELATING TO WRONGFUL DEATH) ARISING OUT OF OR RELATED TO THE OPERATION, USE, POSSESSION OR RENTAL OF THE EQUIPMENT. THIS INDEMNITY PROVISION ALSO APPLIES TO ANY CLAIMS ASSERTED AGAINST UNITED BASED UPON STRICT OR PRODUCT LIABILITY CAUSES OF ACTION. HOWEVER, CUSTOMER SHALL NOT BE

OBLIGATED TO INDEMNIFY UNITED FOR THAT PART OF ANY LOSS, DAMAGE OR LIABILITY CAUSED SOLELY BY THE INTENTIONAL MISCONDUCT OR SOLE NEGLIGENCE OF UNITED. IN FURTHERANCE OF, BUT NOT IN LIMITATION OF THE INDEMNITY PROVISIONS IN THIS AGREEMENT, CUSTOMER EXPRESSLY AND SPECIFICALLY AGREES THAT THE FOREGOING OBLIGATION TO INDEMNIFY SHALL NOT IN ANY WAY BE AFFECTED OR DIMINISHED BY ANY STATUTORY OR CONSTITUTIONAL LIMITATION OF LIABILITY OR IMMUNITY CUSTOMER ENJOYS FROM SUITS BY ITS OWN EMPLOYEES. THE DUTY TO INDEMNIFY WILL CONTINUE IN FULL FORCE AND EFFECT NOTWITHSTANDING THE EXPIRATION OR EARLY TERMINATION OF THE CONTRACT.

4. **INSPECTION OF EQUIPMENT.** Customer acknowledges that Customer has inspected the Equipment prior to taking possession thereof, finds it in good working order and repair, and suitable for Customer's needs. Customer further acknowledges that Customer has inspected the propulsion tank of vehicles registered and licensed, or required to be registered and licensed, for use on any highway or public road use, prior to taking possession thereof, and such propulsion tank contained no dyed fuel. Customer is familiar with the proper operation and use of each item of Equipment. Customer has inspected or will inspect all hitches, bolts, safety chains, hauling tongues and other devices and materials used to connect the Equipment to Customer's towing vehicle, if any. Customer acknowledges United is not responsible for any damage to Customer's towing vehicle caused by detachable hitches or mirrors.

5. **LIMITATION OF LIABILITY.** In no event shall (i) United be responsible to Customer or any other party for any loss, damage or injury caused by, resulting from or in any way connected with the Equipment, its operation or its use, United's failure to deliver the Equipment as required hereunder, or United's failure to repair or replace non-working Equipment or (ii) United be liable for any incidental, consequential, punitive or special damages. Customer acknowledges and assumes all risks inherent in the operation, use and possession of the Equipment from the time the Equipment is delivered to Customer until the Equipment is returned to United and will take all

necessary precautions to protect all persons and property from injury or damage from the Equipment.

**4. USE OF EQUIPMENT.**

A. Customer will not use or allow anyone to use the Equipment: (a) for an illegal purpose or in an illegal manner; (b) without a license, if required under any applicable law, or (c) who is not qualified to operate it. Customer agrees, at Customer's sole expense, to comply with all applicable municipal, state, and federal laws, ordinances and regulations (including O.S.H.A. and the Internal Revenue Code) which may apply to the use of the Equipment. Customer shall not insert, or permit to be inserted, any dyed fuel into the propulsion tank of vehicles registered and licensed, or required to be registered and licensed, for use on any highway or other public road. **CUSTOMER AGREES TO DEFEND, INDEMNIFY AND HOLD UNITED HARMLESS FROM ALL FINES, PENALTIES AND COSTS INCURRED BY UNITED DUE TO DYED FUEL BEING INTRODUCED INTO THE PROPULSION TANK OF SUCH VEHICLES.** Customer agrees to check filters, oil, fluid levels and tire air pressure, to clean and visually inspect the Equipment daily and to immediately notify United when Equipment needs repair or maintenance. Customer acknowledges that United has no responsibility to inspect the Equipment while it is in Customer's possession. United shall have the right to replace the Equipment with other similar equipment at any time and for any reason.

B. **IN CALIFORNIA ONLY:** If any of the Equipment is power operated or power-driven excavating or boring equipment, it is the sole responsibility of Customer to follow the requirements of the regional notification center law pursuant to Article 2 (commencing with Section 4216) of Chapter 3.1 of Division 5 of Title 1 of the Government Code. By signing this Rental Agreement, Customer accepts all liabilities and responsibilities contained in the California regional notification center law.

**7. DISCLAIMER OF WARRANTIES.** UNITED MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AS TO THE MERCHANTABILITY OF THE EQUIPMENT OR ITS FITNESS FOR ANY PARTICULAR PURPOSE. THERE IS NO WARRANTY THAT THE EQUIPMENT IS SUITED FOR CUSTOMER'S INTENDED USE, OR THAT IT IS FREE FROM DEFECTS. EXCEPT AS MAY BE SPECIFICALLY SET FORTH IN THIS RENTAL AGREEMENT, UNITED DISCLAIMS ALL WARRANTIES, EITHER EXPRESS OR IMPLIED, MADE IN CONNECTION WITH THIS RENTAL TRANSACTION.

**8. MALFUNCTIONING EQUIPMENT.** Should the Equipment be involved in an accident, become unsafe, malfunction or require repair, Customer shall immediately cease using the Equipment and immediately notify United. If such condition is the result of normal operation, United will repair or replace the Equipment with similar Equipment in working order, if such replacement Equipment is available. United has no obligation to repair or replace Equipment rendered inoperable by misuse, abuse or neglect. Customer's sole remedy for any failure or defect in Equipment shall be the termination of any rental charges accruing after the time of failure. Customer must return the Equipment to the Store Location within 24 hours from the time of defect in order to terminate rental charges.

**9. RETURN OF EQUIPMENT / DAMAGED & LOST EQUIPMENT.** At the expiration of the Rental Period, Customer will return the Equipment to the Store Location during United's regular business hours, such Equipment to be in the condition and repair as when delivered to Customer, subject to reasonable wear and tear, as defined below. In the event that United has agreed to pick up the Equipment from Customer, Customer shall notify United in writing that the Equipment is "off rent" and shall obtain an "off rent" confirmation number from United. United shall endeavor to pick up the Equipment within a commercially reasonable period of time after the Equipment is called "off rent." Customer shall be liable for all damages to or loss of the Equipment from the time the Equipment leaves the Store Location until the Equipment is (a) returned to the Store Location, including any damage during transit to or from Customer; or (b) picked up by United after issuance of an "off rent" confirmation number. In the case of the loss or destruction of any Equipment, or inability or failure to return same to United for any reason whatsoever, Customer will pay United the then full replacement list value of the Equipment together with the full rental rate as specified until such Equipment is replaced. If the Equipment is returned in a damaged or excessively worn condition, Customer shall pay United the reasonable cost of repair and pay rental on the Equipment at the regular rental rate until all repairs have been completed. United shall be under no obligation to commence repair work until Customer has paid to United the estimated cost therefor.

**10. REASONABLE WEAR AND TEAR.** Reasonable wear and tear of the Equipment shall mean only the normal deterioration of the Equipment caused by ordinary and reasonable use on a one shift (8 hours per day, 40 hours per week) basis. The following shall not

be deemed reasonable wear and tear: (a) damage resulting from lack of lubrication, insertion of improper fuel, or maintenance of necessary oil, water and air pressure levels; (b) except where United expressly assumes the obligation to service or maintain the Equipment, any damage resulting from lack of servicing or preventative maintenance suggested in the manufacturer's operation and maintenance manual; (c) damage resulting from any collision, overturning, or improper operation, including overloading or exceeding the rated capacity of the Equipment; (d) damage in the nature of dents, bending, tearing, staining, corrosion or misalignment to or of the Equipment or any part thereof; (e) wear resulting from use in excess of shifts for which rented; and (f) any other damage to the Equipment which is not considered ordinary and reasonable in the equipment rental industry. Repairs to the Equipment shall be made to the reasonable satisfaction of United and in a manner which will not adversely affect the operation, manufacturer's design or value of the Equipment

11. **LATE RETURN.** Customer agrees that if the Equipment is not returned by the end of the Rental Period, United, in its sole discretion, may require Customer to do any of the following: (a) continue to pay the rental rate(s) applicable to the Equipment as specified on the front page of this Rental Agreement, (b) for periods less than 24 hours, pay the full daily rental rate applicable to the Equipment, or (c) pay any increased rental rate(s) in effect at the time of, or after, the expiration of the Rental Period.

12. **RENTAL PERIOD / CALCULATION OF CHARGES.** Rental charges commence when the Equipment leaves the Store Location and end when the Equipment is returned to the Store Location during United's regular business hours. Rental charges do not include the cost of fuel, any applicable taxes, cost of delivery and pick-up of the Equipment, transportation surcharges, environmental charges or other miscellaneous charges. In the event that United has agreed to pick up the Equipment from Customer, Customer shall notify United in writing that the Equipment is "off rent" and obtain an "off rent" confirmation number from United, at which time rental charges shall no longer be assessed, unless otherwise provided herein. Rental charges accrue during Saturdays, Sundays and Holidays. Rental rates are for normal usage based on an 8 hour day, 40 hours per week and 160 hours per 4 week period. On power equipment, operations in excess of one shift will be as follows: 1.5 times the rental charges for double shift and 2 times the rental charges for triple shift. Customer will truthfully and accurately certify to United the number of shifts the Equipment was operated. Customer's right to

possess the Equipment terminates on the expiration of the Rental Period and retention of possession after this time is a material breach of this Rental Agreement. **TIME IS OF THE ESSENCE.**

13. **DEPOSIT.** In addition to securing the payment of rental charges hereunder, Customer agrees that any rental deposit shall be deemed to be a guarantee by Customer of the full and complete performance of each and all of the terms, covenants, and agreements to be performed by Customer hereunder, and in the event of any breach by Customer, the deposit will be credited against any damages, cost or expense incurred by United as a result of the breach.

14. **PAYMENT.** All amounts due hereunder shall be payable in full upon receipt of invoice by Customer. Customer acknowledges that timely payment of rental charges is essential to United's business operations and it would be impractical and extremely difficult to fix the actual damages caused by late payment. Customer and United agree that there shall be added to all past due rental charges a late payment fee equal to the lesser of 2% per month (24% per annum) on any such payments outstanding after 30 days, or the maximum amount allowed by applicable law.

15. **TITLE / NO PURCHASE OPTION / NO LIENS.** This Rental Agreement is not a contract of sale, and title to the Equipment shall at all times remain with United. Unless covered by a specific supplemental agreement signed by United, Customer has no option or right to purchase the Equipment. Customer shall keep the Equipment free and clear of all mechanics and other liens and encumbrances.

16. **TIRE AND TUBE REPAIR OR REPLACEMENT.** Repair or replacement of tires and tubes is the responsibility of Customer, and is not included in the rental rate.

17. **DEFAULT.** Customer shall be deemed to be in default should Customer in any way fail to pay any amount when due hereunder, or to perform, observe or keep any provision of this Rental Agreement, or should Customer become "Insolvent" (as defined herein), or should United anticipate that Customer may become Insolvent or that Customer may otherwise become in default. If Customer is in default, United may do any one or more of the following: (a) terminate the Rental Period; (b) declare the entire amounts due hereunder immediately due and payable and commence legal action therefor; (c) cause United's employees or agents, with notice but without legal process, to enter upon Customer's property

and take all action necessary to repossess the Equipment, and Customer hereby consents to such entry, re-taking and re-possession and hereby waives all claims for damages and losses, physical and pecuniary, caused thereby and shall pay all costs and expenses incurred by United in retaking and repossessing; or (d) pursue any other remedies available by law. Customer shall be considered "Insolvent" if Customer (i) shall generally not pay, or shall be unable to pay, or shall admit its inability or anticipated inability to pay its debts as such debts become due; or (ii) shall make an assignment for the benefit of creditors, or petition or apply to any tribunal for the appointment of a custodian, receiver, or trustee for it or a substantial part of its assets; or (iii) shall commence any proceeding under any bankruptcy, reorganization, arrangement, readjustment of debt, dissolution, or liquidation law or statute of any jurisdiction, whether now or hereafter in effect; or (iv) shall have had any such petition or application filed or any such proceeding commenced against it in which an order for relief is entered or an adjudication or appointment is made; or (v) shall take any action indicating its consent to, approval of, or acquiescence in any such petition, application, proceeding, or order for relief or the appointment of a custodian, receiver, or trustee for all or any substantial part of its properties.

#### **12. CUSTOMER'S INSURANCE COVERAGE.**

Customer's Insurance Coverage. Customer agrees to maintain and carry, at Customer's sole cost, the following insurance: (a) commercial auto liability insurance with at least a per occurrence limit of \$2 million; (b) commercial general liability insurance ("CGL") (providing coverage equal to or greater than the standard ISO CG 00 01 12 04 form) with limits of insurance not less than \$2 million per occurrence and \$4 million in the aggregate; and (c) property insurance for the full replacement cost of the Equipment, including coverage for all risks of loss or damage to the Equipment. Customer shall obtain insurance policies that provide, or are endorsed to provide, that all insurance required hereunder is primary and non-contributory to any other insurance maintained by United. United shall be named as an additional insured for liability insurance and, if applicable, additional loss payee for property insurance. Any deductibles or self-insured retentions shall be the sole responsibility of the Customer. All insurance required by this agreement shall include a waiver of rights of recovery against United or its insurers by the Customer and its insurers, as well as a waiver of subrogation against United or its insurers. The policies required hereunder shall provide that United must receive not less than 90 days' notice prior to any cancellation.

FOR RENTAL OF EQUIPMENT NOT LICENSED

FOR ROAD USE CUSTOMER MUST EITHER (i) ELECT TO NAME UNITED AS LOSS PAYEE EVIDENCING PROPERTY INSURANCE COVERAGE, OR (ii) ELECT TO PURCHASE THE RENTAL PROTECTION PLAN.

**13. NO ASSIGNMENT, LENDING OR SUBLETTING.** Customer shall not sublease, subrent, assign or loan the Equipment without first obtaining the written consent of United, and any such action by Customer, without United's written consent, shall be void. Customer agrees to use and keep the Equipment at the job site set forth on the first page of this Rental Agreement unless United approves otherwise in writing. United may at any time, without notice to Customer, transfer or assign this Rental Agreement or any Equipment or any moneys or other benefits due or to become due hereunder.

#### **14. ENTIRE AGREEMENT / ONLY AGREEMENT.**

The Rental Agreement, including the front and back pages of the Rental Agreement, and any Addendum attached hereto, represent the entire agreement between Customer and United with respect to the Equipment and the rental of the Equipment. There are no oral or other representations or agreements not included herein. None of United's rights or Customer's rights may be changed and no extension of the terms of this Rental Agreement may be made except in writing, signed by both United and Customer. Any use of Customer's purchase order number on this Rental Agreement is for Customer's convenience only and terms and conditions, whether oral or written, that are different or inconsistent with the terms contained herein are hereby rejected by United.

**15. ORDER OF PRECEDENCE.** The terms and conditions of this Rental Agreement shall control over any conflicting preprinted terms and conditions contained in Customer's purchase order or similar documents.

#### **16. OTHER PROVISIONS.**

A. Any failure of United to insist upon strict performance by Customer of any terms and conditions of this Rental Agreement shall not be construed as a waiver of United's right to demand strict compliance. Customer has carefully reviewed this Rental Agreement and waives any principle of law which would construe any provision hereof against United as the draftsman of this Rental Agreement.

B. Customer agrees to pay all reasonable costs of collection, court, attorneys' fees and other expenses incurred by United in the collection of any charges due

under this Rental Agreement or in connection with the enforcement of its terms.

C. Customer shall pay the rental charge(s) without any offsets, deductions or claims.

D. The federal and state courts in the county in which the Store Location is located shall have exclusive jurisdiction over all matters relating to this Rental Agreement. **TRIAL BY JURY IS WAIVED.** In order to effect service of process on United, please contact the Secretary of State Corporations Division or the equivalent office in your state to obtain the name of the registered agent and the registered office address that is on file with the Secretary of State for United. United shall be entitled to decrees of specific performance (without posting bond or other security) in addition to such other remedies as may be available.

E. United shall have the right to immediately repossess the Equipment, without any liability to Customer, in the event of (i) permanent closure of the Store Location or (ii) declaration of any emergency, disaster or similar situation by any federal, state or local government or (iii) as otherwise set forth in this Rental Agreement

**CRIMINAL WARNING:** The use of false identification to obtain Equipment or the failure to return the Equipment by the end of the Rental Period may be considered a theft subject to criminal prosecution pursuant to applicable criminal or penal code provisions.

