

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 **Wagner Equipment Company**, 4000 Osuna Road NE, Albuquerque, NM 87109, 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. 2016-0199D-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 Using Department will sign Vendor's form titled "Rental/ Purchase Agreement," a copy of which is attached hereto as Attachment B, solely as acknowledgment of a delivery of an item received from the Vendor pursuant to this Price Agreement. By signing the form, the County acknowledges delivery only. Any reference in the form to other terms and conditions which are not contained in this Price Agreement are not binding on the County and do not pertain to this Price Agreement. The item's

rental price, item specifications, and all other terms and conditions of the County's procurement of the items that are the subject of this Agreement, are all governed by the terms of this Price Agreement and no other document or agreement, including Vendor's Rental/Purchase Agreement. The County's signature on the Vendor's Rental/Purchase Agreement form does not waive or nullify the Using Department's right to reject delivered items as provided herein.

2. 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.
3. 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.
4. Whenever the Department does not accept any item and returns it to the Vendor, all related documentation furnished by the Vendor shall be returned.
5. 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.
6. 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 item 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 four years, unless earlier terminated. There shall not be any automatic renewal of the term of this Price Agreement.

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.

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 WARRANTIES. To the extent permitted and so long as no event of default has occurred and is continuing, 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.
- B. All equipment covered by this Price Agreement shall conform to the specifications, samples or other descriptions furnished or adopted by the County, and shall be fit for the purpose for which rented, of best quality and workmanship and free from all defects. 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.

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 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 written 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.

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. The 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 cost of any kind, including attorney's fees for personal injury or damage to property arising from the acts or omissions of the Vendor, its agents, officers, employees, or sub-vendors. The 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:

Wagner Equipment Company
Attn: Carlos Rede, Sales
4000 Osuna Road NE
Albuquerque, NM 87109
(505) 345-8411

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

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

SANTA FE COUNTY


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


Date

ATTESTATION:

Geraldine Salazar 7-12-2016
Geraldine Salazar
Santa Fe County Clerk

Date



APPROVED AS TO FORM:

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

6-15-16
Date

FINANCE DEPARTMENT APPROVAL

Carole H. Jaramillo 6/28/16
Carole H. Jaramillo
Santa Fe County Finance Director

Date

VENDOR - Wagner Equipment Company

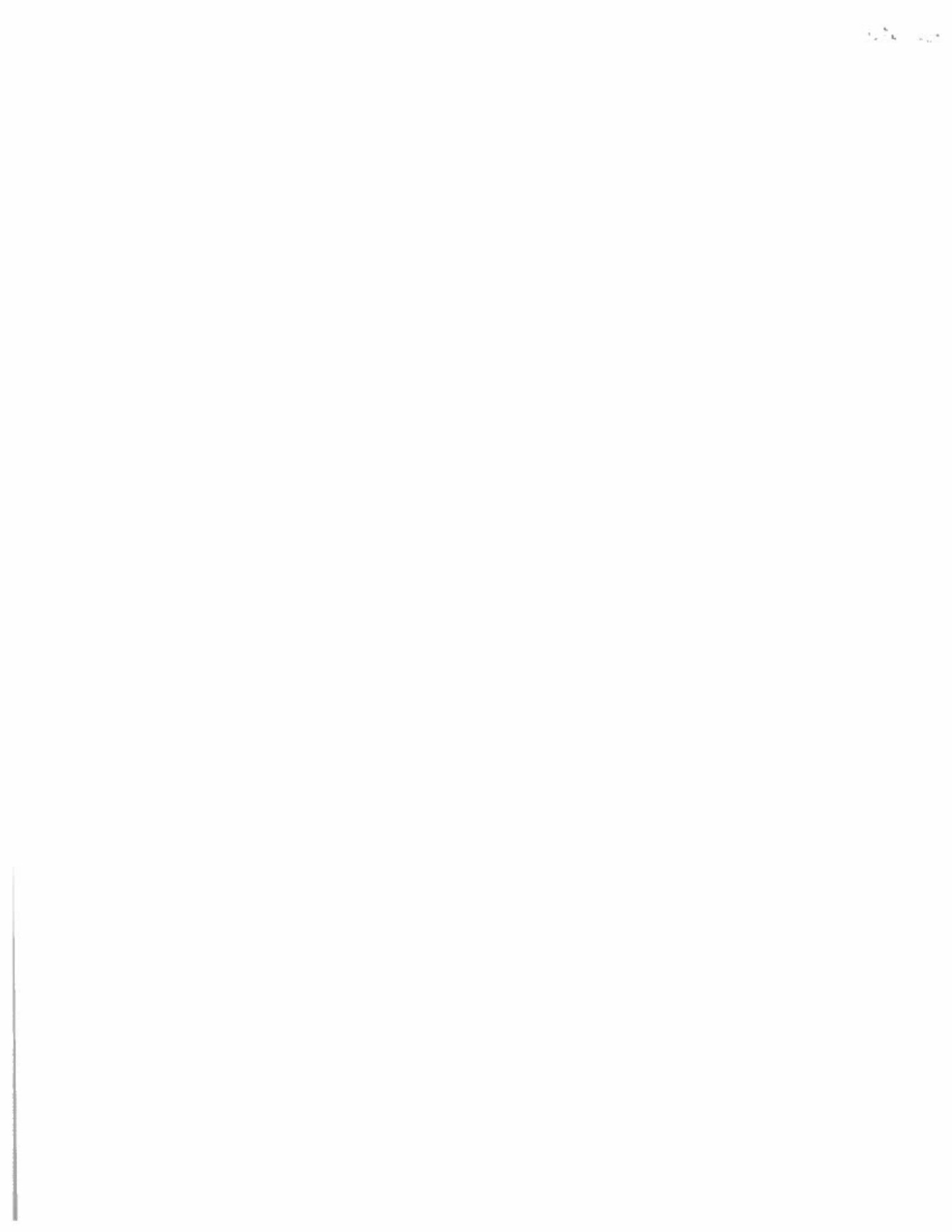
Carlos Rene - Sales
Signature
CARLOS RENE - SALES
Print Name and Title

6-22-16
Date

Attachment A Listing of Prices

Agreement No. 2016-0199D-PW/ RM LEASE & SHORT TERM RENTAL OF HEAVY EQUIPMENT WAGNER EQUIPMENT COMPANY

RENTAL EQUIPMENT:		RENTAL RATES:		
	DESCRIPTION	DAILY	WEEKLY	MONTHLY
1.	Wheel loader, 3-4 Cu. Yd.	650.00	1,825.00	5,100.00
2.	Backhoe loader, extendahoe, enclosed cab, 4x4, 91 HP or better	350.00	825.00	2,375.00
3.	Broom sweeper, enclosed cab, 8 foot brush	250.00	880.00	2,100.00
4.	Excavator, 65 HP or better 12' dig depth or better	425.00	1,485.00	3,700.00
5.	Double drum steel wheel, 2-4 ton with spray bar system	225.00	630.00	1,640.00
6.	Double drum steel wheel, 4-6 ton with spray bar system	280.00	745.00	1,980.00
7.	Pneumatic roller, 8-12 ton with spray bar system	400.00	1,000.00	2,750.00
8.	Motor Grader, 200 HP or better	1,000.00	3,000.00	7,500.00
9.	Dozer 130 HP or better	750.00	2,080.00	5,800.00
10.	Skid steer loader, 80 HP or better	265.00	920.00	2,300.00
11.	Tractor scraper, 18 Cu. Yd. pan self-loading	2,000.00	7,500.00	18,000.00
12.	Asphalt reclaimer 350 HP or better	3,400.00	9,500.00	26,650.00



MAIN OFFICE	DENVER, CO	GRAND JUNCTION, CO	DURANGO, CO	PUEBLO, CO	HAYDEN, CO	BURLINGTON, CO (Ag Sales)
	(303) 739-3000	(970) 242-2834	(970) 259-2001	(719) 544-4433	(970) 276-3781	(719) 346.7880

RENTAL/PURCHASE AGREEMENT

THIS AGREEMENT IS SUBJECT TO THE TERMS AND CONDITIONS BELOW AND ON THE REVERSE SIDE HEREOF, WHICH ARE PART OF THIS AGREEMENT:

#REF!	#REF!	Social Security No.
Lessee	Customer Contact	Federal Tax No.
		#REF!
		Customer Phone

BUSINESS ADDRESS

PROJECT NAME & ADDRESS

#REF!

#REF!

STREET CITY CNTY STATE

OWNER/GENERAL

Hereby enter into a rental agreement to lease from WAGNER EQUIPMENT CO., hereinafter called the Company or Lessor, the following equipment:

MAKE #REF!
MODEL #REF!
SERIAL NO. #REF!
STOCK NO. #REF!
To be used at or near _____
City _____
County _____ State _____

ON THE FOLLOWING TERMS: (All Rental Equipment F.O.B. Wagner Equipment Co. Yard)

1) For a term of _____ 28 day periods commencing the _____ day of _____

2) For the rental of \$ _____ Per 28 day period (plus taxes)

3) Additional Terms:

A. Lessee agrees to pay an additional rental payment of \$ _____ for each hour in excess of _____ hours, equipment usage time in any 28 consecutive day period.

In the absence of an overtime rate, overtime will be charged at 1/176th of the monthly rate for each hour's use in excess of 176 hours in any one 28 consecutive day period.

B. Tire wear (if applicable) will be charged at the rate of \$ _____ per 1/32 inch of wear per tire upon return.

C. In the event of subsequent purchase of the unit, rental interest will be calculated at _____ % of the original value of the machine for any 28 day period within which the rental payment is received within ten days of the end of the rental period. Rental interest for all other 28 day periods will be charged at _____ % of the original value of the machine.

D. In the event that this machine is returned to Wagner Equipment Co. before the guaranteed rental period is completed, the rental rate will revert to \$ _____ per 28 day period plus applicable taxes.

Equipment Value: \$		\$0.00
AGREED ITEMIZED CHARGES		
Rental		\$0.00
Wagner		
Customer	Delivery	\$0.00
Return Charge		\$0.00
Physical Damage Waiver %	0.00%	\$0.00
Sales Tax	City (Incl Delv)	0.00%
	County	0.00%
	RTD	0.00%
	State	0.00%
SMM Tax %	2.00%	\$0.00
BALANCE DUE		\$0.00
Payment Attached	Yes No	

PHYSICAL DAMAGE WAIVER

Renter must elect A. or B. by signing below.

A. Renter elects to purchase physical damage liability waiver from Owner on the machine retail value of _____ at a rate of _____

of the applicable rental period rental rate or a minimum of \$10.00. A deductible of \$5000.00 applies (see PHYSICAL DAMAGE WAIVER on reverse side.)

B. Renter declines physical damage waiver and will cover the machine retail value of _____ by providing his/her own all risks insurance coverage. (See INSURANCE on reverse side.)

CUSTOMER AGREES TO PROMPTLY ADVISE THE SALESMAN IF THE UNIT IS MOVED TO ANOTHER PROJECT AND TO PROVIDE ALL NECESSARY INFORMATION REGARDING ANY CHANGE IN LOCATION.

LESSOR: By: _____ Date: _____
LESSEE: By: _____ Date: _____

SALESMAN PHONE # _____

2020-2021

2020-2021

2020-2021