



City of Sacramento City Council

915 I Street, Sacramento, CA, 95814

www.CityofSacramento.org

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Meeting Date: 8/23/2011

Report Type: Consent

Title: Lower American River Salmonid Contradts: Spawning Gravel Augmentation Project (G14000200)

Report ID: 2011-00714

Location: Citywide

Recommendation: Adopt a Resolution authorizing the City Manager or his designee to execute the necessary contracts and purchase orders for equipment rental with: 1) Holt of California dba The CAT Rental Store in the amount of \$94,885, plus \$7,000 for unanticipated damages and wear and tear to equipment and 2) with Hertz Equipment Rental Corporation in the amount of \$5,152, plus \$500 to cover unanticipated damages and wear and tear to equipment, for work associated with the Lower American River Salmonid Spawning Gravel Augmentation Project being administered by the City-County Office of Metropolitan Water Planning.

Contact: Sarah Foley, Program Manager, (916) 808-1997, Department of Utilities

Presenter: NOne

Department: Department Of Utilities

Division: C/Co Ofc Water Planning

Dept ID: 14001911

Attachments:

- 1-Description/Analysis
- 2-Background
- 3-Resolution
- 4-UnExecuted Contract Covert Holts
- 5-Contract for Holt
- 6-UnExecuted Contract Cover Hertz
- 7-Contract Hertz

City Attorney Review

Approved as to Form
Joe Robinson
8/11/2011 2:49:14 PM

City Treasurer Review

Prior Council Financial Policy Approval or
Outside City Treasurer Scope
Russell Fehr
8/9/2011 1:29:54 PM

Approvals/Acknowledgements

Department Director or Designee: Marty Hanneman - 8/11/2011 8:50:59 AM

Assistant City Manager: John Dangberg - 8/11/2011 11:49:03 AM



Description/Analysis

Issue: The CCOMWP has partnered with the U.S. Bureau of Reclamation, U.S. Fish and Wildlife (FWS), California Department of Fish and Game and Sacramento County Regional Parks on the Lower American River Salmonid Spawning Gravel Augmentation Project (G14000200) (Project). The purpose of the Project is to increase the availability of spawning gravel and rearing habitat for fall-run Chinook salmon and steelhead trout in the lower American River. This report recommends approval of contracts for equipment rental necessary to perform the Project. Pursuant to the Interagency Agreement that created the CCOMWP, the City's procedures are followed for all CCOMWP contracting activities.

Policy Considerations: This Project will aid fish habitat restoration efforts for the Lower American River, consistent with goals of the Water Forum Agreement. One recommended contract is with the low bidder; and the other contract is with the only bidder for rental of the specific equipment necessary to perform the Project.

Environmental Considerations:

California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA):

The Project is subject to review pursuant to both CEQA and NEPA. The Bureau of Reclamation is responsible for NEPA review. The Bureau prepared a Finding of No Significant Impact (FONSI) for the Project. The NEPA review process does not require action by the City.

The Project is exempt from CEQA review pursuant to CEQA Guidelines Section 15333, Small Restoration Projects. The project does not exceed five acres in size, will be undertaken for the purpose of restoring habitat for fish, would have no significant impact on endangered, rare or threatened species or their habitat, and would not otherwise result in any significant effects on the environment.

Sustainability Considerations: Implementation of the Project is consistent with the City of Sacramento's Sustainability Master Plan Goals:

Sustainability Goal No. 7 - Parks, Open Space and Habitat Conservation is promoted by the second co-equal objective of the Water Forum Agreement "To preserve the fishery, wildlife, recreational, and aesthetic values of the lower American River."

Commission/Committee Action: None

Rationale for Recommendation: Approval of equipment rental contracts with the low bidders will provide equipment needed to implement the Project. Replenishing gravel in the lower American River will improve spawning and rearing habitat for anadromous fish.

Financial Considerations: This Project has no impact on the City of Sacramento's General Fund. On August 16, 2011 the Sacramento City Council authorized the execution of Funding Agreement C2010-0694-1 with the United States Fish and Wildlife Service for an additional \$253,773 in federal funding for the Project, bringing the total funding for the Project to date to \$1,683,468.00. There are sufficient Habitat Management Element funds (Fund 7104) in the project (G14000200) for rental of this equipment in an amount not to exceed (1) \$107,537 for the equipment rental contract with Holt of California (includes \$7,000 funding contingency to cover unanticipated damages and wear and tear to equipment), and (2) \$5,652 for the equipment rental contract with Hertz Equipment Rental Corporation (includes \$500 funding contingency to cover unanticipated damages and wear and tear to equipment).

Emerging Small Business Development (ESBD): Neither firm is certified by the City of Sacramento as an Emerging Business.

Background Information:

The United States Bureau of Reclamation (Reclamation) operates facilities that regulate flows in the lower American River, which contains populations of anadromous Chinook salmon and threatened steelhead trout. Flow regulation and stream channel manipulations have modified anadromous salmonid habitat in the American River. Specifically, gravel is regularly lost from spawning sites on the river because of the construction and operation of Central Valley Project dams, bank protection projects, and other actions that reduce the availability of spawning gravel and rearing habitat in the American River downstream of Nimbus Dam.

In 2006 Reclamation approached the CCOMWP, on behalf of the Sacramento Region Water Forum, to assist Reclamation and other project partners in carrying out the Project. Assistance from the CCOMWP includes project planning, permitting, inter-agency coordination, and contracting. Pursuant to the Interagency Agreement that created the CCOMWP, the City's procedures are followed for all CCOMWP contracting activities. This is the fifth year of this project.

Reclamation has chosen to utilize mining dredgings at Sailor Bar in the American River Parkway for this Project. These dredgings were identified as having significant historical value during Reclamation's environmental analysis for the Project because of the type of mining activity that produced the dredgings. Project partners have developed an interpretive exhibit about historic mining activities in the Parkway that will mitigate for the use of these dredgings. This mitigation is the subject of a Memorandum of Agreement (MOA) between Reclamation, County Parks and SHPO. The CCOMWP, on behalf of the Water Forum, has signed this MOA as a concurring party.

This Project is consistent with the goals of the Fisheries and Instream Habitat Plan, which is incorporated into the River Corridor Management Plan (RCMP). The RCMP is a coordinated approach to management of the lower American River that was developed and endorsed by 38 organizations and local governments in 2002, including the City of Sacramento. The RCMP serves as the implementation vehicle for the Habitat Management Element (HME) of the Water Forum Agreement, of which the City of Sacramento is a signatory. The HME implements one of the Agreement's co-equal objectives, which is to preserve the fishery, wildlife, recreational and aesthetic values of the lower American River.

The Request for Bids was advertised on the City of Sacramento online Bid Center beginning on July 1, 2011.

In addition to advertising this opportunity on the City of Sacramento online Bid Center, telephone calls were made to the following vendors notifying them of the bid opportunity:

- Hertz Equipment Rental
- I-5 Rentals
- Ford Construction
- Holt of California
- Volvo Rents

Two bids were received and opened on July 14, 2011, from Holt of California (dba The CAT Rental Store) and Hertz Equipment Rental. The bid results are summarized in the table below.

Bid Results – Bid No. B12-14001911-01

Item	Quantity	Hertz Equipment Rental Corporation	Holt of California Db a The CAT Rental Store
A. CAT D8T or D9 dozer with biodegradable fluids for in-river work (Hi Tracked).*	1	No Bid	\$22,978.13
B. CAT 966 front end loader with a 5 cubic yard capacity toothed bucket	1	No Bid	\$10,129.75
C. CAT 938 front end loader with a 2.5 to 3.0 cubic yard toothed bucket	1	No Bid	\$5,048.75
D. CAT 325 or 330 tracked excavator with grousers and a 60-inch to 72-inch wide toothed bucket	1	No Bid	\$10,337.50
E. 2,000 gallon capacity, or larger, water truck with sprayers for dust control	1	\$1,708.92	\$2,355.00
F. 10-wheel end dump truck with 10 to 12 yard capacity rock bed	1	\$3,442.61	\$4,725.50
G. 25-ton off road end dump trucks	2	No Bid	\$28,555.00
H. CAT 950 or JD 644J front end loaders with a 5 cubic yard capacity toothed bucket with biodegradable fluids for in-river work.*	2	No Bid	\$14,752.06
I. Portable toilet with weekly servicings	1	No Bid	\$96.98
J. CAT 314 or 315 tracked excavator with an 18 to 24 inch bucket with a thumb and biodegradable fluids for in-river work.*	1	No Bid	\$2,986.33
Total		\$5,151.53	\$101,965.00

* Pressure washing of in-river equipment included in bid to avoid the spread of invasive species.



RESOLUTION NO.

Adopted by the Sacramento City Council

AWARDING EQUIPMENT RENTAL CONTRACTS FOR LOWER AMERICAN RIVER SALMONID SPAWNING GRAVEL AUGMENTATION PROJECT

BACKGROUND

- A. The United States Bureau of Reclamation (Reclamation) operates facilities that regulate flows in the lower American River, which contains populations of anadromous Chinook salmon and threatened steelhead trout. Gravel is regularly lost from spawning sites on the river as a result of the construction and operation of Central Valley Project dams, bank protection projects, and other actions that reduce the availability of spawning gravel and rearing habitat in the American River downstream of Nimbus Dam.
- B. In October 2006 the City of Sacramento entered into a five-year grant funding agreement with Reclamation, on behalf of the City County Office of Metropolitan Water Planning (CCOMWP), for the Lower American River Salmonid Spawning Gravel Augmentation Project ("Project") being administered by the CCOMWP. Reclamation has provided \$1,181,000 for this Project to date. The purpose of the Project is to increase the availability of spawning gravel and rearing habitat for fall-run Chinook salmon and steelhead trout in the lower American River.
- C. Additional funding for the Project has been provided by the United States Fish and Wildlife Service and the County of Sacramento Department of Transportation, bringing the total Project funding to date to \$1,683,468.00.
- D. CCOMWP staff advertised a Request for Bids for equipment rental necessary to perform the Project, and two bids were received and opened on July 14, 2011, from Holt of California, dba The CAT Rental Store, and from Hertz Equipment Rental Corporation.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

- Section 1. The City Manager or his designee is authorized to execute contracts and purchase orders for equipment rental, for work associated with the Lower American River Salmonid Spawning Gravel Augmentation Project, with Holt of California, dba The CAT Rental Store, in an amount not to exceed \$101,885, and with Hertz Equipment Rental Corporation, in an amount not to exceed \$5,652.



Unexecuted Contract/Agreements

- The Unexecuted Contract/Agreement is signed by the other party, is attached as an exhibit to the resolution, and is approved as to form by the City Attorney.

- The Unexecuted Contract/Agreement (Public Project) is NOT signed by the other party, is attached as an exhibit to the resolution, and is approved as to form by the City Attorney.

- The Unexecuted Contract is NOT included as an exhibit to the Resolution because the Agreement(s) is with other another governmental agency and it is not feasible to obtain the other agency's signature prior to Council action (be they denominated Agreements, MOUs, MOAs, etc.); however, the City Attorney approves the forwarding of the report to Council even though the signed agreement is not in hand yet.

- The Unexecuted Contract is NOT included as an exhibit to the resolution because, due to special circumstances, and the City Attorney confirms in writing that it is okay to proceed with Council action even though the signed agreement is not in hand yet.

All unexecuted contracts/agreements which are signed by the other parties are in the Office of the City Clerk before agenda publication.



8900 FRUITRIDGE ROAD, SACRAMENTO, CA 95826
 FRUITRIDGE (916) 381-9940

Rental Reservation

Reservation F75200

Date Out: 09/05/2011 Mon 08:00 AM
 Est. Date In: 10/03/2011 Mon 08:00 AM
 Delivery Date: 09/05/2011 Mon 08:00 AM

Jobsite: SAILOR BAR
 Contact: SARAH
 Phone: 916 808 1997
 ILLINOIS AVE
 FAIR OAKS, CA,
 SAILOR BAR AT THE VERY END OF ILLINOIS
 AVE AT LEVEE

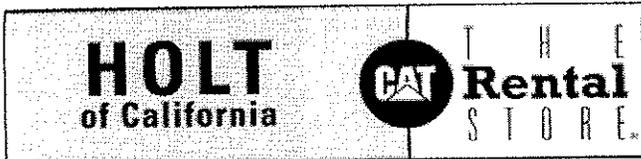
Written By: SVASKO
 Sales Rep: MARK GRIFFIN
 PO #:



Customer: 1140480
 Bill to: CITY OF SACRAMENTO
 CITY-COUNTY MWP
 2831 G STREET STE # 100
 CITY-COUNTY METROPOLITAN WATTER
 SACRAMENTO CA 95816

Signed By:
 Order By: SARAH

QTY	DESCRIPTION	DAY	WEEK	4WEEK
Rental Items				
1.	WL 966 WHEEL LOADER CAB/AIR ID:U52583 SERIAL:0A6D00845 MODEL:966H HRS OUT: 4510.0 HRS ALLOWED: 8/40/160	\$0.00	\$0.00	\$8,900.00
1.	HEX 330/336 EXCAVATOR CAB/AIR ID:U52736 SERIAL:0DKY02460 MODEL:330CL HRS OUT: 3133.0 HRS ALLOWED: 8/40/160	\$0.00	\$0.00	\$9,000.00
1.	WL 938 WHEEL LOADER CAB/AIR ID:CRS10-240 SERIAL:0RTB01556 MODEL:938 HRS OUT: 2061.0 HRS ALLOWED: 8/40/160	\$0.00	\$0.00	\$4,500.00
1.	ARTICULATED DUMP TRUCK 735 ID:M15397 SERIAL:0B1N00624 MODEL:735 HRS OUT: 1849.0 HRS ALLOWED: 8/40/160	\$0.00	\$0.00	\$13,000.00
1.	ARTICULATED DUMP TRUCK 735 ID:M15113 SERIAL:0B1N00509 MODEL:735 HRS OUT: 3150.0 HRS ALLOWED: 8/40/160	\$0.00	\$0.00	\$13,000.00
1.	WL 950 WHEEL LOADER CAB/AIR ID:CRS16830 SERIAL:0JAD00605 MODEL:950 HRS OUT: 74.5 HRS ALLOWED: 8/40/160 \$356.00 LABOR CHARGE FOR BIODEGRADABLE FLUID AND CLEANING CHARGE \$1175.00 FOR COST OF BIODEGRADABLE OIL	\$0.00	\$0.00	\$7,531.00
1.	WL 950 WHEEL LOADER CAB/AIR ID:CRS16831 SERIAL:0JAD00613 MODEL:950 HRS OUT: 7.0 HRS ALLOWED: 8/40/160 \$356.00 LABOR CHARGE FOR BIODEGRADABLE FLUID AND CLEANING CHARGE \$1175.00 FOR COST OF BIODEGRADABLE OIL	\$0.00	\$0.00	\$7,531.00
1.	HEX 314 EXCAVATOR CAB/AIR W/ THUMB ID:CRS15549 SERIAL:0PCA01453 MODEL:314 HRS OUT: 2738.0 HRS ALLOWED: 8/40/160 \$446.00 LABOR CHARGE FOR BIODEGRADABLE FLUID AND CLEANING CHARGE \$477.00 FOR COST OF BIODEGRADABLE OIL RENTAL PERIOD FROM 9.27.11 THROUGH 9.29.11	\$0.00	\$2,618.00	\$0.00
1.	TTT D8 DOZER CAB/AIR ID:U52685 SERIAL:0KPZ01347 MODEL:D8T	\$0.00	\$0.00	\$20,916.00



8900 FRUITRIDGE ROAD, SACRAMENTO, CA 95826
 FRUITRIDGE (916) 381-9940

Rental Reservation

Reservation F75200

Date Out: 09/05/2011 Mon 08:00 AM
 Est. Date In: 10/03/2011 Mon 08:00 AM
 Delivery Date:

Bill to: Customer: 1140480
 CITY OF SACRAMENTO
 CITY-COUNTY MWP
 2831 G STREET STE # 100
 CITY-COUNTY METROPOLITAN WATTER
 SACRAMENTO CA 95816

Jobsite: SAILOR BAR
 Contact: SARAH
 Phone: 916 808 1997
 ILLINOIS AVE
 FAIR OAKS,CA,
 SAILOR BAR AT THE VERY END OF ILLINOIS
 AVE AT LEVEE

Signed By:
 Order By: SARAH

Written By: SVASKO
 Sales Rep: MARK GRIFFIN
 PO #:

QTY	DESCRIPTION	DAY	WEEK	4WEEK
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Rental Items

HRS OUT: 4030.0 HRS ALLOWED: 8/40/160
 \$2566.00 LABOR CHARGE FOR BIODEGRADABLE FLUID AND CLEANING CHARGE
 \$1450.00 FOR COST OF BIODEGRADABLE OIL

1.	TTT D8 DOZER CAB/AIR	\$90.00	\$90.00	\$90.00
	ID:RENT SERIAL:RENT HRS OUT: 222249.0 HRS ALLOWED: 8/40/160 RERENT IS PORTABLE TOILET			

Miscellaneous Items

1	ENVIRONMENTAL FEE		8.00 each	
1	DELIVERY CHARGES		1,855.00 each	
1	PICK UP CHARGES		1,855.00 each	
1	FIRE,THEFT, & VANDALISM		14.00 %	
	State 7.25% County 0.5% Total Tax: 7.75%			

WHEN OPERATED IN CALIFORNIA, THE RENTER/LESSEE IS RESPONSIBLE TO COMPLY WITH THE AIR RESOURCES BOARD VEHICLE IDLING REGULATION FOR IN-USE OFF-ROAD DIESEL UNITS. PLEASE VISIT THE CALIFORNIA AIR RESOURCES BOARD WEB SITE AT WWW.ARB.CA.GOV/MSPROG/ORDIESEL/ORDIESEL.HTM (TITLE 13, SECTION 2449(d)(3))

THE ADDITIONAL TERMS AND CONDITIONS ON THE REVERSE SIDE ARE PART OF AND INCORPORATED IN THIS AGREEMENT. THIS AGREEMENT SHALL NOT BE CONSIDERED ENFORCEABLE UNTIL ACCEPTED BY HOLT AND EXECUTED BY ITS OFFICER. ANY INDIVIDUAL SIGNING THIS AGREEMENT REPRESENTS AND WARRANTS THAT HE/SHE IS AT LEAST 18 YEARS OLD AND HAS THE AUTHORITY TO BIND CUSTOMER TO THE TERMS OF THIS AGREEMENT. THIS AGREEMENT IS NOT A PURCHASE AGREEMENT. CUSTOMER HAS NO RIGHT OR OPTION TO PURCHASE THE EQUIPMENT BASED ON THIS AGREEMENT.

Customer acknowledges receipt of Fire, Theft, and Vandalism Policy offered to Customer and hereby **ACCEPTS** **DECLINES**

I warrant the Lessee shown above and/or have the authority to contract as agent for Lessee. A faxed copy of this completed document may serve as the original. I warrant that the Equipment will be used only at the Jobsite location unless prior written consent is obtained from Holt of California.

Holt of California Employee Signature	Employee Print Name	Customer Print Name	Title
Date Delivered _____	Time AM / PM	Customer Signature _____	
Date Returned _____	Time AM / PM	Received, Holt of California _____	
Date Called Off _____	Time AM / PM	Called Off By _____	



Unexecuted Contract/Agreements

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- The Unexecuted Contract is NOT included as an exhibit to the resolution because, due to special circumstances, and the City Attorney confirms in writing that it is okay to proceed with Council action even though the signed agreement is not in hand yet.

All unexecuted contracts/agreements which are signed by the other parties are in the Office of the City Clerk before agenda publication.

This Agreement ("Agreement") is for the rental of the equipment described on the other side of this page ("Front"), including all parts and accessories to such equipment ("Equipment"). This Agreement is between the person indicated on the Front as the customer ("Customer") and Hertz Equipment Rental Corporation ("HERC"). Both parties acknowledge that this Agreement consists solely of all the terms written or printed on both side of this page.

1. **NATURE OF THIS AGREEMENT.** This Agreement is solely for the purpose of creating a rental transaction, which allows Customer to use the Equipment as permitted by this Agreement. Customer represents that the Equipment herein is to be used solely and exclusively for business or commercial purposes. The Equipment is owned by HERC. Customer acknowledges that no one other than HERC may transfer or assign the Equipment or any rights or obligations under this Agreement. Neither Customer nor any Additional Operators or agents of HERC. No one may repair or alter the Equipment without HERC's prior written approval. Customer will not suffer any liens or encumbrances to attach to the Equipment and will defend, indemnify and hold HERC harmless from all loss, liability, and expense by reason thereof.

2. **WHO MAY OPERATE THE EQUIPMENT.** Only Customer and the following persons with Customer's permission ("Authorized Operators") may operate the Equipment: Customer's employer, employees, fellow employees in the course of such employee's regular employment, or persons approved by HERC in writing. Customer and all Authorized Operators must be at least 25 years old to operate a motor vehicle, 21 years old for all other equipment; be properly qualified to operate the Equipment; and have a valid operator's license with respect to the Equipment where required by law.

3. **RENTAL CHARGES.** Customer will pay HERC on demand at the HERC branch designated on the Front, all rental, time, mileage, service, transportation, refueling service, and other charges and sums in accordance with this Agreement, all sales and use taxes or tax reimbursement imposed with respect to the Equipment and this Agreement, and all expenses, including reasonable attorney's fees incurred in collecting same. Customer will also pay to HERC on demand at the HERC branch designated on the Front the registration or licensing fee and/or ad valorem tax reimbursement charges described on the Front. Customer understands that such charges will reimburse HERC for a portion of the registration or licensing fees and ad valorem taxes that HERC paid in HERC's prior fiscal year to the state in which such HERC branch is located and to local governments and other taxing authorities located in such state. Customer further understands that unless otherwise required by applicable law, such charges may be determined by HERC on the basis of the revenues HERC receives or estimates it will receive in such state and the total registration or licensing fees and ad valorem taxes that HERC pays or estimates it will pay to such state, local governments and other taxing authorities. The basic daily, weekly and the 4 week rental will entitle customer to a maximum of one shift use (i.e., a maximum of 8 hours per day; 40 hours per week; 160 hours per week). Use in excess of one shift will be payable at the hourly rate of 1/16th of the daily charge (for a daily rental), 1/10th of the weekly charge (for a weekly rental) and 1/30th of the 4 week charge (for a 4 week rental), plus applicable taxes. All charges are subject to final audit by HERC. HERC will have a lien as allowed by law for charges incurred hereunder upon the premises and improvements upon which the Equipment is employed. Rentals are F.O.B. the HERC branch location. All charges are subject to final audit by HERC. Shipping charges from such branch to the Customer's destination and return and all loading, unloading, assembling and dismantling will be paid by Customer. All rates for rentals in excess of 4 weeks are subject to change on thirty (30) days notice in writing to the Customer with respect to any portion of the rental period then remaining. Customer and any person to whom, with HERC's consent, Customer expressly directs the charges incurred under this Agreement to be billed, are jointly and severally responsible for payment of all such charges. Customer represents having the authority to direct such charges to be billed to that person. Charges not paid on time, as required by this Agreement, may be subject to a late payment fee as provided in this Agreement. Customer may also be charged a reasonable fee for any check used for payment hereunder that is returned unpaid.

4. **CUSTOMER'S RESPONSIBILITIES.** Customer must return the Equipment to HERC in the same good and clean condition it is in when Customer receives it, ordinary wear excepted. The Equipment must be returned to HERC at the rental HERC branch by the Due Date specified on the Front, or sooner if demanded by HERC. Customer acknowledges that it must confirm return receipt of the Equipment by HERC at the expiration or earlier termination of this Agreement. Until such time as HERC receives actual possession of the Equipment, Customer agrees to hold said Equipment in a safe and secure manner. The Equipment will be used solely in Customer's business and kept only at Customer's place of business or the job site at which the Equipment is used, and will not be moved without the prior written consent of HERC. The Equipment will be used only in accordance with the manufacturer's instructions within its rated capacity. Customer will perform or cause to be performed and pay for all normal, periodic, and other basic field or maintenance work, including but not limited to: checking of the Equipment before each shift; checking and maintaining crankcase, transmission, cooling and fluid systems daily; and checking the pressures and battery fluid and charge levels weekly. If the Equipment fails to operate properly or becomes in need of repair, Customer will immediately cease using same and will immediately notify HERC. Customer will record and supply to HERC at expiration or earlier termination of this Agreement, fuel receipts and driver trip records containing mileage breakdown by state. Failure to comply with the foregoing fuel and mileage requirements will entitle HERC to 8.0¢ per unrecorded mile as additional rent hereunder, which Customer hereby agrees to pay.

5. **RISK OF LOSS.** All loss of or damage to the Equipment from any cause whatsoever while on rental or in Customer's or Authorized Operator's care, custody or control, whether exclusive or not, and whether or not due to the fault of Customer, including, but not limited to, fire, flood, theft, comprehensive losses, collision and rollover, and Acts of God, will be the sole responsibility of Customer and will be paid to HERC promptly upon Customer's receipt of an invoice therefor. Such responsibility is limited to the full value of the Equipment at the time it is lost or damaged, less its salvage value, plus an administrative fee and HERC's related expenses, such as loss of use, appraisal fees or recovery costs. THE COST OF LABOR FOR REPAIRS WILL BE EITHER HERC'S THEN PREVAILING HOURLY RATE FOR LABOR, WHICH INCLUDES LOSS OF USE, POSTED AT THE HERC BRANCH WHERE THE EQUIPMENT IS TO BE REPAIRED, OR THE REPAIRER'S HOURLY RATE FOR LABOR CHARGED TO HERC FOR REPAIRS AS THE CASE MAY BE. PARTS WILL BE CHARGED AT HERC'S COST PLUS A RETAIL MARKUP. Use of the Equipment by persons other than Customer or Authorized Operators will be at Customer's sole risk.

6. **EVENTS OF DEFAULT.** Customer shall be in default of this Agreement if Customer fails to pay any rent when due or if Customer breaches any of the other terms of this Agreement, or if Customer becomes insolvent or ceases to do business as a going concern, or if a petition in bankruptcy is filed by or against Customer, or if Customer is in default pursuant to the provisions of any other agreement by and between Customer and HERC. Customer will further be deemed to be in default if the Equipment is obtained from HERC through fraud or misrepresentation or is used: (A) in violation of any law or ordinance; (B) in a reckless, negligent or abusive manner, or is intentionally damaged by Customer or with Customer's permission; (C) in violation of Paragraph 4 above, or (D) in any fashion or manner for which the Equipment was not designed or beyond the manufacturer's rated capacity for the Equipment.

7. **REMEDIES OF HERC.** In case of default by Customer, or if HERC deems itself insecure, HERC may, but is not required to, peaceably enter the premises where the Equipment is located and render it inoperative or remove same with or without process of law and without any notice or liability to Customer. Customer hereby waives any right to any hearing or to receive any notice of legal process, as a pre-condition for HERC recovering the Equipment. Customer agrees to permit such entry and action by HERC. In such case HERC may also terminate this Agreement without notice to Customer or prejudice to any remedies or claims which HERC might otherwise have for rent, expense of retaking, court costs and reasonable attorney's fees. Customer will remain liable for the Equipment or for any loss or injury to the Equipment, notwithstanding such termination. HERC shall have the right to issue and circulate theft notices, cause warrants to be issued for the taking of custody of Customer, Customer's agents, partners or employees, or take any other steps which HERC will reasonably deem necessary to recover the Equipment, if the Equipment is not returned on demand on the Front or sooner as permitted by the terms of this Agreement. The remedies provided herein in favor of HERC are not exclusive, but shall be cumulative and in addition to all other remedies existing at law or in equity, any one or more of which may be exercised simultaneously or successively.

8. **OPTIONAL DAMAGE WAIVER.** You, the customer, are financially responsible for all damage to rented equipment even if someone else caused it or the cause is unknown, except for normal wear or damage caused by the active negligence of HERC. HERC offers customers optional damage waiver protection when renting equipment at a cost of 14% of the rental charge for equipment. HERC agrees to waive claims for damages caused by your own negligence. This damage waiver by HERC is subject to the restrictions and qualifications listed below:

A) Even though you purchase damage waiver protection, the following loss or damages are not covered and are specifically excluded from damage waiver protection:

- * Damage caused by our equipment being used or operated in violation of section 4 of this contract.
- * Damage to electrical tool and/or equipment caused by improper electrical current.
- * All damage, however caused, to tires, tubs, and wheels for off road equipment.
- * All overhead damage caused to van truck bodies.
- * All damage resulting from overturning, overloading, or exceeding rated capacities.
- * Damage resulting from your negligent failure to maintain proper oil, fuel, hydraulic, coolant or air pressure levels, or to lubricate.
- * Damage caused by water, paint, plaster, concrete, resin, hazardous waste or any other material or substance.
- * All damage to tires resulting from burns, tears, or cuts.
- * All loss due to theft, vandalism, graffiti, or disappearance.
- * All damage resulting from fire, earthquake or act of God.
- * All damage caused by your willful misconduct or gross negligence.

B) Damage waiver protection is not insurance and only covers repair or replacement costs to HERC's responsibility. Damage waiver does not cover injuries to yourself, nor does it protect you from (1) Law suits brought or claims made by other persons for physical injuries, or property damage waiver protection when renting equipment of (2) Your responsibilities under section 10 below you may wish to consult your insurance agent to determine whether or not your insurance policy will cover your use of the equipment or whether other insurance coverage is necessary or warranted, damage waiver is not offered in china, glassware, the chains, hydraulic hammers, core-bits and saw blades. Damage waiver protection is optional and may be defined.

9. **INSURANCE.** (a) **Liability Insurance for Injury/Damage to Third Parties.** - Customer will, at its own expense and at all times during the term of this Agreement, maintain in force applicable liability insurance policies as described below, each of which shall include liability limits written on a combined single limit basis of not less than \$1,000,000 per occurrence: (1) For Equipment Rental not including motor vehicles, a Commercial General Liability Insurance Policy which must include contractual liability coverage; and (2) If the Equipment Rental includes motor vehicles, a Business Automobile Liability Insurance Policy which must include coverage for non-owned motor vehicles. In the states of Arizona, Maryland, Massachusetts, Michigan, Minnesota and West Virginia, coverage provided by the Customer's Business Automobile Liability Insurance Policy shall be excess of ownership liability protection as provided by HERC on a primary basis, with such protection not to exceed the minimum limits required by the applicable financial responsibility laws of the applicable state noted above. Such protection will conform to the basic requirements of the applicable No Fault law, BUT DOES NOT INCLUDE UNINSURED/UNDERINSURED MOTORIST, SUPPLEMENTARY NO FAULT OR ANY OTHER OPTIONAL COVERAGE. TO THE EXTENT PERMITTED BY LAW, HERC AND CUSTOMER REJECT THE INCLUSION OF ANY SUCH COVERAGE. If such coverage is imposed by operation of law, then the limits of such coverage will be the minimum required by the law of the applicable state noted above.

(b) **Property Insurance/Physical Damage Insurance [HERC Equipment].** - If LDW is not accepted by Customer, the Customer will, at its own expense and at all times during the term of this Agreement, maintain in force Property Insurance/Physical Damage Insurance in an amount adequate to cover damage to, or loss of, the Equipment being rented under this Agreement. Customer's policies must expressly provide coverage for non-owned equipment, including motor vehicles (if applicable), while in the Customer's care, custody and control.

(c) **Evidence of Coverage.** - Customer will, on demand, furnish HERC with a Certificate of Insurance evidencing the applicable coverages more fully described in subparagraphs (a) and (b) just above. Such certificate(s) shall be endorsed to provide that the applicable insurance policies may not be canceled or materially modified except on thirty (30) days prior written notice to HERC at the branch identified on the Front.

10. **INDEMNIFICATION.** For and in addition to consideration of providing the Equipment herein, CUSTOMER WILL DEFEND, INDEMNIFY AND HOLD HARMLESS HERC, ITS SUBSIDIARIES, PARENT COMPANY AND ITS AND THEIR OFFICERS, AGENTS, AND EMPLOYEES, FROM AND AGAINST ALL LOSS, LIABILITY, CLAIM, ACTION OR EXPENSE, INCLUDING REASONABLE ATTORNEY'S FEES, BY REASON OF BODILY INJURY INCLUDING DEATH, AND PROPERTY DAMAGE, SUSTAINED BY ANY PERSON OR PERSONS INCLUDING BUT NOT LIMITED TO EMPLOYEES OF CUSTOMER, AS A RESULT OF THE MAINTENANCE, USE, POSSESSION, OPERATION, ERECTION, DISMANTLING, SERVICING OR TRANSPORTATION OF THE EQUIPMENT OR MOTOR VEHICLE OR CUSTOMER'S FAILURE TO COMPLY WITH THE TERMS OF THIS AGREEMENT, EVEN IF SUCH LIABILITY RESULTS IN ANY PART FROM THE ORDINARY NEGLIGENCE OF HERC, ITS AGENTS OR EMPLOYEES. CUSTOMER WILL, AT ITS EXPENSE, COMPLY WITH ALL FEDERAL, STATE AND LOCAL LAWS AND REGULATIONS AFFECTING THE EQUIPMENT AND ITS USE, OPERATION, ERECTION, DESIGN AND TRANSPORTATION, INCLUDING WITHOUT LIMITATION, LICENSING AND BUILDING CODE REQUIREMENTS AND WILL DEFEND, INDEMNIFY AND HOLD HERC HARMLESS FROM ALL LOSS, LIABILITY OR EXPENSE RESULTING FROM ACTUAL OR ALLEGED VIOLATIONS OF ANY SUCH LAWS, REGULATIONS OR REQUIREMENTS.

11. **NOTICE OF LOSS OR ACCIDENT.** - In the event of an accident, loss of, theft of, or damage to the Equipment, Customer agrees to notify HERC as soon as possible by telephone and, thereafter, to immediately report in writing to HERC and to the public authorities (where required by law or by HERC) all necessary information relating to the loss or accident.

12. **CONDITION OF THE EQUIPMENT.** Customer acknowledges having examined the Equipment upon its delivery to Customer. Customer's acceptance or use of the Equipment without prompt notice to HERC that the Equipment is not in good mechanical condition constitutes Customer's acknowledgment that the Equipment is in good mechanical condition at that time. If, during Customer's possession of the Equipment, it is found by Customer not to be in good mechanical condition, as a result of conditions not the responsibility of Customer, nor caused by the fault or negligence of Customer or Customer's employees or agents, Customer will so notify HERC, whereupon HERC will then, at its option and without any other liability or responsibility by HERC to Customer, (a) repair the Equipment at a reasonable time during HERC's normal working hours, with the commencement or running of terms of this Agreement to be tolled for the period the Equipment is "down" or (b) remove the Equipment and terminate this Agreement and refund payments of rental charges, if any, for the unexpired term of the Agreement, less whatever is due HERC for damage to or maintenance of Equipment which is the responsibility of Customer. Customer agrees to provide full access to the Equipment to HERC's representatives so as to enable HERC to meet its responsibilities hereunder.

THE FOREGOING IS IN LIEU OF (1) ALL WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTY OF MERCHANTABILITY AND THE IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE AND OF (2) ALL OBLIGATIONS OR LIABILITIES ON THE PART OF HERC TO CUSTOMER FOR DAMAGES, INCLUDING BUT NOT LIMITED TO, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE RENTING, MAINTENANCE, USE, OPERATION, STORAGE, ERECTION, DISMANTLING OR TRANSPORTATION OF THE EQUIPMENT.

13. **LATE PAYMENT FEE.** Should Customer fail to pay any invoice to HERC in accordance with the terms of such invoice, Customer will pay a late payment fee to HERC on such delinquent payment until fully paid, at the maximum rate allowed by the laws of the jurisdiction in which the HERC branch specified on the Front is located.

14. **FUELING SERVICE CHARGE.** HERC agrees to provide the Equipment to Customer with full fuel tanks. Customer agrees to return the Equipment with full fuel tank(s). If Customer returns the Equipment with the fuel tank(s) less than full, Customer will pay to HERC a sum equal to HERC's then applicable refueling service charge posted at HERC's branch where the Equipment is returned for the number of gallons required to refill the tank(s) at the time of return.

15. **MERGER/MODIFICATION/SEVERABILITY.** This Agreement expresses the entire agreement between the parties with respect to the subject matter hereof. No change, modification or alteration of the terms hereof will be effective as against HERC unless same is in writing and signed by a duly authorized officer of HERC. Customer's execution of this instrument and/or acceptance of delivery of any part of the Equipment to be furnished hereunder shall constitute Customer's acceptance of all of the terms and conditions contained herein, and the exclusion of any terms and conditions otherwise stated by Customer or contained in any of Customer's documents that conflict with or limit in any way any of the terms and conditions contained herein. The paragraph headings contained in this Agreement are for convenience only and will not be used to expand or limit the actual terms and conditions hereof.

This Agreement shall be governed and construed by the laws of the STATE OF NEW JERSEY, with the exception of collection, lien enforcement and bond claims ("Collections") for which the laws of Oklahoma shall govern. Customer consents to jurisdiction in the State and United States District Court, Western District, of Oklahoma for resolution of all Collections. If any provision, or any part of any provision of this Agreement or the application thereof is thereafter held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and to this end the provisions of this Agreement are declared severable.

RESERVATION

NOT A CONTRACT ** COPY **



Show R.A. Number on all Correspondence

R.A. No. 18545437

Page 1 of 1

BRANCH: 730	BILL TO CUSTOMER: 0319966	SHIPPING ADDRESS
HERC WEST SACRAMENTO 901 STILLWATER ROAD W. SACRAMENTO, CA 95605 916-372-2266	CITY OF SACRAMENTO 660 J STREET - SUITE 260 DEP DIR WTR FORUM-SARAH H SACRAMENTO, CA 95814	SAILOR BAR RECREATIONAL PARK OLIVE AVE. AT SAILOR BAR PARK SACRAMENTO, CA 94203 C#: 916-808-1997 J#: 916-808-1997

DESCRIPTION/CHARGES

RST START: 9/06/11 8:00 EST RETURN: 9/30/11 16:00 DROP DATE: _____
 SHIPPED BY: ORDERED BY: FOLEY, SARAH DROP TIME: _____
 ORDER DATE: 7/29/11 SALESPERSON: 725 SALES COORDINATOR:

PO# / JOB#: B12-14001911-01 / AMERICAN RIVER SAILO

Rates include maintenance service

Qty	Equipment #	Hrs/ Min	Hour	Day	Week	Month	Amount
1	TRUCK/WATER/2000 GALLON/DSL 664020 Miles Free: MIL CHG: .50	8/ 207.00		207.00	750.00	1466.00	1466.00
	DELIVERY CHARGE						30.00
	PICKUP CHARGE						30.00
	Taxable Sub-total:	1526.00					1526.00
						Tax:	118.28
						Total:	1644.28

TRANSPORTATION-DRIVER WAIT TIME is charged if a driver spends more than 20 minutes waiting to unload/load Equipment after scheduled delivery/pickup time. Wait time is \$20 for each 20-minute period thereafter. Customer is responsible for daily maintenance, fuel, damages, and cleaning fees if Equipment is not cleaned before return. REFUELING-For Equipment valued less than \$5,000 and holds less than 3 GAL when full, we assume that 0.6 GAL are needed to refuel. TO END RENTAL CHARGES, Customer must call the branch to get a release #.

CAREFULLY READ TERMS AND CONDITIONS ON REVERSE SIDE OF THIS PAGE

Notwithstanding payment of the DW fee, Customer is liable for all damage to the Equipment and expense of HERC caused by the Equipment being used or operated in violation of the terms and conditions on the Reverse Side of this page or in violation of the DAMAGE WAIVER GUIDE.
 PARAGRAPH 12. ON THE REVERSE SIDE OF THIS PAGE IS IN LIEU OF (i) ALL WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTY OF MERCHANTABILITY AND THE IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; AND (ii) ALL OBLIGATIONS ON THE PART OF HERC TO CUSTOMER FOR DAMAGES, INCLUDING, BUT NOT LIMITED TO, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE LEASING, MAINTENANCE, USE, OPERATION, STORAGE, ERECTION, DISMANTLING OR TRANSPORTATION OF THE EQUIPMENT, CUSTOMER REPRESENTS THAT HE HAS FULLY INSPECTED THE EQUIPMENT AND THAT SAME IS IN GOOD CONDITION AND REPAIR CUSTOMER IS LIABLE FOR ALL VIOLATIONS OF LAW ARISING OUT CUSTOMER'S USE, POSSESSION OR OPERATION OF THE EQUIPMENT. THE EQUIPMENT DESCRIBED HEREIN IS RENTED PURSUANT TO AND IN ACCORDANCE WITH THE TERMS AND CONDITIONS SET FORTH ABOVE AND ON THE REVERSE SIDE OF THIS PAGE. CUSTOMER REPRESENTS HAVING READ AND AGREED TO SAME.

* Environmental Recovery Fee -- If an Environmental Recovery Fee is charged, it is a recovery by HERC of its expenses and costs for handling, managing, and/or disposing of waste materials associated with the rented equipment that contain hazardous substances, such as motor oil, grease, and/or hydraulic fluid, as well as related administrative cost. THIS IS NOT A GOVERNMENT MANDATED CHARGE.

DAMAGE WAIVER (DW) IS NOT INSURANCE. The charge for DW is 14.00% of gross rental charges. Customer accepts or declines DW. If Customer accepts DW, in consideration of the charge shown above, Lessor agrees to waive certain claims against customer for loss of or damage to Equipment, in accordance with the terms and conditions set forth in Paragraph 8, on the Reverse Side of this page and in the DAMAGE WAIVER GUIDE which Customer hereby acknowledges receiving.

Customer acknowledges that the Equipment will be returned in a good, clean, and uncontaminated condition, free of any and all hazardous substances.

Terms are Net 10 Days

Print Customer Name _____ Title _____

Customer Signature _____ Date _____

This Agreement ("Agreement") is for the rental of the equipment described on the other side of this page ("Front"), including all parts of and accessories to such equipment ("Equipment"). This Agreement is between the person indicated on the Front as the customer ("Customer") and Hertz Equipment Rental Corporation ("HERC"). Both parties acknowledge that this Agreement consists solely of all the terms written or printed on both side of this page.

1. **NATURE OF THIS AGREEMENT.** This Agreement is solely for the purpose of creating a rental transaction, which allows Customer to use the Equipment as permitted by this Agreement. Customer represents that the Equipment herein is to be used solely and exclusively for business or commercial purposes. The Equipment is owned by HERC. Customer acknowledges that no one other than HERC may transfer or assign the Equipment or any rights or obligations under this Agreement. Neither Customer nor any Additional Operators are agents of HERC. No one may repair or alter the Equipment without HERC's prior written approval. Customer will not suffer any fines or encumbrances to attach to the Equipment and will defend, indemnify and hold HERC harmless from all loss, liability, and expense by reason thereof.

2. **WHO MAY OPERATE THE EQUIPMENT.** Only Customer and the following persons with Customer's permission ("Authorized Operators") may operate the Equipment: Customer's employee, employees, fellow employees in the course of such employee's regular employment, or persons approved by HERC in writing. Customer and all Authorized Operators must be at least 25 years old to operate a motor vehicle, 21 years old for all other Equipment; be properly qualified to operate the Equipment; and have a valid operator's license with respect to the Equipment where required by law.

3. **RENTAL CHARGES.** Customer will pay HERC on demand at the HERC branch designated on the Front, all rental, time, mileage, service, transportation, refueling service, and other charges and sums in accordance with this Agreement, all sales and use taxes or tax reimbursement imposed with respect to the Equipment and this Agreement, and all expenses, including reasonable attorney's fees incurred in collecting same. Customer will also pay to HERC on demand at the HERC branch designated on the Front the registration or licensing fee and/or ad valorem tax reimbursement charges described on the Front. Customer understands that such charges will reimburse HERC for a portion of the registration or licensing fees and ad valorem taxes that HERC paid in HERC's prior fiscal year to the state in which such HERC branch is located and to local governments and other taxing authorities located in such state. Customer further understands that unless otherwise required by applicable law, such charges may be determined by HERC on the basis of the revenues HERC receives or estimates it will receive in such state and the total registration or licensing fees and ad valorem taxes that HERC pays or estimates it will pay to such state, local governments and other taxing authorities. The basic daily, weekly and the 4 week rental will entitle customer to a maximum of one shift use (i.e., a maximum of 8 hours per day; 40 hours per week; 160 hours per 4 weeks). Use in excess of one shift will be payable at the hourly rate of 1/16th of the hourly rate of the daily charge (for a daily rental), 1/8th of the weekly charge (for a 4 week rental), plus applicable taxes. All charges are subject to final audit by HERC. HERC will have a lien as allowed by law for charges incurred hereunder upon the premises and improvements upon which the Equipment is employed. Rentals are F.O.B. the HERC branch designated on the front unless otherwise specified. Shipping charges from such branch to the Customer's destination and return and all loading, unloading, assembling and dismantling will be paid by Customer. All rates for rentals in excess of 4 weeks are subject to change on thirty (30) days notice in writing to the Customer with respect to any portion of the rental period then remaining. Customer and any person to whom, with HERC's consent, Customer expressly directs the charges incurred under this Agreement to be billed, are jointly and severally responsible for payment of all such charges. Customer represents having the authority to direct such charges to be billed to that person. Charges not paid on time, as required by this Agreement, may be subject to a late payment fee as provided in this Agreement. Customer may also be charged a reasonable fee for any check used for payment hereunder that is returned unpaid.

4. **CUSTOMER'S RESPONSIBILITIES.** Customer must return the Equipment to HERC in the same good and clean condition it is in when Customer receives it, ordinary wear excepted. The Equipment must be returned to HERC at the renting HERC branch by the Due Date specified on the Front, or sooner if demanded by HERC. Customer acknowledges that it must confirm return receipt of the Equipment by HERC at the expiration or earlier termination of this Agreement. Until such time as HERC receives actual possession of the Equipment, Customer agrees to hold said Equipment in a safe and secure manner. The Equipment will be used solely in Customer's business and kept only at Customer's place of business or the job site at which the Equipment is used, and will not be used without the prior written consent of HERC. The Equipment will be used only in accordance with the manufacturer's instructions within its rated capacity. Customer will perform or cause to be performed and pay for all normal periodic and other basic service, adjustments and lubrication of the Equipment, including but not limited to: checking of the Equipment before each shift; checking and maintaining trackways, transmission, cooling and fluid systems daily; and checking the pressures and battery fluid and charge levels weekly. If the Equipment fails to operate properly or becomes in need of repair, Customer will immediately cease using same and will immediately notify HERC. Customer will stop and supply to HERC at expiration or earlier termination of this Agreement, fuel receipts and driver trip records containing mileage breakdown by state. Failure to comply with the foregoing fuel and mileage requirements will entitle HERC to \$.05 per unrecorded mile as additional rent hereunder, which Customer hereby agrees to pay.

5. **RISK OF LOSS.** All loss of or damage to the Equipment from any cause whatsoever while on rental or in Customer's or Authorized Operator's care, custody or control, whether exclusive or not, and whether or not due to the fault of Customer, including, but not limited to, fire, flood, theft, comprehensive losses, collision and rollover, and Acts of God, will be the sole responsibility of Customer and will be paid to HERC promptly upon Customer's receipt of an invoice therefor. Such responsibility is limited to the full value of the Equipment at the time it is lost or damaged, less its salvage value, plus an administrative fee and HERC's related expenses, such as loss of use, appraisal fees or recovery costs. THE COST OF LABOR FOR REPAIRS WILL BE EITHER HERC'S THEN PREVAILING HOURLY RATE FOR LABOR, WHICH INCLUDES LOSS OF USE, POSTED AT THE HERC BRANCH WHERE THE EQUIPMENT IS TO BE REPAIRED, OR THE REPAIRER'S HOURLY RATE. FOR LOSS CHARGED TO HERC FOR REPAIRS AS THE CASE MAY BE, PARTS WILL BE CHARGED AT HERC'S COST PLUS A RETAIL MARKUP. Use of the Equipment by persons other than Customer or Authorized Operators will be at Customer's sole risk.

6. **EVENTS OF DEFAULT.** Customer shall be in default of this Agreement if Customer fails to pay any rent when due or if Customer breaches any of the other terms of this Agreement, or if Customer becomes insolvent or ceases to do business as going concern or if a petition in bankruptcy is filed by or against Customer, or if Customer is in default pursuant to the provisions of any other agreement by and between Customer and HERC. Customer will further be deemed to be in default if the Equipment is obtained from HERC through fraud or misrepresentation or is used: (A) in violation of any law or ordinance; (B) in a reckless, negligent or abusive manner, or is intentionally damaged by Customer or with Customer's permission; (C) in violation of Paragraph 4 above, or (D) in any fashion or manner for which the Equipment was not designed or beyond the manufacturer's rated capacity for the Equipment.

7. **REMEDIES OF HERC.** In case of default by Customer, or if HERC deems itself insecure, HERC may, but is not required to, peacefully enter the premises where the Equipment is located and render it inoperative or remove same with or without process of law and without any notice or liability to Customer. Customer hereby waives any right to any hearing or to receive any notice of legal process, as a pre-condition for HERC recovering the Equipment. Customer agrees to permit such entry and action by HERC. In such case HERC may also terminate this Agreement without notice to Customer or prejudice to any remedies or claims which HERC might otherwise have for rent, expense of re-taking, court costs and reasonable attorneys' fees. Customer will remain liable for the Equipment or for any loss or injury to the Equipment, notwithstanding such termination. HERC shall have the right to issue and circulate their notices, cause warrants to be issued for the taking of custody of Customer, Customer's agents, partners or employees, or take any other steps which HERC will reasonably deem necessary to recover the Equipment, if the Equipment is not returned on date specified on the Front or sooner as permitted by the terms of this Agreement. The remedies provided herein in favor of HERC are not exclusive, but shall be cumulative and in addition to all other remedies existing at law or in equity, any one or more of which may be exercised simultaneously or successively.

8. **OPTIONAL DAMAGE WAIVER.** You, the customer, are financially responsible for all damage to rented equipment even if someone else caused it or the cause is unknown, except for normal wear or damage caused by the active negligence of HERC. HERC offers customers optional damage waiver protection when renting equipment at a cost of 14% of the rental charge for equipment. HERC agrees to waive claims for damages caused by your own negligence. This damage waiver by HERC is subject to the restrictions and qualifications listed below:

A) Even though you purchase damage waiver protection, the following loss or damages are not covered and are specifically excluded from damage waiver protection:

- * Damage caused by our equipment being used or operated in violation of section 4 of this contract.
- * Damage to electrical tool and/or equipment caused by improper electrical current.
- * All damage, however caused, to tires, tubes, and wheels for off road equipment.
- * All overhead damage caused to van truck bodies.
- * All damage resulting from overloading, overloading, or exceeding rated capacities.
- * Damage resulting from your negligent failure to maintain proper oil, fuel, hydraulic, coolant or air pressure levels, or to lubricate.
- * Damage caused by water, paint, plaster, concrete, resin, hazardous waste or any other material or substance.
- * All damage to liens returned with burns, tears, or cuts.
- * All loss due to theft, vandalism, graffiti, or disappearance.
- * All damage resulting from fire, earthquake or act of God.
- * All damage caused by your willful misconduct or gross negligence.

B) Damage waiver protection is not insurance and only covers repair or replacement costs to HERC's equipment. Damage waiver does not cover injuries to yourself, nor does it protect you from (1) Law suits brought or claims made by other persons for physical injuries, or property damage waiver protection when renting equipment of (2) Your responsibilities under section 10 below you may wish to consult your insurance agent to determine whether or not your insurance policy will cover your use of the equipment or whether other insurance coverage is necessary or warranted, damage waiver is not offered in china, glassware, the chains, hydraulic hammers, core-bits and saw blades. Damage waiver protection is optional and may be declined.

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(b) **Property Insurance/Physical Damage Insurance (HERC Equipment)** - If LDW is not accepted by Customer, the Customer will, at its own expense and at all times during the term of this Agreement, maintain in force Property Insurance/Physical Damage Insurance in an amount adequate to cover any damage to, or loss of, the Equipment being rented under this Agreement. Customer's policies must expressly provide coverage for non-owned Equipment, including motor vehicles (if applicable), while in the Customer's care, custody and control.

(c) **Evidence of Coverage** - Customer will, on demand, furnish HERC with a Certificate of Insurance evidencing the applicable coverages more fully described in subparagraphs (a) and (b) just above. Such certificate(s) shall be endorsed to provide that the applicable insurance policies may not be canceled or materially modified except on thirty (30) days prior written notice to HERC at the branch identified on the Front.

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THE FOREGOING IS IN LIEU OF (I) ALL WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTY OF MERCHANTABILITY AND THE IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, AND OF (II) ALL OBLIGATIONS OR LIABILITIES ON THE PART OF HERC TO CUSTOMER FOR DAMAGES, INCLUDING BUT NOT LIMITED TO, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE RENTING, MAINTENANCE, USE, OPERATION, STORAGE, ERECTION, DISMANTLING OR TRANSPORTATION OF THE EQUIPMENT.

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This Agreement shall be governed and construed by the laws of the STATE OF NEW JERSEY, with the exception of collection, lien enforcement and bond claims ("Collections") for which the laws of Oklahoma shall govern. Customer consents to jurisdiction in the State and United States District Court, Western District, of Oklahoma for resolution of all Collections. If any provision, or any part of any provision of this Agreement or the application thereof is thereafter held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and to this end the provisions of this Agreement are declared severable.