

Sun Concrete Pumping, Co. Terms and Conditions of Rental (hereinafter "Agreement")

**I. RESPONSIBILITIES OF CUSTOMER.** The Customer shall: a.) Abide by these terms and conditions, including all terms and conditions incorporated herein; b.) Provide safe and reasonable access to and egress from job site; c.) Provide pumpable concrete mix; d.) Provide for reasonable scheduling of concrete deliveries; e.) Provide for a reasonable on-site area for Equipment wash down; f.) Perform all necessary cleanup of any wash down area; g.) Provide labor for erection, dismantling and cleanup of placement system, as needed; h.) Provide timely notice of any schedule changes, with a minimum of 24-hour notice for any delays or cancellations; and i.) Secure any necessary permits, easements or licenses required by state or local agencies for the performance of the concrete pumping service by Company on the job site.

**2. DELAYS, STOPPAGES AND BACKCHARGES.** a.) Company shall have no liability for back charges or other amounts for delays or stoppages which result from: i.) Breach of the Responsibilities of Customer above in section 1; ii.) The condition of any concrete mix, including, but not limited to, unpumpable mixes; iii.) Mechanical breakdown or failure of pumping Equipment that is caused by difficult or unpumpable mixes; iv.) The first one (1) hour of any other mechanical breakdown or failure of the pumping Equipment; v.) Late arrival of concrete or other material; vi.) Damage to asphalt, concrete, driveway, curbs, sidewalks, suspended slabs, or slab on grade; vii.) Strikes, lockouts, acts of God, adverse weather, and other causes beyond the reasonable control of Company; viii.) Damage to property beyond curb line; or ix.) Loss of concrete resulting from the addition of water. b.) Back charges or other liability for concrete finisher overtime labor costs, if otherwise allowable, shall not exceed the actual time of the delay or stoppage of the pumping Equipment less the first one (1) hour of such breakdown or failure, as above provided. c.) Back charges or other liability for loss of concrete if otherwise allowable shall accrue only for that amount of concrete lost which exceeds five percent (5%) of the total volume of concrete pumped in that one (1) day period. d.) In no event shall back charges or other amounts accruing exceed the total price chargeable by Company for that one (1) day period and Company shall not be liable for, and Customer hereby waives and releases all consequential, indirect, special, or punitive damages arising out of Company's performance or failure to perform its obligations hereunder.

**3. NOTICE AND WAIVER.** Back charges and claims for damages resulting from delay due to the fault of Company shall be deemed waived by Customer unless claim is made in writing to Company within forty-eight (48) hours from the beginning of the delay. Any action, demand, lawsuit, arbitration or any other claim by Customer against Company arising out of or related to this Agreement must be commenced within one (1) year from the date on which any such right, claim, or cause of action shall have first accrued.

**4. RESPONSIBILITIES OF COMPANY.** Company shall provide the Equipment shown on this Agreement or its equivalent, in good working order, along with the indicated personnel. The Equipment and personnel shall be made available pursuant to the schedule agreed by the Parties. Company is not supplying any concrete mix or product under this Agreement. Company does not warrant the suitability or fitness of any concrete mix, product or material for any particular purpose and further disclaims all liability arising from the suitability or fitness of any concrete mix, product, or material for any particular purpose.

**5. CHANGE IN CONDITIONS.** In addition to Section 1, any changes to the condition of the site or work from the time of any proposal to the time when Company starts the work shall be the responsibility of the Customer. Customer shall immediately notify Company by email of any changes not previously disclosed regarding the setup or site conditions. In the event of an increase in the work, the contract price shall be increased by a fair and reasonable valuation based upon the original contract rates. In either an increase or decrease in work, Customer shall provide an extra work notification to Company. Signing a time sheet is an automatic extra work notification and an authorization of overtime pay.

**6. FINAL TERMS. THE PERSON EXECUTING THIS AGREEMENT ON BEHALF OF THE CUSTOMER AND THE CUSTOMER REPRESENT THAT SAID PERSON HAS THE AUTHORITY TO EXECUTE THIS AGREEMENT AND TO BIND THE CUSTOMER TO THE TERMS OF THIS AGREEMENT. THESE TERMS AND CONDITIONS ARE THE FINAL TERMS AND CONDITIONS BETWEEN THE PARTIES.** Customer shall be conclusively deemed to have accepted these Terms and Conditions and any incorporated terms (herein "Agreement"), and to have entered into this Agreement with Company, Company and Customer, each shall be known as a Party and together they shall be known as Parties. The rental period shall commence upon either the start of performance by Company or the execution of this Agreement or any quote by Customer. This Agreement is valid for the greater of 364 days, or the duration of the project, for this and any other Equipment leased to Customer.

**INDEMNIFICATION AND INSURANCE. THE INDEMNIFICATION AND INSURANCE PROVISIONS APPLICABLE TO THIS AGREEMENT SHALL BE DETERMINED BY THE STATE WHERE THE WORK IS PERFORMED.**

**7. IOWA INDEMNIFICATION AND RELEASE PROVISIONS.** IT IS THE PARTIES INTENT THAT THIS PROVISION IS SPECIFICALLY IN COMPLIANCE WITH ALL IOWA LAWS, AND TO THE FULLEST EXTENT PERMITTED BY IOWA LAW, CUSTOMER AGREES TO INDEMNIFY, RELEASE, AND SAVE COMPANY, ITS EMPLOYEES AND AGENTS HARMLESS FROM ALL CLAIMS OR LOSS FOR DEATH OR INJURY TO PERSONS INCLUDING COMPANY'S AND CUSTOMER'S EMPLOYEES, OF ALL LOSS, DAMAGE OR INJURY TO PROPERTY, ARISING IN ANY MANNER OUT OF CUSTOMER'S WORK OR OPERATIONS. IT IS THE PARTIES' INTENT THAT THIS DUTY TO INDEMNIFY IS AS BROAD AS PERMITTED BY IOWA LAW. -- Customer's duty to indemnify hereunder shall include costs or expenses arising out of claims specified herein, including all court and/or arbitration costs, filing fees, attorneys' fees and costs of settlement. Customer shall not indemnify, hold harmless, or defend Company or Company's employees, consultants, agents, or others for whom Company is responsible, against liability, claims, damages, losses, or expenses, including attorney's fees, to the extent caused by or resulting from the negligent act or omission of the Company or Company's employees, consultants, agents, or others for whom the Company is responsible. However, the indemnification obligation under the above paragraph shall not be limited in any way by any limitation on the amount or type of damage, compensation, or benefits payable by or for the Customer under worker's compensation acts, disability benefit acts, or other employee benefit acts. The Customer's obligations hereunder shall further not be limited by the amount of its liability insurance, and the purchase of such insurance for Company shall not operate to waive any of the above obligations. This provision is separate and distinct from any other provision or paragraph in this contract, including any provision or paragraph concerning partial indemnification or procurement of insurance. If this paragraph is declared invalid, then all other paragraphs of this contract shall stand. Furthermore, as part of Customer's additional obligations hereunder, Customer shall bear the cost of any investigation or adjustment (including but not limited to, attorneys' fees and costs, private investigator/adjuster fees and costs, expert fees and costs, costs of storage and down time, and costs of testing of property, or other items) initiated by the Company, Company's insurance carriers or Company's third party adjusters into any accident of any kind, when such accident, or occurrence happens, involving directly or indirectly Customer's Work or Operations, whether or not such accident involves personal injury, death or damage to property or all of these.

**8. IOWA INSURANCE.** To the fullest extent permitted by Iowa, the Customer agrees to purchase, maintain and carry the following insurance coverages prior to Customer beginning Work or Operations on the job site. The Customer shall procure the following coverages for Company: a) worker's compensation and employer's liability insurance, with limits of at least the statutory minimum or \$1,000,000, whichever is greater; b) primary non-contributory commercial general liability ("CGL") insurance on an occurrence basis, including bodily injury and property damage coverages with minimum limits of \$1,000,000 per occurrence and \$2,000,000, in the aggregate; c) excess/umbrella following form non-contributory insurance in the amount of at least \$5,000,000 and Customer's primary and excess/umbrella policies must be endorsed so that they are primary and non-contributory to all of Company's insurance policies; d) inland marine/eff-risk and or builder's risk which includes an all-risk physical damage insurance, on a primary non-contributory basis, to cover the full insurable value of any equipment, for its loss or damage from any and all causes, including, but not limited to, overloading, misuse, fire, theft, flood, explosion, overturn, accident, and acts of God and Customer shall pay all deductibles and or coinsurance requirements of the inland marine/builders risk policies provided by Customer and Customer shall also provide the greater of 6 months or \$500,000.00 rental reimbursement coverage or similar coverages for the Company's benefit for any loss or if the equipment is damaged, stolen, lost or destroyed; e) all policies are to be written by insurance companies acceptable to the Company; f) for all liability insurance policies (including any excess/umbrella policies) Customer shall name as an additional insured, Company and Company's officers, directors, shareholders, members, managers, partners and employees, all affiliated partnerships, joint ventures and corporations of Company and anyone whom Company is required by contract to name as an additional insured; g) Customer shall use all of the following ISO endorsements to provide additional insured status and coverage to Company: CG 2001 04 13, CG 20 10 10 01, CG 20 37 10 01, CG 20 28 07 04, CG 20 34 03 97, CG 20 28 04 13, CG 25 03 03 97, and CG 24 04 05 09; h) Additional insured coverage shall include, but not be limited to, coverage for any and all liability of Company arising out of any statute, regulation or duty imposed by law; i) Customer shall provide punitive damage coverage for Company's benefit on all liability policies, unless prohibited by state law; j) Customer shall name Company as a Primary Loss Payee on all insurance policies; k) Customer shall provide all insurance certificates to Company when requested by Company and prior to start of work by Company; l) all of Company's policies, and the policies of anyone Company is required to insure shall be excess over all of Customer's policies; m) all Customer's policies shall be endorsed to require the insurer to give at least thirty (30) days advance notice to all insured's, including additional insured's, prior to cancellation or non-renewal; n) all Customer's policies must remove any exclusion for explosion, collapse and underground operations (XCU); o) all Customer's policies must remove the "employer's liability exclusion" for all additional insureds; and p) all Customer's policies must include coverage for blanket contractual liability for the obligations assumed here-under and also for the liabilities assumed in the indemnity section above. Customer's agreement to indemnify and hold Company harmless from any liability, damage, and loss are in addition to, and not an alternative to, these insurance provisions and the purchase of any of the above coverages shall not operate to waive any of the above indemnity provisions. To the extent that the Customer may perform under this Agreement without obtaining the above coverages, such an occurrence shall not operate, in any way, as a waiver of the Company's right to maintain any breach of contract action against the Customer. Customer hereby agrees to waive any and all rights of subrogation and any and all lien rights (including those arising from worker's compensation/employer's liability policies or other employee benefit programs, commercial general liability policies, or similar policies) which may accrue to it or its insurers. This shall include, but not be limited to, rights of subrogation and lien rights. The Customer understands that this waiver shall bind the insurers of all levels and agrees to put these insurers on notice of this waiver and to have any necessary endorsements added to the insurance policies applicable to this Agreement.

SEE TERMS AND CONDITIONS LOCATED AT URL: [www.sunconcretepumping.com](http://www.sunconcretepumping.com)

WHICH ARE MADE PART OF THIS AGREEMENT.

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require the insurer to give at least thirty (30) days advance notice to all insured's, including additional insured's, prior to cancellation or non-renewal; n) all Customer's policies must remove any exclusion for explosion, collapse and underground operations (XCU); o) all Customer's policies must remove the "employer's liability exclusion" for all additional insureds; and p) all Customer's policies must include coverage for blanket contractual liability for the obligations assumed here-under and also for the liabilities assumed in the Indemnity section above. Customer's agreements to indemnify and hold Company harmless from any liability, damage, and loss are in addition to, and not an alternative to, these insurance provisions and the purchase of any of the above coverages shall not operate to waive any of the above indemnity provisions. To the extent that the Customer may perform under this Agreement without obtaining the above coverages, such an occurrence shall not operate, in any way, as a waiver of the Company's right to maintain any breach of contract action against the Customer. Customer hereby agrees to waive any and all rights of subrogation and any and all lien rights (including those arising from worker's compensation/employer's liability policies or other employee benefit programs, commercial general liability policies, or similar policies) which may accrue to it or its insurers. This shall include, but not be limited to, rights of subrogation and lien rights. The Customer understands that this waiver shall bind its insurers of all levels and agrees to put these insurers on notice of this waiver and to have any necessary endorsements added to the insurance policies applicable to this Agreement.

**9. OPERATION.** It shall be the duty of Customer and any Controlling Entity to give specific instructions and directions to all persons working on the job site. Customer agrees to provide or otherwise select competent and experienced personnel to direct all operations and further agrees that the standard of care and responsibilities will be in accordance with all applicable safety standards, including but not limited to the following: Subpart Q - CONCRETE AND MASONRY CONSTRUCTION (29 CFR Part 1926.700); 1926.20(b)(4) [1926 Subpart C, General Safety and Health Provisions]; 1926.21(b)(2) [1926 Subpart C, General Safety and Health Provisions]; 1926.95(a) [1926 Subpart E, Personal Protective and Life Saving Equipment]; 1926.101(a) [Subpart E, Personal Protective and Life Saving Equipment]; 1926.600(a)(6) [1926 Subpart O, Motor Vehicles, Mechanized Equipment, and Marine Operations; applicable manufacturer "operation, maintenance, and parts manual" materials; the "American Concrete Pumping Association Safety Manual"; and ASME B30.27 (2019) Material Placement Systems];

**10. RESPONSIBILITIES.** Company furnished personnel shall be qualified and competent for their assigned tasks, however, Company shall not provide any boom hose operator. All boom hose operators shall be provided by Customer. Company shall deliver the Equipment for use in good operating condition. If the Equipment is damaged as result of Customer's directions including use, then Customer shall be responsible for all repairs to the Equipment. Customer releases and waives all claims against Company for damages or injury arising from any concrete mix, product or materials supplied by any entity or person. This release and waiver include any environmental contamination of such property, arising out of or occurring in connection with this Agreement. No back charges shall be levied against Company for delays or stoppage which arise out of this Agreement. Customer and Controlling Entity are responsible for directing, controlling, and supervising the manner, means and methods of the work.

**10. LIMITATION OF LIABILITY. NOTWITHSTANDING ANY PROVISION IN THIS AGREEMENT, IN NO EVENT WILL COMPANY BE LIABLE FOR ANY LOSS OF PROFITS, LOSS OF USE, BUSINESS INTERRUPTION, INDIRECT, SPECIAL, LIQUIDATED, EXEMPLARY, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND IN CONNECTION WITH OR ARISING OUT OF THE FURNISHING, PERFORMANCE OR USE OF THE EQUIPMENT OR SERVICES PERFORMED HEREUNDER, WHETHER ALLEGED AS BREACH OF CONTRACT OR TORTIOUS CONDUCT, INCLUDING NEGLIGENCE, EVEN IF COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION OF LIABILITY SHALL ALSO APPLY TO ANY LOSS OF ANY KIND ARISING FROM AN EXERCISE OF CIVIL AUTHORITY, RESTRICTIVE GOVERNMENTAL LAWS, INCLUDING BUT NOT LIMITED TO THE DEFENSE PRODUCTION ACT, DISASTER DECLARATIONS, REGULATIONS, SLOWDOWNS, STAY IN PLACE/SHELTER AT HOME ORDERS, GOVERNMENTAL OR CIVIL SHUTDOWNS, OR SIMILAR GOVERNMENTAL REQUIREMENTS, PANDEMICS OR OTHER WIDESPREAD ILLNESS, WIND OR OTHER INCLEMENT WEATHER, PROTEST, INSURRECTION, WAR, RIOT, OR CIVIL UNREST. COMPANY'S LIABILITY ON ANY CLAIM OR ANY KIND OF LOSS OR DAMAGE ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR FROM THE PERFORMANCE OR BREACH THEREOF BY COMPANY SHALL IN NO CASE EXCEED THE PAYMENTS RECEIVED BY COMPANY FROM CUSTOMER FOR THE EQUIPMENT OR SERVICES PROVIDED UNDER THIS AGREEMENT DURING MOST RECENT THREE (3) MONTHS, OR \$10,000.00, WHICHEVER IS GREATER, (HEREAFTER REFERRED TO AS "DAMAGES CAP"). COMPANY SHALL NOT BE LIABLE TO CUSTOMER, UNDER ANY CIRCUMSTANCES, WHETHER PURSUANT TO CONTRACTUAL AGREEMENT, WARRANTY (EXPRESS OR IMPLIED), TORT (INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE, OR PRODUCTS AND/OR STRICT LIABILITY) OR OTHERWISE, AND WHETHER CAUSED OR ALLEGED TO BE CAUSED DIRECTLY OR INDIRECTLY BY THE EQUIPMENT OR SERVICES, OR BY ANY INADEQUACY THEREOF, OR BY ANY DEFECT THEREIN, OR BY ANY ACT OF OMISSION IN CONNECTION THEREWITH, IN EXCESS OF THE DAMAGES CAP.**

**11. ASSUMPTION AND RELEASE.** The Customer assumes all the risks associated with the performance of any and all work occurring under or arising out of this Agreement. This includes, but is not limited to, any risks, claims, suits, or causes of action that may arise from negligence or carelessness on the part of the Customer or the Customer's agents, servants or employees, independent contractors or anyone else. Further, the Customer waives, releases and discharges Company and its agents, servants or employees, from any and all liability, including but not limited to, liability arising from any and all negligence or fault, for any death, disability, personal injury, property damage, or actions of any kind which may hereafter occur or arise out of the performance of any and all work under, or arising out of this Agreement.

**12. CONDITIONS - GROUND/POWERLINES.** The Customer hereby agrees that it assumes all responsibility and shall be solely responsible for the ground conditions and the proper use of supporting materials during the transportation, storage, and the placement of the Equipment for operation of the Equipment. Furthermore, Customer and General Contractor/Construction Manager shall be the controlling entity or employer as described in 1926 §1402(d). "Ground conditions" means the ability of the ground to support the Equipment (including slope, compaction, and firmness). "Supporting materials" means blocking, mats, cribbing, or similar supporting materials or devices. The Equipment must not be assembled or used unless ground conditions are firm, drained, and graded to a sufficient extent so that, in conjunction (if necessary) with the use of supporting materials, the Equipment manufacturer's specifications for adequate support and degree of level of the Equipment are met. The Customer shall ensure that ground preparations necessary to meet the requirements of this paragraph are provided, which includes, but is not limited to, the identification, communication and elimination of hazards in, around and beneath the Equipment set-up area, including below grade. If the work site is inadequate to provide clear passage or to support the operation of heavy Equipment, or subsurface conditions necessitate reinforcement and/or relocation of facilities and/or services, all such work and the co-ordination of same required to permit the work to proceed in a timely manner shall be the responsibility of Customer and at Customer's expense. Customer shall perform or have performed all necessary inspections or testing to determine the nature of the ground or soil and its ability to support the Equipment while in operation or otherwise. Suitable ground conditions referenced to herein means ground conditions meeting or exceeding the requirements of AASHTO H-20 / HS-20. If additional towing or pushing of the Equipment is required because of inadequate site conditions, additional costs incurred (including costs of repairing damage to our Equipment) will be billed extra at cost plus fifteen (15%) percent. Customer assumes all responsibility to protect the Equipment and persons in or around the Equipment from the danger of power lines and agrees that all work will be done in accordance with all applicable safety regulations and/or standards. Customer shall not expose the Equipment or any persons in or around such Equipment to the danger of energized power lines. All power lines in the work area shall be identified prior to the work beginning. All power lines are to be de-energized prior to the Equipment being operated in or around such power lines. Customer shall contact the local electric utility or other such authorized entity to arrange to have the power lines de-energized prior to beginning work. Even if power lines are de-energized, Customer shall keep the Equipment clear of such power lines at the distances required by OSHA, ANSI and any other safety regulations or standards. If it is not possible to de-energize power lines, then the Customer shall be responsible for the insulating of any power lines, the grounding of all Equipment and will be required to use safety measures or other Equipment designed to prevent electrocution.

**13. DAMAGE TO OR DESTRUCTION OF EQUIPMENT.** Following delivery of possession of the Equipment to Customer, Customer solely and entirely assumes all risk of loss of and damage to the Equipment from any and all causes, including, but not limited to, loss and/or damage due to theft, vandalism, fire, accident, casualty and acts of God. No loss of or damage to the Equipment will reduce or impair any obligation of Customer under this Agreement, which will continue in full force and effect. In the event of loss or damage that is not beyond repair as authorized by the manufacturer, Customer shall, at Customer's sole cost and expense, promptly restore the Equipment to substantially the same condition and repair as it was in at the commencement of this Agreement, in which case this Agreement shall remain in full force and effect and Customer will be entitled to use and operate the Equipment

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for the balance of the term of this Agreement. If the Equipment is damaged beyond repair or is lost or stolen (an Event of Loss), then Customer shall promptly pay to Company an amount equal to the Replacement Value, whereupon Company shall have the option to either (a) replace the Equipment with Equipment that is substantially similar to the Equipment, in which case this Agreement shall continue in full force and effect and all references in this Agreement to the Equipment shall be deemed to refer to such replacement Equipment; or (b) terminate this Agreement effective upon Company's receipt of such payment from Customer. Company shall give Customer written notice as to which of the foregoing options Company has elected within thirty (30) days after the date on which the Event of Loss occurred. If Company elects the option described in (b) above, then Customer shall be obligated to make any Rent payments that become due and payable prior to Customer's payment of the Replacement Cost to Company. Customer shall furnish to Company such proof of the Event of Loss as Company may reasonably require. Company may enter the premises where the Equipment is kept in order to inspect it and to arrange for its disposal. Company shall pay to Customer an amount that is equal to the lesser of the Replacement Cost paid to Company by Customer or the total amount of any insurance or other proceeds received by Company (less any deductible paid by Company) from the disposition of the Equipment suffering an Event of Loss, upon Company's receipt of such proceeds..

**14. ACCIDENT INVESTIGATION.** As part of Customer's obligations hereunder and in accordance with section 6, Customer shall bear the cost of any investigation initiated by Company, Company's insurance carriers or Company's third party adjusters (designated below as Company's "representatives") into any accident of any kind, when such accident occurs during the term of this Agreement, and directly or indirectly involving the Equipment, whether or not such accident involves personal injury or death or damage to the Equipment or other property or any or all of the above. The decision to initiate any such investigation and the scope of any such investigation shall be at the sole discretion of Company or Company's representatives. The cost of any such investigation that is to be paid by Customer shall include, but not be limited to, attorneys' fees for site inspections, document review and interviews with witnesses of any kind, including cost of travel, fees of private investigators for site inspections, obtaining and reproducing agreements and documents and interviews of witnesses, including costs of travel, costs of obtaining and reproducing related agreements and documents, adjusters fees, costs for photography, expert fees including expert forensic fees, all costs of site inspections and destructive and/or non-destructive testing, as needed, and costs of dismantling, storing and maintaining property, Equipment or other items as evidence. These costs shall be invoiced to Customer along with rental fees and other costs incurred under this Agreement and shall be payable according to the terms of this Agreement. Customer shall allow Company entry upon or access to any premises where the Equipment is used, at all reasonable times, to locate and inspect the state and condition of the Equipment.

**15. PANDEMIC SAFETY RULES.** Customer agrees to train all personnel working on the job site, on the symptoms associated with the COVID-19 virus or other declared pandemic, epidemic or widespread illness and will immediately implement all safety measures to limit or prevent the spread of the COVID-19 virus or other declared pandemic, epidemic or widespread illness as recommended or required by the Centers for Disease Control ("CDC"), the Occupational Health and Safety Administration ("OSHA") and/or applicable state or local authorities. Customer will fully implement and maintain all health screening and isolation measures required by applicable local/state emergency orders then in effect as well as all health screening measures, and isolation protocols recommended by the CDC and/or OSHA and or local health authorities relative to all Services. Customer will not assign anyone to perform Services and will instruct all personnel working at its job site not to perform any Services if any personnel: a) is experiencing any symptoms of COVID-19 related illness or other declared pandemic, epidemic or widespread illness, as described by the CDC and/or applicable state or local authorities in the most recent 14 days; b) is directed by a health care professional or public health official to self-quarantine or self-isolate due to a suspected or confirmed case of the COVID-19 virus or other declared pandemic, epidemic or widespread illness, by anyone with whom the personnel has had close or household contact (within 6 feet) in the most recent 14 days; or c) has tested positive or been in close or household contact (within 6 feet) with anyone testing positive for the COVID-19 virus or other declared pandemic, epidemic or widespread illness, within the most recent 14 days.

**16. RENTAL DECISIONS.** AS TO COMPANY, CUSTOMER HAS MADE THE DECISION TO RENT THIS EQUIPMENT AND OPERATOR BASED ON CUSTOMER'S REQUIREMENT'S FOR THIS PROJECT. COMPANY MADE THIS EQUIPMENT AND OPERATOR AVAILABLE FROM A POOL OF AVAILABLE PERSONNEL AND MACHINES FOR CUSTOMER'S USE AND THE DECISION TO USE THIS EQUIPMENT AND ANY PERSONNEL IS SOLELY CUSTOMER'S DECISION. THE PROVIDED OPERATOR SHALL NOT OPERATE THE HOSE. CUSTOMER RENTS THE EQUIPMENT IN GOOD WORKING ORDER, BUT COMPANY SHALL NOT BE LIABLE TO CUSTOMER FOR ANY LOSS, DELAY, OR DAMAGE RESULTING FROM DEFECTS IN THE EQUIPMENT OR ANY ACCIDENTAL BREAKAGE. NOTWITHSTANDING THE FOREGOING, COMPANY SHALL REPLACE THE EQUIPMENT WITH SIMILAR EQUIPMENT IF THE EQUIPMENT FAILS TO OPERATE IN ACCORDANCE WITH THE MANUFACTURERS SPECIFICATIONS AND/OR OPERATING INSTRUCTIONS. SUCH REPLACEMENT SHALL BE MADE AS SOON AS REASONABLY POSSIBLE AFTER CUSTOMER RETURNS THE NON-CONFORMING EQUIPMENT.

**17. OPERATOR / EMPLOYEE.** If an operator is provided with the Equipment, the Customer shall be responsible for payment of the operator's wages and benefits in the rental payment, which shall be included as part of the rental charges, even though such wages and benefits may be administered by the Company. The term "employee" or "operator" shall include all operators, , helpers, technicians, or any other person that is assembling, disassembling, mobilizing, demobilizing and performing maintenance work or repair work on the Equipment, or providing any other work on the Equipment.

### **18. DEFAULT AND REMEDIES.**

(a) If: (i) Customer fails to make any payment, as and when required under this Agreement; (ii) Customer breaches or fails to perform at the time and in the manner herein specified any term, covenant or condition contained in this Agreement and such breach or failure continues for five (5) days after written notice thereof to Customer; (iii) Customer files or has filed against it a petition in bankruptcy, or a custodian, receiver or trustee is appointed for Customer or for a substantial part of its assets, or Customer becomes insolvent or unable to pay its debts as they become due, or any substantial part of Customer's property becomes subject to any levy, seizure, assignment, application or sale for or by any creditor or governmental agency; or (iv) Customer is acquired by or merges with any other entity, unless this Agreement is assumed in writing by the new entity and such assumption is agreed to by Company ; then

(b) In the case of any of the foregoing events, each an "Event of Default", then Company shall, without notice, demand or action of any kind by Company, all of which are hereby waived by Customer:

(i) Take possession of the Equipment (damages occasioned by such taking of possession being expressly waived by Customer) or otherwise require Customer to assemble the Equipment and to make it available to Company at any place designated by Company, and thereupon Customer's right to the possession of the Equipment will terminate, and Customer shall remain and be liable for the payment of the remaining Rent and all other obligations imposed upon Customer hereunder, all of which will become immediately due and payable;

(ii) Rent the Equipment or any portion thereof for the remainder of the term of this Agreement to such third party as Company may elect, in which event Company will apply the net proceeds from any such Agreement in payment of the Rent and other obligations due from Customer to Company hereunder (by acceleration or otherwise), and Customer shall remain liable to Company for any deficiency;

(iii) Sell the Equipment or any portion thereof to a third party at public or private sale without demand or notice of intention to sell or of such sale, in which event Company will apply the net proceeds of any such sale in payment of the Rent and other obligations due from Customer to Company hereunder (by acceleration or otherwise), and Customer shall remain liable for any deficiency;

(iv) Deduct all costs and expenses incurred in connection with the recovery, repair, storage, renting or sale of the Equipment from the proceeds of such renting and/or sale; and/or

(v) Terminate Customer's rights hereunder.

(c) No right or remedy conferred upon or reserved to Company by this Agreement is exclusive of any other right or remedy granted herein or provided by law; all rights and remedies of Company conferred upon Company by this Agreement or by law are cumulative and in addition to every other right and remedy available to Company.

(d) In the event of any default or failure specified above, Customer shall be liable for all costs and expenses expended or incurred by Company in the enforcement of its rights

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hereunder (including reasonable attorneys' fees and court or Arbitration Costs).

(e) If any of the above Events of Default occur to any guarantor or any other party liable for payment or performance of Customer's obligations under this Agreement, such event shall also be considered an Event of Default under this Agreement.

(f) Company has the right to choose among the remedies available to it and to exercise any or all of them at any time after a default by Customer.

(g) A waiver of one default by Company does not apply to any future or other default.

**19. RENTAL PERIOD AND CHARGES.** The rental period shall start at the time the Equipment first leaves the Company's yard/terminal. The rental period includes all time necessary for the transport, mobilization, demobilization, assembly and disassembly of the Equipment and continues until the Equipment has returned to the Company's yard. Equipment will not be accepted by the Company until it is returned in the same condition as when the Equipment left the yard. If the Equipment is returned in a damaged state, this Agreement is extended until the Equipment is restored to its condition at the time it left the Company's yard at the inception of this Agreement. If a periodic rental rate is charged by Company, rental charges will be billed to the Customer for each period or portions of the period from the time the Equipment leaves the Company's yard, until it is returned and accepted by Company. If a term rental rate is charged by Customer, rental charges are billed to the Customer for the full term even if the Equipment is returned before the end of the term. Each piece of Equipment is charged based upon a 160-hour monthly use of the Equipment. Any Equipment used more than 160 hours in a calendar month will be charged for each additional hour or fraction thereof per month as follows: Hours of operation in excess of 160 hours per month ÷ 160 hours x monthly rental rate. There are no unused hour carryovers allowed from month to month. No allowance without a prior written amendment to this Agreement will be allowed for any Equipment, or accessory, which is claimed not to have been used. The Customer further covenants and agrees to open for inspection by the Customer, any and all payroll records and hour meters for the purpose of verifying the actual hours worked.

**20. RENTAL PAYMENTS; NO SET-OFF.** All invoices submitted by Company shall be due and payable by Customer within ten (10) days of receipt. Customer shall pay to Company an interest penalty of the highest rate allowed under applicable law, or 1.5% per month, whichever is greater, on the total balance of any and all invoices, or any portion of any and all invoices, that remain unpaid thirty (30) days after receipt by Customer. Company may, upon reasonable notice, require Customer to pay rentals in advance if Customer falls more than (30) days behind in making any payment at any time. All charges for use of the Equipment must be paid as billed by the Company in accordance with the Prompt Pay statute of the state where the Equipment is being used. All notices in accordance with the prompt pay statute must be made in accordance with the notice provisions of this Agreement. Customer acknowledges that a fundamental principle of this Agreement is that it shall pay the sums due under this Agreement as and when required. Accordingly, Customer unconditionally and irrevocably waives any and all rights to withhold from, set-off against, reduce or delay any amount owed to Company, for any reason or by any amount whatsoever, including by any amount claimed to be owed by Company to Customer. If the Equipment is damaged while operating on the job site, as a result of the Customer's actions and directions and unless permission is granted by the Company, if the Equipment is not returned during or at the end of the term, then for every hour, or portion thereof, from the end of the term to the time when the Equipment is returned to the Company, as required herein, the Customer shall pay a rental rate equal to three (3) times (x) the standard hourly rental rate for such Equipment.

**21. TAXES; FEES; PERMITS.** Customer shall be responsible for any sales, use, excise, value added, utility, personal property or other taxes and any license fees, permits and/or assessments relating to Customer's use or possession of the Equipment. Customer shall pay taxes and other charges to Company in accordance with invoices submitted by Company.

**22. COMPLIANCE WITH LAW; SPECIFIC FEDERAL LAWS.** Customer shall, at all times, (i) comply with all applicable federal, state, provincial and local laws and regulations relating to this Agreement; and (ii) have in place and maintain any and all licenses, permits, and other authorizations required by federal, state, provincial and local laws. Customer certifies that: (i) it is not acting, directly or indirectly, for or on behalf of any person, group, entity, or nation named by any Executive Order or the United States Treasury Department as a terrorist, "Specially Designated National and Blocked Person," or other banned or blocked person, entity, nation, or transaction pursuant to any law, order, rule, or regulation that is enforced or administered by the Office of Foreign Assets Control; and (ii) it is not engaged in this transaction, directly or indirectly on behalf of, or instigating or facilitating this transaction, directly or indirectly on behalf of, any such person, group, entity, or nation. Finally, Customer shall, at all times, perform its obligation under this Agreement in compliance with all applicable financial sanction laws, rules and regulations, including, but not limited to, all applicable laws, rules and regulations regarding bribery or money laundering. Customer further agrees that any and all transactions or funds transfers occurring under this Agreement shall be subject to scrutiny for compliance with all such laws, rules and regulations and that any and all transactions or funds transfers may be embargoed or otherwise restricted until compliance with these laws, rules and regulations can be verified.

**23. INTERPRETATION.** This Agreement shall be interpreted as between parties on equal footing and without resort to any rule of construction resolving ambiguity against the drafter.

**24. INDEPENDENT SERVICE PROVIDER.** This Agreement does not create a partnership or joint venture. Customer and its agents, servants and employees, shall at all times, be an independent service provider, and employees of Customer shall in not be considered employees of Company, and they shall not be eligible for any employee, or other benefits.

**25. SURVIVAL- SEVERABILITY.** To the fullest extent permitted by the laws of the state where the Equipment is being used, provisions of this Agreement shall be interpreted to be valid and enforceable under applicable law; provided, however, that if any provision is held invalid or unenforceable, such provision will be deemed deleted from the Agreement and replaced by a valid and enforceable provision which so far as possible achieves the parties' intent in agreeing to the original provision. The Agreement's remaining provisions will stay in effect. This document is a complete and exclusive statement of all the terms of this Agreement and includes all the representations of the parties. All prior discussions and negotiations are incorporated into this Agreement as the final Agreement of the Parties. All of the representations, warranties and indemnities contained in this Agreement shall survive the expiration, suspension or termination of this Agreement.

**26. NO ASSIGNMENT.** This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and assigns, except that Customer shall not be permitted to assign this Agreement without the express written consent of the Company.

**27. WAIVERS.** No delay or failure to exercise any right or remedy accruing to Company or any breach or default of Customer under this Agreement will impair any such right or remedy of Company or be construed as a waiver of any such breach or default, or an acquiescence therein, or a waiver of or acquiescence in any breach or default thereafter occurring; nor will waiver of a single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. Any waiver, permit, consent or approval of any kind or character on the part of Company of any breach or default by Customer under this Agreement, or any waiver on the part of Company of any provision or condition of this Agreement, must be in writing and will be effective only to the extent specifically set forth in such writing.

**28. TRADE SECRETS.** The Parties shall keep all Trade Secrets as defined by the Defense of Trade Secret Act ( which include any quote, bid, drawing, operational sequence, site plan or job and project specific details, ("Submission") along with this Agreement and its terms confidential and the Customer shall not share the Submission with any competing entity of Company. Each party shall keep the Trade Secret (as defined below) of the other party confidential and shall not use any of that Confidential Information for any purpose other than in connection with this Agreement and the Submission. The "Trade Secret" of a party is any, financial information or other confidential or proprietary information in any way relating to that party's services, including all forms and types of financial, business, scientific, technical, economic, or engineering information, including patterns, plans, compilations, program devices, formulas, designs, prototypes, methods, techniques, processes, procedures, programs, or codes, whether tangible or intangible, and whether or how stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing. A party may, without violating this paragraph, make such disclosures (i) to its directors, officers, employees, attorneys, and other agents as may be necessary to permit that party to perform its obligations and to exercise its rights hereunder, and (ii) as it reasonably deems are required by law, though a party will use its reasonable best efforts to notify the other party in advance of any such disclosure required by law. The parties' respective obligations under this paragraph shall survive the termination of this Agreement. The parties hereto acknowledge that disclosure of the Submission will cause irreparable harm; consequently, each explicitly agrees that the other party shall be entitled to seek injunctive relief, without needing to post a bond or to prove the inadequacy of damages, to prevent any violation or imminent violation of, or to compel specific performance with this paragraph. Furthermore, all parties understand and agree that the Submission and this Agreement is also protected

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by each state's laws on Trade Secrets, including the adoption by each state of the Uniform Trade Secrets Act.

**29. FORCE MAJEURE.** Except as otherwise expressly set forth herein, in the event a Party shall be delayed or hindered in, or prevented from, the performance of any act required of it hereunder by reason of strike, inability to procure materials, failure of power, telecommunications or connectivity failure, exercise of civil authority, restrictive governmental laws, including, but not limited to, the Defense Production Act, disaster declarations, regulations, slowdowns, stay in place orders/shelter at home orders, governmental shutdowns or similar governmental requirements, riot, insurrection, war, civil unrest, protests, wind or other inclement weather, act of God, pandemic, epidemic or other widespread illness, viral slowdowns/issues, or other event outside the reasonable control of that Party (each such cause or event being hereinafter referred to as a "Force Majeure"), then performance of such acts will be excused for the period of the delay and the period for performance of any such act shall be extended for a period equivalent to the period of such delay. Any time a Party is experiencing a Force Majeure that is expected to result in a significant failure or delay, that Party will endeavor to give notice to the other party describing the Force Majeure and the nature of the failure or delay and giving an estimate as to how long the delay will last. A Party claiming an excusable delay or failure under this paragraph shall use reasonable efforts to alleviate or overcome the Force Majeure as soon as practicable. A Force Majeure event shall not excuse the Customer from payment of the rental rate as originally agreed upon including any Operator wages and benefits. If this agreement is cancelled or terminated early due to Force Majeure, then Customer shall pay an additional two (2) months' rent as a cancellation fee.

**30. THIRD PARTY BENEFICIARY.** Nothing in this Agreement, expressed or implied, is intended to confer upon any person or entity, other than the parties and their legal successors and permitted assigns, any rights, benefits, or obligations.

**31. CHOICE OF LAW; VENUE.** This proposal and any Contracts arising from acceptance hereof shall be governed by and interpreted in accordance with the laws of the State where work is being performed, and the Federal laws of the United States of America applicable therein, including, but not limited to, federal transportation law while the cargo is in transit. However, if a state law requires that a construction indemnity statute apply to Equipment rented in the state where the Equipment is being used, then that State's laws shall apply.

**32. NOTICE.** All notices to be given pursuant to this Agreement shall be provided to the respective party at the addresses contained in this Agreement shall be deemed to have been properly given when either (i) personally delivered, or (ii) mailed by registered or certified mail, postage prepaid with return receipt requested, or (iii) delivered by private courier, or (iv) email, electronic receipt requested. A copy of any such notice, although not constituting official notice, shall be provided to the respective party by electronic mail. Notice by electronic mail shall become official notice under this Agreement, upon acknowledgment of receipt sent by the Parties through an email system such as Microsoft Outlook.

**33. HEADINGS.** The section or section headings in this Agreement are inserted only as a matter of convenience and for reference and in no way, define, limit or describe the scope or intent of this Agreement or in any way affect this Agreement or its interpretation.

**34. VALIDITY OF PROVISIONS.** If any provision of this Agreement is ever held to be invalid or unenforceable, that provision will be severed from the rest of this Agreement, and all of the other provisions of this Agreement will remain in effect. The Parties agree that it is the intention of the Parties that this Agreement is valid and complies with all laws.

**35. EXECUTION/SIGNATURES.** This Agreement may be executed in counterparts, each of which shall be an original, but all of which shall constitute one and the same, document. The terms of this Agreement shall not be altered in any manner except by written instrument signed by Company and Customer and shall be binding upon and inure to the benefit of their permitted successors and assigns. Parties may electronically sign or pre-sign this agreement before the work starts. In the event this Agreement has been executed by an individual on behalf of a corporation or other business entity, the person whose signature is affixed hereto and the entity for which the individual has signed this Agreement, represent to Company that the individual signing has full authority to execute this Agreement on behalf of said corporation or other business entity.

**36. BINDING TERMS AND CONDITIONS.** The scope of work will proceed, when directed by the Customer in accordance with these TERMS AND CONDITIONS. The parties agree that these TERMS AND CONDITIONS OF CONTRACT WILL BIND THE PARTIES EVEN IF THE QUOTE OR BID HAS NOT BEEN SIGNED AND CUSTOMER SHALL BE CONCLUSIVELY DEEMED TO HAVE ACCEPTED THE TERMS AND CONDITIONS AND TO HAVE ENTERED INTO THIS AGREEMENT WITH COMPANY. IF CUSTOMER REQUESTS COMPANY TO PERFORM ANY WORK AFTER THE CUSTOMER'S RECEIPT OF ANY QUOTE, BID, PROPOSAL OR THESE TERMS AND CONDITIONS, THESE TERMS AND CONDITIONS SHALL BE DEEMED EXECUTED AND BINDING. IF CUSTOMER CALLS COMPANY AND REQUESTS COMPANY TO SUPPLY EQUIPMENT AND/OR PERSONNEL, THEN CUSTOMER AGREES TO AND SHALL BE BOUND BY THESE TERMS AND CONDITIONS.

**37. DISPUTES.** All disputes will be resolved according to the terms and conditions set forth below.

### DISPUTE RESOLUTION AGREEMENT

#### Section 1. Dispute Resolution

(a) In the event of a dispute between the Company, (also known as "Lessor") and Customer (also known as "Lessee") arising out of or relating to this Agreement, or any underlying contract or agreement whether written or oral, or the work to be performed by Lessor or Lessee, or a breach of this Agreement, or any underlying contract or agreement, whether written or oral, by any party, any and all disputes shall be decided in accordance with these conditions. Such disputes include, but are not limited to, any claim the Lessee or Lessor may have related in whole or in part concerning the conduct of any other party or Lessor and/or their employees or agents. Lessor and Lessee each shall be afforded a reasonable opportunity to present information and testimony involving its claims, rights or defenses and shall be solely responsible for the presentation of any information or testimony concerning its claims, rights or defenses.

(b) Lessor and Lessee agree to continue performance of all Work, and payments on all non-disputed amounts despite the existence of disputes between them. The existence of a dispute shall not be sufficient cause or justification for any failure to otherwise comply with this Agreement or with any underlying contract or agreement.

#### Section 2. Mediation

(a) Negotiation Prior to Arbitration ("Mediation"): Prior to any arbitration and/or litigation after arbitration being instituted by any party arising out of or relating to this Agreement, or any underlying contract or agreement whether written or oral, or a breach of this Agreement, or any underlying contract or agreement, whether written or oral, the parties shall each appoint an executive corporate officer to meet to negotiate the claim/dispute through an in-person settlement meeting ("Mediation"). An Insurance representative for each party shall attend the Mediation in order to bind the insurer to any settlement. Corporate officers attending shall have full settlement authority to resolve the claim/dispute. This Mediation shall be a condition precedent to the filing of any arbitration and shall be in accordance with Section 2(b). Prior to engaging in any mediation, all parties shall provide notice of any dispute to their respective insurers.

(b) Submission of Itemized Claims. Within Thirty (30) business days of the Lessor or Lessee filing and serving a demand for Mediation, the party filing the Mediation demand ("Claimant") shall provide the other party ("Respondent") with a written, itemized statement of its claim, that shall include copies of all documents supporting its liability statement and damages along with citations to specific provisions of the Agreement that support Claimant's position ("Claimant's Itemized Statement of Claim"). The Claimant shall make all requests for documents from the Respondent when the demand for Mediation is filed. The Respondent shall have 15 days to respond and turn over the requested documents. Claimant's Itemized Statement of Claim shall be served via Federal Express or equivalent overnight delivery service that provides proof of delivery and shall be deemed served as of the date of Respondent's receipt from Federal Express records or equivalent overnight delivery service of the Itemized Statement of Claim. Within Thirty (30) business days after Respondent

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receives Claimant's Itemized Statement of Claim, Respondent shall provide the Claimant with its answer, affirmative defenses and counterclaim, if any, which shall include a written, itemized statement in support of its defense and/or counterclaim, along with copies of all documents supporting its damages and citations to specific provisions of any underlying contract or agreement, whether written or oral. (Respondent's Itemized Statement of Claim). The Respondent shall make all requests for documents from the Claimant when the Respondent's Itemized Statement of Claim is filed. The Claimant shall have 15 days to respond and turn over the requested documents. Respondent's Itemized Statement of Claim shall be served via Federal Express or equivalent overnight delivery service that provides proof of delivery and shall be deemed served as of the date of Claimant's receipt from Federal Express records or equivalent overnight delivery service of the Itemized Statement of Claim. If any party fails to turn over any reasonably requested documents, or either party fails to participate in the Mediation process in good faith, the arbitrator may make such a finding and take such finding into account when determining liability and damages, in any later arbitration of these claims. Each party shall provide copies of all Statements of Claim and relevant supporting documents to their respective insurers. The parties shall meet and mediate all claims as soon as possible thereafter. Notwithstanding the foregoing, the Mediation process, including the exchange of information and documents shall be completed with 90 days of the filing of a demand for Mediation.

(c) **Venue for Mediation.** All claims, counterclaims or disputes between Lessor and Lessee, which are subject to Mediation pursuant to Section 2, shall be mediated in the county in which the related job or project is located, or as otherwise agreed.

(d) **Offers of Settlement.** Within thirty (30) days of receiving Respondent's Itemized Statement of Claim, or if Respondent does not serve one, within thirty (30) days from when Respondent's Itemized Statement of Claim was due, Claimant shall serve Respondent with a written settlement offer that will include both Claimant's Itemized Statement of Claim and Respondent's Itemized Statement of Claim, if any. Claimant's settlement offer shall be served via Federal Express or equivalent overnight delivery service that provides proof of delivery and shall be deemed received upon Respondent's receipt of Claimant's settlement offer. Claimant's settlement offer shall state the amount it will accept from or pay to Respondent to settle all claims asserted in the arbitration. Within thirty (30) business days of Respondent's receipt of Claimant's settlement offer, Respondent shall serve a written settlement offer to Claimant that will include both Claimant's Itemized Statement of Claim and Respondent's Itemized Statement of Claim, if any. Respondent's settlement offer shall be served via Federal Express or equivalent overnight delivery service that provides proof of delivery and shall be deemed served upon Claimant's receipt of Respondent's settlement offer. Respondent's settlement offer shall state the amount it will accept from or pay to Claimant to settle all claims asserted in the arbitration. Claimant's filing of an amended demand for arbitration or Respondent's filing of an amended counterclaim shall in no way alter the timing requirements set forth herein for purposes of determining the prevailing party. If Respondent does not submit a written settlement offer to Claimant as provided herein, then Respondent's settlement offer for purpose of determining the prevailing party shall be considered the greater of: (i) the amount set forth in Respondent's Itemized Statement of Claim, (ii) the amount requested in Respondent's initial counterclaim, (iii) the amount requested by Respondent at the final arbitration hearing, or (iv) \$0.00.

### Section 3. Arbitration

(a) **Scope and Venue of Arbitration:** All claims, counterclaims or disputes between Lessor and Lessee arising out of or relating to this Agreement, or any underlying contract or agreement, whether written or oral, or the work to be performed by Lessor or Lessee at any applicable job site, or a breach of this Agreement, or any underlying contract or agreement, whether written or oral, whether based on contract or tort, which are not resolved pursuant to Section 2, shall be decided by a final, binding, non-appealable arbitration, to take place in the county in which the related job or project is located, or as otherwise agreed. The arbitration shall be in accordance with the Construction Industry Arbitration Rules and Mediation Procedures of the American Arbitration Association ("AAA") then existing subject, to the requirements and limitations set forth herein. The arbitration shall be further subject to the Federal Arbitration Act, 9 U.S.C. § 1 et seq., and any applicable state statutes governing arbitration.

(b) **Arbitrator's Selection and Authority:** Any matters to be arbitrated under this Agreement shall be decided by a single arbitrator selected by agreement of the parties. The appointed arbitrator shall be an impartial person with extensive experience and who has an expert understanding of the concrete pump industry. If within seven (7) calendar days of either party filing for arbitration, the parties have not agreed on an arbitrator, then the appointment of an arbitrator shall be referred to the AAA office in or nearest to the county in which the related job or project is located. The AAA shall appoint a single arbitrator who is an impartial local person with extensive experience and who has an expert understanding of the concrete pump industry to serve in this matter. The arbitrator shall have full and complete authority to decide any and all claims that have been properly noticed and preserved in accordance with this Agreement. Any judgment entered by the arbitrator shall be final, binding and non-appealable. The arbitrator is required to enforce the terms of this Agreement, including but not limited to, the determination of the prevailing party for purposes of awarding attorney's fees and costs. The arbitrator shall not be authorized to award any punitive damages and shall only be permitted to award consequential damages if the parties have not waived consequential damages by contract and only to the extent permitted under the express terms of this Agreement. Should either party assert that a claim(s) submitted to arbitration has not been properly noticed and/or has been waived or released, then the Arbitrator shall first decide any such issues by way of a declaratory judgment action decided by solely by the arbitrator, with both parties waiving any right to a trial by jury. Any arbitration between the parties for non-Declaratory Action issues shall be stayed pending any such declaratory judgment action so that the Arbitrator can first decide what claims should proceed forward in arbitration. If the Arbitrator finds that a claim(s) was not properly noticed and preserved and/or was released, then the arbitrator shall dismiss that claim(s) and shall not decide such claim(s). The arbitration shall only proceed after a final decision on any declaratory judgment action brought hereunder and shall only include those claims found to have been properly noticed, preserved and not released. All parties consent to such jurisdiction.

(c) **Choice of Law.** This Agreement shall be construed according to the laws of the state where the work is performed, unless otherwise determined by law.

(d) **Prevailing Party in Arbitration.** The prevailing party in any arbitration shall be entitled to an award of attorney's fees and costs. The prevailing party in any arbitration shall be the party whose last written settlement offer, as set forth in Section 2 above, is closer to the initial arbitration award, prior to considering costs (including AAA and arbitrator costs), interest, attorney fees and/or expert fees. If the difference between the initial arbitration award and the parties' last settlement offers are equal, then neither party shall be the prevailing party for purposes of an award of attorneys' fees and costs.

(e) **Nondisclosure of Settlement Offers to the Arbitrator:** Settlement offers shall only be disclosed to the arbitrator after the initial arbitration award has been entered and shall only be used to determine the prevailing party for purposes of the award of attorney's fees and costs.

(f) **Venue of Litigation.** Any dispute arising out of or relating to this Agreement, or any underlying contract or agreement whether written or oral, or the work to be performed by Lessor or Lessee at any applicable job site, or a breach of this Agreement, or any underlying contract or agreement, whether written or oral, which is not subject to mediation and arbitration under this Agreement or which the parties have mutually waived their right to arbitrate under this Agreement shall be litigated in the state where the work is performed, unless otherwise determined by law. Such action shall proceed in The United States District Court in or nearest to the county in which the related job or project is located. Both parties acknowledge that should litigation ensue, the United States District Court in or nearest to the county in which the related job or project is located, shall have exclusive jurisdiction and venue over any lawsuits arising under this Agreement, or any underlying contract or agreement, whether written or oral, including any motion to confirm an arbitration award. The prevailing party in any such litigation shall additionally be entitled to an award of all attorneys' fees and costs.

(g) **Waiver of Right to Jury Trial:** LESSOR AND LESSEE FURTHER AGREE THAT SHOULD ANY LITIGATION OR ARBITRATION ARISE DIRECTLY OR INDIRECTLY, THE PARTIES HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL, AND THE PARTIES HEREBY STIPULATE THAT ANY SUCH TRIAL SHALL OCCUR WITHOUT A JURY.

(h) **Transfer of Venue.** Should either party file any action in court against the other party arising out of a dispute as defined in this Agreement, said Party agrees to transfer the action to the Arbitrator to make any and all decisions concerning any dispute including the authority stated in Section 3, including the authority to decide if the action is a dispute covered by this Agreement. If the Arbitrator decides that the dispute should be decided in accordance with this Agreement, the party that filed the action shall pay all costs incurred by the other party, including attorneys' fees, incurred in dismissing and/or transferring the venue of such matter to the Arbitrator.

(i) **Discovery in Arbitration.** Discovery in any arbitration hereunder shall be limited to the following and must done in accordance with the Federal Rules on Civil Procedure: (i)

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The production of each side's job/project/work files as they are maintained in the ordinary course of business and any file index related to same, with all such documents being produced electronically if reasonably feasible or otherwise in hard copy, in the arbitration venue herein indicated; (ii) Other than the documents produced pursuant to Section 2 and Section 3(e)(i) no other written discovery shall be permitted, except on a showing of good cause to the arbitrator. The party requesting any documents, other than those produced pursuant to Section 2 and Section 3(e)(i) shall be responsible to pay for all costs associated with such production, including attorneys' fees incurred in the review for privilege and relevance, third-party consultant fees and any other costs associated with such production. The payment of all such costs is an express condition precedent to either side's right to any such production. The cost associated with obtaining electronic discovery shall not be taxed to the prevailing party as costs/fees and to the extent this conflicts with any provision in the AAA rules, this provision shall control; (iii) Three (3) fact depositions with one being a corporate representative under the Federal Rules of Civil Procedure, if so requested, with all such depositions to take place in the arbitration venue herein indicated; (iv) The opinions and the depositions of any designated expert witnesses. The deposition of all experts that intend to testify or submit opinions at the arbitration hearing must be concluded sixty (60) days before the scheduled arbitration date. Each side will pay for their own expert time and expenses to appear for deposition in the county and state where the contract was being performed. Thirty (30) days prior to any expert deposition, all experts that will testify or submit opinions at the final hearing shall provide a report containing all of his/her opinions and all information, documents and facts relied upon in arriving at such opinions, or if no such report is prepared, the subject matter on which the witness is expected to present evidence and a summary of the facts and opinions to which the witness is expected to testify and all information/documents/facts relied upon in arriving at such opinions, along with the witness's qualifications, including a list of all publications authored in the previous 10 years and a list of all other cases in which, during the previous 4 years, the witness testified as an expert at trial or by deposition and a statement of the compensation to be paid for the study and testimony in the case; (v) Each party shall be entitled to have the arbitrator issue six subpoenas for documents. The other side shall be entitled to a copy of all documents provided in response to any third-party subpoena, provided however, that it has to pay for the costs of reproduction, but shall be entitled to use a third party to make such copies; and (vi) No other discovery shall be permitted by the Arbitrator, unless mutually agreed to by the parties, upon good cause shown.

(j) These sections and provisions (including all sub-parts) shall survive the termination of this Agreement, or any related or underlying contract and/or completion of the related work or project.

Sun Concrete Pumping, Co. does not supply concrete ready-mix, nor is Sun Concrete Pumping, Co. responsible for any concrete ready-mix pumped or placed by our equipment. OSHA states that wet concrete contains chemicals that may irritate or burn unprotected skin and eyes. Wet concrete should be immediately washed off and individual should see a physician.

\_\_\_\_\_  
CONTRACTOR NAME

SUN CONCRETE PUMPING, CO.

\_\_\_\_\_  
Printed Name of Contractor Representative

Tracey A. Manson, Vice President

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date