

MASTER EQUIPMENT RENTAL AGREEMENT

THIS AGREEMENT is entered into between Union Concrete and Construction Corp., a New York State Corporation with its principal place of business located at 435 Meyer Rd., West Seneca, New York, 14224, (hereinafter called “Lessor”),

and _____,
with a principal place of business of _____

(hereinafter called “Lessee”).

WHEREAS, the Lessee from time to time desires to rent equipment from Lessor, and Lessor desires to rent such equipment to Lessee; Lessor and Lessee enter into this agreement and agree to be legally bound by the following covenants:

Article I: Recitals

- A. Lessor is a contractor engaged in the business of heavy highway construction and owns and maintains an equipment fleet. In the ordinary course of its business, Lessor rents its equipment to third parties.
- B. Lessee desires to rent equipment from Lessor.
- C. Any and all equipment rented to Lessee by Lessor shall be subject to all of the terms and conditions contained within this agreement. The specific equipment being rented and the rental price shall be set out in a written proposal that shall be agreed to and signed by both Lessee and Lessor. This agreement shall not be construed to obligate or require Lessor to rent equipment to Lessee. The agreement also shall not be construed to obligate or require Lessee to accept any equipment rentals from Lessor.

Article II: Rental of Equipment

- A. Lessor hereby rents to Lessee the equipment specifically described in the proposal. This equipment rental is done on a “bare” basis without Lessor furnishing an equipment operator. Lessee, at its sole expense, (unless otherwise agreed to in writing) shall transport, inspect, operate, maintain and return the equipment. The equipment shall be returned to Lessor in the same condition that Lessee received it, less ordinary wear and tear.
- B. The rental term shall start the instant when the Lessee picks up the equipment from Lessor and ends the moment that the equipment has been returned and unloaded to Lessor. If Lessor makes or arranges transportation, the rental term shall start upon delivery and end upon pickup.

Article III: Operation of Equipment

- A. Lessee shall furnish a competent operator who is familiar with, and has substantial experience with, the type of equipment being rented. This operator shall possess all licenses, certifications, and training required by law, regulation, or industry best practice to operate the rented equipment. This operator shall be under the sole supervision and control of the Lessee. At all times operator shall not be under the influence of any drugs

or alcohol. The operator shall observe and follow all warnings and the equipment operator's manual. Lessee will strictly prevent operation of the equipment by individuals not qualified to do so. Operation of the equipment by unqualified personnel could result in serious injuries, damage and/or death.

- B. Lessee shall utilize the equipment in a normal fashion and shall not expose it to careless or rough usage. At all times, operation of the equipment shall be in compliance with all laws, and regulations. Equipment shall not be used for pile driving, blasting, dynamic compaction or any other construction operation that imposes significantly more wear and tear on the equipment than normal use, without prior written approval of Lessor. At all times, Lessee's operation of the equipment shall be in conformance with the equipment's operating manual.
- C. Lessee agrees to comply with all rules, ordinances, statutes, regulations, orders, or decrees, that may be issued under any State or Federal statute that are effective or applicable to the execution of this agreement, including but not limited to OSHA rules and regulations, and all other safety rules and regulations.
- D. Lessee shall furnish all fuels, and all other fluids or materials (for example DEF) needed for proper operation of the equipment. When rented equipment is returned by the Lessee, it shall have approximately the same amount of fuel and fluids in its tanks as when it was delivered.
- E. If equipment being rented is a crane, Lessee is solely responsible for completing daily crane inspection reports as required by the Occupational Health and Safety Act. Lessee shall have crane inspected by a competent person prior to each and every use. Lessee is also solely responsible with complying with any and all other laws and regulations applicable to the operation of cranes.
- F. Lessee shall not expose the equipment to any form of hazardous materials or waste. In the event of exposure, the Lessee shall immediately notify Lessor and remove the equipment from the hazardous materials or waste. Lessee shall be fully responsible for completely and thoroughly cleaning and decontaminating the equipment. If the equipment cannot be remedied of all adverse effects resulting from the exposure, Lessee shall pay to Lessor the full fair market value of the equipment. Fair market value is to be determined by an independent appraiser.
- G. This agreement is for rental only. The Lessor shall retain full and complete title to equipment during the term of this agreement. Nothing in this agreement shall be construed to confer any right of title to the equipment to Lessee. Any attachments, parts, repairs, maintenance, or additions to the equipment made by Lessee shall become property of Lessor. Lessee shall keep the equipment free and clear of any and all liens, encumbrances or claims.
- H. The rented is equipment is to be used ONLY by the Lessee. Use of the equipment by any other party is strictly prohibited.
- I. Lessee is strictly prohibited from modifying the equipment in any way shape or form.
- J. Unless otherwise agreed in the equipment rental proposal, equipment rental does not include transportation. Lessee is responsible for picking up the equipment at Lessor's facilities and returning it upon the completion of the rental. The return destination may be

different than the pickup location. Lessor, at its own expense, shall assist in loading and unloading at its facilities. Lessee is solely responsible for all other costs of transportation. Lessee is fully responsible for properly tying down the equipment for transport, even when equipment is loaded at Lessor's facilities with Lessor's assistance.

- K. Lessee has no option to purchase any equipment rented under this agreement.
- L. At any time during the equipment rental, Lessor may immediately repossess and cancel the rental if it believes the equipment is not being operated in accordance with this article or that the equipment is otherwise in danger. Lessor may also cancel the rental with ten days of notice to Lessee for any reason whatsoever.

Article IV: Maintenance of Equipment

- A. Lessee is responsible for all normal maintenance, and adjustments of the equipment required by the operator's manual during the rental term. This includes, but is not limited to, normal basic service, filters, lubricants and greasing. All work performed by Lessee shall be in accordance with the operator's manual and all manufacturer specifications.
- B. Lessee shall maintain at all times proper oil, coolant and other fluid levels in the machine. Lessee shall check these levels daily. Lessee shall also grease all grease points on the equipment daily, or as otherwise required by the operator's manual.
- C. Lessee shall be fully responsible for any damage to the equipment caused by its failure to perform the maintenance required by this article.
- D. Lessee shall promptly notify Lessor of any equipment condition that warrants repair. Lessor shall instruct the Lessee how to proceed.
- E. Lessee shall immediately notify lessor if the equipment is involved in an accident.

Article V: Damage to Equipment

- A. Lessee shall immediately notify Lessor of any damage to the equipment, regardless of the source of the damage.
- B. Lessee shall be fully responsible for the repair of any and all damage, arising from any source whatsoever, including, but not limited to, vandalism, theft, fire, flood and other acts of god, to the equipment that occurs during the rental term. Any necessary repairs shall be performed by Lessor, unless Lessee receives written approval from Lessor to complete repairs itself. In event Lessee is authorized to make repairs itself, such repairs shall conform to the operator's manual and all manufacturer specifications.
- C. If upon return of rented equipment, Lessor finds equipment has been damaged, subjected to excessive wear and tear (outside that which arises in normal operation, been operated improperly, or damaged in any other way, Lessee agrees to immediately pay Lessor the full cost of restoring the equipment to its condition at the start of the rental.
- D. All risk of loss or damage to equipment during the rental term shall be borne exclusively by the Lessee.

Article VI: Lessor's Warranty and Lessee Remedies

- A. The equipment being rented to Lessee is in "AS IS" condition. Within 48 hours after receiving the equipment, Lessee shall inspect the equipment and certify that it is good working condition or notify Lessor of any defects. Failure of Lessee to send notice, shall be construed to mean that the equipment is in good working order and is accepted by Lessee.
- B. In event that the equipment is delivered with defects, Lessor will decide to repair the equipment at its sole expense, or cancel the rental. If the rental is cancelled, Lessor shall transport equipment back to its facilities at its own cost.
- C. Lessor warrants that equipment will be in working order at delivery. Lessor's sole responsibility, and Lessee's sole remedy under the above warranty shall be, at Lessor's option, to repair the equipment or cancel the rental. In event Lessor chooses cancellation, it shall transport equipment back to its facilities at its cost and shall prorate the rental price. The above warranty is contingent upon proper use and maintenance of the equipment by Lessee. It shall not apply if repair to the equipment is necessary because of accident, misuse, improper handling, improper operation, improper maintenance, unusual use or use during unusual weather conditions. This is the sole and exclusive warranty given by Lessor in connection with the rented equipment which is otherwise being rented in "AS IS" condition. Lessor makes no other warranty and expressly disclaims any and all express and implied warranties as to the rented equipment, including any warranty of merchantability, fitness for a particular purpose, or capacity. Lessor shall not be liable for any delays, work stoppages, loss of use of equipment, lost time, inconvenience, lost profits or any other direct incidental, special or consequential damages relating to the possession, transport, use, operation, control, maintenance and/or repair of the equipment, or any loss, damage or injury resulting therefrom.

Article VII: Billing and Payment

- A. Lessor shall bill Lessee for equipment rental at the rate set out in the equipment rental proposal. Lessor shall bill Lessee at monthly intervals, until equipment is returned. Once the equipment is returned and if the total rental period is not in whole units of the rental rate, the fractional portion shall be prorated.
- B. Lessee shall make payment to Lessor within 15 days of receipt of Lessor's invoice.
- C. Lessee also agrees to pay all sales tax or any other taxes, levies, assessments, or fees due upon the equipment rental as a result of law or regulation.
- D. Lessee shall be fully responsible for all costs incurred by Lessor in collecting amounts due under this agreement, including reasonable attorney's fees.

Article VIII: Indemnity

- A. To the fullest extent permitted by law, Lessee shall defend, indemnify and hold harmless Lessor and its shareholders, agents, partners, officers, employees, successors and assigns (hereinafter collectively "Indemnities") from any and all allegations, investigations, claims, actions, demands, damages, losses, liabilities or expenses, including reasonable attorneys' fees, caused in whole or in part by Lessee, or its agents, servants, employees,

or sub-Lessees or which is in any way connected with the equipment rental, whether for personal injury, death, or property damage or other (including statutory penalties and/or damages), to the extent such arises or results from (i) Lessee's use of the rented equipment, or (ii) Lessee's performance or failure to perform under this Agreement, or (iii) Lessee's breach of any term or condition of this Agreement or any representation or warranty herein, or (iv) any negligent act, omission, breach of statutory duty or obligation, on the part of Lessee or any other person for whom Lessee is liable, including but not limited to, acts of negligence.

- B. The foregoing indemnification includes, but is not limited to, any all allegations, investigations, claims, actions, demands, damages, losses, liabilities or expenses of any kind, including reasonable attorneys' fees, which is in any way connected with the Lessee's conduct and which is based upon a breach of statutory duty or obligation on the part of the Lessor where the Lessor is not found to have committed a negligent act or omission. If the foregoing indemnity is made void or otherwise impaired by any law controlling the construction thereof, such indemnity shall be deemed to conform to the fullest indemnity permitted by law.
- C. In claims against the Lessor by an employee of Lessee, or anyone indirectly employed by Lessee or anyone for whose acts the Lessee may be liable, the indemnification provisions hereunder shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for the Lessee under workers' compensation acts, disability benefits acts, or other employee benefit acts.
- D. The foregoing indemnification shall not be construed to negate, abridge or reduce other rights or obligations of indemnity which would otherwise exist.
- E. To the fullest extent permitted by law, Lessee hereby assumes all responsibility and liability for the adequacy of design and strength of any lifting lug or device embedded in or attached to any object, and any and all rigging or lifting apparatus (even if such lifting apparatus is supplied by Lessor), and Lessee will indemnify and hold Lessor harmless from any and all actions, causes of action, claims, suits, demands, investigations, obligations, judgements, losses, costs, liabilities, damages, fines, penalties and expenses, including attorney's fees arising or resulting therefrom.
- F. Lessee shall pay the Lessor for any and all costs, expenses and attorneys' fees which Lessor may suffer, incur or become liable for by reason of the Lessee's failure to carry out the provisions of this Agreement or as a result of the Lessor enforcing, or attempting to enforce, the terms and provisions of this Agreement.
- G. All provisions in this article shall indefinitely survive termination of this Agreement.

Article IX: Insurance Provisions

- A. Lessee further agrees to secure and maintain, during all times it is renting equipment under this contract, the following insurance. All of the insurance listed below shall be written through a company or companies satisfactory to the Lessor, licensed and authorized in the state where the equipment will be utilized, and has an A.M. Best Rating of A-, VII or better.

- a. Commercial General Liability Insurance with coverage limits of not less than \$1,000,000 per occurrence and \$2,000,000 general aggregate. Lessee's Commercial General Liability shall include contractual liability insurance applicable to its operations under this Agreement written on an occurrence basis. Such insurance shall also insure Lessor, to the full extent of the foregoing limits, in respect of personal injuries suffered by workers. Such insurance shall not contain any exclusion for any type of work that the rented equipment will be utilized in.
 - b. Commercial Auto Insurance, providing coverage for both damage to property and injury to persons, expressly insuring Lessee's indemnity obligations referenced in Article VIII, in an amount not less than \$1,000,000 combined single limit. Such Commercial Auto Insurance must include coverage for liability arising out of all owned, leased, hired and non-owned automobiles.
 - c. Excess Insurance, providing coverage for both damage to property and injury to persons, over and above the coverages provided in paragraphs "a" and "b" of this article, in an amount not less than \$2,000,000.00 each occurrence or accident, and in the aggregate.
 - d. Workers Compensation and Employers Liability with limits of at least \$500,000 each accident for bodily injury by accident and \$500,000 each employee for injury by disease. When rented equipment is utilized in such a manner that the U.S. Longshore and Harbor Workers' Compensation Act (USL&H) applies, the policy shall include a USL&H endorsement.
 - e. Physical Damage coverage covering the rented equipment written to the full replacement value of the rented equipment. This physical damage coverage shall insure against, but not be limited to, fire, theft, vandalism, overload, collapse, and water damage. If the equipment being rented is a crane, the Physical Damage insurance must also be endorsed to cover boom and overload damage. If the rented equipment is to be used on a barge or vessel, the physical damage coverage shall also include coverage for waterborne equipment. Lessor shall be named as a loss payee on this policy
- B. Lessee agrees to name the Lessor as an additional insured under each policy required by this article, except Worker's Compensation insurance and Physical Damage coverage, on a primary and non-contributory basis before any other insurance or self-insurance, including any deductible, maintained by, or provided to, the additional insured, without restriction as to fault or liability. Lessee agrees to furnish the Lessor with Certificates of Insurance identifying each insurance carrier, evidencing Lessee's compliance with the obligations as set forth herein and which states that the coverages afforded under the policies will not be canceled or terminated unless at least 30 days written notice is given to Lessor. Lessee, upon request, shall provide additional documentation, including, but not limited to, copies of underlying insurance policies so that Lessor may verify Lessee's compliance with this article.
- C. Lessee waives all rights against Lessor and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by commercial general

liability, commercial umbrella liability, business auto liability or workers compensation maintained per requirements in this section. Lessee shall cause its insurer to include a "waiver of subrogation" clause in or issue an endorsement to all of its insurance policies recognizing and agreeing to this provision

- D. It is understood and agreed that the insurance coverage and limits, required by this Article, shall not limit the extent of the Lessee's responsibilities and liabilities to Lessor arising by indemnity (under Article VIII of this agreement), law or otherwise..

Article X: Miscellaneous Provisions

- A. This Agreement shall be executed by both parties in duplicate; one copy shall be kept by the Lessee and one copy shall be kept on file by the Lessor.
- B. This Agreement shall remain in effect unless and until: (1) either party gives written notice to terminate on thirty (30) days' advance notice; or, (2) this Agreement is amended and/or superseded by written notice. Notwithstanding the foregoing, any notice of termination shall not be effective as to any open equipment rentals absent written agreement signed by both parties to this Agreement. In addition, notwithstanding the foregoing, the following clauses shall survive termination of this Agreement: **[Article VIII]**.
- C. Neither this Agreement nor any interest herein nor claim hereunder, nor any part of any of the foregoing, shall be assigned, subletted or transferred by Lessee except as expressly authorized in writing by Lessor. Any attempt at unauthorized assignment, subletting, or transfer, by Lessee shall constitute a material breach of this Agreement.
- D. This Agreement constitutes the entire agreement between the parties hereto and shall not be amended or modified except by written instrument specifically referencing the section being amended and executed by both parties. There are no agreements or understandings, verbal or otherwise, between the parties concerning equipment rental which are not set forth herein. No provision of this Agreement may be waived except by written instrument signed by both parties hereto.
- E. Except as otherwise provided herein, no provision of this Agreement shall in any way inure to the benefit of any third person (including the public at large) so as to constitute any such person a third-party beneficiary of this Agreement or of any one or more of the terms hereof or otherwise give rise to any cause of action in any person not a party hereto.
- F. The illegality, unenforceability, or non-applicability of any provision hereof shall not affect the remaining provisions of this Agreement, but such remaining provisions shall be construed as though such illegal, unenforceable or non-applicable provisions had not been included herein.
- G. Lessee shall indemnify Lessor and reimburse Lessor for all fees, costs and disbursements incurred by Lessor in the enforcement of this Agreement, including Lessor's reasonable legal fees and disbursements through all trial and appellate proceedings.
- H. The exchange of copies of this Agreement and of signature pages by electronic means intended to preserve the original graphic and pictorial appearance of a document shall constitute effective execution and delivery of this Agreement as to the parties hereto and may be used in lieu of the original Agreement for all purposes. Signatures of the parties hereto transmitted by electronic means shall be deemed to be their original signatures for all purposes.
- I. The parties each represent that the person executing this document on behalf of such party has the power and authority to enter into this Agreement and such entity has the authority to consummate the transactions herein contemplated. The execution and delivery hereof

and the performance by each party of its obligations hereunder will not violate or constitute an event of default under the terms or provisions of any agreement, document or other instrument to which it is a party or by which it is bound. All proceedings required to be taken by or on behalf of each party to authorize it to make, deliver and carry out the terms of this Agreement have been or will be duly and properly taken by each party and this Agreement is the legal, valid and binding obligation of the parties and is enforceable in accordance with its terms.

- J. The headings of Sections and paragraphs are for convenience only and shall not modify rights and obligations created by this Agreement.
- K. The failure of Lessor to insist upon strict compliance by Lessee shall not be deemed a waiver of Lessor’s right to do so in the future.
- L. This Agreement shall be construed and interpreted in accordance with the Laws of the State of New York.

The parties have executed this Agreement in duplicate and affixed their seals below on this _____ day of _____, 20_____.

LESSOR

By: _____
Name: _____
Title: _____

LESSEE

By: _____
Name: _____
Title: _____