

MASTER EQUIPMENT RENTAL AGREEMENT

AGREEMENT made the ____ day of _____, 2006, by and between BRAZOS RIVER HARBOR NAVIGATION DISTRICT OF BRAZORIA COUNTY, TEXAS, a conservation and reclamation district, a body politic, and a corporate and governmental agency of the State of Texas whose address 200 West Second Street, Third Floor, Freeport, Texas 77541 (hereinafter called "District"), and _____, whose address is _____ (hereinafter called "User").

RECITALS:

WHEREAS, User desires to rent certain equipment from District from time to time under the terms contained herein and contained in Tariff No. 5 issued by the District as from time to time amended ("Tariff").

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that District has agreed to rent to User such Equipment (hereinafter defined) as may be desired by User in its business, subject to the limitations hereafter defined as set out in the Tariff.

Definitions

1. "Agreement" shall mean this Master Equipment Rental Agreement as amended from time to time by written agreement signed by the District and User.
2. "Equipment" shall mean all equipment rented by District and described in Item 445 of the Tariff as amended from time to time.
3. The "Rental Rates" as used herein for each piece or group of Equipment rented hereunder means the amount to be paid for the piece of Equipment as set out in Item 445 of Tariff as amended from time to time.

Terms and Conditions of Master Rental Agreement

1. Rental Agreement.

A. Equipment. User may rent from District and User has accepted the Equipment for the Rental Rate as set out in the Tariff as amended from time to time. User will be subject to and must comply with all terms of the Agreement and all Terms of the Tariff (which is incorporated herein by reference).

2. Term of Master Rental Agreement.

A. This Agreement shall commence on even date herewith and continue to the latter of the end of sixty (60) months.

B. All rental charges under this Agreement shall be paid by the User to the District's place of business at 200 West Second Street, Third Floor, Freeport, Texas 77541, free of all claims, demands or other set offs against the District or the supplier of the Equipment and in accordance with Item 395 of the Tariff as amended from time to time.

3. Equipment. THE DISTRICT MAKES NO WARRANTY, DIRECTLY OR INDIRECTLY, EXPRESS OR IMPLIED, AS TO THE EQUIPMENT OR ANY PART THEREOF, AS TO ITS DURABILITY, CONDITION, MERCHANTABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE. The User understands and agrees the District, not being a manufacturer or distributor of Equipment, makes no warranty or representation, express or implied, as to the merchantability, fitness, safeness, design, condition, quality, capacity, usability, or workmanship of the Equipment, nor any warranty that the Equipment will satisfy the requirements of any law or contract specifications, such risk being borne as between User and District by User at its sole risk and expense.

4. User's Inspection. User will inspect any of the Equipment desired to be leased and hereby accepts all of the Equipment "as is, where is".

5. Termination. District may terminate this Agreement at any time without cause. In the event the District notifies the User that it no longer desires to lease equipment, District shall promptly pay all outstanding fees due to User for all Rental Rates to date.

6. Insurance. At all times during the Term of this Agreement, User will, at its own expense, keep and maintain, or cause to be kept and maintained, the insurance policies required under Item 380 of the Tariff and comply in all respects with the requirements of Item 380 of the Tariff.

7.01. Liability. User assumes all risk and liability for the loss of or damage to the rented equipment, for the death of or injury to any person or property of another, and for all other risks and liabilities arising from the use, operation, condition, possession, or storage of the Equipment. Nothing in this Agreement shall authorize User or any other person to operate any of the Equipment so as to impose any liability or other obligation on District. In the event the District furnishes an operator for any rental equipment, User agrees that User shall have operational control of such equipment and the operator and the ability to direct the operator and shall be liable for all loss or damage caused by such operator.

7.02 Indemnity. THE USER HEREBY ASSUMES ALL LIABILITY FOR, AND AGREES TO DEFEND, INDEMNIFY AND HOLD THE DISTRICT, ITS OFFICERS, COMMISSIONERS, DIRECTORS, EMPLOYEES, AGENTS, SUCCESSORS AND ASSIGNS (COLLECTIVELY, THE "INDEMNIFIED PARTIES"), HARMLESS FROM ALL CLAIMS, FINES, DAMAGES, LIABILITIES, LOSSES, COSTS, EXPENSES (INCLUDING WITHOUT LIMITATION REASONABLE ATTORNEYS' FEES AND COURT COSTS), PENALTIES, ASSESSMENTS, AND/OR INJUNCTIVE OBLIGATIONS, WHICH MAY BE SUFFERED OR INCURRED AT ANY TIME BY THE INDEMNIFIED PARTIES, ON ACCOUNT OF INJURIES TO OR DEATH OF ANY PERSONS, DAMAGE TO OR DESTRUCTION OF ANY PROPERTY, AND/OR ANY VIOLATION OF ANY APPLICABLE LAW, RULE, REGULATION, OR ORDER OF ANY GOVERNMENTAL ENTITY, CAUSED BY, RESULTING FROM, OR ARISING OUT OF (i) THE ACTS OR OMISSIONS OF THE USER, ITS OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS, OR (ii) ANY DEFAULT, BREACH OR VIOLATION OF THIS AGREEMENT BY THE USER.

8. Damage. If any piece of Equipment under this Agreement is damaged, lost, stolen, or destroyed as a result of its operation, use, maintenance, or possession by User, User shall promptly notify District of the occurrence and shall file all necessary accident reports, including those required by law and those required by interested insurance companies. In the event of loss or damage of any kind to any piece of Equipment rented hereunder, User, at the option of District, shall either (i) place the piece of Equipment in good condition and working order; or (ii) replace the piece of Equipment with a like piece of Equipment in good condition and working order and furnish the District with necessary documents to vest good and marketable title thereto in the District.

9. Use, Location, Removal, and Inspection. The Equipment shall be used only on the District's premises in the lawful business of the User.

10. Events of Default. The occurrence of any of the following events shall be deemed to constitute a default within the meaning of this Agreement:

- A. If User fails to pay the Rental Payments or any other sums when due hereunder.
- B. If User shall fail or omit to perform or observe any of the covenants, agreements or conditions contained in this Agreement.
- C. If any representation or warranty made herein by the User, or in any written statement of certificate now or later furnished by or for User in connection herewith, shall prove to be materially untrue as of the date with respect to which it was made.

11. Conflicts Of Interest.

A. User acknowledges that the District is a governmental authority and, as such, the District is firmly committed to making any business decisions based solely on evaluation of offers that the District believes will provide the District the best value and greatest return. Basic business integrity dictates that the District's business decisions be objective, be in the best interest of the District, and be in no way connected to or influenced by any other relationship. The undersigned, as a duly authorized representative of the User, represents, warrants and certifies on behalf of the User that (a) User has not directly or indirectly paid, offered, promised to pay, contributed, or promised to contribute any money or any other thing of value or benefit (including employment, contracts or subcontracts relating to User's business) to any Commissioner, official or employee of the District, (b) no Commissioner, official or employee of the District has (directly or indirectly) solicited any such payment or contribution, and (c) User does not have any Relationship (as that term is hereinafter defined) with any Commissioner, official or employee of the District. For the purposes of this agreement, a Relationship is defined as (1) a Commissioner, official or employee of the District or an affiliate of a Commissioner, official or employee of the District owns ten percent (10%) of the ownership of the User or ownership in the User with a fair market value of \$5,000 or more; or (2) a Commissioner, official or employee of the District or an affiliate of a Commissioner, official or employee of the District has an employment or other business relationship with the User that results in taxable income or receipt of something of value by a Commissioner, official or employee of the District or an affiliate of a Commissioner, official or employee of the District; or (3) a Commissioner, official or employee of the District or an affiliate of a Commissioner, official or employee of the District receives one or more gifts from the User that have a total value of more than \$250 in one 12-month period. An "affiliate" of a person is (1) a family member of the person, related within the first degree by consanguinity or affinity, as defined by Subchapter B, Chapter 573 of the Texas Government Code, or (2) an entity owned in whole or in part by the person or by a family member of the person related within the first degree by consanguinity or affinity. The representations, warranties and certifications made in this Section 11 are ongoing and will remain in effect for the term of this Agreement. If any of the representations, warranties or certifications made by User herein cease to be correct during the term of this Agreement, and in any event prior to making any

payment or contribution to or forming a Relationship with a Commissioner, official or employee of the District, User will notify the District by filing a written statement with the Board Secretary of the District through the office of the Executive Port Director. User will be in default under the terms of this Agreement if (i) any of the representations, warranties or certifications made herein are false or misleading in any material respect as of the effective date, (ii) User fails to disclose any matter required to be disclosed hereunder, or (iii) User makes a payment or contribution to a Commissioner, official or employee of the District without first disclosing the nature of the payment to be made as provided herein.

B. The undersigned, as a duly authorized representative of the User, represents, warrants and certifies on behalf of the User that User understands the requirements imposed on User as a vendor under Section 60.483 (Vendor Requirements), Subchapter P, Texas Water Code and that User has fully and timely complied with all such requirements. During the term of this Agreement, User agrees to comply with all requirements of Section 60.483, including without limitation the requirement to timely file any required updates to the vendor conflict of interest questionnaire previously filed by User. User acknowledges and agrees that pursuant to Section 60.483 (Vendor Requirements), Subchapter P, Chapter 60 of the Texas Water Code and the terms of this Agreement, this Agreement is voidable and may be terminated by the District at no cost to the District if Contractor fails to comply with a requirement of this subsection and Section 60.483. A termination of this Agreement by the District under this subsection and Section 60.483 is effective when the District delivers notice to User of termination citing a violation of this subsection and Section 60.483 as the basis for termination, notwithstanding any other procedures or provisions in this Agreement that address a termination of this Agreement by the District.

12. Safety.

A. User shall comply with all safety standards and accident prevention regulations promulgated by federal, state or local authorities having jurisdiction and shall at all times conduct all operations in a manner to avoid the risk of bodily harm to any persons and the risk of damage to any property, equipment or material. User shall continuously inspect all work, materials and equipment to discover and determine any conditions which might involve such risks and shall be solely responsible for discovery, determination and correction of any such conditions and shall continue to be responsible until all work is completed.

B. User is responsible for actions of omissions or commission by its representatives, personnel, agents, contractors and vendors and their respective employees and shall be liable and shall promptly remedy damage or loss to equipment as a result of such acts. User shall be fully responsible for the safety and health protection of its representatives, employees, agents, contractors, vendors and their respective employees and visitors it brings on site.

C. Users shall conduct a site safety orientation for new hires and a regular periodic training meeting for employees or personnel working on or using the Navigation District's facilities. The Navigation District has the right to monitor such meetings. Further, Users shall provide suitable training about, but not be limited to, safe work practices, safety policies and rules, personal protective equipment requirements and hazardous materials. Contractors and vendors shall provide specialized training to personnel engaged in risky and non-routine tasks.

D. Users' employees, agents, contractors and visitors are required to wear appropriate personal protective equipment per safety rules and regulations.

E. User shall upon request provide the District with a copy of its Safety Policy and Safety Procedures Manual and shall designate an individual that is responsible for the administration of its safety program and shall provide the District with the individual's identity and contact information.

F. All serious accidents on the District's facilities are to be reported to the District immediately upon occurrence. The District is to be provided with a written accident investigation report about all serious accidents resulting in fatality, lost time, when personnel are hospitalized as a result of a single incident or when serious equipment or property damage occurs within ten (10) days of the day of the accident.

G. The Safety requirements set out herein are only minimum requirements and the User should take all precautions necessary to prevent bodily injury or property damage. In the event the Navigation District observes any unsafe practice, it may stop the User's work. The Navigation District does not assume Users responsibility for the safety and health of its personnel and the discovery and/or elimination of hazards, which could possibly cause accidents or damage. Users agree to indemnify and hold harmless the Navigation District from and against all losses, claims, demands and suits for damages including court costs and attorney fees resulting from or relating to that Users' compliance or failure to comply with this Item 345.

H. User is obligated to bind its Contractors, representatives, vendors, suppliers, agents and their respective employees to the provisions set forth in this Section 14 as well as all applicable provisions set forth in the Tariff or this Agreement.

13. Concurrent Remedies. The rights granted to the District under this Agreement and the Tariff shall be cumulative and action on one shall not be deemed to constitute an election or waiver of any other right to which the District may be entitled. The User waives trial by jury in any action or proceeding arising hereunder.

14. Notice. All notices relating to this agreement shall be delivered in person to an officer of the District or User or shall be mailed certified or registered to the District or User at their respective addresses shown above or at any other address hereafter furnished by notice given in like manner. If mailed, a notice shall be effective three (3) days after deposited in the U.S. mail.

15. Non-Waiver. A waiver of a specific default shall not be a waiver of any other or subsequent default. No waiver by the District of any provisions hereof shall constitute a waiver of any other matter and all waivers shall be in writing and executed by an officer of the District. No failure on the part of the District to exercise, and no delay in exercising, any right or remedy hereunder shall operate as a waiver thereof.

16. Entire Agreement. This instrument constitutes the entire agreement between the parties and may not be modified except by an instrument signed by the parties. The Agreement shall not constitute a contract until accepted in writing by an authorized representative of the District. Any representation or statement made by the District or User not stated herein shall not be binding.

17. Additional Documents. At the request of the District, the User shall execute and deliver to the District such documents as the District shall deem necessary or desirable for the purpose of recording or filing.

18. Severability. If any provision of this instrument is prohibited by law in any state, such provision shall, as to such state, be ineffective to the extent of such prohibition without invalidating the remaining provisions hereof.

19. Governing Law. This instrument shall be governed by and construed in accordance with the laws of the State of Texas and any lawsuit to interpret or enforce this Agreement must be brought in Brazoria County, Texas.

20. Headings. Headings in this instrument are for convenience only and shall not be used to interpret or construe its provisions.

21. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

22. Binding Effect. The provisions of this Agreement shall be binding upon and inure to the benefit of District and User and their respective legal representatives, successors, and assigns.

EXECUTED this the _____ day of _____, 2006.

DISTRICT:

USER:

BRAZOS RIVER HARBOR
NAVIGATION DISTRICT OF
BRAZORIA COUNTY, TEXAS

By:

By:
