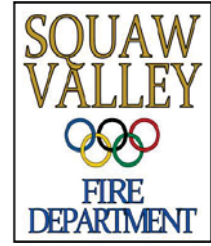




SQUAW VALLEY PUBLIC SERVICE DISTRICT



Operations Backhoe Purchase

DATE: September 26, 2017

TO: District Board Members

FROM: Brandon Burks, Operations Superintendent

SUBJECT: A contract with John Deere, Inc. to purchase a 310 SL/HL backhoe. This new backhoe will replace the 1994 JCB backhoe.

BACKGROUND: The 1994 JCB backhoe was purchased in 1994 and is undersized and underpowered for the type of work the District utilizes it for. The backhoe is used to dig on water and sewer line repairs and for snow removal. The JCB backhoe is in need of significant repairs including hydraulic valve body repair and steering column wiring issues.

DISCUSSION: Operations staff has investigated multiple types and sizes of backhoes. Staff feels it is advantageous to purchase the same brand and types that other districts in the area use. The mechanical support in the area is limited, but John Deere has a shop in Reno that has been responsive and offers mobile repair. The John Deere Model 310 SL/HL is well-suited to our needs and validated.

Operations staff solicited pricing from three manufacturers and recommends purchasing from John Deere. The pricing is in accordance with the State of California contract for this equipment. Staff also requested pricing from Caterpillar and Case. Pricing was fairly close among the three brands. Purchasing the John Deere unit is recommended due to its capabilities and value for the price.

Pape Machinery, the John Deere distributor, has proposed purchasing the used JCB backhoe from the District for \$10,000, which would reduce the cost of the new John Deere backhoe by that amount. This price is within the market value range of the JCB. There are a few issues that need repair which lowers the amount the District is able to get for the old backhoe.

ALTERNATIVES: 1. Approve the contract to purchase the John Deere 310 SL/HL.
2. Not approve this contract.

FISCAL IMPACT: This will be a capital replacement funded purchase through the Water and Sewer Fixed Asset Replacement Funds. An amount of \$150,000 was budgeted for 2017-18 year. The cost to purchase the 310 SL/HL is \$129,407, but the price will be reduced by \$10,000 to \$119,407 with the trade in of the 1994 JCB backhoe.

RECOMMENDATION: Approve the contract for purchase of the John Deere 310 SL/HL in the amount of \$119,407.

ATTACHMENTS: Pape machinery Sales Order and Quote (5 Pages)

DATE PREPARED: September 19, 2017



Brandon Burks and Josh Wilson
 Squaw Valley Public Utilities Division
 305 Squaw Valley Rd
 Olympic Valley, CA 96146
 Phone: 530-583-4692

John Deere 310SL HL BACKHOE LOADER

0A80T	310SL HL BACKHOE LOADER
170C	JDLink Ultimate Cellular - 5 Years
2401	English Decals with English Operator and Safety Manuals
3065	Mechanical Front Wheel Drive (MFWD) with Limited Slip Differential
2035	Cab
8685	Dual Maintenance Free Batteries With Disconnect and Jump Post
6020	Extendible Dipperstick
6230	Auxiliary Hydraulic with One & Two Way Flow (Hammer & Thumb/Swinger)
5285	Pilot Controls, Two Lever, with Pattern Selection
5460	Rear Hydraulic Coupler for Pin-on Buckets
7085	Loader Coupler, 3-Function Hydraulics, Single Lever
8475	1000 Lb. (454 kg) Front Counterweight
1065	John Deere PowerTech Plus 4.5L (276 Cu. In.) Final Tier 4 and Stage IV Emissions
4484	Galaxy 580 Radial - 500/70R24 Rear & 340/80R18 Front
7690	1.32 Cu. Yd.(1.0 Cu. M.), 92 in.(234 mm) wide Multipurpose Coupler Bucket
9965	Seat, Cloth Air-Suspension
9920	Exterior Rear View Mirrors (2)
9916	Radio, Bosch Premium Package
9116	LED Light Package
9235	42 Inch Hydraulic Backhoe Thumb - 4 Tine
9045	Chrome Exhaust Extension
9515	Diagnostic Oil Sampling Ports
9505	Full MFWD Driveshaft Guard

Accessory Items

AT313592	6 inch Amber Warning Light with LED Beacon and Magnetic Roof Mounting Kit
AT434236	Rubber Bumper for Grille Frame
AT186288	Slow Moving Vehicle Emblem
310SL	18" Dig Bkt (GANNON)
310SL	24" Dig Bkt (GANNON)
	CMAS GOV'T DISCOUNT

Configured Price (After 44% CMAS Discount)	\$120,192.51
Sales Tax (7.250%)	\$8,713.96
Tire Tax	\$7.00
Price including Taxes	\$128,913.47

Trade In 1 (1994, JCB, 417 Site Master, USA214smcre417697):
Trade In Value (\$10,000.00)

Total Sale Price **\$118,913.47**

Thomas Beam
Pape Machinery
2850 El Centro Rd.
Sacramento, CA 95833
(916)542-5323
tbeam@papemachinery.com
www.papemachinery.com



SALES ORDER

REFERENCE NUMBER

BILL TO	SIC Code _____	SHIP TO	Name <u>Brandon Burks</u>
Buyer <u>Squaw Valley Public Service Division</u>	Address <u>305 Squaw Valley Rd</u>		
Address <u>305 Squaw Valley Rd</u>	City <u>Olympic Valley</u> State <u>CA</u> Zip <u>96146</u>		
City <u>Olympic Valley</u> State <u>CA</u> Zip <u>96146</u>	County: <u>Placer</u>		
County <u>Placer</u> Customer No. _____	Delivery Date (Est.) <u>12/15/17</u> Customer No. _____		
Ph. No. <u>530-583-4692</u> Fax No. _____	P.O. NO. _____		

EQUIPMENT	MAKE	MODEL	EQUIP. #	TRANSACTION		INVENTORY		
				SALE	RPO	NEW	USED	RENT
John Deere		310SL		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
		SER.# <u>Order sold</u>						

Description:	<u>310SL HL BACKHOE LOADER, JDLink Ultimate Cellular - 5 Years, English Decals with English Operator and Safety Manuals, Mechanical Front Wheel Drive (MFWD) with Limited Slip Differential, Cab, Dual Maintenance Free Batteries With Disconnect and Jump Post, Extendible Dipperstick, Auxiliary Hydraulic with One & Two Way Flow (Hammer & Thumb/Swinger), Pilot Controls, Two Lever, with Pattern Selection, Rear Hydraulic Coupler for Pin-on Buckets, 18" (457 mm) Wide, Heavy-Duty, 5.1 Cu. Ft...(more)</u>	\$	\$120,192.51
Attachments:	<u>18" Dig Bkt (GANNON), 24" Dig Bkt (GANNON), CMAS Fee, Pape' Install labor, SMV, Beacon, Resea</u>		

Del'y/F.O.B		\$		AGREED PRICE \$	\$120,192.51
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TRADE	YEAR	1994	SERIAL #	USA214smcre417697	If Tax Exempt, Provide Certificate or enter Rate Below
MAKE	JCB		MODEL	417 Site Master	

Lienholder:	Total Price	\$	\$128,906.47
Trade In Allowance ▶ \$10,000.00	Less (Est.) Payoff ▶	▶ Net Trade-In	< \$10,000.00 >

BILL OF SALE: FOR TRADE-IN DESCRIBED HEREIN. WE CERTIFY THAT THERE IS NO LIEN, CLAIM, DEBT, MORTGAGE OR ENCUMBRANCE OF ANY KIND, NATURE OR DESCRIPTION AGAINST THIS PROPERTY NOW EXISTING, OF RECORD OR OTHERWISE AND THAT SAME IS FREE AND CLEAR AND IS MY/OUR SOLE AND ABSOLUTE PROPERTY EXCEPT AS NOTED ABOVE.	Sales Tax (WA Only) (%)	\$0.00
	CA Tire Fee	\$ 7.00
	Balance Due	\$ 118,913.47

BUYER'S SIGNATURE: X	Down Payment	< >
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FINANCE	<input type="checkbox"/> FINANCED	<input checked="" type="checkbox"/> ON ACCOUNT	<input type="checkbox"/> CASH/COD	Doc Fees	\$500.00
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TERMS (SUBJECT TO APPROVAL): <u>Purchase on Account with PO</u>	INSURANCE	
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Insurance Agent:	Amount to Finance	
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WARRANTY	<input checked="" type="checkbox"/> NEW BASIC (DESCRIBE)	<u>1 Year Unlimited Hours PTH</u>	Length of Term	Est. PMT. W/Ins.	
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<input type="checkbox"/> NEW EXTENDED (DESCRIBE)		Est. PMT. W/O Ins.	
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<input type="checkbox"/> AS IS / NO WARRANTY	<input type="checkbox"/> USED (DESCRIBE)	
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This Sales Order is subject to additional terms and conditions on the reverse side of this document. The undersigned Buyer agrees that it has read and understands the terms and conditions, warranty disclaimers, and limitations of liability set out in the additional terms and conditions on the reverse side of this document and that the same are included in and are part of this Sales Order as if set forth on the face hereof.

PAPÉ MACHINERY, Inc.		BUYER	
(Store Address) <u>2850 El Centro Rd.</u>	By _____	Title _____	
City <u>Sacramento</u> State <u>CA</u> Zip <u>95833</u>	By _____	Title _____	
By <u>Thomas Beam</u>	Date <u>09/19/2017</u>	Date <u>09/19/17</u>	
Title _____			

TERMS AND CONDITIONS OF SALE

TERMS AND CONDITIONS OF SALE: Sales Orders are based on the terms and conditions stated herein. Unless otherwise provided on the face hereof, offers are good for acceptance for a period of 30 days from the date hereof. An order by the Buyer shall constitute an acceptance of the terms and conditions herein proposed. If, and only if, no offer of sale is issued by Seller, then the invoice shall be deemed: an acceptance of the Buyer's order; a written confirmation; and a final, complete, and exclusive written expression of the agreement between Seller and Buyer. Buyer is hereby notified that additional or different terms from those contained herein are objectionable.

1. Taxes. Buyer shall pay all local, state, and federal taxes arising from or related to any sale or lease to which this document relates, except for taxes upon or measured by net income of Seller.

2. Delivery. Stated or promised delivery dates are estimates only based upon Seller's best judgment and Seller shall not be responsible for deliveries later than promised regardless of the cause. Delivery periods are projected from the date of receipt of any order by Seller, but if equipment to be furnished by Seller is to be manufactured specifically to fill a particular order, delivery periods will be projected from the date of Seller's receipt of complete manufacturing information. If the furnishing of equipment on orders accepted by Seller is hindered or prevented by public authority or by the existence of war or other contingencies, including, but not limited to, shortage of materials, fires, labor difficulties, accidents, delays in manufacture or transportation, acts of God, embargoes, inability to ship, inability to insure against war risks or substantially increased prices or freight rates, or other causes beyond Seller's control, the obligation to fill or complete such orders shall be excused by Seller's option.

3. Transportation and Claims. Prices quoted are net F.O.B. point designated in writing by Seller. When no F.O.B. point is designated in writing by Seller, prices for new equipment shall be deemed to be net F.O.B. point of manufacture and prices for all other equipment shall be deemed to be F.O.B. Seller's place of business at which the order for the equipment is accepted. When transportation is allowed, the price charged will be adjusted to reflect the lowest transportation rates in effect at the time of shipment even though such rates may differ from those quoted by Seller. Seller's responsibility for the equipment shall cease and all risk of loss shall become the Buyer's upon delivery of the equipment to the first carrier for shipment to the Buyer or his consignee, even though such delivery shall be made prior to the arrival of the equipment at the F.O.B. point designated, and any and all claims for shortages, deliveries, damages or non-delivery must be made by the Buyer or his consignee to the carrier. Seller shall in no event be responsible for shortages in shipments unless notice of such shortage is given in writing to Seller within 15 days after receipt of shipment.

4. Payment and Security. Buyer agrees to pay in full for the equipment at time of delivery. Buyer agrees to pay the late charge on any past due balance at the rate of 18% per annum. The signator warrants that he/she has authority to execute this order on behalf of any party for whom he/she signs, and that such party has the power to enter into this agreement and perform its terms. As security for all of Buyer's obligations to Seller, Buyer grants to Seller a security interest in the equipment and authorizes Seller to file all documents necessary to perfect Seller's security interest. The security interest granted hereunder is in addition to any other rights available to Seller, and Seller shall have all of the rights and remedies available to a secured party under the Uniform Commercial Code, all of which are cumulative. Throughout the duration of Seller's security interest. Buyer shall keep the equipment fully insured against theft and loss or damage by fire and other casualty as Seller may from time to time require in accordance with such terms as Seller may require.

5. Buyer to Furnish. Performance by Seller is subject to the Buyer furnishing a satisfactory credit rating certificate, letter of credit, evidence of financing, or any other similar papers necessary for the satisfactory completion of such order.

6. Laws Governing. All orders will be governed by the laws of the State of Oregon.

7. Assignment. The right to any monies due or to become due hereunder may be assigned by Seller, and Buyer, upon receiving notice of such assignment, shall make payment as directed.

8. Limitations of Warranties. If "NEW" warranty is indicated on the reverse side or if new equipment is purchased hereunder, all warranties are strictly given only by the manufacturer. Copies of manufacturer's warranty can be obtained from Seller. If "USED" warranty is indicated on the reverse side. Seller hereby warrants to Buyer that the equipment or components thereof designated on the reverse side, shall be free under normal use and service from defects in material and workmanship for the period shown, commencing on the date of delivery. Buyer's exclusive remedy for breach of the limited warranty shall be the repair or replacement of the warranted equipment without charge to Buyer when returned at Buyer's expense to the Seller's facility where the equipment was purchased, with proof of purchase. Buyer must give notice of any warranty claim not later than 7 days after the expiration of the warranty period and must return the equipment to Seller for repair or replacement no later than 30 days after expiration of the warranty period. Any action against Seller for breach of the limited warranty must be commenced within one year after the date of delivery of the equipment. Seller's warranty does not extend to any defect, claim, or damage attributable to the failure to operate and/or maintain the equipment in accordance with the manufacturer's specifications, or due to the failure to operate or maintain the equipment in accordance with any recommendations of Seller. If "AS IS" is indicated on the reverse side, no warranty of any kind is being given and the equipment is being sold with all faults. **THE WARRANTIES IN THIS PARAGRAPH AND ON THE REVERSE SIDE ARE THE EXCLUSIVE WARRANTIES GIVEN BY SELLER AND SUPERSEDE ANY PRIOR, CONTRARY, OR ADDITIONAL REPRESENTATIONS, WHETHER ORAL OR WRITTEN. SELLER HEREBY DISCLAIMS AND EXCLUDES ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY IMPLIED WARRANTIES OTHERWISE ARISING FROM COURSE OF DEALING OR USAGE OF TRADE. SELLER SHALL NOT BE LIABLE FOR ANY LOSS, INJURY, OR DAMAGE TO PERSONS OR PROPERTY RESULTING FROM THE FAILURE OR DEFECTIVE OPERATION OF THE EQUIPMENT; NOR WILL SELLER BE LIABLE FOR DIRECT, INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND SUSTAINED FROM ANY CAUSE.** This exclusion applies regardless of whether such damages are sought for breach of warranty, breach of contract, negligence, or strict liability in tort or under any other legal theory.

9. Rental Purchase Option. If rental purchase option (RPO) is granted in any addendum, the purchase price shall be tendered to Seller coincidentally with the exercise of the purchase option provided that Buyer is not then in default in performing all of the terms and conditions of lease with Seller.

10. Notice. This paragraph shall serve as notice that The Papé Group, Inc. has assigned its rights to sell its rental equipment (as may be described in this sales order) and its rights to sales proceeds (including "trade-in assets" related thereto) to North Star Deferred Exchange as part of an IRC Sec. 1031 exchange.

11. Attorneys Fees. In the event suit or action is instituted against Buyer on account of or in connection with or based upon the terms hereof, the Buyer agrees to pay, in addition to the costs and disbursements provided by law, such sum as the court may adjudge reasonable attorney's fees in both the trial and appellate courts, or in connection with any bankruptcy proceeding.

12. Entire Agreement. The foregoing and any addendum shall constitute the complete and exclusive agreement between the parties, and it is expressly understood and agreed that no promises, provisions, terms, warranties, conditions, guarantees, or obligations whatsoever, either expressed or implied, other than as herein set forth or provided for shall be binding on either party. Each party may transmit its signature by facsimile to the other party and such facsimile signatures shall have the same force and effect as an original signature.

RENTAL TERMS AND CONDITIONS

Lessee must check engine oil, water and fuel daily. Lessee is responsible for all tire maintenance, fuel, missing parts and all damage other than normal wear. Any damage to this Equipment resulting from improper care will be charged directly to Lessee. The Contract shall extend beyond the term at the same terms if Lessee holds the Equipment over the specified term of Contract.

1. **Equipment Location.** The Equipment will be delivered to and used at the listed address unless otherwise noted on the front of this Contract and shall not be moved to another location without consent.
2. **Tires.** All damage to tracks, tires, and tubes caused by blow-out, bruises, cuts, road hazards and other causes inherent to the use of the Equipment is the responsibility of the Lessee.
3. **Theft.** Lessee is responsible for the theft of the Equipment, until Lessor takes possession of the Equipment.
4. **Malfunctioning Equipment.** Should the Equipment become unsafe, malfunction or require repair, Lessee shall immediately cease using such Equipment and immediately notify the Lessor. If such condition is the result of normal operation, Lessor will repair or replace the Equipment with similar Equipment in working order if such replacement Equipment is available. Lessor has no obligation to replace Equipment rendered inoperable by misuse, abuse or neglect.
5. **Past Due Accounts.** Interest on all past due amounts shall accrue at the lesser of: (a) 1.5% per month, or (b) the highest rate permitted by law.
6. **Deposit.** Lessee acknowledges that one of the purposes and intents of the deposit, if a deposit is requested, is to secure and guarantee complete performance of Lessee's obligations under the Contract.
7. **Possession/Title.** Lessee's right to possession of the Equipment terminates on the return date indicated on the front of this Contract or upon termination of this Contract, whichever occurs first. Retention of possession after this date constitutes a material breach of this Contract. Time is of the essence of this Contract. Any extension of this Contract must be agreed upon in writing. Title to the Equipment is and shall remain in Lessor. If the Equipment is not returned and/or is levied upon for any reason whatsoever, Lessor may terminate this Contract without further notice, retake said items without further notice or legal process and use whatever force is reasonably necessary to do so. Lessee hereby agrees to indemnify, defend, and hold Lessor harmless from any and all claims and costs arising from such retaking. If Equipment is levied upon, Lessee shall notify Lessor immediately.
8. **Receipt/Inspection of Equipment.** Lessee hires the Equipment on an "AS IS" basis. Lessee acknowledges that it has personally inspected the Equipment prior to its leaving Lessor (regardless of point of delivery) and finds it suitable for its needs. Lessee acknowledges receipt of all items listed in this Contract in good working order and repair and that it understands its proper operation and use without further instructions regarding operation and use from Lessor. Lessee acknowledges that it has had an opportunity to inspect all hitches, bolts, safety chains, hauling tongues and other devices and materials used to connect the Equipment to Lessee's vehicle, if any, and Lessee declares that it has received the Equipment in a secure and operative condition. Lessee shall, whenever requested, advise Lessor of the exact location of the Equipment. Lessor, other equipment dealers, and equipment manufacturers may use data reporting systems at any time during this Contract to collect equipment data from the Equipment and determine its location, condition, or other operating parameters.
9. **Solvency.** Lessee represents to Lessor that Lessee is not insolvent and should it become insolvent, that it will return all Equipment to Lessor immediately.
10. **Rental Period/Rate/Payment.** Rental period is for a maximum of 24 hours unless a longer term is specified in the "return date." Rental charges begin immediately upon delivery of the Equipment to the location directed by the Lessee or upon Equipment leaving Lessor, whichever happens first. Rental charges end upon return of the Equipment to Lessor in an acceptable condition. If the Equipment is returned prior to the end of the minimum rental period, the rental due shall be for the entire designated rental period. Lessor may terminate or cancel rental at any time and retake the Equipment without further notice in case of violation by Lessee of any terms or conditions of this Contract. Lessee agrees to pay any collection costs and attorneys' fees incurred in relation to any matter arising under this Contract, including trials, appeals and bankruptcy proceedings. Rental rates are based upon single shift usage. Overtime usage is determined by service meter hour readings. If Lessee makes greater use of the Equipment, it is agreed that the additional usage will be charged.
11. **Ordinary Wear and Tear.** "Ordinary wear and tear" shall mean only the normal deterioration of the Equipment caused by ordinary, reasonable and proper use of the Equipment on a one-shift basis. Damage which is not "ordinary wear and tear" includes but is not limited to: damage resulting from lack of fuel or lubrication; failure to maintain proper oil, water, hydraulic or air pressure levels; damage due to overturning, overloading or exceeding a rated capacity; improper use; abuse; lack of cleaning; tire or track damages. Lessee shall be responsible for all damage not caused from ordinary wear and tear.
12. **Compliance with Laws/Use of Equipment.** Lessee agrees not to use or allow anyone to use the Equipment for any illegal purpose or in any illegal manner. Lessee acknowledges that Lessor has no physical control over the use of the Equipment. Lessee agrees at his sole cost and expense to comply with all municipal, county, state and federal laws, ordinances and regulations (including OSHA) which may apply to the use of the Equipment during the rental period. Lessee further agrees to pay all licenses, fees, permits or taxes arising from his use of the Equipment, including any subsequently determined to be due as a result of an audit. Lessee shall not permit Equipment to be operated by any person other than Lessee or Lessee's duly authorized employee, who has experience and training in the safe and proper use and operation of the Equipment, and is not under the influence of alcohol, intoxicants, narcotics or drugs. If Equipment is a motor vehicle, Lessee warrants and agrees that Equipment will not be operated or used by any person who has been convicted of a major traffic violation (excluding parking violations) including, but not limited to, careless or reckless driving, or driving while under the influence of alcohol, drugs or other intoxicants within the prior three years. Lessee shall not allow any person to use or operate the Equipment when it is in need of repair or when it is in an unsafe condition or situation; modify, misuse, harm or abuse the Equipment; permit any repairs to the Equipment without Lessor's written permission; or allow a lien to be placed upon the Equipment. Lessee agrees to check filters, oil, fluid levels, air pressure and clean and visually inspect the Equipment at least daily and to discontinue use and immediately notify Lessor when Equipment is found to need repair or maintenance. Lessee acknowledges that Lessor has no responsibility to inspect the Equipment while it is in Lessee's possession. If the Equipment becomes unsafe or requires repair, Lessee shall discontinue using it and notify Lessor immediately.
13. **Contamination-Free Return of Equipment.** Lessee agrees to return the Equipment to Lessor during regular business hours upon "return date" or immediately upon termination or cancellation of this Contract, whichever occurs first. Lessee agrees to return Equipment free of contamination by Hazardous Substances (as defined by state and federal laws) and agrees that the cost of any cleaning and decontamination caused by Lessee's failure to do so will be Lessee's responsibility. Lessee must inform Lessor if the Equipment has been in contact with Hazardous Substances.
14. **Sole Remedy.** Lessee's sole remedy for any failure of or defect in the Equipment shall be termination of the rental charges at the time of failure, provided that Lessee notifies Lessor immediately of such failure and returns the Equipment to Lessor within 24 hours of such failure. Lessor shall not be liable for damages of any kind, including special, incidental or consequential damages.
15. **Purchase Orders.** Any use of Lessee's purchase order number in or on this Contract is for Lessee's convenience in identification only.
16. **Default.** Should Lessee in any way fail to observe or comply with any provision of this Contract, Lessor may, at its sole option, exercise any and all of the following remedies: (a) termination of this Contract, (b) retake the Equipment, (c) declare any outstanding rent and charges due and payable and initiate legal process to recover the monies, (d) pursue any of the remedies available to Lessor. Exercise of any remedy available to Lessor shall not constitute an election of remedies or a waiver of any additional remedies to which Lessor may be entitled.
17. **Retaking of Equipment.** If for any reason it becomes necessary for Lessor to retake the Equipment, permission is granted to Lessor to enter upon property, including tribal lands, and retake the Equipment without further notice.
18. **Accidents and Indemnification.** For and in additional consideration of providing the Equipment, Lessee agrees to defend, indemnify and hold harmless Lessor, its assigns, the wholesale distributor, or the manufacturer, its affiliated companies, and its and their officers, agents and employees for, from and against all loss, liability, claim, action or expense, including reasonable attorneys' fees, arising out of Lessee's use or possession of the Equipment. The foregoing includes, without limitation, property damage and bodily injury, including death, sustained by any person or persons, including, but not limited to, employees of Lessee, arising out of the maintenance, use, possession, operation, erection, dismantling, servicing or transportation of the Equipment or Lessee's failure to comply with the terms of this Contract, except to the extent caused solely by the gross negligence or the intentional wrongful act of Lessor.
19. **Insurance and Loss Damage Waiver.** Lessee will, at all times during the term of this Contract, maintain general and auto liability coverages in amounts that may be required from time to time by Lessor, of not less than \$1,000,000. If Lessee does not elect loss damage waiver (LDW), Lessee shall maintain contractor's equipment physical damage coverage for rented Equipment in an amount of the value of the Equipment. Lessee shall provide a certificate evidencing such insurance with Lessor named as an additional insured and loss payee. Unless Lessee provides adequate proof of such physical damage insurance, Lessee is provided with and charged for LDW. LDW is a service offered by Lessor to cover repair charges for accidental damage and does not relieve Lessee from responsibility for damage to the Equipment caused by gross negligence, abuse or other willful misconduct. The charge for LDW will appear as a separate line item in your invoice and is not insurance.
20. **Venue, Sovereign Immunity and Jury Trial Waiver.** Lessee agrees that jurisdiction and venue for the litigation of any disputes arising under the Contract shall be in the applicable state or federal court in the county in which Lessor is located. This Contract shall be governed by the laws of the United States and the laws of the state in which this Contract was entered into. Lessee waives its sovereign immunity to any legal action, arbitration, or other proceeding brought to enforce this Contract or resolve any dispute and further waives its sovereign immunity as to the enforcement of any judgment or award resulting therefrom. LESSOR AND LESSEE HEREBY EXPRESSLY WAIVE ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM ARISING OR CONNECTED IN ANY WAY WITH THIS CONTRACT.
21. **Notice of Non-Waiver/Severability.** No failure of Lessor to insist upon strict performance by Lessee as regards to any provision of this Contract shall be interpreted as a waiver of Lessor's right to demand strict compliance with all other provisions of this Contract against Lessee or any other person. The provisions of this Contract shall be severable so that unenforceability, invalidity or waiver of any provision shall not effect any other provision.
22. **Assignment.** Lessee agrees that Lessor may assign this Contract and all right, title, and interest of Lessor in and to the Equipment, and all sums due or to become due to Lessor hereunder (of which assignment Lessee hereby waives notice), and Lessee agrees to recognize such assignment. Lessee's obligation to pay rent under this Contract will not as to any such assignee be subject to any diminution arising out of any breach of any obligation hereunder or other liability of Lessor to Lessee. Lessee may not assign this Contract. Lessee further agrees to make rental payments directly to any assignee of Lessor, upon and following receipt of evidence of assignment and a written request to do so, and Lessor agrees to recognize any payment so made as satisfaction of Lessee's obligation to make that payment hereunder.
23. **Other Provisions.** It is agreed that this Contract contains all of the Contract of the parties, and it is further agreed that no representation, warranty or agreements other than those set forth herein shall be binding upon either of the parties hereto unless the same is reduced to writing, signed by both parties to this Contract and purports to be an express modification of this Contract.