

AGENDA PLACEMENT FORM

(Submission Deadline – Monday, 5:00 PM before Regular Court Meetings)

Date: 4/3/2024

Meeting Date: 4/22/2024

Submitted By: Lance Anderson

Department: Purchasing Department

Signature of Elected Official/Department Head:



Court Decision: <small>This section to be completed by County Judge's Office</small>
 April 22, 2024

Description:

Consideration and approval with Authorization for County Judge to Sign renewal of Master Rental Agreement and Johnson County Contract Terms Addendum to Rental Contract for Sunbelt Rentals. Renewal Term date May 1, 2024 - April 30, 2025.

(May attach additional sheets if necessary)

Person to Present: Lance Anderson

(Presenter must be present for the item unless the item is on the Consent Agenda)

Supporting Documentation: (check one) PUBLIC CONFIDENTIAL

(PUBLIC documentation may be made available to the public prior to the Meeting)

Estimated Length of Presentation: 5 minutes

Session Requested: (check one)

Action Item Consent Workshop Executive Other _____

Check All Departments That Have Been Notified:

County Attorney IT Purchasing Auditor

Personnel Public Works Facilities Management

Other Department/Official (list) _____

**Please List All External Persons Who Need a Copy of Signed Documents
In Your Submission Email**

**MASTER RENTAL AGREEMENT AND
JOHNSON COUNTY CONTRACT TERMS
ADDENDUM TO RENTAL CONTRACT**

This Master Rental Agreement And Johnson County Contract Terms Addendum to Rental Contract, (hereinafter referred to as the “AGREEMENT”) is between **Johnson County, Texas**, a political subdivision of the State of Texas, (hereinafter referred to as “COUNTY”), and Sunbelt Rentals, Inc. (hereinafter referred to as “VENDOR”), collectively referred to as the “PARTIES”, and is a master rental agreement and an addendum to the Rental Contract of Vendor between the Parties for the rental of equipment and together this AGREEMENT and the Rental Contract shall constitute the entire and complete contract between the Parties.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the Parties agree and understand as follows:

1. This Agreement is to apply to each and every Rental Contract for the rental of equipment by County from Vendor after the date this Agreement is approved by the Parties and shall continue to be effective until April 30 2025 . A signed copy of this Agreement shall be attached to and become part of each Rental Contract between the Parties as though said copy of this Agreement were an original. In the event a signed copy of this Agreement is not attached to a Rental Contract, the Parties agree that the terms and conditions of the Agreement will apply to the Rental Contract as though said Agreement had been attached.
2. This Agreement is to clarify, limit, modify or delete terms and provisions of the Rental Contract and in the event of any conflict between the terms and provisions of this Agreement and the terms and provisions of those contractual provisions tendered to Johnson County in the Rental Contract, this Agreement shall control and amend the contractual provisions of the Rental Contract and any provisions in the Rental Contract to the contrary are hereby deleted.
3. This Agreement is being executed in order to facilitate County being able to rent equipment from Vendor on an “as needed” basis and that when a representative of County signs the Rental Contract upon taking possession of the equipment, the representative of County is acknowledging the tender or delivery of Vendor’s equipment, the rate to be charged and the time period of the rental; however, the representative of County is not agreeing to or binding the County to any terms and conditions that conflict with this Agreement.
4. Each Rental Contract with a signed copy of this Agreement attached will be an effective agreement between the Parties upon the Purchasing Agent of County issuing a Purchase Order for the rental of equipment listed on the Rental Contract and a representative of County signing the said Rental Contract.

5. Either Party may cancel this Agreement by providing written notice to the other Party thirty (30) days prior to cancellation.
6. This Agreement will be governed by and construed according to the laws of the State of Texas. Venue for any action or claim arising out of the Agreement will be in the state district courts in Johnson County, Texas or the federal district courts in Dallas County, Texas. Any provision in the Rental Contract stating that County agrees to waive any right to trial by jury is hereby deleted.
7. Limitations for the right to bring an action, regardless of form, shall be governed by the laws of the State of Texas, Texas Civil Practice and Remedies Code §16.070, as amended, and any provision in the Rental Contract to the contrary is hereby deleted.
8. Under Texas law, a contract with a governmental entity that contains a claim against future revenues is void; therefore, any term in the Rental Contract which provides for such a claim is hereby deleted.
9. Under the Texas Constitution and laws of the State of Texas, Johnson County cannot enter into an agreement whereby Johnson County agrees to indemnify or hold harmless any other party; therefore, all references in the Rental Contract of any kind to Johnson County indemnifying and holding harmless any individuals or entities for any reason whatsoever are hereby deleted.
10. County is a political subdivision of the State of Texas, and therefore has certain governmental/sovereign immunity and limitations on liability, and that County's general liability and vehicle insurance coverage is with the Texas Association of Counties Risk Pool and said insurance coverage is limited to the statutory maximum limits of the Texas Tort Claims Act (Chapter 101, Texas Civil Practice and Remedies Code); therefore, any provisions in the Rental Contract requiring County to provide and maintain any insurance in excess of the statutory maximum limits are hereby deleted.
11. County does not waive any of its common law, statutory or constitutional defenses to which it may be entitled; therefore any provisions in the Rental Contract to the contrary are hereby deleted.
12. County will provide property insurance covering the replacement (fair market value) cost of the equipment rented and will provide Vendor with a certificate of insurance.
13. County will provide statutory workers compensation for its employees; however, County does not agree to include a waiver of subrogation, and therefore any provisions in the Rental Contract to the contrary are hereby deleted.

14. County does not agree to waive any rights and remedies available to County under the Uniform Commercial Code ("UCC"); therefore, any provisions in the Rental Contract to the contrary are hereby deleted.
15. County does not agree to waive any rights and remedies available to County under the Texas Deceptive Trade Practices-Consumer Protection Act; therefore, any provisions in the Rental Contract to the contrary are hereby deleted.
16. Except for a heavy equipment tax, County does not agree to be responsible for any sales tax, use tax, or any other taxes, fees, fines or penalties that may be imposed, levied or assessed by any federal, state or local government or agency which relates to the Rental Contract, the equipment or its use; therefore, any provisions in the Rental Contract to the contrary are hereby deleted.
17. Pursuant to Texas Government Code Section 2251.021 and this Agreement, a payment by a governmental entity under a contract is overdue on the 31st day after the later of:
 - a. the date the governmental entity receives the goods under the contract;
 - b. the date the performance of the service under the contract is completed; or
 - c. the date the governmental entity receives an invoice for the goods or service.

Pursuant to Texas Government Code Section 2251.021 and this Agreement, a payment begins to accrue interest on the date the payment becomes overdue. The rate of interest that accrues on an overdue payment is the rate in effect on September 1 of the fiscal year in which the payment becomes overdue. The rate in effect on September 1 is equal to the sum of: (1) one percent; and (2) the prime rate as published in the Wall Street Journal on the first day of July of the preceding fiscal year that does not fall on a Saturday or Sunday. Interest on an overdue payment stops accruing on the date the governmental entity or vendor mailed or electronically transmits the payment. Therefore, all provisions in the Rental Contract to the contrary are hereby deleted.


18. To the extent, if any, that any provision in this Agreement is in conflict with Chapter 552 of the Texas Government Code (the "Public Information Act"), the same shall be of no force and effect. Furthermore, it is expressly understood and agreed that Johnson County, its officers and employees may request advice, decisions and opinions of the Attorney General of the State of Texas in regard to the application of the Public Information Act.
19. Services provided under the Agreement shall be provided in accordance with all applicable state and federal laws.

IN WITNESS WHEREOF, intending to be legally bound, the Parties have caused their authorized representative to execute this Agreement. Each representative whose signature appears


on this Agreement represents and does hereby certify that they have the authority to enter into this Agreement for their represented Party.

APPROVED AS TO FORM AND CONTENT:

JOHNSON COUNTY:


Christopher Boedeker
County Judge

April 22, 2024
Date

Attest: 
April Long
County Clerk



April 22, 2024
Date

VENDOR:



Digitally signed by: Ryan
Walton
DN: CN = Ryan Walton email
= ryan.walton@sunbeltrentals.
com C = AD
Date: 2024.04.01 11:49:19 -
04'00'

Authorized Representative
Printed Name: Ryan Walton
Title: Contract Manager

April 1, 2024
Date



PC#:

SUNBELT RENTALS, INC.

TELEPHONE:

[Empty box for address or contact information]

[Empty box for address or contact information]

[Empty box for address or contact information]

[Empty box for address or contact information]

[Large empty box for terms and conditions or notes]

Rate your rental experience www.sunbeltrentals.com/survey

IF THE EQUIPMENT DOES NOT WORK PROPERLY, NOTIFY THE OFFICE AT ONCE

MULTIPLE SHIFTS OR OVERTIME RATES MAY APPLY

CUSTOMER IS RESPONSIBLE FOR REFUELING, DAMAGES AND REPAIRS

1. The total charges are an estimate based on the estimated rental period and other information provided by Customer.
2. Customer assumes all risks associated with the Equipment during the Rental Period, including injury and damage to persons, property and the Equipment.
3. Customer is responsible for and shall only permit properly trained, Authorized Individuals to use the Equipment.
4. If the Equipment does not operate properly, is not suitable for Customer's intended use, does not have operating and safety instructions or Customer has any questions regarding use of the Equipment, Customer shall not use the Equipment and shall contact Sunbelt immediately.
5. Equipment misuse or using damaged or malfunctioning Equipment may result in serious bodily injury or death and Customer agrees that Customer (i) assumes all risk associated thereunder, and (ii) indemnifies Sunbelt Entities for all claims or damages as a result of misuse or use of damaged or malfunctioning Equipment.
6. Customer has received, read, understands and agrees to the estimated charges and all the terms on this page, plus all sections on the reverse side of this Contract ("Sections"), including Release and Indemnification in Section 8 and Environmental Fee in Section 16, which can also be found at www.sunbeltrentals.com/rentalcontract. *Delivery/Pickup Surcharge fee explanation is available at www.sunbeltrentals.com/surcharge.
7. Customer must contact Sunbelt to request pickup of Equipment, retain the Pick-Up Number given by Sunbelt and will be responsible for Equipment until actually retrieved by Sunbelt.
8. Customer waives its right to a jury trial in any dispute as set forth in Section 19.
9. At the election of Sunbelt or Customer, Customer agrees to submit every dispute to arbitration and waives any right to bring a class action as set forth in Section 20.

Customer is declining Rental Protection Plan (see reverse side for details) _____ (Customer Initials)

Customer Signature

Date

Name Printed

Delivered By

Date

SUNBELT RENTALS TERMS AND CONDITIONS

1) **DEFINITIONS.** "Authorized Individuals" are those individuals that Customer directly or indirectly allows to use the Equipment, who must be properly trained to use the Equipment, at least 18 years old or the legal age of majority in the state, whichever is greater and are not under the influence of any drugs, alcohol, substances or otherwise impaired. "Customer" is identified earlier and includes any of your representatives, agents, officers, employees or anyone signing this Contract on your behalf. "Environmental Services Charge" is the charge described in Section 17. "Equipment" is the equipment and/or services identified on the other pages provided, together with all replacements, repairs, additions, attachments and accessories and future Equipment rented "Incident" is any fire, citation, theft, accident, casualty, loss, vandalism, injury, death or damage to person or property, claimed by any person or entity that appears to have occurred in connection with the Equipment. "Lost" means the Equipment is either stolen, its location is unknown, or Customer is unable to recover it for a period of 30 days. "FMV" is the Equipment's fair market value on or about the date of the Incident relating to the Equipment, plus any administrative fees and expenses. "One Shift" means not more than 8 hours per day, 40 hours per week and 160 hours every 4-week period, provided that double shift will be 150% and triple shift will be 200% of the rental charge on Equipment with four meters. "Ordinary Wear and Tear" means normal deterioration considered reasonable in the equipment rental industry for One Shift use. "Party" means Sunbelt or Customer and together both are the "Parties". "Pick-Up Number" is the number Customer obtains from Sunbelt evidencing the Customer's call to pick up Equipment. "Rental Period" commences when the Equipment is delivered to Customer or the Site Address and continues until the Equipment is returned to the Store or picked up by Sunbelt during normal business hours, provided Customer has otherwise complied with this Contract. "RPP" is the rental protection plan described in Section 10. "Site Address" is the location that Customer represents the Equipment will be located during the Rental Period identified earlier. "Store" is the Sunbelt location identified earlier. "Sunbelt" is Sunbelt and its affiliated companies, their respective officers, directors, employees and agents. "Telematics Data" is data collected within the Equipment or via software relating to the Equipment, its performance, location, or operators. Transportation Surcharge is a charge intended to defray a wide range of transportation expenses (both direct and indirect), which are not always fully recovered by other transportation charges.

2) **TERMS.** Customer's execution of this Contract or taking possession of the Equipment (whichever occurs first) shall be deemed acceptance of the terms herein for this and all past and future contracts between Sunbelt and Customer upon Customer's receipt of Sunbelt's Equipment under those contracts. Customer rents the Equipment from Sunbelt pursuant to this Contract, which is a true lease. The Equipment (a) is and shall remain the personal property of Sunbelt and (b) shall not be affixed to any other property. Customer shall not pledge or encumber the Equipment in any manner.

3) **PERMITTED USE.** Customer agrees and warrants that (a) Sunbelt has no control over the manner in which the Equipment is operated during the Rental Period by Customer or any third party that Customer implicitly or explicitly permits, (b) prior to each use and its return to Sunbelt, Customer shall inspect the Equipment to confirm that the Equipment is in good condition, without defects, readability, decals are on the Equipment, and the Equipment is suitable for Customer's intended use; (c) Customer has access to and reviews the operating and safety instructions and will operate the Equipment in accordance with the manufacturer's instructions and with applicable safety equipment; (d) any safety agent at the Site Address is authorized to accept delivery of the Equipment (and if Customer requests, Customer authorizes Sunbelt to leave the Equipment at the Site Address without requirement of written receipt); (e) Customer shall immediately stop use and notify Sunbelt if the Equipment is damaged, unsafe, disabled, malfunctioning, warning lights come on, locked up, threatened with seizure, lost, or if any Incident occurs; (f) Customer has received from Sunbelt all information needed or requested regarding the operation of the Equipment; (g) Sunbelt is not responsible for providing operator or other training unless Customer specifically requests in writing and Sunbelt agrees to provide such training (Customer being responsible to obtain all training that Customer desires prior to the Equipment's use); (h) Sunbelt is not responsible for Customer's obligation to provide reasonable accommodation(s) to any (disabled) Authorized Individual(s); (i) only Authorized Individuals shall use and operate the Equipment, however Customer is responsible for the Equipment and its use during the Rental Period regardless of the user; (j) the Equipment shall be used and maintained in a careful manner, within the Equipment's capacity and in compliance with all applicable laws, regulations, as well as all operating and safety instructions provided on, in or with the Equipment and all applicable federal, state and local laws, permits and licenses, including but not limited to, OSHA and ADA, as revised; (k) the Equipment shall be kept in a secure location; and (l) Customer shall provide Sunbelt with accurate and complete information, which Sunbelt relies upon to provide the appropriate Equipment to Customer.

4) **PROHIBITED USE.** Customer shall not (a) alter or cover up any decals or insignia on the Equipment, remove any operating or safety equipment or instructions or alter or tamper with the Equipment, (b) assign its rights under this Contract, (c) move the Equipment from the Site Address without Sunbelt's written consent, (d) use the Equipment in a negligent, illegal, unauthorized or abusive manner, or (e) utilize the use of the Equipment in any manner (including, without limitation, print, audiovisual or electronic); or (f) allow the use of the Equipment by anyone other than Authorized Individuals (Customer acknowledging that the Equipment may be dangerous if used improperly or by untrained parties).

5) **MAINTENANCE.** Customer shall perform routine maintenance on the Equipment, including routine inspections and maintenance of fuel and oil levels, grease, cooling and fluid systems, batteries, tire/tracks cutting edges, and cleaning in accordance with the manufacturer's specifications, as applicable. All other maintenance or repairs may only be performed by Sunbelt or its agents, but Sunbelt has no responsibility during the Rental Period to inspect or perform any maintenance or repairs unless Customer requests a service call. If Sunbelt determines that repairs to the Equipment are needed, other than Ordinary Wear and Tear, Customer shall pay the full repair charges, additional fees, if any, and rental of the Equipment until the repairs are completed. If equipment is stolen or damaged in excess of 40% of the Equipment's FMV, Customer will be responsible for the FMV of the Equipment, including sales tax, as applicable. Sunbelt has the right to inspect the Equipment wherever located. Customer has the authority to and hereby grants Sunbelt and its agents the right to enter the physical location of the Equipment for the purposes set forth herein. Sunbelt shall be responsible for repairs needed because of Ordinary Wear and Tear. Customer agrees that repair or replacement of the Equipment is Customer's exclusive remedy for Sunbelt's breach of this Section. Notwithstanding Sunbelt's service commitment, if Customer breaches this Contract, Sunbelt shall have no obligation to stop the Rental Period, commence repairs or rent other equipment to Customer until Customer or its agent agrees to pay for such charges.

6) **CUSTOMER LIABILITY, DURING THE RENTAL PERIOD, CUSTOMER ASSUMES ALL RISK ASSOCIATED WITH THE POSSESSION, CONTROL OR USE OF THE EQUIPMENT, INCLUDING BUT NOT LIMITED TO, PERSONAL INJURY, DEATH, RENTAL CHARGES, THEFT, LOSSES, DAMAGES AND DESTRUCTION, INCLUDING CUSTOMER TRANSPORTATION, LOADING AND UNLOADING, WHETHER OR NOT THE CUSTOMER IS AT FAULT.** After an Incident, Customer shall (a) immediately notify Sunbelt, the police, if necessary, and Customer's insurance carriers; (b) secure and maintain the Equipment and the surrounding premises in the condition existing at the time of such Incident, until Sunbelt or its agents investigate; (c) immediately submit copies of all police or other third party reports to Sunbelt; and (d) as applicable, pay Sunbelt, in addition to other sums due herein, the rental rate for Equipment until the repairs are completed or Equipment replaced plus either (i) the FMV or (ii) the full charges of recovery and repairs of damaged Equipment. Accrued rental charges shall not be applied against these amounts. Sunbelt shall have the immediate right, but not obligation, to reclaim any Equipment involved in any incident.

7) **NO WARRANTIES. SUNBELT DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE EQUIPMENT, ITS DURABILITY, CONDITION, MERCHANTABILITY, NON-INFRINGEMENT, OR FITNESS FOR ANY PARTICULAR PURPOSE. CUSTOMER ACKNOWLEDGES ACCEPTANCE OF THE EQUIPMENT ON AN "AS IS, WHERE IS" BASIS, WITH "ALL FAULTS" AND WITHOUT ANY RECOURSE WHATSOEVER AGAINST SUNBELT ENTITIES. CUSTOMER ASSUMES ALL RISKS ASSOCIATED WITH THE EQUIPMENT AND RELEASES SUNBELT ENTITIES FROM ALL LIABILITIES AND DAMAGES (INCLUDING LOSS PROFITS, PERSONAL INJURY, AND SPECIAL, INCIDENTAL AND CONSEQUENTIAL DAMAGES, EVICTION OR ADVERSE OF THE POSSIBILITY OF SUCH DAMAGES) IN ANY WAY CONNECTED WITH THE EQUIPMENT, ITS INSTALLATION, OPERATION OR USE, OR ANY DEFECT OR FAILURE THEREOF, A BREACH OF SUNBELT'S OBLIGATIONS HEREIN, OR ERRORS OR INACCURACIES IN INFORMATION OBTAINED FROM CUSTOMER OR THIRD PARTIES, UPON WHICH SUNBELT RELIES; PROVIDED HOWEVER, IF CUSTOMER IS A CONSUMER UNDER APPLICABLE LAW, THEN NO CONSEQUENTIAL DAMAGES LIMITATION OF INJURIES TO PERSONS SHALL APPLY.**

8) **RELEASE AND INDEMNIFICATION TO THE FULLEST EXTENT PERMITTED BY LAW, CUSTOMER INDEMNIFIES, RELEASES, HOLDS SUNBELT ENTITIES HARMLESS AND AT SUNBELT'S REQUEST, DEFENDS SUNBELT ENTITIES (WITH COUNSEL APPROVED BY SUNBELT), FROM AND AGAINST ALL LIABILITIES, CLAIMS, LOSSES, DAMAGES, AND EXPENSES (INCLUDING ATTORNEY'S AND/OR LEGAL FEES AND EXPENSES) HOWEVER ARISING OR INCURRED, RELATED TO ANY INCIDENT, DAMAGE TO PROPERTY, INJURY OR DEATH OF ANY PERSON, CONTAMINATION OR ALLEGED CONTAMINATION, OR VIOLATION OF LAW OR REGULATION CAUSED BY OR CONNECTED WITH THE (a) ACCESS, USE, POSSESSION OR CONTROL OF THE EQUIPMENT BY CUSTOMER OR ANY THIRD PARTY THAT CUSTOMER IMPLICITLY OR EXPLICITLY PERMITS TO ACCESS, USE, POSSESS OR CONTROL THE EQUIPMENT DURING THE RENTAL PERIOD OR (b) BREACH OF THIS CONTRACT, WHETHER OR NOT CAUSED IN PART BY THE ACTIVE OR PASSIVE NEGLIGENCE OR OTHER FAULT OF ANY PARTY INDEMNIFIED HEREIN AND ANY OF THE FOREGOING ARISING OR IMPOSED IN ACCORDANCE WITH THE DOCTRINE OF STRICT OR ABSOLUTE LIABILITY. CUSTOMER ALSO AGREES TO WAIVE ITS WORKERS' COMPENSATION IMMUNITY, TO THE EXTENT APPLICABLE. CUSTOMER'S INDEMNITY OBLIGATIONS SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THIS CONTRACT. All of Customer's indemnification obligations under this paragraph shall be joint and several.**

9) **INSURANCE.** During the Rental Period, Customer shall maintain, at its own expense, the following minimum insurance coverage: (a) for Customers using Equipment for non personal use, general liability insurance of not less than \$1,000,000 per occurrence, including coverage for Customer's contractual liabilities herein such as the release and indemnification caused contained in Section 8; (b) for Customers using Equipment for non personal use, property insurance against loss by all risks to the Equipment, in an amount at least equal to the FMV thereof, unless RPP is elected at the time of rental and paid for prior to any incident; (c) worker's compensation insurance as required by law; and (d) automobile liability insurance (including comprehensive and collision coverage, and uninsured/underinsured motorist coverage), in the same amounts set forth in subsections (a) and (b), if the Equipment is to be used on any roadway. Such policies shall be primary, non-contributory, on an occurrence basis, contain a waiver of subrogation, name Sunbelt and its agents as additional insured (including an additional insured endorsement) and loss payee, and provide for Sunbelt to receive at least 30 days prior written notice of any cancellation or material change. Any insurance that excludes boom damage or overturns is a breach. Customer shall provide Sunbelt with certificates of insurance to insurancecertificates@sunbeltrentals.com evidencing the coverages required above prior to any rental and any time upon Sunbelt's request. To the extent Sunbelt Entities carry any insurance, Sunbelt Entities' insurance will be considered excess insurance. The insurance required herein does not relieve Customer of its responsibilities, indemnification, or other obligations provided herein, or for which Customer may be liable by law or otherwise.

10) **RENTAL PROTECTION PLAN.** Customer's repair or replacement responsibility in Sections 5 and 6 of this Contract is modified by the RPP, if offered on the Equipment, and Sunbelt shall limit the amount Sunbelt collects from Customer for the Equipment loss, damage or destruction to the following amounts for each piece of Equipment, per each occurrence: (a) 10% of the FMV for Lost Equipment, up to a maximum of \$500 per piece of Equipment; (b) 10% of the repair charges for incidental or accidental damage to Equipment, up to a maximum of \$500 per piece of Equipment; (c) charges in excess of \$50 per tire for tire repairs; and (d) nothing for the rental charges which would otherwise accrue during the period when damaged or destroyed Equipment is being repaired or replaced by Sunbelt or Lost Equipment is being replaced; provided however, the foregoing RPP liability reduction only applies if the Conditions (defined below) are satisfied and an Exclusion (defined below) does not apply. The RPP is NOT INSURANCE and does NOT protect Customer from liability to Sunbelt or others arising out of possession, control or use of the Equipment, including injury or damage to persons or property. The RPP IS A CONTRACTUAL MODIFICATION OF CUSTOMER'S LIABILITY. All of the following "Conditions" must be satisfied for the RPP and the corresponding liability reduction to apply: (i) Customer accepts the RPP in advance of the rental; (ii) Customer pays 15% of the gross rental charges as the fee for the RPP (plus applicable taxes); (iii) Customer fully complies with the terms of this Contract; (iv) Customer's account is current at the time of the loss, theft, damage or destruction of the Equipment; and (v) none of the Exclusions apply. Customer assumes the Exclusion risks, meaning that if any Exclusion occurs, the RPP does NOT reduce the liability of Customer to Sunbelt for the loss, theft, damage or destruction resulting from such Exclusion. "Exclusions" shall mean loss, theft, damage or destruction of the Equipment (A) due to intentional misuse; (B) caused by Lost Equipment not reported by Customer to the police within 48 hours of discovery, and substantiated by a written police report (promptly delivered to Sunbelt); (C) due to flood, water level changes, wind, storms, earthquakes or Acts of God; (D) accessories or Equipment rented by Customer in violation of the RPP; (E) EXCLUSIONS REMAIN THE LIABILITY OF CUSTOMER AND ARE NOT MODIFIED BY THE RPP. RPP IS REFLECTED ON THIS CONTRACT AS PART OF CUSTOMER'S ESTIMATED CHARGES UNLESS CUSTOMER HAS ELECTED TO DECLINE RPP IN WRITING, FAILS TO PAY THE RPP FEE OR MADE OTHER CONTRACTUAL ARRANGEMENTS WITH SUNBELT. Notwithstanding anything to the contrary in this Contract, if Lost Equipment is later recovered, Sunbelt retains ownership of the Equipment regardless of any payments made by Customer or Customer's insurance company with respect to such Equipment, all of which payments are non-refundable. Customer agrees to promptly return any Equipment that is recovered. Sunbelt shall be subrogated to Customer's rights to recover against any person or entity relating to any loss, theft, damage or destruction to the Equipment. Customer

shall cooperate with, assign Sunbelt all claims and proceeds arising from such loss, theft, damage or destruction, execute and deliver to Sunbelt whatever documents are required and take all other necessary steps to secure in Sunbelt such rights, at Customer's expense.

11) **RENTAL RATES.** The total charges specified in this Contract are: (a) estimated based upon Customer's representation of the estimated Rental Period identified herein (rental rates beyond the estimated Rental Period may change) and other information conveyed by Customer to Sunbelt; and (b) for the Equipment's use for One Shift, unless otherwise noted. Weekly and 4 week rental rates shall not be prorated. Rental charges accrue during Sunbelt's, Sundays and holidays. The rental rates do not include and Customer is responsible for, (i) all consumables, fees, licenses, present and future taxes and any other governmental charges based on Customer's possession and/or use of the Equipment, including additional fees for more than One Shift use; (ii) delivery and pickup charges to and from the Store, including but not limited to any freight, transportation, delivery, pickup and surcharge fees listed in this Contract; (iii) maintenance, repairs and replacements to the Equipment as provided herein; (iv) a cleaning fee if required; (v) miscellaneous charges, such as fees for lost keys, RPP, costs to recover Equipment, emergency mobilization or store opening; (vi) fuel used during the Rental Period and for refueling Equipment as described below; (vii) lines for use of dyed diesel fuel on on-road Equipment; and (viii) an Environmental Services Charge (see www.sunbeltrentals.com/environmental) and (ix) Transportation Surcharge (see www.sunbeltrentals.com/surcharge). The convenience charge for off-road diesel fuel does not include governmental motor fuel taxes or charges. Sunbelt collects these fees as revenue and uses them at its discretion.

12) **PAYMENT.** Customer shall pay for the rental of Equipment, sale of Equipment, materials and all other items and services identified in this Contract and all other amounts due, without any offset, in advance at the time of rental, unless Sunbelt approves Customer's executed commercial credit application. Commercial customers who are approved for Sunbelt's extended payment terms must pay, in areas, upon receipt of Sunbelt's invoice, either by cash, check or ACH. Customer must notify Sunbelt in writing of any disputed amounts, including credit card charges, within 15 days after the receipt of the invoice/contract or Customer shall be deemed to have irrevocably waived its right to dispute such amounts. At Sunbelt's discretion, any account with a delinquent balance may be placed on a cash basis, deposits may be required and the Equipment may be picked up without notice. Due to the difficulty in fixing actual damages caused by late payment, Customer agrees that a service charge equal to the lesser of 1.5% per month or the maximum rate permitted by law shall be assessed on all delinquent accounts, until paid in full. Customer shall reimburse Sunbelt for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees. Payment of any late charge does not excuse Customer of any default under this Contract. Customer shall pay a fee of \$75 for each check returned for lack of sufficient funds to compensate Sunbelt for its overhead for processing missed payment. Deposits will only be returned after all amounts are paid in full. CUSTOMER AGREES THAT IF A CREDIT OR DEBIT CARD IS PRESENTED TO PAY FOR CHARGES OR TO GUARANTEE PAYMENT, CUSTOMER AUTHORIZES SUNBELT TO CHARGE THE CREDIT OR DEBIT CARD ALL AMOUNTS SHOWN ON THIS CONTRACT AND CHARGES SUBSEQUENTLY INCURRED BY CUSTOMER, INCLUDING BUT NOT LIMITED TO, LOSS OR DAMAGE TO THE EQUIPMENT AND EXTENSION OF THE RENTAL PERIOD. Effective June 1, 2021 and where permitted by law, Sunbelt may impose a surcharge of 2% (minimum \$3) for credit card payments on charge accounts. This surcharge is not greater than Sunbelt's merchant discount rate for credit card transactions and is subject to sales tax in some jurisdictions.

13) **RETURN OF EQUIPMENT.** Sunbelt may terminate this Contract at any time, for any reason. The Equipment shall be returned to Sunbelt (when needed for inspections, maintenance and at the end of the Rental Period) in the same condition it was received, less Ordinary Wear and Tear and free of any hazardous materials and contaminants. Customer will return the Equipment at the end of the Rental Period, but will continue to be responsible for rental and other charges after the Rental Period if the Equipment is not returned in the condition required herein. If Sunbelt delivered the Equipment to Customer, Customer shall notify Sunbelt that the Equipment is ready to be picked up at the Site Address and obtain a Pick-Up Number, which Pick-Up Number Customer should keep as proof of the call; provided Customer remains liable for any loss, theft, damage to or destruction of the Equipment until Sunbelt confirms that the Equipment is returned in the condition required herein. Customer will not be charged the rental charges after the date the Pick-Up Number is given, provided Customer has otherwise complied with this Contract. No pickups occur on Sundays or statutory holidays and Saturday pickups are dependent on specific Store hours. If Customer picked up Equipment, Customer shall return Equipment to the same Store during that Store's normal business hours. If the Equipment is not returned by the estimated end of the Rental Period specified earlier, Customer agrees to pay the applicable rental rate for the Equipment until the end of the Rental Period.

14) **PURCHASES.** If this Contract identifies any Equipment, materials or other items that is to be purchased by Customer, Sunbelt sells and delivers such items to Customer on an "AS IS, WHERE IS" basis, with all faults and without any warranties (other than manufacturer warranties, if any) in consideration for Customer's payment to Sunbelt of the full purchase price of the item. Sunbelt retains title to the item until Customer has paid in full.

15) **DEFAULT.** Customer shall be in default if Sunbelt deems itself insecure or if Customer (a) fails to pay sums when due; (b) breaches any Section of this Contract; (c) becomes a debtor in a bankruptcy proceeding, goes into receivership, takes protection from its creditors under any insolvency legislation, ceases to carry on business, or has its assets seized by any creditor; (d) fails to insure the Equipment as required, or otherwise places the Equipment at risk; (e) fails to return Equipment immediately upon Sunbelt's demand; or (f) is in default under any other contract with Sunbelt. If a Customer default occurs, Sunbelt shall have, in addition to all rights and remedies at law or in equity, the right to repossess the Equipment without judicial process or prior notice. Customer shall pay all of Sunbelt's costs, including reasonable costs of collection, court costs, attorneys and legal fees, incurred in exercising any of its rights or remedies herein. Sunbelt shall not be liable due to seizure of Equipment by order of governmental authority. CUSTOMER WAIVES ANY RIGHT OF ACTION AGAINST SUNBELT ENTITIES FOR SUCH REPOSSESSION.

16) **CRIMINAL WARNING.** The use of false identification to obtain Equipment or the failure to return Equipment by the end of the Rental Period may be considered theft, subject to criminal prosecution and civil liability where permitted, pursuant to applicable laws.

17) **ENVIRONMENTAL SERVICES CHARGE.** To promote a clean and sustainable environment, Sunbelt takes various measures to comply with applicable environmental regulations, as well as with Sunbelt's own policies. Sunbelt also incurs a wide range of environmental related expenses (both direct and indirect). These expenses may include services such as waste disposal, construction and maintenance of deaning facilities, acquisition of more fuel-efficient equipment as well as, labor costs, administration costs, etc. To help offset these and other costs, Sunbelt assesses an Environmental Services Charge, plus applicable taxes thereon in connection with certain rentals. The Environmental Services Charge is not a tax or governmentally mandated charge and is not designated for any particular use or placed in an escrow account, but is a charge that Sunbelt collects as revenue and uses at its discretion.

18) **FUEL.** For Equipment that uses fuel, Customer has three options: (a) Prepay Fuel Option - Customer may purchase a full tank of fuel for the Equipment at the start of the rental, in which case a "convenience charge" will appear on this Contract (calculated by multiplying the estimated fuel capacity of Equipment by the Prepay per gallon rate). As an added benefit, Customer may return the Equipment full of fuel and the convenience charge will be refunded (however, if not returned full, Customer will not obtain any credit for fuel left in the Equipment upon return); (b) Pay on Return Option - if Customer returns Equipment with less fuel than when received, Customer shall pay a refueling charge (calculated by multiplying gallons required to refill tank with fuel to level when received, by the Pay on Return per gallon rate); and (c) Return Fuel Option - if Customer returns the Equipment with at least as much fuel as when it was received (most Sunbelt Equipment comes with a full tank of fuel, but not all), no fuel charge will be assessed. The cost of Customer refueling Equipment itself will generally be lower than the Prepay Fuel Option or the Pay on Return Option; however these options each allow for the convenience of not refueling. Customer agrees that none of these options are a retail sale of fuel.

19) **LIMITATION OF SUNBELT'S LIABILITY. IN CONSIDERATION OF THE RENTAL OF EQUIPMENT, CUSTOMER AGREES THAT SUNBELT'S LIABILITY UNDER THIS CONTRACT, INCLUDING ANY LIABILITY ARISING FROM SUNBELT'S, SUNBELT ENTITIES, OR ANY THIRD PARTY'S COMPARATIVE, CONCURRENT, CONTRIBUTORY, PASSIVE OR ACTIVE NEGLIGENCE OR THAT ARISES AS A RESULT OF ANY STRICT OR ABSOLUTE LIABILITY, SHALL NOT EXCEED THE TOTAL RENTAL CHARGES PAID BY CUSTOMER UNDER THIS CONTRACT.**

20) **JURY TRIAL WAIVER. IN ANY DISPUTE ARISING OUT OF, IN CONNECTION WITH, OR IN ANY WAY PERTAINING TO THIS CONTRACT, CUSTOMER AND SUNBELT HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT TO A TRIAL BY JURY, THIS WAIVER BEING A MATERIAL INDUCEMENT TO ENTERING INTO THIS CONTRACT.**

21) **ARBITRATION AGREEMENT & CLASS ACTION WAIVER. AT THE ELECTION OF CUSTOMER OR SUNBELT, ANY DISPUTE ARISING OUT OF, IN CONNECTION WITH OR IN ANY WAY PERTAINING TO THIS CONTRACT SHALL BE SETTLED BY ARBITRATION BROUGHT IN THE PARTY'S INDIVIDUAL CAPACITY AND NOT AS A PLAINTIFF IN A PURPORTED CLASS OR REPRESENTATIVE CAPACITY, ADMINISTERED BY THE AMERICAN ARBITRATION ASSOCIATION UNDER ITS COMMERCIAL ARBITRATION RULES OR BY JAMS PURSUANT TO ITS STREAMLINED ARBITRATION RULES AND PROCEDURES AND JUDGEMENT ON THE AWARD RENDERED BY THE ARBITRATOR(S) MAY BE ENTERED IN ANY COURT HAVING JURISDICTION THEREOF. THERE SHALL BE NO RIGHT OR AUTHORITY FOR ANY CLAIMS TO BE ARBITRATED OR TRIED ON A CLASS ACTION BASIS.**

22) **COMPLIANCE WITH EXPORT AND IMPORT LAWS.** Removal of the Equipment from the United States ("U.S.") is prohibited under this Contract. If Customer desires or causes the transport and/or operation of the Equipment outside of the U.S., Customer must (a) obtain Sunbelt's consent prior to taking such action, including approval of established customs broker, and (b) execute an amendment to this Contract, which amendment is incorporated herein. If Customer exports or re-exports without complying with the above sentence, Customer agrees that (i) the Equipment is subject to and must comply with all applicable export laws, including but not limited to the Export Administration Regulations; and (ii) Customer, as the exporter/importer of record, is responsible for (A) determining whether and obtaining if necessary, export or re-export licenses or other authorizations as required prior to exporting or re-exporting the Equipment; (B) obtaining any required documentation necessary for return of the Equipment; and (C) ensuring no unauthorized transfers or diversions of the Equipment occur. Refer to www.bis.doc.gov for information.

23) **COLLECTION OF DATA.** Customer consents to the collection, use and disclosure of the data and information Customer voluntarily provides to Sunbelt, including personal identifiable information and financial information, as well as the Telematics Data collected from the Equipment, as described in our Privacy Policy found at www.sunbeltrentals.com/privacypolicy.

24) **GOVERNING LAW.** The Parties expressly and irrevocably agree: (a) this Contract, including any related tort claims, shall be governed by the laws of South Carolina, without regard to any conflicts of law principles and (b) if any Section of this Contract is prohibited by any law, such Section shall be ineffective to the extent of such prohibition without invalidating the remaining Sections.

25) **FORCE MAJEURE.** Sunbelt shall not be liable or responsible to the Customer, nor be deemed to have defaulted under or breached this Contract, for any failure or delay in fulfilling or performing any term of this Contract when and to the extent such failure or delay is caused by or results from acts beyond Sunbelt's control, including, without limitation, the following force majeure events ("Force Majeure Event(s)": (a) acts of God, (b) flood, fire, earthquake, epidemics, pandemics or explosion, (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, (d) riot or other civil unrest; (d) government order, law, regulations, shutdowns, or actions; (e) embargoes or blockades in effect on or after the date of this Contract; (f) national or regional emergency; (g) strikes, labor stoppages or slowdowns, or other industrial disturbances; (h) shortage of adequate power or transportation facilities; and (i) other events beyond the control of Sunbelt.

26) **MISCELLANEOUS.** This Contract, together with any Customer executed commercial credit application, if any, constitutes the entire agreement of the Parties regarding the Equipment and may not be modified except by written amendment signed by the Parties. Any reference in Customer's purchase order or other Customer document to other terms that shall control this transaction shall be void. This Contract benefits solely the Parties and their respective permitted successors and assigns and nothing in this Contract, express or implied, confers on any other person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Contract. Customer's obligations hereunder shall survive the termination of this Contract. If any term is invalid, illegal, unenforceable, such invalidity, illegality, or unenforceability shall not affect any other term or invalidate or render unenforceable such term. This Contract and all of Customer's rights in and to the Equipment are subordinate to all the terms, title and interest of all persons (including Sunbelt's lenders) who have rights in the Equipment. Headings are for convenience only. To the extent that any terms in this Contract conflict, the Parties agree that the more specific terms control. A copy of this Contract shall be valid as the original. Any failure by Sunbelt to insist upon strict performance of any Section of this Contract shall not be construed as a waiver of the right to demand strict performance of the same. Customer agrees that upon the termination of this Contract, Customer represents and warrants that (a) the person executing as is or the legal age of majority in the state, whichever is greater and they both have full authority to execute, deliver and perform this Contract; and (b) this Contract constitutes a legal, valid and binding obligation of Customer, enforceable in accordance with its terms. If the Parties have a fully executed, active agreement, intended to govern over conflicting terms and conditions, such agreement shall take precedence over the terms herein.