

AGENDA PLACEMENT FORM

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

Date: 5.6.2024

Meeting Date: 5.13.2024

Submitted By: Lance Anderson

Department: Purchasing Department

Signature of Elected Official/Department Head:



<p>Court Decision: This section to be completed by County Judge's Office</p>

<p>May 13, 2024</p>

Description:

Consideration and approval with Authorization for County Judge to Sign renewal of Master Rental Agreement and Johnson County Contract Terms Addendum for Equipment Share. Renewal Term date May 13, 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 EquipmentShare (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 30th 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 Boedecker Larry Woolley
County Judge Comm. Pct. 4, Judge Pro Tem

5/13/2024
Date

Attest:

April Long
April Long
County Clerk



5/13/2024
Date

VENDOR: Equipmentsha, a
Carl Howard
Authorized Representative
Printed Name: Carl Howard
Title: Territory Account manager

4/1/24
Date

EQUIPMENTSHARE RENTAL AGREEMENT

EquipmentShare.com Inc
5710 Bull Run Dr.
Columbia, MO 65201

Renter Information

Name _____

Billing Address _____

City _____ State _____ Zip Code _____

Phone _____ Fax _____

Email _____

This Rental Agreement, together with the EquipmentShare Terms of Use (<https://equipmentshare.com/terms>), Privacy Policy (<https://equipmentshare.com/privacy>) and Rental Protection Plan (<https://www.equipmentshare.com/rental-protection-plan>) which are hereby incorporated into this Rental Agreement in their entirety (collectively the "Agreement"), is between the renter identified above ("Renter") and EquipmentShare.com Inc ("EquipmentShare"). This Agreement sets forth the terms and conditions governing Renter's rental of the equipment described in the attached Description of Equipment including all parts and accessories, as well as any additional equipment Renter may subsequently rent from or through EquipmentShare (collectively the "Equipment"). For avoidance of doubt the parties agree that this Agreement shall govern all future rentals of Equipment by Renter from the date hereof unless it has been superseded or amended by a new rental agreement or other writing in accordance with Section 16 below. By entering this Rental Agreement, Renter is representing that he has read and agreed to the Terms of Use, Privacy Policy and Rental Protection Plan (if purchased) and understands that their terms are legally binding on him.

Section 1 Rental Period

The Rental Period will begin upon delivery of Equipment to Renter (unless otherwise agreed to) and end at the earlier of when Renter calls or texts EquipmentShare to schedule pickup of the Equipment or 28 days after the beginning of the Rental Period. If Renter has not scheduled the Equipment to be picked up by the end of a given Rental Period, the Rental Period will automatically renew for an additional 28-day Rental Period. Renter may decrease the length of any renewal Rental Period by scheduling pick up of the Equipment prior to the expiration of the Rental Period. EquipmentShare may elect to not renew the Rental Period at any time by notifying Renter prior to the expiration of the current Rental Period. EquipmentShare shall have the right to replace the Equipment with other similar equipment at any time and for any reason.

Section 2 Billing and Rental Rates

Except for COD customers (as determined by EquipmentShare in its sole discretion), Renter will be billed for all rental and other charges accumulated during the Rental Period at the conclusion of the Rental Period. Payment of the invoice(s) is due by the date indicated on the invoice. This record and the obligations evidenced or secured hereby are subject to the security interest of Capital One, National Association, as agent for the benefit of certain secured parties and any sale or other disposition violates the rights of Capital One, National Association.

The total charges specified in this Agreement are: (a) estimated based upon Renter's representation of the estimated Rental Period identified herein (rental rates beyond the estimated Rental Period may change) and other information conveyed by Renter to EquipmentShare; and (b) for the Equipment's use for One Shift, unless otherwise noted. "One Shift" means not more than 8 hours per day, 40 hours per week and 160 hours every 4-week period. Hours accrued on machines in excess of One Shift will be charged an overage fee assessed at the daily rate of the contract. Rental charges accrue during Saturdays, Sundays and holidays. Rental rates for the Equipment will be set forth in the applicable purchase order confirmation, description of equipment, and/or schedule (each a "Rental Confirmation Document") issued to Renter in connection with each rental of Equipment pursuant to this Agreement. Renter agrees that it will be bound by and pay the rates set forth in any Rental Confirmation Document unless it notifies EquipmentShare that there is an error in the Rental Confirmation Document within twenty-four (24) hours of such Rental Document being sent to Renter's email address or otherwise delivered to Renter.

Section 3 Taxes and Other Fees

The rental rates do not include and Renter is responsible for determining and paying all sales, use, other applicable taxes, and any personal property tax surcharges or recovery fees that Renter may owe as a consequence of renting the Equipment and using any

associated services provided by EquipmentShare including, but not limited to, environmental recovery fees, consumables, licenses, and delivery fees.

Delivery fees will be calculated based on the type of Equipment being delivered or picked up, the requested delivery and pickup time, the distance of the delivery or pickup, and other relevant considerations. Delivery and pickup charges will be negotiated with the Renter prior to the pickup or delivery.

IN CALIFORNIA ONLY: Customer acknowledges that an estimated personal property tax reimbursement charge will be applied to all rented Equipment at a rate of up to 0.75% of the rental amount. By signing this Agreement, Customer agrees to pay this charge.

Section 4 Technology and Data

EquipmentShare has created an advanced telematics platform ("T3") that collects information from telematics devices on equipment and retains such information related to the operation and maintenance of equipment and enables the Renter to access and utilize that data through an intuitive and user-friendly interface on certain enabled Equipment. Renter acknowledges that the devices and T3 collect, record, store and transmit information about the Equipment, user and use of the Equipment including Equipment settings, speed, geolocation, maintenance history and status, Equipment performance, inspection data, diagnostic data, engine alerts, error codes, activity logs, hours of operation data, use names and certifications, and more (collectively "Renter Data"). The telematics devices transmit all collected Renter Data to a central server or servers so that the data can be accessed by Renter via T3. Access to certain T3 services is included in the rental charges billed to Renter. Renter shall retain ownership of all right, title and interest in and to the Renter Data associated with Renter's account. Renter hereby grants to EquipmentShare a worldwide, royalty-free, fully paid, transferable, assignable, sub-licensable (through multiple tiers), perpetual license to collect, analyze, use, and otherwise exercise control over any and all Renter Data, including the right to share the Renter Data with its subsidiaries, affiliates, partners and/or others authorized by EquipmentShare. EquipmentShare has no obligation under this Agreement to provide Renter with the Renter Data except pursuant to the terms of this Agreement. Renter's access to T3 and the ability of the telematics devices to communicate with and transmit data to the EquipmentShare servers may be interrupted or otherwise adversely affected by the location of the Equipment, weather conditions, issues with partners' cellular networks and GPS satellite networks, as well as numerous other factors. Certain features of T3 may not function or be available for all types of Equipment. Additionally, EquipmentShare may, from time to time, need to interrupt Renter's access to T3 to perform system maintenance, testing or for other purposes and may not always be able to give Renter advance notice prior to such service interruptions. Renter agrees and understands that EquipmentShare will not be liable for any loss or unavailability of the Renter Data or T3 access. EquipmentShare reserves the right to introduce new technology, features, or services at any time to T3 and charge additional fees for those services. EquipmentShare reserves the right to modify T3 at any time including the option to remove, add or modify existing technology, features, or services. EquipmentShare reserves the right to immediately suspend or discontinue access to T3 for any reason at any time, including for non-payment of any monies due EquipmentShare, without penalty or liability.

Section 5 Rental Protection Plan and Prepayment Deposit

Renter must comply with the requirements set forth in Section 6 of this Agreement and provide EquipmentShare with proof of insurance meeting the property insurance coverage requirements specified therein and maintain current proof of insurance on file with EquipmentShare while the Equipment is on-rent. EquipmentShare may require Renter to purchase Rental Protection Plan ("RPP") coverage during any rental term where Renter has not provided EquipmentShare with proof of current property insurance coverage. Subject to the terms and conditions of the RPP (<https://www.equipmentshare.com/rental-protection-plan>), if RPP coverage has been purchased, Renter will only be responsible for the first \$1,000.00 of any loss, damage, or destruction of the Equipment.

Section 6 Required Insurance Coverage

Renter will maintain and carry for the duration of the Rental Period, at Renter's sole cost and expense, the following insurance:

- a) Comprehensive or Commercial Form General Liability Insurance including, but not limited to, coverage for any property damage, bodily injury, personal injury, death, and contractual liability with a minimum limit of liability of \$1,000,000.00 per occurrence and \$2,000,000.00 in the aggregate; and
- b) Automobile Liability Insurance if Renter will be transporting with their own vehicle or trailer the Equipment on any public highways or byways, including underinsured and uninsured motorist coverage, with a minimum combined single limit of liability of \$1,000,000.00 per occurrence for bodily injury, personal injury, death and/or property damage.

Renter will also:

- a) Carry Property Insurance with a minimum limit of liability of \$100,000.00 per occurrence for damage or losses to equipment; or
- b) If Renter fails to satisfy the requirements set forth in this Section 6, EquipmentShare reserves the right to invoice Renter for the RPP, however, RPP is not insurance and Renter remains responsible for pursuing all claims for liability under this Agreement with its insurer even if no Certificate of Insurance has been provided to EquipmentShare.

All insurance policies described above must contain, or be endorsed to contain, the following provisions:

- a) EquipmentShare and its officers, directors, employees, agents, representatives, and assigns are to be covered as additional insureds on the general liability and automobile liability insurance policies and as loss payees on the property insurance policy;
- b) The Equipment Owner and his, her or its officers, directors, employees, agents, representatives, and assigns are to be covered as additional insureds on the general liability and automobile liability insurance policies and as loss payees on the property insurance policy;
- c) A waiver of rights of recovery against EquipmentShare and the Equipment Owner, and their insurers, by the Renter and its insurers as well as a waiver of subrogation against EquipmentShare, Equipment Owner, and their insurers; and
- d) A provision that EquipmentShare must receive at least 30 days written notice prior to any cancellation or change in Renter's coverage.

Renter shall exercise all rights available under its insurance policies required by this Section 6 and take all actions necessary to process and pursue all insurance claims against those policies in force at the time of the rental and/or loss. EquipmentShare reserves the right to require Renter to submit Certificates of Insurance and/or Letters of Endorsement verifying that Renter holds and carries policies meeting the above criteria and containing the specified endorsements.

Section 7 Inspection of Equipment and Acceptance

Renter represents and warrants that Renter is capable of and qualified to inspect the Equipment to determine its condition, state of repair, whether it is in good working order, safe to use and suitable for Renter's intended use. Renter further represents that prior to taking possession of the Equipment and before attempting to use the Equipment (except to the extent necessary to perform such inspection) that it has inspected the Equipment, found it to be in good working order and repair, and fit for Renter's intended use. Renter will be deemed to have accepted the Equipment at the time it takes possession either by picking up the Equipment at an EquipmentShare rental yard or by delivery of the Equipment to Renter's jobsite.

Section 8 Renter's Representations and Warranties

- a. Renter represents and warrants that Renter is qualified to operate the Equipment and has obtained all necessary licenses, certifications, credentials, permits and variances required by the jurisdiction(s) in which Renter will operate the Equipment for operation of the Equipment and Renter's intended use of the Equipment and has met any other requirements or conditions set by such jurisdiction(s).
- b. Renter represents and warrants that only Renter or Renter's qualified agents or employees operating under Renter's direct supervision will operate the Equipment and that Renter has verified that every employee and agent who will be operating the Equipment has satisfied all requirements and conditions for operation of the Equipment set by the jurisdiction(s) where the Equipment will be operated including, but not limited to, obtaining any required licenses or certifications.
- c. Renter represents and warrants that Renter's use of the Equipment will be for legal purposes only and that Renter's use of the Equipment will comply with all applicable federal, state, local and other laws, rules, directives, regulations, ordinances, and requirements. **RENTER AGREES TO DEFEND, INDEMNIFY AND HOLD EQUIPMENTSHARE HARMLESS FROM ALL FINES, PENALTIES AND COSTS INCURRED BY EQUIPMENTSHARE FOR RENTER'S FAILURE TO COMPLY.**
- d. Renter represents and warrants that the Equipment will only be used and stored at the Job site(s) ("Delivery Address") identified in the Description of Equipment or other Confirmation Document, and the Equipment may not be driven or operated on public highways or byways. If at any time during the Rental Period, Renter wants to use or store the Equipment at another location(s), Renter may request permission from EquipmentShare to use or store the Equipment at the additional location(s) by sending an email to info@equipmentshare.com. Renter may not use or store the Equipment at the additional location(s) unless and until Renter receives a confirmation email from EquipmentShare approving the additional location(s).
- e. Renter represents and warrants that Renter is familiar with the manufacturer's specifications for the Equipment as contained in the manufacturer's operation and maintenance manual or other similar guide or manual, is qualified and able to perform any routine maintenance required or recommended by the manufacturer for the Equipment, and will perform, at Renter's expenses, any such required or recommended maintenance in the manner and at the intervals specified or recommended by the manufacturer. Renter further represents and warrants that Renter will not (i) make any changes, adjustments or alterations to the Equipment (other than in connection with the performance of Renter's maintenance

requirements set forth above) or (ii) use the Equipment in a manner that is likely to result in anything other than ordinary wear and tear of the Equipment and Renter acknowledges that, except as otherwise provided in this Agreement, Renter will be solely responsible for any damages to the Equipment beyond ordinary wear and tear. Ordinary wear and tear of the Equipment shall mean only the normal deterioration of the Equipment caused by ordinary and reasonable use on a One Shift basis, unless otherwise agreed. The following shall not be deemed ordinary wear and tear: (i) damage resulting from lack of lubrication, insertion of improper or dyed fuel, or maintenance of necessary oil, water and air pressure levels; (ii) any damage resulting from lack of servicing or preventative maintenance suggested in the manufacturer's operation and maintenance manual; (iii) damage resulting from any collision, overturning, or improper operation, including overloading or exceeding the rated capacity of the Equipment; (iv) damage in the nature of dents, bending, tearing, staining, corrosion or misalignment to or of the Equipment or any part thereof; (v) wear resulting from use in excess of shifts for which rented; and (f) any other damage to the Equipment which is not considered ordinary and reasonable in the equipment rental industry.

f. Renter represents and warrants that if at any time the Equipment is involved in an accident, suffers a malfunction, becomes unsafe, or is damaged Renter shall immediately (i) cease using the Equipment and (ii) notify EquipmentShare. If such condition is the result of a defect in the Equipment, EquipmentShare will, if possible, repair the Equipment or replace the Equipment with similar equipment. EquipmentShare has no obligation to repair or replace Equipment that was damaged due to negligence, misuse, abuse, or neglect. Renter's sole remedy for any failure or defect in Equipment shall be the termination of any rental charges accrued during the time the Renter was not able to use the Equipment due to the failure or defect.

g. Renter agrees that, if Renter elects to sign this Agreement using electronic signatures, the electronic signatures, whether digital or encrypted, of the respective signatories hereto are intended to authenticate such signatures and to have the same force and effect as the use and delivery of manual signatures and give rise to a valid, enforceable, and fully effective agreement to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act or any other similar state laws, acts, or statutes based on the Uniform Electronic Transactions Act.

Section 9 Risk of Loss and Indemnification

RENTER SHALL BE RESPONSIBLE FOR ALL LOSSES TO THE EQUIPMENT, UP TO THE FULL REPLACEMENT VALUE OF THE EQUIPMENT, DAMAGE OR INJURY CAUSED BY, RESULTING FROM OR IN ANY WAY CONNECTED WITH THE EQUIPMENT, ITS OPERATION, POSSESSION OR USE, FROM THE TIME THE EQUIPMENT IS DELIVERED TO RENTER UNTIL THE TIME EQUIPMENT IS PICKED UP FROM RENTER BY EQUIPMENTSHARE OR OTHERWISE RETURNED TO EQUIPMENTSHARE'S CARE, CUSTODY, AND CONTROL. RENTER IS RESPONSIBLE FOR ALL DAMAGE INCLUDING TIRES. A CLEANING CHARGE WILL APPLY TO EQUIPMENT RETURNED WITH EXCESSIVE DIRT, CONCRETE, AND/OR PAINT. A FUEL CHARGE WILL BE APPLIED TO ALL UNITS NOT RETURNED FULL OF FUEL. IN NO EVENT SHALL EQUIPMENTSHARE BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR SPECIAL DAMAGES.

A "Loss" is any loss to the Equipment including, but not limited to losses caused by theft, accident, misuse, damage (other than ordinary wear and tear) or destruction of the Equipment. After a Loss occurs, Renter shall immediately: (a) notify EquipmentShare of the Loss; (b) notify the police of the Loss if the Loss is due to theft or other applicable cause(s); (c) secure and maintain the Equipment unless it is not safe to do so; (d) cooperate with EquipmentShare and/or its agents and local law enforcement in investigating the Loss; and (e) in addition to all sums otherwise owed under this Rental Agreement and, except as modified by Renter's purchase of the Rental Protection Plan, pay EquipmentShare the full cost of repairs for any damages to the Equipment or, if the Equipment is lost, stolen or destroyed, pay to EquipmentShare the full replacement cost of the Equipment.

TO THE FULLEST EXTENT PERMITTED BY LAW, RENTER AGREES TO INDEMNIFY, DEFEND AND HOLD EQUIPMENTSHARE, AND ANY OF ITS RESPECTIVE OFFICERS, AGENTS, SERVANTS, OR EMPLOYEES, AND AFFILIATES, PARENTS AND SUBSIDIARIES, HARMLESS FROM AND AGAINST ANY AND ALL LIABILITY, CLAIMS, LOSS, DAMAGE OR COSTS (INCLUDING, BUT NOT LIMITED TO, ATTORNEYS FEES, LOSS OF PROFIT, BUSINESS INTERRUPTION OR OTHER SPECIAL OR CONSEQUENTIAL DAMAGES, DAMAGES RELATING TO PROPERTY DAMAGE, BODILY INJURY, OR DAMAGES RELATING TO WRONGFUL DEATH) ARISING OUT OF OR RELATED TO THE OPERATION, USE, POSSESSION OR RENTAL OF THE EQUIPMENT. THIS INDEMNITY PROVISION ALSO APPLIES TO ANY CLAIMS ASSERTED AGAINST EQUIPMENTSHARE BASED UPON STRICT OR PRODUCT LIABILITY CAUSES OF ACTION. HOWEVER, RENTER SHALL NOT BE OBLIGATED TO INDEMNIFY EQUIPMENTSHARE FOR THAT PART OF ANY LOSS, DAMAGE OR LIABILITY CAUSED SOLELY BY THE INTENTIONAL MISCONDUCT OR SOLE NEGLIGENCE OF EQUIPMENTSHARE. IN FURTHERANCE OF, BUT NOT IN LIMITATION OF THE INDEMNITY PROVISIONS IN THIS AGREEMENT, RENTER EXPRESSLY AND SPECIFICALLY AGREES THAT THE FOREGOING OBLIGATION TO INDEMNIFY SHALL NOT IN ANY WAY BE AFFECTED OR DIMINISHED BY ANY STATUTORY OR CONSTITUTIONAL LIMITATION OF LIABILITY OR IMMUNITY RENTER ENJOYS FROM SUITS BY ITS OWN EMPLOYEES. THE DUTY TO INDEMNIFY WILL CONTINUE IN FULL FORCE AND EFFECT NOTWITHSTANDING THE EXPIRATION OR EARLY TERMINATION OF THE AGREEMENT.

Nothing in this Section shall be construed to waive, limit, or otherwise reduce Renter's liability for any loss, damage, or injury arising out of Renter's possession, custody, operation and use of the Equipment, including liability to third parties.

Section 10 Disclaimer of Warranties

EQUIPMENTSHARE MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AS TO THE MERCHANTABILITY OF THE EQUIPMENT OR ITS FITNESS FOR ANY PARTICULAR PURPOSE. THERE IS NO WARRANTY THAT THE EQUIPMENT IS SUITED FOR RENTER'S INTENDED USE, OR THAT IT IS FREE FROM DEFECTS. EXCEPT AS MAY BE SPECIFICALLY SET FORTH IN THIS RENTAL AGREEMENT, EQUIPMENTSHARE DISCLAIMS ALL WARRANTIES, EITHER EXPRESS OR IMPLIED, MADE IN CONNECTION WITH THIS RENTAL AGREEMENT.

Section 11 Default

Renter shall be in default of this Agreement if Renter fails to pay any rent charges or other charges or fees when due or if Renter breaches any other terms of this Agreement, or if Renter becomes insolvent or ceases to do business as a going concern, or if a petition of bankruptcy is filed by or against Renter. In the event that the Renter is considered in default of this agreement, EquipmentShare reserves the right to file Mechanic liens and or claim on any bond, on any and or all equipment leased, subject to all state and local ordinances in relations to the filing and claim on any lien/bond. All notifications will be sent via certified mail to any applicable party including, but not limited to, General Contractor, Property owner, and Subcontractors. Any applicable fees, charges and interest due at time of claim are the responsibility of the Renter and shall be included in the total amount owed. All past due accounts are subject to a 1.5% finance charge on all invoices 30 days or more past due, which is an annual percentage rate of 18%. Renter agrees to pay all costs of collections, including attorney's fees and court costs, whether or not a lawsuit is filed.

Renter also agrees that in the event of Renter's default EquipmentShare shall have, in addition to all rights and remedies at law or in equity, the right to enter onto the property where the Equipment is being held and to take all actions necessary to repossess the Equipment without legal process or notice. Renter hereby consents to such repossession and waives all claims for damages and losses caused by such repossession and shall pay all costs and expenses incurred by EquipmentShare in repossessing the Equipment. This Agreement is governed by the laws of the State of Missouri, without regard to its conflict of laws principles. Renter and EquipmentShare agree that exclusive jurisdiction and venue for any suit or collection action to enforce the terms of this Agreement shall lie in Boone County, Missouri or Dallas County, Texas, and both parties consent to venue and personal jurisdiction in such courts.

Section 12 Returned Payment

Should a payment on any account be returned by the bank for any reason, there will be a fee imposed by EquipmentShare of \$15 to be due immediately, further, any account(s) that have a check returned by the bank shall be immediately suspended from credit terms and placed on a COD payment status for no less than 30 calendar days. Review of said account is subject to approval by EquipmentShare's Collections Manager.

Section 13 Credit Accounts

Any and all accounts are subject to suspension from credit at any time at the discretion of the Collections Manager if they become outstanding beyond established and approved credit limits or become delinquent outside of the agreed upon credit terms. Reinstatement of credit terms is at the discretion of the Collections Manager. Should an account be referred to "Collections," any and all legal fees, attorney fees, and collection fees associated with the collection of the outstanding debt, shall become the sole responsibility of the Renter and subject to any interest accrued per this agreement.

Section 14 Assignment

Renter shall not sublease, sub-rent, assign, loan, pledge as collateral, or otherwise encumber the Equipment or assign or attempt to assign any interest in the Equipment without prior written authorization from EquipmentShare, and any attempt to do so shall be void. EquipmentShare can freely assign this Agreement and its rights hereunder to affiliates and third parties.

Section 15 Title and Subordination

Title to the Equipment does not transfer to Renter, and Renter understands and agrees that Renter's rights to the Equipment pursuant to this agreement are subordinate to the rights of any bank, lender or other secured party holding a lien or other security interest against the Equipment. Renter shall keep the Equipment free and clear of all mechanics and other liens and encumbrances.

Section 16 Only Agreement: Counterparts

This Agreement along with any Addendums attached hereto and subsequent Descriptions of Equipment or other Confirmation Documents represent the entire agreement between Renter and EquipmentShare with respect to Renter's rental of Equipment from EquipmentShare. Any terms and conditions, whether oral or written, contained in any customer issued purchase order or similar document are rejected by EquipmentShare to the extent they are inconsistent with or different from the terms contained herein. The terms and conditions of this Agreement shall control over any conflicting terms contained in a Confirmation Document, customer purchase order or similar document. This Agreement may only be altered, modified, amended or superseded by a writing signed by authorized representatives of each party hereto. Renter may sign this Agreement manually or electronically, and the Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, shall be deemed an original, and all of which, when taken together, shall constitute one and the same Agreement.

Section 17 Waiver & Severability

EquipmentShare's failure to enforce a provision of this Agreement is not a waiver of its right to do so later. If a provision of this Agreement is found to be unenforceable, the remaining provisions of this Agreement will remain in full force and effect.

I acknowledge and affirm that I have fully read, fully understood, and agree to be bound by the terms and conditions contained in this Rental Agreement, the EquipmentShare Terms of Use and Privacy Policy, that I am over 18 years of age, that, if signing the Agreement electronically I agree to use Electronic Records and Signatures, and that I have the power and authority to enter into this Rental Agreement for the rental of the equipment described in the attached Description of Equipment including all parts and accessories, as well as any additional equipment Renter may subsequently rent from or through EquipmentShare.

Renter Name:

EquipmentShare Representative

Title:

Description of Equipment

Delivery Address _____

Description of Equipment: Make _____ Model _____ S/N _____ Yr _____ Hours _____

Rental Rates: \$ _____ p/weekday, \$ _____ p/weekend day, \$ _____ p/week, and \$ _____ p/month (28 days).

Purchase Rental Protection Plan (Cost is 14% of the total rental charges accumulated during the Rental Period, with Equipment for Forestry/Demolition purposes charged at 20% of the total rental charges): Yes _____ No _____