

**KANSAS STATE UNIVERSITY  
PURCHASING OFFICE  
21 ANDERSON HALL  
MANHATTAN, KS 66506  
PHONE 785-532-6214 FAX 785-532-5577**

**CONTRACT RENEWAL SIGNATURE SHEET**

Date: 5/25/2011  
CONTRACT NO.: 40204  
Replaces Contract No.: NA

Procurement Officer: Chris Dekat, CPPB  
Phone: 785-532-5469  
E-Mail: cidekat@k-state.edu

Item: Loaders, Skid Steer  
Primary Using Department: Kansas State University- Animal Sciences & Industries  
Period of Contract: 10/1/2011 through 9/30/2012

Contractor Information: Foley Rental  
5104 Skyway Dr.  
Manhattan, KS 66503  
CONTACT: David Marple  
Phone: 785-537-2101; FAX: 785-267-8181; e-mail: DSMarple@foleyeq.com

Prices: as bid on IFB 40204 and any addendums and a 5% increase  
(Exception of non-renewal of Category II).  
Payment Terms: N30  
Shipping Information: Dest, Ppd & Allowed

The parties agree as follows:

1. Subject to the terms and conditions of this contract and companion bid documents, Kansas State University hereby accepts the offer of Contractor as expressed by Contractor's bid submitted to K-State Purchasing in response to above referenced contract/quote number.
2. It is understood and agreed by the parties that pursuant to the bid, Contractor agrees to furnish products or services for the period noted above on orders of the Department(s) at the price or prices contained in the bid. Department(s) agrees to pay on delivery of the item(s) the amount(s) billed by Contractor in accordance with the bid as shown on delivery invoice(s) of the Contractor to the Department(s). Payment will be made as soon after receipt of the invoice(s) as possible in accordance with state law.
3. Failure of Contractor to furnish the item(s) in accordance with the bid specifications incorporated into this contract by reference, or failure of Contractor to deliver the item(s) in accordance with any time schedules prescribed in this contract or any documents incorporated by reference into this contract shall result in forfeiture of any performance bond of Contractor and/or in termination of this contract at the option of the University.
4. It is understood and agreed that the provisions set out in the K-State Purchasing Office bid document for this contract are incorporated and made a part of this contract by reference as though fully set forth herein. Contractor agrees and understands that these documents are controlling over Contractor's bid, invoice, department order forms or any other documents of the Contractor.
5. The provisions found in Contractual Provisions Attachment, is incorporated and made a part of this contract by reference.
6. In the event of any disputes regarding the terms and conditions of this Contract or payments alleged to be due and owing, Contractor's sole remedy shall be with the Department that placed the order.

Contractor: Foley Rental

By: Joe Wilken

Printed Name: Joe Wilken

Title: CEE Sales

KANSAS STATE UNIVERSITY

By: Carla K Bishop  
CARLA BISHOP  
DIRECTOR OF PURCHASING

**KANSAS STATE UNIVERSITY  
PURCHASING OFFICE  
21 ANDERSON HALL  
MANHATTAN, KS 66506  
PHONE 785-532-6214 FAX 785-532-5577**

**Contract Signature Sheet**

Date: 11/15/10

CONTRACT I.F.B. NO. 40204  
REPLACES CONTRACT NO. 40191R

PROCUREMENT OFFICER:

Chris Dekat, CPPB  
Phone: 785-532-5469  
e-mail: cidekat@ksu.edu

Item: Loaders, Skid Steer

Primary Using Department: Kansas State University – Animal Sciences & Industries

Period of Contract: 10/1/10 through 9/30/11

Vendor Information:

Foley Rental  
5104 Skyway Dr.  
Manhattan, KS 66503  
Contact: David Marple  
Ph: 785-537-2101  
Fax: 785-267-8181

Prices: See attached

Payment Terms: N30

Shipping Information: Dest, Ppd & Allowed

The parties agree as follows:

1. Subject to the terms and conditions of this contract and companion Contract Award document, University hereby accepts the offer of Contractor as expressed by Contractor's bid submitted to K-State Purchasing on **10/1/10**, in response to above contract number.
2. It is understood and agreed by the parties that pursuant to the bid, Contractor agrees to furnish products or services for the period noted above on orders of the Department(s) at the price or prices contained in the bid. Department(s) agrees to pay on delivery of the item(s) the amount(s) billed by Contractor in accordance with the bid as shown on delivery invoice(s) of the Contractor to the Department(s). Payment will be made as soon after receipt of the invoice(s) as possible in accordance with state law.
3. Failure of Contractor to furnish the item(s) in accordance with the bid specifications incorporated into this contract by reference, or failure of Contractor to deliver the item(s) in accordance with any time schedules prescribed in this contract or any documents incorporated by reference into this contract shall result in forfeiture of any performance bond of Contractor and/or in termination of this contract at the option of the University.
4. It is understood and agreed that the provisions set out in the K-State Purchasing Office bid document for this contract are incorporated and made a part of this contract by reference as though fully set forth herein. Contractor agrees and understands that these documents are controlling over Contractor's bid, invoice, department order forms or any other documents of the Contractor.
5. The provisions found in Contractual Provisions Attachment, is incorporated and made a part of this contract by reference.
6. In the event of any disputes regarding the terms and conditions of this Contract or payments alleged to be due and owing, Contractor's sole remedy shall be with the Department that placed the order.

Contractor: (Contractor Name)

Kansas State University

**See Attached Signature Document**

By: \_\_\_\_\_

By: \_\_\_\_\_

CARLA BISHOP  
DIRECTOR OF PURCHASING

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

MEMORANDUM OF AGREEMENT

This Agreement is entered into as of 9/8/2010, at Manhattan, Kansas between Kansas State University, Manhattan, Kansas and Foley Equipment, 5104 Skyway Dr., Manhattan, KS 66503

WITNESSETH THAT the purpose of this agreement is to outline and describe the responsibilities to be assumed by the contracting parties under this agreement. (RFQ & Vendor response)

*CEL  
DM*

Part 1. Duration:

This agreement is for the period from 10/1/10 through 9/30/11.

Part 2. The Parties Hereto Agree That:

- a. The University will provide:
  - (1) Payment for products or services received.
- b. The Contractor will provide:
  - (1) Products or Services as specified under Contract # 40204.

Part 3. Payments:

Payments to be made in regular routine upon receipt by the University of the contractor's invoice in duplicate.

Part 4.

The provisions found in Contractual Provisions Attachment (form DA-146a), which is attached hereto, are hereby incorporated in this contract and made a part hereof.

THE STANDARD TERMS AND CONDITIONS OF FOLEY RENTAL FROM ATTACHMENT FR ARE HEREIN INCORPORATED INTO THIS AGREEMENT BY REFERENCE, UNLESS PROHIBITED BY FORM DA-146a

In witness whereof the parties hereto have signed this agreement.

*CEL  
DM*

~~Foley Equipment~~ Foley Rental  
5104 Skyway Dr.  
Manhattan, KS 66503

*David S. Morple*  
Signature

David S. Morple  
Print Name

11-12-10  
Date

Kansas State University  
Financial Ser./Purchasing  
Manhattan, KS 66506

*Carla K. Bishop*  
Carla K. Bishop  
Director of Purchasing

Closing Date 07/14/10

Item Rental of Skid Loaders

Kansas State University

SIGNATURE SHEET

We submit a proposal to furnish the requirements during the contract period in accordance with the specifications and Schedule of Supplies.

LEGAL NAME OF PERSON, FIRM OR CORPORATION: Foley Equipment ~~Foley Rental~~

TELEPHONE (TOLL FREE) NUMBER: (785) 537-2101 FAX NUMBER: (785) 267-8181

ADDRESS: 5104 Skyway Drive

CITY & STATE: Manhattan, KS ZIP CODE 66503-9710

SS OR FIEN NUMBER 48-1213167  
SIGNATURE David S. Marple  
TYPED NAME OF SIGNATURE David S. Marple  
TITLE CCE Sales  
DATE 07/14/10

If awarded a contract and purchase orders are to be directed to an address other than above, indicate mailing address and telephone number below.

ADDRESS 5104 Skyway Drive

CITY & STATE Manhattan KS 66502

TELEPHONE (TOLL FREE) NUMBER 785-256-1080 FAX NUMBER \_\_\_\_\_

EMAIL DSMarple@foleyeq.com

**BID SHEET**

Category	Quantity	Description	Make/Model	Annual Unit Price	Total Annual Price
I	1	55-65 Gross HP	<u>CAT/226B2</u>	<u>\$3,109.00</u>	<u>\$3,109.00</u>
II	1	75-85 Gross HP	<u>CAT/252B2</u>	<u>\$3,109.00</u>	<u>\$3,109.00</u>
III	1	75-85 Gross HP (w/ enclosed cab & A/C, self-leveling bucket)	<u>CAT/252B2</u>	<u>\$3,109.00</u>	<u>\$3,109.00</u>
IV	2	80-90 Gross HP	<u>CAT/272C</u>	<u>\$3,399.00</u>	<u>\$6,798.00</u>
V	2	85-95 Gross HP (w/ enclosed cab, A/C, self-leveling bucket)	<u>CAT/272C</u>	<u>\$3,599.00</u>	<u>\$7,198.00</u>
VI	2	High-Volume Buckets	<u>CAT/84"LM</u>	<u>\$180.00</u>	<u>\$360.00</u>

CONTRACTUAL PROVISIONS ATTACHMENT

**Important:** This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain the following provision:

"The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 1-01), which is attached hereto, are hereby incorporated in this contract and made a part thereof."

The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

1. **Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated.
2. **Agreement With Kansas Law:** All contractual agreements shall be subject to, governed by, and construed according to the laws of the State of Kansas.
3. **Termination Due To Lack Of Funding Appropriation:** If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.
4. **Disclaimer Of Liability:** Neither the State of Kansas nor any agency thereof shall hold harmless or indemnify any contractor beyond that liability incurred under the Kansas Tort Claims Act (K.S.A. 76-6101 *et seq.*).
5. **Anti-Discrimination Clause:** The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 *et seq.*) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 *et seq.*) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 *et seq.*) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1118; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) if it is determined that the contractor has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration. Parties to this contract understand that the provisions of this paragraph number 5 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of such contract or whose contracts with the contracting state agency cumulatively total \$5,000 or less during the fiscal year of such agency.
6. **Acceptance Of Contract:** This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
7. **Arbitration, Damages, Warranties:** Notwithstanding any language to the contrary, no interpretation shall be allowed to find the State or any agency thereof has agreed to binding arbitration, or the payment of damages or penalties upon the occurrence of a contingency. Further, the State of Kansas shall not agree to pay attorney fees and late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect which attempts to exclude, modify, disclaim or otherwise attempt to limit implied warranties of merchantability and fitness for a particular purpose.
8. **Representative's Authority To Contract:** By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.
9. **Responsibility For Taxes:** The State of Kansas shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.
10. **Insurance:** The State of Kansas shall not be required to purchase, any insurance against loss or damage to any personal property to which this contract relates, nor shall this contract require the State to establish a "self-insurance" fund to protect against any such loss of damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 76-6101 *et seq.*), the vendor or lessor shall bear the risk of any loss or damage to any personal property in which vendor or lessor holds title.
11. **Information:** No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101 *et seq.*
12. **The Eleventh Amendment:** "The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."



Controller's Office  
102 Anderson Hall  
Manhattan, KS 66506-0108  
Fax: 785-532-6612

July 6, 2010

IFB # 40204

ADDENDUM No. 1

Item: Rental of Skid Loaders

Department: Kansas State University – Animal Sciences & Industries

Closing Date: 7/14/2010

Conditions of Addendum:

In additional to the original specifications, add;

Each machine shall come with a standard dirt bucket with a smooth bolt-on cutting edge attached (no teeth).

There are no other changes at this time.

Please return a signed copy of this addendum with your bid.

Kansas State University  
Controllers / Purchasing Office  
Anderson Hall Rm. 21  
Manhattan, KS 66506

Chris Dekat  
Procurement Officer

I (we) have read and understand this Addendum and agree it is a part of my (our) bid on the above Invitation for Bid.

Name of Company/Firm: Foley <sup>RENTAL</sup> Eq. Company

Signed by: Jaid S Maple

Title: Sales Rep Date: 7-14-10

Cashiers  
211 Anderson Hall  
785-532-6317  
Fax: 785-532-6454  
Student Loans  
211 Anderson Hall  
785-532-6204  
Fax: 785-532-6454  
Accounts Payable  
220 Anderson Hall  
785-532-6202  
Fax: 785-532-1305  
Purchasing  
21 Anderson Hall  
785-532-6214  
Fax: 785-532-1577  
Funds Management  
226 Anderson Hall  
785-532-1836  
Fax: 785-532-1105  
Sponsored Projects/  
Accounting  
10 Anderson Hall  
785-532-6207  
Fax: 785-532-5577  
Systems  
218 Anderson Hall  
785-532-2048  
Fax: 785-532-1305  
Financial Reporting/  
Inventory  
21C Anderson Hall  
785-532-6575  
Fax: 785-532-5577  
Administration  
102 Anderson Hall  
785-532-6210  
Fax: 785-532-6612

As used herein, "FS" shall mean Foley Supply LLC (DBA Foley Rental), "Customer" shall mean the customer listed on the front of this Agreement, and "Equipment" shall mean the rented items specified on the front of this Agreement. All other capitalized terms are as defined on the front of this Agreement or as specified herein.

1. **Rental Term.** The rental term begins when the Equipment is delivered to Customer and continues until it is picked up by FS or returned to FS during its regular business hours and properly received. In no case, except as expressly waived by FS, shall the rental term be less than the Minimum Rental Period.

Rental Day means the first to elapse of 24 hours (regardless of use) commencing on the hour and minute first rented (the "time elapsed" rate) or eight hours of Equipment use (the "Equipment use" rate) as recorded by an hour meter provided on the Equipment. Rental Week means the first to elapse of seven calendar days (regardless of use) or 40 hours of Equipment use as recorded by an hour meter on the Equipment. Rental Month means the first to elapse of twenty eight calendar days (regardless of use) or 160 hours of Equipment use as recorded by an hour meter provided on the Equipment. Rent for the entire rental shall be calculated either by (i) a time elapsed rate for the entire rental or (ii) the Equipment use rate for the entire rental; and the method used shall be that which yields the highest rental. For Power Generation Equipment see addendum.

If the Equipment is used for less than the Minimum Rental Period, the full rate for the Minimum Rental Period shall, as a minimum, be due. FS reserves the right to assess additional rental charges if the hour meter is malfunctioning and it is not reported to FS, and, in FS's reasonable determination, the Equipment was used for more hours than is allowed for the otherwise applicable time elapsed rental rate. FS shall have the right, at its discretion, to inspect the Equipment during the rental period to check the reading on an hour meter on the Equipment or for compliance with the terms of this Agreement.

2. **Rental Charges & Payment.** Unless FS has granted Customer an "Open Account" status, Customer shall pay FS two (2) advance Rents equal to the applicable rental rate multiplied by the Minimum Rental Period. At the end of the Minimum Rental Period, and upon every anniversary thereof, Customer shall pay an advance Rent equal to the applicable rental rate multiplied by the Minimum Rental Period until the Equipment is properly returned. Customer agrees that all bills/invoices submitted to Customer are subject to adjustment based upon later review of the Equipment's hour meter or of the Equipment's condition. If Customer elects the Fire, Theft and Vandalism (FTV) waiver, charges for FTV will be due at the same time that the Equipment Rent is due.

If the Equipment is initially rented with a credit card, then unless other arrangements are agreed upon, FS shall be entitled to charge the credit card periodically and at such times as FS may determine for all amounts calculated to be due. Customer shall execute and deliver all authorizations required or desired by FS for such charges to be made to the credit card account.

3. **Condition of Equipment Upon Return.** Customer agrees to return all rented items to FS's renting location during regular business hours, in the same good condition and repair as when delivered, subject only to reasonable wear and tear. An additional charge for cleaning of the Equipment may be assessed if the Equipment is returned in an unclean condition (\$100 minimum clean up fee). Customer agrees to pay for any additional rental charges, damages to or loss of the Equipment because it was not returned and accepted by FS within FS's regular business hours.

4. **Use of the Equipment.** Customer agrees to use the Equipment only at the specified location. Customer acknowledges receipt of all manufacturers' operation manuals pertaining to the Equipment and has thoroughly studied and understands the manuals. Customer is solely responsible to advise any persons operating the Equipment or in the vicinity of the Equipment of all safety operating procedures and safety precautions. Customer assumes all responsibility to ensure that all operators are properly trained and competent and use the Equipment in compliance with the operating instructions and all applicable safety standards and procedures. Customer knows and will instruct all operators of the limitations of the Equipment, and Customer agrees that the Equipment will be used only for its designed purposes within its specified performance capabilities. Customer shall at Customer's sole expense comply with all Federal, State and Local laws, regulations, and ordinances, relating to the use of the Equipment while it is rented to Customer, including without limitation the regulations of the Occupational Safety and Health Administration (OSHA).

CUSTOMER SHALL INDEMNIFY, DEFEND, AND HOLD FS, ITS AGENTS, EMPLOYEES, OFFICERS, DIRECTORS, OWNERS, INSURERS, AND THEIR SUCCESSORS AND ASSIGNS HARMLESS FROM AND AGAINST ANY AND ALL LIABILITIES, OBLIGATIONS, LOSSES, DAMAGES, CLAIMS, PENALTIES, INJURIES (BOTH AS TO BODY AND PROPERTY), AND ALL COSTS AND EXPENSES THEREOF (INCLUDING ATTORNEYS' FEES AND EXPENSES) IN ANY WAY RELATING TO OR ARISING OUT OF THE EQUIPMENT, IN WHATEVER MANNER, IN CONNECTION WITH ANY EVENT OCCURRING PRIOR TO THE PROPER RETURN OF THE EQUIPMENT. Customer shall give prompt notice in advance to any occurrence under which FS may be entitled to indemnification hereunder which shall include the names and addresses of all persons involved in the occurrence and all witnesses. The conditions of this section shall survive the termination of the term of this Agreement.

5. **Risk of Loss, Insurance, and Fire, Theft and Vandalism (FTV) Waiver.** Upon delivery of the Equipment to Customer, Customer shall bear the entire risk of loss, damage, theft, or destruction of the Equipment or any part thereof, from any and every cause whatsoever, which shall occur prior to the proper return of the Equipment, and no such loss, damage, theft, or destruction shall relieve Customer of its obligation to pay Rent or to comply with any other provision of this Agreement. The amount of damage for any loss of or injury to the Equipment shall be based upon the then actual reasonable agreed value and without regard to Rent paid or accrued.

Unless Customer chooses to accept the Fire, Theft and Vandalism Waiver, then Customer will, at its own expense and at all times during the term of this Agreement, maintain in force Property Insurance in an amount adequate to cover any damages to, or loss of, the Equipment. Customer's policy must expressly cover non-owned equipment while in Customer's care, custody, or control.

In addition, Customer will, at its own expense and at all times during the term of this Agreement maintain in force Commercial General Liability Insurance with a combined, single limit for bodily injury, including death, and property damages of \$1,000,000.00, (\$5,000,000.00 for Crane Rentals) on a primary and not excess or contributory basis, for Customer's liability for damages sustained by any person, including, but not limited to, agents or employees of Customer, as a result of the maintenance, use, operation, possession, storage, erection, dismantling, servicing or transportation of Equipment.

The amount, terms and conditions of the insurance required by this Agreement must be acceptable to FS. Customer will, on demand, furnish FS a Certificate of Insurance evidencing such insurance, endorsed to provide that such insurance may not be canceled or materially modified except on 30 days prior written notice to FS. Customer agrees to abide by all terms and conditions of said insurance. Customer, its agents and employees will cooperate fully with FS and Customer's insurer in an investigation, prosecution or defense of any claim or suit arising there from and will do nothing to impair or invalidate the applicable insurance coverage. Neither FS's acceptance of Customer's Certificates of Insurance nor Customer's failure to provide a Certificate of Insurance will be deemed a waiver, limitation or modification of Customer's insurance, indemnity or other obligations under this Agreement or Customer's liability hereunder. Customer agrees to assign any and all proceeds from such insurance to FS. Customer agrees that subrogation will be waived against FS and its insured in all policies of Customer's insurance, and that Customer's insurance will be primary.

If the Equipment is used in compliance with the Rental Agreement and if Customer accepts the "Fire, Theft, and Vandalism Waiver" option (hereafter called "FTV"), which is NOT INSURANCE, at the beginning of the rental period by initiating the FTV Accepts Box on the front of the Rental Agreement, and pays the additional

charges for the FTV when due, then FS agrees to waive, to the extent specified herein and in the Rental Agreement, Customer's responsibility to FS for loss of or damage to the Equipment exceeding the greater of \$1,000 or three times the monthly rental rate, per item of Equipment. FS reserves the right to deny FTV to Customer. Customer not initiating either the "YES" or "NO" FTV box will be deemed to have accepted FTV. NOTWITHSTANDING THE FOREGOING PROVISIONS OF THIS PARAGRAPH, CUSTOMER WILL BE LIABLE FOR ALL LOSS OR DAMAGE TO THE EQUIPMENT AND EXPENSE OF FOLEY RESULTING FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF CUSTOMER, WHICH INCLUDES, BUT IS NOT LIMITED TO THE USE OR OPERATION OF THE EQUIPMENT IN A RECKLESS OR ABUSIVE MANNER, OR INTENTIONAL DAMAGE TO THE EQUIPMENT BY CUSTOMER OR WITH CUSTOMER'S PERMISSION, OR UNDER ANY OF THE FOLLOWING CIRCUMSTANCES: (A) striking overhead objects with the Equipment; (B) vandalism, malicious mischief, theft or conversion of the Equipment not documented by Customer's prompt filing with the applicable public authorities (with an immediate written copy to FS) of a formal written theft, vandalism or conversion report; (C) any exposure to radioactive, contaminated or other hazardous materials; (D) boom damage from overloading of a boom or from a collision when a boom is in motion; (E) the Equipment's rollover or upset; (F) use of or operation of the Equipment by a person other than an employee of Customer possessing all necessary permits and not otherwise prohibited by law from such operation; (G) use or operations of the Equipment in violation of any law or ordinance; (H) the failure of a Customer to perform, or the improper performance of, the basic maintenance required under the Rental Agreement; (I) any failure of Customer to comply with any requirement of the Rental Agreement; (J) over spray of concrete, paint, or any other material; (K) use of the Equipment in violation of the applicable manufacturer instruction manual, overloading, or exceeding rated capacity; and (L) Customer's failure to secure the Equipment by leaving the keys readily available to any unauthorized operator or by not reasonably restricting access to the Equipment as a prudent person would protect his or her own equipment. If such charges for the FTV are not paid as specified in the Rental Agreement, then at FS's option and discretion, FS may terminate the Rental Agreement without prejudice to any of its other remedies. Pending exercise of FS's option, or if FS's option is not exercised, the FTV will not be in effect regardless of any initiating of the "Accepts" Box and Customer will remain fully responsible for loss and damage to the Equipment. In the event of any loss or damage to the Equipment, FS will subrogate with respect to any rights of Customer to recover against any person or entity.

6. **Further Assurances.** Upon request by FS, Customer shall promptly provide to FS the following: (a) A copy of the contract governing all projects on which the Equipment is used; (b) A copy of the payment bond, if any, issued pursuant to the contract; (c) The name and location of all projects where the Equipment has been or will be used; and (d) any other information FS shall in its sole judgment deem appropriate. Failure to provide such information shall be deemed an Event of Default of this Agreement.

7. **Limited Express Warranty and Substitution of Equipment.** FS will replace or repair the Equipment if it is defective in materials or workmanship. Customer recognizes that FS reserves the right, at its sole discretion, to substitute the Equipment with other equipment of the same model type and series designation.

8. **Maintenance and Repairs.** All labor and material for normal operation and maintenance as specified in the operation and maintenance manual for the Equipment shall be the responsibility of Customer, and Rent shall not abate because of the need for such maintenance. Except for (i) defects in materials or of workmanship, (ii) amounts covered by the FTV Waiver (less amounts Customer is responsible for) if elected by Customer, or (iii) normal and customary wear and tear, Customer shall be responsible for repair of all damage, and labor and materials necessary to perform all repairs, of any kind or nature to the Equipment necessary to place it in the same condition it had upon the initial delivery thereof to Customer. FS reserves the right to invoice Customer for any amounts for which it is responsible under this section after FS has had the opportunity to fully inspect the Equipment. FS reserves the right to remove the Equipment from the job at any time when, in its opinion, the Equipment is in danger or it is deemed necessary for the purpose of repair or inspection.

9. **Termination and Survival.** FS or Customer may for any reason or for no reason, terminate the term of this Agreement, but such termination shall not be effective until after the Minimum Rental Period. The termination of the term of this Agreement shall not terminate or cancel FS's right to pursue any remedies provided herein at law or equity against Customer. All warranties and obligations of Customer shall continue until the Equipment is properly returned to FS as specified herein.

10. **Default.** In addition to the other events specified herein, each of the following shall constitute an Event of Default hereunder: (a) Customer fails to make any payment of Rent or other amount due to FS when due; (b) Customer fails to return the Equipment to FS after termination; (c) Customer fails to perform or observe any other term, covenant, or condition of this Agreement; (d) Any representation or warranty made by Customer herein or other document provided or executed by Customer shall be false or misleading at any time in any material respect; (e) Customer's default in the performance or obligations under any other agreement now existing or hereafter made with FS; or (f) Customer ceases doing business as a going concern, transfers all or substantially all of its assets, becomes or is adjudicated insolvent or bankrupt, makes an assignment for the benefit of creditors, or Customer institutes any bankruptcy, insolvency, reorganization, dissolution, liquidation, or similar proceedings. Customer shall promptly notify FS of the occurrence of any Event of Default.

11. **Remedies.** Upon the occurrence of any Event of Default, FS may, with or without notice to Customer, exercise any remedy provided by law or any one or more of the following remedies, as FS in its sole discretion shall elect and such remedies shall be cumulative: (a) Require Customer, at Customer's expense, to return any or all of the Equipment, or FS, at its option, may enter onto Customer's premises and repossess and remove the Equipment, or render the Equipment unusable without removal, and FS shall not be deemed to have committed a trespass by so doing; (b) Declare immediately due and payable all Rents and other amounts due to or become due; (c) Sell by public or private sale, release, hold, retain, or otherwise dispose of the Equipment in any manner FS chooses, free and clear of any claims or rights of Customer; or (d) recover from Customer as damages as may be allowed under the Uniform Commercial Code or any other remedy under other statute or common law. The exercise of the foregoing remedies by FS shall not constitute a termination of this Agreement unless FS so notifies Customer in writing. No failure or delay by FS to exercise any right or remedy hereunder shall operate as waiver thereof. Additionally, Customer shall be liable for all costs, expenses and damages incurred by FS by reason of the occurrence of any Event of Default or the exercise of FS's remedies thereto, including but not limited to, all attorneys' fees and costs and damage or loss due to the exercise of FS's remedies, and all incidental and consequential damages.

12. **Ownership of Equipment, Assignment, and Nature of Transaction.** The parties agree that FS retains all right and title to the Equipment. Customer shall not assign or in any way dispose or otherwise relinquish possession or control of all or any part of the Equipment or any of its rights or obligations or enter into any sublease of all or any part of the Equipment without the prior written consent of FS. FS may, without notice to Customer, assign or sell its interest in, grant a security interest in, or otherwise transfer, in whole or in part, this Agreement or any or all of the Equipment or any of its rights, interests, or obligations with respect thereto, to one or more persons or entities. Customer agrees to defend FS's title against, and keep the Equipment free of, all liens, claims, and encumbrances. Customer agrees to execute any documents necessary to secure FS's rights in the Equipment. 13. **Other.** This Agreement shall inure to the benefit of and be binding upon each of the parties hereto and each of their respective heirs, administrators, executors, personal representatives, and permitted successors and assigns. If any provision is in conflict with any statute or rule of law of any state or district in which jurisdiction may lie for enforcement, then such provision shall not be invalidated, but may be reformed by the court to the extent necessary to protect the rights of the parties. This Agreement is governed by the laws of the state of Kansas and embodies the entire and final understanding between the parties hereto with respect to the Equipment and supersedes any preexisting agreements, arrangements, representations, or warranties with respect to the Equipment.

Initial Here: 