



AGENDA ITEM EXECUTIVE SUMMARY

| | | | |
|---|---|--|--|
| Agenda Item: | Purchase of Scissor lift and trailer from Lift Works of St. Charles | | |
| Presenter & Title: | Nate Landers, Superintendent of Streets, Fleets, and Facilities | | |
| Date: | December 20, 2021 | | |
| Please Check Appropriate Box: | | | |
| | Committee of the Whole Meeting | | Special Committee of the Whole Meeting |
| X | City Council Meeting | | Special City Council Meeting |
| | Public Hearing | | Other – Mayor Emergency Declaration Authorization |
| Associated Strategic Plan Goal/Objective: EMS-II | | | |
| Estimated Cost: \$ 38,537.00 | | Budgeted? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | Other Funding? <input type="checkbox"/> Yes <input type="checkbox"/> No |
| Executive Summary: | | | |
| <p>The FY22 budget contains funds allocated for the purchase of a scissor lift and trailer. The lift is specifically designed with a 32 foot working height and 32 inch width to be used at all City facilities including GGF, FD, PD, WWTP, WTP, City Hall and PW and the cost will be shared between Electric, Water, and General funds. Staff requested three quotes from suppliers and only received two, which are attached for your review. Due to supply chains shortages, lifts with these specifications are hard to find. Staff has been notified by the vendor that there is one lift available for purchase and will be sold as first come first served. This information coupled with the quote only being valid for 30 days requires the need to expedite the approval process therefore this item is being brought directly to Council for approval.</p> | | | |
| Attachments: <i>(please list)</i> | | | |
| <ul style="list-style-type: none"> • Resolution • Quotes | | | |
| Voting Requirements: | | | |
| <p><i>This motion requires a simple majority of affirmative votes for passage.</i></p> <p><i>The Mayor may vote on three occasions: (a) when the vote of the aldermen or trustees has resulted in a tie; (b) when one half of the aldermen or trustees elected have voted in favor of an ordinance, resolution, or motion even though there is no tie votes; or (c) when a vote greater than a majority of the corporate authorities is required by state statute or local ordinance to adopt an ordinance, resolution, or motion.</i></p> | | | |
| Recommendation / Suggested Action: <i>(how item should be listed on agenda)</i> | | | |
| Recommend approval of a resolution authorizing the City Administrator to purchase scissor lift and trailer from Lift Works of St. Charles in the amount not to exceed \$38,537.00 | | | |

RESOLUTION NO. 2021-327

**RESOLUTION AUTHORIZING EXECUTION OF
the City Administrator to purchase a scissor lift and trailer from Lift Works of St. Charles.**

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GENEVA, KANE COUNTY, ILLINOIS, as follows:

SECTION 1: That the City Administrator is hereby authorized to execute, on behalf of the City of Geneva, the purchase of a scissor lift and trailer from Lift Works of St. Charles in the amount not to exceed \$38,537.00

SECTION 2: This Resolution shall become effective from and after its passage as in accordance with law.

PASSED by the City Council of the City of Geneva, Kane County, Illinois, this 20th day of December, 2021

AYES: __ NAYS: __ ABSENT: __ ABSTAINING: __ HOLDING OFFICE: __

Approved by me this 20th day of December, 2021.

Mayor

ATTEST

City Clerk



600 INDUSTRIAL DRIVE
ST. CHARLES, IL 60174
www.liftworksinc.com
630-833-4626 Phone
630-833-4628 Fax

Status: Quote
Quote #: q165701-1

Quote To: Mon 11/29/2021 9:00AM

Operator: Gia Spagnola
Terms: COD

Customer #: 10104

City of Geneva
22 S. First Street
Geneva, IL 60134

Phone 630-232-7494

Job Descr: Quote - NEW Air-Tow UT14-10/GS 3246
PO #: required

Ordered By: Joe

Salesman: Ryan Bohnenkamp 630-538-6673 rbohenkamp@liftworksinc.com

Used at Address

Geneva - City of Geneva

Lead Time: Currently In Stock

| Qty | Key | Items Sold | Ser# | Status | Each | Price |
|-----|------------------|---|------|------------|-------------|-------------|
| 1 | 6552 | AIR TOW TRAILER - RUT14-10 UTILITY BED Year: NEW 2021 / Model # Air-Tow UT4-10 | | Sold Asset | \$16,254.00 | \$16,254.00 |
| 1 | FREIGHT-1 | FREIGHT - DELIVERY OF EQUIPMENT Freight from Manufacturer | | Retail | \$250.00 | \$250.00 |
| 1 | Doc Fee | Doc Fee | | Retail | \$50.00 | \$50.00 |
| 1 | Title Fee | Title Fee - As required by the State of Illinois. You're Title will be mailed directly to you in approx. 4-8 weeks | | Retail | \$150.00 | \$150.00 |
| 1 | Registration Fee | Registration Fee Municipality Plates Registration Your TRP is good for 3 months. Your plate and registration card will be mailed directly to you in 6-8 weeks. * Safety lane inspection every 6 months is required with this plate | | Retail | \$8.00 | \$8.00 |
| 1 | 10600 | 32' W ELEC SCISSOR LIFT Year: NEW 2021 / Model # Genie GS3246 | | Sold Asset | \$21,150.00 | \$21,150.00 |
| 1 | FREIGHT-1 | FREIGHT - DELIVERY OF EQUIPMENT Freight from Manufacturer | | Retail | \$675.00 | \$675.00 |

Valid for 30 days from Quoted Date

Quote

This is a Quote / Sales Order on the goods named, subject to the approval of Lift Works Management

The undersigned is a duly authorized purchasing agent of the above referenced organization and is authorizing the purchase of this equipment.

PLEASE REVIEW AND AUTHORIZE THIS QUOTE / SALES ORDER BY SIGNING BELOW.

LIFT WORKS SALES FAX NUMBER 630-833-4628 OR INFO@LIFTWORKSINC.COM

Purchase Order #: _____

Signature: _____
City of Geneva

| | |
|-------------|-------------|
| Sales: | \$38,537.00 |
| Subtotal: | \$38,537.00 |
| Total: | \$38,537.00 |
| Paid: | \$0.00 |
| Amount Due: | \$38,537.00 |



RENTAL AGREEMENT TERMS AND CONDITIONS

1. The lessor agrees to render mechanical services at no charge to the equipment covered hereunder for adjustments due to normal wear and tear only. The lessor will perform no mechanical services unless compensated for such services when they are required by the lessee due to neglect or damage and the lessor will not be responsible for any repairs on rental equipment by any other party except an employee of the lessor and such repairs will be made only during normal working hours.
2. The machinery covered herein shall remain the property of the lessor, and shall be subject to no recapture by the lessee regardless of the term of this lease. Lessor expressly retains right of ownership and does not offer this equipment for sale.
3. On out-of-town shipments, the rental period shall begin on and include the date of bill of lading of shipment to the lessee and shall end on and including the date of return to the lessor's aiding or receiving point. Both local and out-of-town rentals are subject to the minimum rental period provided for in this contract. If equipment is kept longer than the specified minimum rental period, the rental will then be invoiced on a pro-rata basis.
4. The lessee agrees that the rates provided for in this contract are considered straight time rates based on eight (8) hours per day, five (5) eight (8) hour days per week, or twenty (20) eight (8) hour days in any one twenty-eight (28) consecutive day period. Should the machinery be used longer than the above specified hours in any specific period, the overtime rate shall be pro-rated on the above basis.
- On straight rentals of equipment the lessee agrees to maintain said machinery and equipment in the same condition as when delivered to it by lessor, usual wear and tear excepted, and to pay all claims and damages arising from defects therein or from the use or handling of said machinery and equipment, whether from injuries to person or property and to pay for all damages to the equipment except the usual and ordinary wear and tear during the life of this contract, and to return said property in as good condition as when received to the storage yard of the lessor or receiving point designated by the lessor, usual and ordinary wear and tear excepted, and to pay all freight, demurrage, storage, or other charges against said equipment from the time the same shall leave the storage yard of said lessor up to and including the time of its return to said storage yard or other place of return agreed upon.
5. In the event the lessee accepts the machinery and equipment, as herein provided, and thereafter the said machinery proves defective or unfit for use, because of accident or otherwise, or, if for any other reason lessee desires to discontinue the use of said machinery or equipment, the only remedy of lessee shall be to return the machinery to lessor and terminate this contract as herein elsewhere provided for, and to pay any and all charges then due, which in no event shall be less than the transportation charges on said machinery and equipment and minimum rental herein provided for and the lessee further expressly agrees and assumes to indemnify, defend, reimburse and hold harmless the lessor, its employees, workmen, servants and agents and its assigns from and again of any and all liabilities, claims, demands, loss, damage, attorneys' fees, expenses, penalties and actions either for bodily injury, death or property damage of any character whatsoever occasioned by the use, operation, condition, handling or transportation of any of the equipment during the rental period and while said equipment is in the possession of, under the custody and control of, lessee or its sublessees, if any, their employees, workmen, servants or agents, made by any person, firm or corporation, including employees, workmen, servants or agents of the lessee and the lessor (or its successors and assigns) that may have been caused or alleged to have been caused directly or indirectly, or by any act of omission or commission, negligent or otherwise of the lessee, its sublessees, if any, their employees, workmen, servants, or agents or of the lessor (or its successors and assigns), its employees, workmen, servants or agents, or by reason of any condition or activity on the premises wherein the equipment is being used, stored, maintained or repaired. The indemnities and assumptions of liability in this paragraph shall continue in full force and effect notwithstanding termination of this lease, whether by expiration of time, by operation of law or otherwise. The lessor shall give lessee prompt notice of any claim or liability hereby indemnified against and lessee shall be entitled to conduct the defense thereof.
- The equipment being leased by the lessee under this lease shall be considered as being under the sole custody and control of the lessee during the period of use under this lease by others than the lessor and should any person or persons in the employ of the lessor be used to operate said equipment during the period of such use, such person or persons shall be deemed during such period of operation to be an employee of employees of and under the exclusive control jurisdiction and direction of the lessee.
- Lessee further agrees to deliver the equipment in the same condition as received at the end of the rental period to the lessor less normal wear and tear. This hold harmless agreement shall encompass any claims arising from either or both personal injury and property damage caused as a result of the use or storage of this equipment both by the employee of the lessee or any third parties and the lessee also agrees to hold the lessor officers, directors, agents and employees, successors and assigns harmless and defend them each from any and all claims, actions, suits, proceedings, demands, judgments, losses, costs, liabilities, damages and expenses, including, without limitation, reasonable attorney fees, arising out of or in connection with the active or passive use or storage of the lessor's equipment while in the possession or control of the lessee or its agents, servants or employees as well as agreeing to pay for all damage to the equipment itself pursuant to the agreed and stated value that appears on the face hereof. Should same not appear on the face hereof then the replacement cost of the equipment so destroyed or damaged shall govern.
6. The lessee agrees to pay any charge for work or inspection required by any labor union. The lessor may, at its option, refuse to do any repair work on the equipment in time of strike, or any other cause beyond its control, or in violation of any rule affecting the equipment. The lessor reserves the right to remove the equipment from the job at any time when, in its opinion, the equipment is in danger because of strike or any other condition and the lessor in no way shall be responsible for any claims made by the lessee for delay or inoperative use time of said equipment. The limit of the lessors liability to be only that which is contained herein. Such equipment must be returned to the lessor or be picked up by the lessor through the request of the lessee and until such pick up or delivery is made the rental recited herein shall continue for such equipment.
7. The lessee agrees to comply with and conform to all municipal, state and federal laws relating to the operation of said machinery and to pay all costs and expenses or every character occasioned by or involving the use or operation of the machinery or equipment and to pay all legal assessments, taxes or public charges, either local, municipal, state or federal, which may be levied upon such equipment while in the possession of the lessee. Nothing in this paragraph is to be construed as meaning that the lessee is to pay the personal tax levied against the machinery rented when said machinery is delivered within the home state of the lessor, as in this case the lessor is to pay his own personal property tax and properly segregate the lessors equipment and such segregation have same marked or otherwise identified as the property of the lessors at all times.
8. The lessee agrees to pay the lessor for all loss and damages occasioned by fire, theft, flood, accident, explosion wreck, an act of God or any other causes that may occur during the life of this lease, and until such machinery has been returned to the possession of the lessor and accepted by it.
9. The lessee further agrees, during the term of this lease to:
 - (a) Keep the equipment herein leased fully insured against loss or damage resulting from peril of every kind and nature, including, but not limited to, fire, theft, flood, explosion, accident, and act of God, whether resulting from lessee's negligence or otherwise, which policies shall name the lessor as an insured thereunder and provide for payment of the proceeds to lessor in the event of such loss or damage.
 - (b) Maintain Workmen's Compensation insurance covering lessee's employees, and having Section B limits of notices than \$1,000,000 hold harmless and indemnify.
 - (c) Maintain public liability insurance covering lessor against loss of every kind of nature arising out of the use, transportation of storage of the equipment herein leased, including, but not limited to, death or bodily injury and property damage (including contractual liability) coverage with limits of not less than \$1,000,000 for bodily injury or death to any one person, \$3,000,000 for bodily injury or death to all persons in any one accident, and \$1,000,000 for damage to property.All insurance required hereunder shall be in such form and with such companies as shall be acceptable to lessor, and certificates of all such insurance coverage shall be furnished to lessor at the time of delivery of the equipment covered by this lease, which certificates shall provide that the policies may not be cancelled except after ten (10) days prior written notice to lessor. Lessee shall provide to lessor proof of its timely payment of premiums for all insurance required hereunder. All insurance policies carried in accordance with subparagraph (c) shall name the lessor as the insured thereunder and shall to the extent obtainable without additional cost, contain a clause that the interest of the lessor shall not be impaired or invalidated by any act or neglect of the lessee.
10. The title to property herein leased and to all replacements thereof or substitution thereof is and shall at all times remain in the lessor.
11. The lessee agrees, whenever requested by lessor, to give the exact location of all of the machinery and equipment covered by this lease and further agrees to give lessor immediate notice of any levy attempted upon said equipment, or if said equipment from any cause becomes liable to seizure, and to identify lessor and hold lessor harmless against all loss, cost, expenses, judgment and damages caused by any such action or claim. The lessor shall have the privilege at all times of entering any job, building or location where the above property is being used for the purpose of inspection and reserves the privilege of removing said machinery and equipment on a twenty-four hours' notice if it is being overloaded or taxed beyond its capacity or in any manner abused or neglected.
12. Should any of the provisions of this lease be violated by the lessee, the rental for the entire period herein specified, shall become forthwith due and payable, and the lessor or its agents may, without notice, enter the premises occupied by lessee without being a trespasser thereon and take possession thereof and remove said equipment with or without process of law. In the event any action as hereinbefore set forth becomes necessary the lessee agrees to pay, in addition to other charges herein specified, all costs and expenses of removal of said machinery, from the possession of the lessee and all freight, demurrage, storage, labor or other charges on or against said property incurred during or by the removal, shipping and return to the possession of the lessor at his designated receiving point, or equivalent point designated by the lessor.
13. The equipment hereby leased shall not be sublet, loaned or borrowed, without the prior written consent of the lessor, which consent may be withheld in the lessor's sole discretion, nor shall said property be moved out of the state specified in this contract without the prior written consent of the lessor, which consent may be withheld in lessor's sole discretion.
14. The lessee agrees to pay all the rentals when they are due and for all services and materials furnished and all damages and sums due the lessor under this contract as soon as the loss occurs or services are rendered or materials are furnished. The taking of notes, or renewals thereof, covering rentals herein specified shall not in any manner whatsoever change or invalidate the terms and conditions of this contract and said notes shall be considered additional security only and in no way act as an accord and satisfaction of this agreement.
15. Lessee agrees that if any of the lease provisions are violated and lessor demands the return of the equipment that this lease shall constitute authority to the watchman or other persons responsible for the equipment to deliver all or any part of the equipment to the lessor or its agents.
16. On all equipment rentals which are supplied with pneumatic tires, the repair of such tires shall be the sole responsibility of the lessee except in such case where the tire shall be adjudged defective by the manufacturer. The lessor under no circumstances assumes any responsibility for the repair, replacement or adjustment of said tires, regardless of the circumstances involved.
17. In the event of accident to, or breakage (other than normal wear and tear) of, any part of the equipment, including but not limited to accidents or breakage due to lessee's willful destruction or neglect, lessee shall notify lessor thereof, and the lessor will repair or replace said equipment for the lessee, using reasonable diligence to make said repairs or replacement in the shortest possible time, and the lessee agrees to pay the lessor its regular charges for any material or labor furnished in making said repairs or replacement upon demand; in the event any work is done outside of lessor's regular hours, by reason of which lessor shall be required to pay double time or other overtime charges to its employees, or to anyone doing the work for lessee, all such charges will be paid by the lessee to the lessor.
18. A waiver of any of the terms and conditions of this agreement by the lessor shall in no way invalidate or waive any other portion of this agreement but same shall remain in full force and effect. If the occasion waived by the lessor arises for an additional time under the terms of this agreement the lessor by waiving them in a prior instance shall not have its action treated as a continuous waiver thereunder but may act upon any new default in the terms and conditions of this agreement as if they were made by the lessee for the first time. Should any portion of this agreement be held invalid for any reason whatsoever it is the intention of the parties to continue to have all of the within terms and conditions of this agreement remain in full force and effect.
19. All deliveries and pick-ups are to be f.o.b. our trucks or delivering carrier.
20. The lessee acknowledges and agrees lessor, its agents or employees have not made, and do not hereby make, any representation or warranty or covenant with respect to the merchantability, condition, quality, durability, or suitability of the equipment in any respect or in connection with or for the purposes and uses of lessee, or any other representation or warranty or covenant of any kind or character, express or implied, with respect thereto. The lessor shall not be liable in any event to the lessee or any other person for any loss, delay or damage of any kind or character resulting from defects in, or inefficiency of equipment hereby leased or accidental breakage or breakdown thereof, or the unsuitability of the equipment for the purposes of the lessee or its sublessees, if any.
21. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, ALL WARRANTIES, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE EXPRESSLY DISCLAIMED BY LESSOR. IN NO EVENT WILL THE LESSOR OR ITS AGENTS BE LIABLE FOR ANY LOST PROFITS OR ANY CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, INDIRECT OR SPECIAL DAMAGES, ARISING FROM OR IN ANY WAY RELATED TO THIS AGREEMENT, THE EQUIPMENT HEREIN LEASED OR RELATING IN WHOLE OR IN PART TO THE LESSEE'S RIGHTS HEREUNDER OR THE USE OF OR INABILITY TO USE THE MACHINERY OR EQUIPMENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
22. Both lessor and lessee agree that modification of this agreement shall not be binding upon them or either of them, unless such modification shall be in writing and duly accepted in writing.
23. Lessee agrees to be responsible for safe keeping of equipment and acknowledges responsibility for loss of equipment while in lessee's possession under the terms of this agreement.
24. Lessor shall not be responsible for any indemnification hold harmless agreements or any other terms not specifically contained herein.
25. This lease is not for a specifically designed structure. Lessor is not responsible for the operation of this equipment nor for the work performed thereon. Lessor further disclaimer any right to control, supervise, stop, or change the work done on or near the equipment.
26. Lessor shall not be responsible for any failure to perform or delay in performing any of its obligations under this agreement where and to the extent that such failure or delay results from causes outside the reasonable control of the lessor. Such causes shall include, without limitation, Acts of God or of the public enemy, acts of terrorism, acts of the government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, freight embargoes, civil commotion, or the like.



2525 Huffman Blvd
Rockford, IL 61103
www.liftworksinc.com
866-912-4292 Phone
815-962-0145 Fax

Status: Quote
Quote #: q165701-2

Quote To: Mon 11/29/2021 9:00AM

Operator: Gia Spagnola
Terms: COD

Customer #: 10104

City of Geneva
22 S. First Street
Geneva, IL 60134

Phone 630-232-7494

Job Descr: Quote - NEW Air-Tow UT14-10/GS 3246
PO #: required

Ordered By: Joe

Salesman: Dan Distazio 630-780-8583 ddistazio@liftworksinc.com

Used at Address

Geneva - City of Geneva

Lead Time: Currently In Stock

| Qty | Key | Items Sold | Ser# | Status | Each | Price |
|-----|------------------|---|------|------------|-------------|-------------|
| 1 | 6552 | AIR TOW TRAILER - RUT14-10 UTILITY BED Year: NEW 2021 / Model # Air-Tow UT4-10 | | Sold Asset | \$16,254.00 | \$16,254.00 |
| 1 | FREIGHT-1 | FREIGHT - DELIVERY OF EQUIPMENT Freight from Manufacturer | | Retail | \$350.00 | \$250.00 |
| 1 | Doc Fee | Doc Fee | | Retail | \$50.00 | \$50.00 |
| 1 | Title Fee | Title Fee - As required by the State of Illinois. You're Title will be mailed directly to you in approx. 4-8 weeks | | Retail | \$150.00 | \$150.00 |
| 1 | Registration Fee | Registration Fee Municipality Plates Registration Your TRP is good for 3 months. Your plate and registration card will be mailed directly to you in 6-8 weeks. * Safety lane inspection every 6 months is required with this plate | | Retail | \$8.00 | \$8.00 |
| 1 | 10600 | 32' W ELEC SCISSOR LIFT Year: NEW 2021 / Model # Genie GS3246 | | Sold Asset | \$21,150.00 | \$21,150.00 |
| 1 | FREIGHT-1 | FREIGHT - DELIVERY OF EQUIPMENT Freight from Manufacturer | | Retail | \$775.00 | \$675.00 |

Valid for 30 days from Quoted Date

Quote

This is a Quote / Sales Order on the goods named, subject to the approval of Lift Works Management

The undersigned is a duly authorized purchasing agent of the above referenced organization and is authorizing the purchase of this equipment.

PLEASE REVIEW AND AUTHORIZE THIS QUOTE / SALES ORDER BY SIGNING BELOW.

LIFT WORKS SALES FAX NUMBER 630-833-4628 OR INFO@LIFTWORKSINC.COM

Purchase Order #: _____

Signature: _____
City of Geneva

| | |
|-------------|--------------------|
| Sales: | \$38,737.00 |
| Subtotal: | \$38,737.00 |
| Total: | \$38,737.00 |
| Paid: | \$0.00 |
| Amount Due: | \$38,737.00 |



RENTAL AGREEMENT TERMS AND CONDITIONS

1. The lessor agrees to render mechanical services at no charge to the equipment covered hereunder for adjustments due to normal wear and tear only. The lessor will perform no mechanical services unless compensated for such services when they are required by the lessee due to neglect or damage and the lessor will not be responsible for any repairs on rental equipment by any other party except an employee of the lessor and such repairs will be made only during normal working hours.
2. The machinery covered herein shall remain the property of the lessor, and shall be subject to no recapture by the lessee regardless of the term of this lease. Lessor expressly retains right of ownership and does not offer this equipment for sale.
3. On out-of-town shipments, the rental period shall begin on and include the date of bill of lading of shipment to the lessee and shall end on and including the date of return to the lessor's aiding or receiving point. Both local and out-of-town rentals are subject to the minimum rental period provided for in this contract. If equipment is kept longer than the specified minimum rental period, the rental will then be invoiced on a pro-rata basis.
4. The lessee agrees that the rates provided for in this contract are considered straight time rates based on eight (8) hours per day, five (5) eight (8) hour days per week, or twenty (20) eight (8) hour days in any one twenty-eight (28) consecutive day period. Should the machinery be used longer than the above specified hours in any specific period, the overtime rate shall be pro-rated on the above basis.
- On straight rentals of equipment the lessee agrees to maintain said machinery and equipment in the same condition as when delivered to it by lessor, usual wear and tear excepted, and to pay all claims and damages arising from defects therein or from the use or handling of said machinery and equipment, whether from injuries to person or property and to pay for all damages to the equipment except the usual and ordinary wear and tear during the life of this contract, and to return said property in as good condition as when received to the storage yard of the lessor or receiving point designated by the lessor, usual and ordinary wear and tear excepted, and to pay all freight, demurrage, storage, or other charges against said equipment from the time the same shall leave the storage yard of said lessor up to and including the time of its return to said storage yard or other place of return agreed upon.
5. In the event the lessee accepts the machinery and equipment, as herein provided, and thereafter the said machinery proves defective or unfit for use, because of accident or otherwise, or, if for any other reason lessee desires to discontinue the use of said machinery or equipment, the only remedy of lessee shall be to return the machinery to lessor and terminate this contract as herein elsewhere provided for, and to pay any and all charges then due, which in no event shall be less than the transportation charges on said machinery and equipment and minimum rental herein provided for and the lessee further expressly agrees and assumes to indemnify, defend, reimburse and hold harmless the lessor, its employees, workmen, servants and agents and its assigns from and again of any and all liabilities, claims, demands, loss, damage, attorneys' fees, expenses, penalties and actions either for bodily injury, death or property damage of any character whatsoever occasioned by the use, operation, condition, handling or transportation of any of the equipment during the rental period and while said equipment is in the possession of, under the custody and control of, lessee or its sublessees, if any, their employees, workmen, servants or agents, made by any person, firm or corporation, including employees, workmen, servants or agents of the lessee and the lessor (or its successors and assigns) that may have been caused or alleged to have been caused directly or indirectly, or by any act of omission or commission, negligent or otherwise of the lessee, its sublessees, if any, their employees, workmen, servants, or agents or of the lessor (or its successors and assigns), its employees, workmen, servants or agents, or by reason of any condition or activity on the premises wherein the equipment is being used, stored, maintained or repaired. The indemnities and assumptions of liability in this paragraph shall continue in full force and effect notwithstanding termination of this lease, whether by expiration of time, by operation of law or otherwise. The lessor shall give lessee prompt notice of any claim or liability hereby indemnified against and lessee shall be entitled to conduct the defense thereof.
- The equipment being leased by the lessee under this lease shall be considered as being under the sole custody and control of the lessee during the period of use under this lease by others than the lessor and should any person or persons in the employ of the lessor be used to operate said equipment during the period of such use, such person or persons shall be deemed during such period of operation to be an employee or employees of and under the exclusive control jurisdiction and direction of the lessee.
- Lessee further agrees to deliver the equipment in the same condition as received at the end of the rental period to the lessor less normal wear and tear. This hold harmless agreement shall encompass any claims arising from either or both personal injury and property damage caused as a result of the use or storage of this equipment both by the employee of the lessee or any third parties and the lessee also agrees to hold the lessor officers, directors, agents and employees, successors and assigns harmless and defend them each from any and all claims, actions, suits, proceedings, demands, judgments, losses, costs, liabilities, damages and expenses, including, without limitation, reasonable attorney fees, arising out of or in connection with the active or passive use or storage of the lessor's equipment while in the possession or control of the lessee or its agents, servants or employees as well as agreeing to pay for all damage to the equipment itself pursuant to the agreed and stated value that appears on the face hereof. Should same not appear on the face hereof then the replacement cost of the equipment so destroyed or damaged shall govern.
6. The lessee agrees to pay any charge for work or inspection required by any labor union. The lessor may, at its option, refuse to do any repair work on the equipment in time of strike, or any other cause beyond its control, or in violation of any rule affecting the equipment. The lessor reserves the right to remove the equipment from the job at any time when, in its opinion, the equipment is in danger because of strike or any other condition and the lessor in no way shall be responsible for any claims made by the lessee for delay or inoperative use time of said equipment. The limit of the lessors liability to be only that which is contained herein. Such equipment must be returned to the lessor or be picked up by the lessor through the request of the lessee and until such pick up or delivery is made the rental recited herein shall continue for such equipment.
7. The lessee agrees to comply with and conform to all municipal, state and federal laws relating to the operation of said machinery and to pay all costs and expenses or every character occasioned by or involving the use or operation of the machinery or equipment and to pay all legal assessments, taxes or public charges, either local, municipal, state or federal, which may be levied upon such equipment while in the possession of the lessee. Nothing in this paragraph is to be construed as meaning that the lessee is to pay the personal tax levied against the machinery rented when said machinery is delivered within the home state of the lessor, as in this case the lessor is to pay his own personal property tax and properly segregate the lessors equipment and such segregation have same marked or otherwise identified as the property of the lessors at all times.
8. The lessee agrees to pay the lessor for all loss and damages occasioned by fire, theft, flood, accident, explosion wreck, an act of God or any other causes that may occur during the life of this lease, and until such machinery has been returned to the possession of the lessor and accepted by it.
9. The lessee further agrees, during the term of this lease to:
 - (a) Keep the equipment herein leased fully insured against loss or damage resulting from peril of every kind and nature, including, but not limited to, fire, theft, flood, explosion, accident, and act of God, whether resulting from lessee's negligence or otherwise, which policies shall name the lessor as an insured thereunder and provide for payment of the proceeds to lessor in the event of such loss or damage.
 - (b) Maintain Workmen's Compensation insurance covering lessee's employees, and having Section B limits of notices than \$1,000,000 hold harmless and indemnify.
 - (c) Maintain public liability insurance covering lessor against loss of every kind of nature arising out of the use, transportation of storage of the equipment herein leased, including, but not limited to, death or bodily injury and property damage (including contractual liability) coverage with limits of not less than \$1,000,000 for bodily injury or death to any one person, \$3,000,000 for bodily injury or death to all persons in any one accident, and \$1,000,000 for damage to property.All insurance required hereunder shall be in such form and with such companies as shall be acceptable to lessor, and certificates of all such insurance coverage shall be furnished to lessor at the time of delivery of the equipment covered by this lease, which certificates shall provide that the policies may not be cancelled except after ten (10) days prior written notice to lessor. Lessee shall provide to lessor proof of its timely payment of premiums for all insurance required hereunder. All insurance policies carried in accordance with subparagraph (c) shall name the lessor as the insured thereunder and shall to the extent obtainable without additional cost, contain a clause that the interest of the lessor shall not be impaired or invalidated by any act or neglect of the lessee.
10. The title to property herein leased and to all replacements thereof or substitution thereof is and shall at all times remain in the lessor.
11. The lessee agrees, whenever requested by lessor, to give the exact location of all of the machinery and equipment covered by this lease and further agrees to give lessor immediate notice of any levy attempted upon said equipment, or if said equipment from any cause becomes liable to seizure, and to identify lessor and hold lessor harmless against all loss, cost, expenses, judgment and damages caused by any such action or claim. The lessor shall have the privilege at all times of entering any job, building or location where the above property is being used for the purpose of inspection and reserves the privilege of removing said machinery and equipment on a twenty-four hours' notice if it is being overloaded or taxed beyond its capacity or in any manner abused or neglected.
12. Should any of the provisions of this lease be violated by the lessee, the rental for the entire period herein specified, shall become forthwith due and payable, and the lessor or its agents may, without notice, enter the premises occupied by lessee without being a trespasser thereon and take possession thereof and remove said equipment with or without process of law. In the event any action as hereinbefore set forth becomes necessary the lessee agrees to pay, in addition to other charges herein specified, all costs and expenses of removal of said machinery, from the possession of the lessee and all freight, demurrage, storage, labor or other charges on or against said property incurred during or by the removal, shipping and return to the possession of the lessor at his designated receiving point, or equivalent point designated by the lessor.
13. The equipment hereby leased shall not be sublet, loaned or borrowed, without the prior written consent of the lessor, which consent may be withheld in the lessor's sole discretion, nor shall said property be moved out of the state specified in this contract without the prior written consent of the lessor, which consent may be withheld in lessor's sole discretion.
14. The lessee agrees to pay all the rentals when they are due and for all services and materials furnished and all damages and sums due the lessor under this contract as soon as the loss occurs or services are rendered or materials are furnished. The taking of notes, or renewals thereof, covering rentals herein specified shall not in any manner whatsoever change or invalidate the terms and conditions of this contract and said notes shall be considered additional security only and in no way act as an accord and satisfaction of this agreement.
15. Lessee agrees that if any of the lease provisions are violated and lessor demands the return of the equipment that this lease shall constitute authority to the watchman or other persons responsible for the equipment to deliver all or any part of the equipment to the lessor or its agents.
16. On all equipment rentals which are supplied with pneumatic tires, the repair of such tires shall be the sole responsibility of the lessee except in such case where the tire shall be adjudged defective by the manufacturer. The lessor under no circumstances assumes any responsibility for the repair, replacement or adjustment of said tires, regardless of the circumstances involved.
17. In the event of accident to, or breakage (other than normal wear and tear) of, any part of the equipment, including but not limited to accidents or breakage due to lessee's willful destruction or neglect, lessee shall notify lessor thereof, and the lessor will repair or replace said equipment for the lessee, using reasonable diligence to make said repairs or replacement in the shortest possible time, and the lessee agrees to pay the lessor its regular charges for any material or labor furnished in making said repairs or replacement upon demand; in the event any work is done outside of lessor's regular hours, by reason of which lessor shall be required to pay double time or other overtime charges to its employees, or to anyone doing the work for lessee, all such charges will be paid by the lessee to the lessor.
18. A waiver of any of the terms and conditions of this agreement by the lessor shall in no way invalidate or waive any other portion of this agreement but same shall remain in full force and effect. If the occasion waived by the lessor arises for an additional time under the terms of this agreement the lessor by waiving them in a prior instance shall not have its action treated as a continuous waiver thereunder but may act upon any new default in the terms and conditions of this agreement as if they were made by the lessee for the first time. Should any portion of this agreement be held invalid for any reason whatsoever it is the intention of the parties to continue to have all of the within terms and conditions of this agreement remain in full force and effect.
19. All deliveries and pick-ups are to be f.o.b. our trucks or delivering carrier.
20. The lessee acknowledges and agrees lessor, its agents or employees have not made, and do not hereby make, any representation or warranty or covenant with respect to the merchantability, condition, quality, durability, or suitability of the equipment in any respect or in connection with or for the purposes and uses of lessee, or any other representation or warranty or covenant of any kind or character, express or implied, with respect thereto. The lessor shall not be liable in any event to the lessee or any other person for any loss, delay or damage of any kind or character resulting from defects in, or inefficiency of equipment hereby leased or accidental breakage or breakdown thereof, or the unsuitability of the equipment for the purposes of the lessee or its sublessees, if any.
21. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, ALL WARRANTIES, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE EXPRESSLY DISCLAIMED BY LESSOR. IN NO EVENT WILL THE LESSOR OR ITS AGENTS BE LIABLE FOR ANY LOST PROFITS OR ANY CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, INDIRECT OR SPECIAL DAMAGES, ARISING FROM OR IN ANY WAY RELATED TO THIS AGREEMENT, THE EQUIPMENT HEREIN LEASED OR RELATING IN WHOLE OR IN PART TO THE LESSEE'S RIGHTS HEREUNDER OR THE USE OF OR INABILITY TO USE THE MACHINERY OR EQUIPMENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
22. Both lessor and lessee agree that modification of this agreement shall not be binding upon them or either of them, unless such modification shall be in writing and duly accepted in writing.
23. Lessee agrees to be responsible for safe keeping of equipment and acknowledges responsibility for loss of equipment while in lessee's possession under the terms of this agreement.
24. Lessor shall not be responsible for any indemnification hold harmless agreements or any other terms not specifically contained herein.
25. This lease is not for a specifically designed structure. Lessor is not responsible for the operation of this equipment nor for the work performed thereon. Lessor further disclaimer any right to control, supervise, stop, or change the work done on or near the equipment.
26. Lessor shall not be responsible for any failure to perform or delay in performing any of its obligations under this agreement where and to the extent that such failure or delay results from causes outside the reasonable control of the lessor. Such causes shall include, without limitation, Acts of God or of the public enemy, acts of terrorism, acts of the government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, freight embargoes, civil commotion, or the like.