

ORIGINAL

Holt of California

Master Rental Agreement for Equipment Rentals

AGREEMENT #273-O1811

THIS AGREEMENT, made and entered into by and between the County of El Dorado, a political subdivision of the State of California (hereinafter referred to as "County"), and Holt of California, a corporation duly qualified to conduct business in the State of California, whose principal place of business is 7310 Pacific Avenue, Pleasant Grove, California 95668, whose mailing address is Post Office Box 10001, Sacramento, California 95813 and whose local business address is 8900 Fruitridge Road, Sacramento, California 95826 (hereinafter referred to as "Lessor");

RECITALS

WHEREAS, County has determined that from time to time, it is necessary to rent various types of equipment for its Community Development Services, Department of Transportation, Maintenance and Operations Division for maintenance, repair, and construction related activities; such equipment includes, but is not limited to, excavators, tractors, lifts, cranes, dump trucks, graders, and loaders (Equipment);

WHEREAS, it is the intent of the parties hereto that such transactions be in conformity with all applicable state and local laws;

WHEREAS, Lessor and County intend that the terms and conditions set forth in this Master Rental Agreement for Equipment Rentals (Agreement) shall control any and all rentals transacted between Lessor and County;

NOW, THEREFORE, County and Lessor mutually agree as follows:

ARTICLE I

Purpose and Term: The terms and conditions of this Agreement shall control all equipment rental transactions between the parties hereto and shall supersede any and all other written terms and conditions, including, but not limited to, rental agreements, delivery receipts, or purchase orders issued by either party. This Agreement shall become effective upon final execution by both parties hereto, and shall expire three (3) years thereafter.

ARTICLE II

Nature of This Agreement: This Agreement is solely for the purpose of establishing terms and conditions for Equipment rental transactions between Lessor and County and facilitating the purchase of related incidental parts and supplies, which allow County to use the Equipment as permitted by this Agreement. Lessor acknowledges that this Agreement is not exclusive and that Equipment rental transactions under this Agreement shall be initiated by County in its sole and absolute discretion. County represents that the Equipment herein is to be used solely and exclusively for County purposes. Lessor warrants and represents that the Equipment is owned by Lessor and that Lessor has complete authority and right to rent the Equipment to County. In

accordance with ARTICLE VII, Authorized Operators, herein, neither County nor any Authorized Operators are agents of Lessor.

If the Lessor chooses to finance the equipment proposed to County through a third party leasing party, it is the Lessor's right. However any such arrangements shall be solely between the Lessor and the leasing company. County shall remain clear of all such arrangements and shall not have to alter or amend any terms and conditions set forth herein to accommodate the third party. In addition, the Lessor shall remain the sole agent dealing directly with County.

ARTICLE III

Compensation: For the purposes hereof, the rental rates shall be in accordance with Exhibit A marked "Rate Schedule," incorporated herein and made by reference a part hereof. Upon prior written approval from County's Contract Administrator, the rates in Exhibit A may be updated once annually by September 1st of each year provided that any updated rates are consistent with the market rate charged for comparative equipment. Any rate increases authorized by County's Contract Administrator shall not increase the not-to-exceed amount of the Agreement.

For incidental parts and supplies provided herein, County agrees to pay Lessor monthly in arrears at pricing in effect at the time of the rental. Payment shall be made within forty-five (45) days following County's receipt and approval of itemized invoice(s) detailing all rental, time, mileage, service, transportation, refueling services, sales taxes, and other charges and sums in accordance with this Agreement. The basic daily, weekly, and the four (4) week rental will entitle County to a maximum of one (1) shift use (i.e., a maximum of eight [8] hours per day; forty [40] hours per week; one hundred sixty [160] hours per four [4] weeks). Use in excess of one (1) shift will be payable at the hourly rate of one-eighth (1/8) of the daily charge (for a daily rental), one-fortieth (1/40) of the weekly rental (for a weekly rental), and one-one hundred sixtieth (1/160) of the four (4) week charge (for a four [4] week rental); plus applicable taxes. The immediately preceding provision does not apply to occasional two (2) hours or less equipment use required to complete work already begun. All charges are subject to a final audit by Lessor. Rentals are Free On Board (F.O.B.) the originating Lessor branch unless otherwise specified. Reasonable shipping charges, but not transit damages, from such branch to County's destination and return will be paid by County. All rates for rentals in excess of four (4) weeks are subject to change only after the current rental period expires and upon thirty (30) days notice in writing.

Itemized invoices shall follow the format specified by County and shall reference this Agreement number on their faces. Copies of documentation attached to invoices shall reflect Lessor's charges for the specific services billed on those invoices. Invoices shall be mailed to County at the following address:

County of El Dorado
Community Development Services
Administration & Finance Division
2850 Fairlane Court
Placerville, California 95667
Attn.: Accounts Payable

or to such other location as County directs.

The total amount of this Agreement shall not exceed \$200,000.00, inclusive of all costs and expenses.

ARTICLE IV

Taxes: Lessor certifies that as of today's date, it is not in default on any unsecured property taxes or other taxes or fees owed by Lessor to County. Lessor agrees that it shall not default on any obligations to County during the term of this Agreement.

ARTICLE V

Condition of Equipment: Lessor warrants the Equipment, upon delivery to County, to be in good mechanical and merchantable condition. County's acceptance or use of the Equipment constitutes County's acknowledgment that the Equipment is in apparently good mechanical condition at that time. Lessor shall provide twenty-four (24) hour, seven (7) day a week service during County's possession of the Equipment. If the Equipment is found by County not to be in good mechanical condition, as a result of conditions not the responsibility of County, nor caused by the fault or negligence of County or County's employees or agents, County will promptly notify Lessor, whereupon Lessor will suitably replace or repair the Equipment as soon as is reasonably possible and at Lessor's sole cost and expense. County's obligation to pay rent or other charges shall be tolled for the period the Equipment is "down." County agrees to provide reasonable access to the Equipment to Lessor's representatives so as to enable Lessor to meet its responsibilities hereunder. Lessor shall be capable of providing same-day repair or replacement as needed on weekdays, weekends, and holidays.

County may not perform major service or repair or alter the Equipment without Lessor's prior written approval except for emergencies, which threaten life, property, or production. County remains responsible for lubrication and readiness checks as set forth in ARTICLE XIV, County's Responsibilities, hereinbelow.

ARTICLE VI

Refueling Service Charge: Lessor agrees to provide the Equipment to County with full fuel tank(s). County agrees to return the Equipment with full fuel tank(s). If County returns the Equipment with the fuel tank(s) less than full, County will pay to Lessor the applicable refueling service charge for the number of gallons required to refill the tank(s) at the time of return.

ARTICLE VII

Authorized Operators: Only County employees ("Authorized Operators") may operate the Equipment. All Authorized Operators must be properly qualified to operate the Equipment and have a valid operator's license with respect to the Equipment where required by law.

When requested, and at no additional cost to County, Lessor shall provide demonstrations and training of Equipment. Training shall include instructions on the proper and safe operation of equipment and accessories. Training shall be provided as often as needed at no additional cost to County. The exact location of training will be determined by County at the time of request.

ARTICLE VIII

Changes to Agreement: This Agreement may be amended by mutual consent of the parties hereto. Said amendments shall become effective only when in writing and fully executed by duly authorized officers of the parties hereto.

ARTICLE IX

Audit by California State Auditor: Lessor acknowledges that if total compensation under this Agreement is greater than \$10,000.00, this Agreement is subject to examination and audit by the California State Auditor for a period of three (3) years, or for any longer period required by law, after final payment under this Agreement, pursuant to California Government Code § 8546.7. In order to facilitate these potential examinations and audits, Lessor shall maintain, for a period of at least three (3) years, or for any longer period required by law, after final payment under the Agreement, all books, records, and documentation necessary to demonstrate performance under the Agreement.

ARTICLE X

Fiscal Considerations: The parties to this Agreement recognize and acknowledge that County is a political subdivision of the State of California. As such, County is subject to the provisions of Article XVI, Section 18 of the California Constitution and other similar fiscal and procurement laws and regulations and may not expend funds for products, equipment, or services not budgeted in a given year. It is further understood that in the normal course of County business, County will adopt a proposed budget prior to a given fiscal year, but that the final adoption of a budget does not occur until after the beginning of the fiscal year.

Notwithstanding any other provision of this Agreement to the contrary, County shall give notice of cancellation of this Agreement in the event of adoption of a proposed budget that does not provide for funds for the services, products, or equipment subject herein. Such notice shall become effective upon the adoption of a final budget, which does not provide funding for this Agreement. Upon the effective date of such notice, this Agreement shall be automatically terminated and County released from any further liability hereunder.

In addition to the above, should County's Board of Supervisors during the course of a given year for financial reasons reduce or order a reduction in the budget for any County department for which services were contracted to be performed or for which products or equipment were to be supplied, pursuant to this Article in the sole discretion of County, this Agreement may be deemed to be canceled in its entirety subject to payment for equipment rented prior to such cancellation.

ARTICLE XI

Default, Termination, and Cancellation:

- A. **Default:** Upon the occurrence of any default of the provisions of this Agreement, a party shall give written notice of said default to the party in default (notice). If the party in default does not cure the default within ten (10) days of the date of notice (Time to Cure), then such party shall be in default. The Time to Cure may be extended at the discretion of the party giving notice. Any extension of Time to Cure must be in writing, prepared by the party in default for signature by the party giving notice, and must specify the reason(s) for the extension and the date in which the extension of Time to Cure expires.

Notice given under this section shall specify the alleged default and the applicable Agreement provision and shall demand that the party in default perform the provisions of this Agreement within the applicable period of time. No such notice shall be deemed a termination of this Agreement unless the party giving notice so elects in this notice, or the party giving notice so elects in a subsequent written notice after the Time to Cure has expired.

- B. Bankruptcy: This Agreement, at the sole option of County, shall be terminable in the case of bankruptcy, voluntary or involuntary, or insolvency of Lessor.
- C. Ceasing Performance: County may terminate this Agreement in the event Lessor ceases to operate as a business or otherwise becomes unable to substantially perform any term or condition of this Agreement.
- D. Termination or Cancellation without Cause: County may terminate this Agreement in whole or in part upon seven (7) calendar days written notice by County for any reason. If such prior termination is effected, County will pay for satisfactory equipment rentals prior to the effective dates, as set forth in the Notice of Termination provided to Lessor, and for such other products or services which County may agree to in writing as necessary for contract resolution. In no event, however, shall County be obligated to pay more than the total amount of the Agreement. Upon receipt of a Notice of Termination, Lessor shall promptly discontinue all services affected, as of the effective date of termination set forth in such Notice of Termination, unless the Notice directs otherwise.

ARTICLE XII

Notice to Parties: All notices to be given by the parties hereto shall be in writing and served by depositing the same in the United States Post Office, postage prepaid and return receipt requested. Notices to County shall be in duplicate and addressed as follows:

To County:

County of El Dorado
 Community Development Services
 Department of Transportation
 2441 Headington Road
 Placerville, California 95667

Attn.: Brian Mullens
 Deputy Director
 Maintenance and Operations Division

With a copy to:

County of El Dorado
 Community Development Services
 Administration and Finance Division
 2850 Fairlane Court
 Placerville, California 95667

Attn: Michele Weimer
 Administrative Services Officer
 Procurement and Contracts Unit

or to such other location as County directs.

Notices to Lessor shall be addressed as follows:

Holt of California
 Post Office Box 10001
 Sacramento, California 95813

Attn.: John Johnson, Vice President

or to such other location as Lessor directs.

ARTICLE XIII

Change of Address: In the event of a change in address for Lessor's principal place of business, Lessor's Agent for Service of Process, or Notices to Lessor, Lessor shall notify County in writing as provided in ARTICLE XII, Notice to Parties. Said notice shall become part of this Agreement upon

acknowledgment in writing by County's Contract Administrator, and no further amendment of the Agreement shall be necessary provided that such change of address does not conflict with any other provisions of this Agreement.

ARTICLE XIV

County's Responsibilities: County must return the Equipment to Lessor in the same good and clean condition it was in when County received it, ordinary wear and tear excepted. The Equipment must be returned to Lessor at the Lessor's renting branch from which it was rented. County acknowledges that it must confirm return receipt of the Equipment by Lessor at the time the Equipment is returned. Lessor shall provide County with written confirmation of return receipt including the condition of the Equipment and the status of the gas tank level(s). Until such time as Lessor receives actual possession of the Equipment, County agrees to take reasonable measures to hold said Equipment in a safe and secure manner. The Equipment will be used solely for County's purposes. County shall notify the Lessor's renting branch by telephone or fax, prior to any Equipment movements between County's job sites. The Equipment will be used only in accordance with the manufacturer's instructions within its rated capacity, such instructions and capacity to be provided by Lessor. County will promptly notify Lessor of any accident, damage, or failure involving the Equipment and will reasonably cooperate with Lessor in gathering information in connection therewith. County will perform or cause to be performed lubrication and readiness checks of the Equipment, including, but not limited to: checking of the Equipment before each shift; checking and maintaining the crankcase, transmission, and cooling and fluid systems daily; and checking tire pressure and battery fluid and charge levels weekly.

ARTICLE XV

Risk of Loss: All loss of or damage to the Equipment, unless such loss or damage results from a latent defect(s) or fault or negligence on the part of Lessor, while on rental and in County's care, custody, or control, including, but not limited to, fire, flood, theft, comprehensive losses, collision, and rollover will be the responsibility of County. Such responsibility is limited to: (1) reasonable repair cost or (2) the fair market value of the Equipment at the time it is lost or damaged, less its salvage value. The cost of labor for such repairs will be either Lessor's then-prevailing reasonable hourly rate for labor, posted at the Lessor branch where the equipment is to be repaired, or the repairer's reasonable hourly rate for labor charged to Lessor for such repairs, as the case may be. Parts will be charged at Lessor's cost or as reasonably charged to Lessor by the supplier or repairer, as the case may be. Use of the Equipment by persons other than as provided for in ARTICLE VII, Authorized Operators, herein, will be at County's sole risk. County and any Authorized Operators hereby assume all risk of loss or damage and waive all claims against Lessor by reason of any personal property left or stored by County or any other person in or upon the Equipment.

ARTICLE XVI

Prohibited Use of Equipment: County will be deemed to be in default of the provisions of this Agreement if the Equipment is used: (a) to carry persons for hire; (b) to carry persons other than Authorized Operators or helpers employed by County (unless authorized by Lessor), all of whom will ride only within the cab of the Equipment, and then only if such carriage is lawful; (c) to transport property for hire unless County obtains all necessary permits and licenses; (d) in violation of any law or ordinance; (e) in any race, test, or contest; (f) in a reckless, negligent, or abusive manner, or is intentionally damaged by County; (g) for the carrying or hauling of explosives or other hazardous material in a manner inconsistent or in violation of applicable

laws, rules, or regulations; or (h) in any fashion or manner for which the Equipment was not designed or beyond the manufacturer's rated capacity of the Equipment.

ARTICLE XVII

Insurance:

A. Public Liability and Property Damage Liability Insurance (Third party)

County will, at its expense and at all times during the term of this Agreement, maintain in force Commercial General Liability and Property Damage Liability Insurance or self-insurance with a limit for bodily injury, including death, of \$500,000 for each person in each accident, and with a limit of liability of \$1,000,000 for all persons in each accident, and with a limit of liability for property damage of \$250,000 for each accident, on a primary and not excess or contributory basis, for County's liability for damages sustained by any person or persons, including, but not limited to, agents or employees of County, as a result of the maintenance, use, operation, possession, storage, erection, dismantling, servicing, or transportation of the Equipment. County will, on demand, furnish Lessor a Certificate of Insurance evidencing such insurance, endorsed to provide that such insurance may not be canceled or materially modified except on thirty (30) days prior written notice to Lessor at the Lessor's renting branch. County agrees to abide by all terms and conditions of said insurance. County, its agents and employees will cooperate fully with Lessor in any investigation, prosecution, or defense of any claim or suit arising therefrom and will do nothing to impair or invalidate the applicable insurance coverage. Lessor's acceptance of County's Certificate(s) of Insurance will not be deemed a waiver or modification of County's insurance, indemnity, or any other obligation under this Agreement.

B. Property Insurance (Lessor Equipment)

County will, at its own expense and at all times during the term of this Agreement, maintain in force Property Insurance or self-insurance in an amount adequate to cover any damage to, or loss of, the Equipment being rented under this Agreement. County's policy must expressly cover non-owned equipment while in County's care, custody, and control. County will, on demand, furnish Lessor a Certificate of Insurance evidencing such insurance and endorsed to provide that such insurance may not be canceled or materially modified except on thirty (30) days prior written notice to Lessor at the Lessor's renting branch. County agrees to abide by all of the terms and conditions of such insurance.

ARTICLE XVIII

County's Obligation to Indemnify: County will defend, indemnify, and hold harmless Lessor, its subsidiaries, parent company, and its and their officers, agents, and employees, from and against all loss, liability, claim, action, or expense, including reasonable attorneys' fees, by reason of bodily injury, including death and property damage, sustained by any person or persons, including but not limited to employees of County, to the extent caused exclusively by County's sole or active negligent maintenance, use, possession, operation, erection, dismantling, servicing, or transportation of the Equipment.

ARTICLE XIX

Lessor's Obligation to Indemnify: Lessor shall defend, indemnify, and hold County and its officers, agents, and employees harmless against and from any and all claims, suits, losses,

damages, and liability for damages of every name, kind, and description, including attorneys' fees and costs incurred, brought for, or on account of, injuries to, or death of, any person, including but not limited to workers, County employees, and the public, or damage to property, or any economic or consequential losses, which are claimed to, or in any way arise out of, or are connected with Lessor's services, equipment, latent defects in the equipment, operations, or performance hereunder, regardless of the existence or degree of fault or negligence on the part of County, Lessor, subcontractor(s), and employee(s) of any of these, except for the sole, or active negligence of County, its officers, and employees, or as expressly provided by statute. This duty of Lessor to indemnify and save County harmless includes the duties to defend set forth in California Civil Code Section 2778.

ARTICLE XX

County's Compliance With Law: County will, at its expense, comply with all federal, state, and local laws and regulations affecting the Equipment and its use, operation, erection, design, and transportation, including without limitation, licensing and building code requirements and will defend, indemnify, and hold Lessor harmless from all loss, liability, or expense resulting from County's actual violations of any such laws, regulations, or requirements.

ARTICLE XXI

Lessor's Compliance With Law: Lessor will, at its expense, comply with all federal, state, and local laws and regulations affecting the Equipment and its use, operation, erection, design, and transportation, including, without limitation, licensing, Occupational Safety and Health Administration (OSHA) and American National Standards Institute (ANSI) requirements and will defend, indemnify, and hold County harmless from all loss, liability, or expense resulting from Lessor's actual or alleged violations of any such laws, regulations, or requirements.

ARTICLE XXII

Notice of Loss or Accident: In the event of the loss, theft of, or damage to the Equipment, County agrees to notify Lessor by telephone, and thereafter to report in writing to Lessor and the public authorities (where required by law), all reasonable information deemed relevant thereto by Lessor. County will cause its agents and employees to give Lessor and the public authorities proper and full information and reasonable assistance in the investigation and prosecution of any matter resulting from said loss, theft, or damage.

ARTICLE XXIII

Force Majeure/Infringement: Any failure of performance by County or Lessor due to causes beyond County or Lessor's reasonable control, including, but not limited to, acts of civil or military authority, Acts of God, labor difficulties, failure of transportation, and delays of suppliers will not be deemed to be a default by County or Lessor.

ARTICLE XXIV

Interest of Public Official: No official or employee of County who exercises any functions or responsibilities in review or approval of services, products, or equipment to be provided by Lessor under this Agreement shall participate in or attempt to influence any decision relating to this Agreement which affects personal interest or interest of any corporation, partnership, or association in which he/she is directly or indirectly interested; nor shall any such official or employee of County have any interest, direct or indirect, in this Agreement or the proceeds thereof.

ARTICLE XXV

Conflict of Interest: The parties to this Agreement have read and are aware of the provisions of Government Code Section 1090 et seq. and Section 87100 relating to conflict of interest of public officers and employees. Lessor attests that it has no current business or financial relationship with any County employee(s) that would constitute a conflict of interest with provision of services under this Agreement and will not enter into any such business or financial relationship with any such employee(s) during the term of this Agreement. County represents that it is unaware of any financial or economic interest of any public officer or employee of Lessor relating to this Agreement. It is further understood and agreed that if such a financial interest does exist at the inception of this Agreement, either party may immediately terminate this Agreement by giving written notice as detailed in ARTICLE XI, Default, Termination, and Cancellation, herein.

ARTICLE XXVI

California Forum and Law: Any dispute resolution action arising out of this Agreement, including, but not limited to, litigation, mediation, or arbitration, shall be brought in El Dorado County, California, and shall be resolved in accordance with the laws of the State of California.

ARTICLE XXVII

Attorneys' Fees: In the event of any action to enforce this Agreement or to seek a declaration of rights or responsibilities hereunder, the prevailing party will be entitled to reasonable attorneys' fees in addition to all other costs and expenses allowed by law.

ARTICLE XXVIII

Business License: County's Business License Ordinance provides that it is unlawful for any person to furnish supplies or services, or transact any kind of business in the unincorporated territory of El Dorado County without possessing a County business license unless exempt under County Ordinance Code Section 5.08.070. Lessor warrants and represents that it shall comply with all of the requirements of County's Business License Ordinance, where applicable, prior to renting any equipment under this Agreement and at all times during the term of this Agreement.

ARTICLE XXIX

Contract Administrator: The County Officer or employee with responsibility for administering this Agreement is Brian Mullens, Deputy Director, Maintenance and Operations Division, Community Development Services, Department of Transportation, or successor.

ARTICLE XXX

Authorized Signatures: The parties to this Agreement represent that the undersigned individuals executing this Agreement on their respective behalf are fully authorized to do so by law or other appropriate instrument and to bind upon said parties the obligations set forth herein.

ARTICLE XXXI

Partial Invalidity: If any provision, sentence, or word of this Agreement or the application thereof is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions or parts of said provisions, sentences, or words shall not be affected thereby and will continue in full force and effect without being impaired or invalidated in any way.

ARTICLE XXXII

No Third Party Beneficiaries: Nothing in this Agreement is intended, nor will be deemed, to confer rights or remedies upon any person or legal entity not a party to this Agreement.

ARTICLE XXXIII

Counterparts: This Agreement may be executed in one or more counterparts, each of which shall be an original and all of which together shall constitute one and the same instrument.

ARTICLE XXXIV

Entire Agreement: This document and the documents referred to herein are the entire Agreement between the parties, and they incorporate or supersede all prior written or oral agreements or understandings.

Requesting Contract Administrator Concurrence:

By: 

Brian Mullens
Deputy Director
Maintenance and Operations Division
Community Development Services
Department of Transportation

Dated: 12/22/17

Requesting Department Concurrence:

By: 

For Rafael Martinez, Director
Community Development Services
Department of Transportation

Dated: 12/22/2017

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates indicated below.

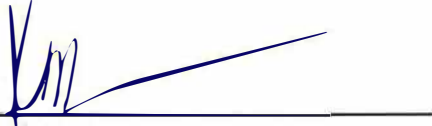
--COUNTY OF EL DORADO--

By: 

Dated: 2/6/2018

Board of Supervisors
"County"

Attest:
James S. Mitrising
Clerk of the Board of Supervisors


By: 

Dated: 2/6/2018

--HOLT OF CALIFORNIA--

By: 
~~John Johnson~~
Vice President
"Lessor"

Dated: 12/19/17

By: 
~~Don Johns~~ Daniel C. Johns
Chief Financial Officer

Dated: 12-21-17