

Collin County, TX - Production



Project Budget Adjustment Entry
CLERK: e012618

PA JOURNAL	EFF DATE	GL YEAR/PER/JNL	REF1	REF2	REF3	REF4	T	AMOUNT
331	04/21/2023							
PAJ	OI010C	-4004-400308001-698801	53893	5/1/2023		TCONNELLY	5	-8,000.00
PAJ	OI010C	-4004-400308001-809120	53893	5/1/2023		TCONNELLY	5	8,000.00
						OI010C Total:		0.00

** END OF REPORT - Generated by Tyler Connel



COLLIN COUNTY

Rick Monk
Facilities Director
4600 Community Avenue
McKinney, Texas 75071
www.collincountytx.gov

Date: April 12, 2023
To: Commissioner's Court
From: Rick Monk/Facilities Director *Rick Monk*
RE: Change Order: Contract 2022-445, to HERC Rentals - 40 Ton HV AC Systems for YMCA Camp, Purchase Order 23000499

I am requesting Commissioners Court consideration and any action regarding approval to add three (3) additional months rental of 40 ton AC/Heat unit at the Adventure Camp. Contract 2022-445, YMCA Adventure Camp HV AC Rentals to HERC Rentals, Inc., Purchase Order 23000499

RM/ke

Tyler Connelly

From: Jessica Shaw
Sent: Friday, April 21, 2023 1:09 PM
To: Tyler Connelly
Cc: Holly Heldt
Subject: Agenda 53893
Attachments: 53893_54959018 COLLIN COUNTY AUDITORS OFFICE[10552].pdf; 53893_Memo.pdf; 53893_Change Order No. 2_Signed.pdf

Tyler,

Can you please enter a project BA for me for this agenda?

Amount \$8,000
FROM: OI010S-4004-400308001-698801
TO: OI010S-4004-400308001-809120

OI010C

Thank you!

Jessica Shaw

Senior Financial Analyst

Collin County Budget & Finance Office
2300 Bloomdale Road Ste 4100
McKinney, TX 75071
(972) 548-4672 Office
(972) 491-4828 Fax



Contract Modification Document

Office of the Purchasing Agent
Collin County Administration Building
2300 Bloomdale Rd, Ste 3160
McKinney, TX 75071
972-548-4165

Vendor: HERC Rentals, Inc.
601 N. Great Southwest Pkwy
Arlington, TX 76011

Contract No. 2022-445
Contract: YMCA HVAC Rentals

YOU ARE DIRECTED TO MAKE THE FOLLOWING MODIFICATION TO THIS CONTRACT

Add three (3) months of rental of a 40 ton AC/Heat Combo Unit at \$9,105.00 per month. \$ 27,315.00

Original Request \$ 67,038.00
Change Order 1 \$ (8,064.00)
Change Order 2 \$ 27,315.00

Total \$ 86,289.00

Except as provided herein, all terms and conditions of the contract remain in full force and effect and may only be modified in writing signed by both parties.

Change Order No. 2 has been accepted and authorized by authority of the Collin County Purchasing Agent effective on _____.

ACCEPTED BY:

Rick Castleman
SIGNATURE

Rick Castleman
(Print Name)

TITLE: Government Account Manager
DATE: 04/14/2023

SIGNATURE

Michelle Chamoski, NIGP-CPP, CPPB
(Print Name)

TITLE: PURCHASING AGENT
DATE: _____

HISTORICAL INFORMATION

Awarded by Court Order No. 2022-1076-10-10

Change Order	<u>No. 1</u>	Court Order No.	<u>FYI</u>	Summary	<u>Trade out of Machines</u>
Change Order	<u>No. 2</u>	Court Order No.	<u></u>	Summary	<u>Add 3 Months Rental</u>

QUOTE

** COPY **



R.A. No. 54959018

Page 1 of 2

BRANCH: 464	BILL TO CUSTOMER: 1625525	SHIPPING ADDRESS
HERC DALLAS FTW PROSOLUTIONS 601 N GREAT SOUTHWEST PKWY ARLINGTON, TX 76011 817-625-5521	COLLIN COUNTY AUDITORS OFFICE 2300 BLOOMDALE RD MCKINNEY, TX 75071-5667	YMCA METROPOLITAN DALLAS 1180 HOUSTON ST ANNA, TX 75409 972-548-4122

DESCRIPTION/CHARGES

EST START: 3/01/23 10:00 **EST RETURN:** 5/30/23 10:00 **DROP DATE:** _____
SHIPPED BY: _____ **ORDERED BY:** MATT DOBECKA **DROP TIME:** _____
ORDER DATE: 3/31/23 **SALESPERSON:** 454 **SALES COORDINATOR:** _____
RENTAL TAX CLAIM: COUNTY GOVERNMENT **TAX DOCUMENT #:** 440558260
PO# / JOB#: TBD / 1 - YMCA METROPOLITA **Rates subject to availability**

Qty	Equipment #	Hrs/	Min	Hour	Day	Week	Month	Amount
1	40 TON HYBRID AIR COND 120KW HEAT 7181830	8/	716.00	119.33	716.00	2195.00	5210.00	15630.00
25	HVAC DUCTING WHT 20X25 6P 9254460	8/	20.00	3.33	20.00	45.00	135.00	10125.00
1	MALE PIGTAIL 4/0 UNDER 10FT 9400880	8/	2.00	.33	2.00	8.00	16.00	48.00
6	CABLE 2 50FT CAMLOCK 5 BANDED 9400516	8/	14.00	2.33	14.00	26.00	84.00	1512.00

* * * Items are priced per piece * * *

Sub-total: 27315.00
 Taxable Sub-total: 0.00
 Total: 27315.00

CAREFULLY READ THE TERMS AND CONDITIONS THAT APPEAR BELOW AND ON REVERSE SIDE OF THIS PAGE ("TERMS")

RENTAL PROTECTION PLAN. Customer must either show proof of Property Insurance as required in Section 8 on reverse side hereof or purchase Rental Protection Plan ("RPP"). Herc Rentals Inc. or its affiliate ("Herc") may offer RPP for a fee to Customer on certain Equipment and for certain types of loss or damage to limit Customer's liability for property loss or damage to such Equipment for such loss or damage. RPP is not offered on all types of Equipment. NOTWITHSTANDING PAYMENT OF THE RPP FEE, RPP DOES NOT APPLY, AND CUSTOMER IS LIABLE FOR, ALL DAMAGES TO OR REPLACEMENT COST OF, THE EQUIPMENT, AS APPLICABLE, AND ANY ADMINISTRATIVE FEES AND EXPENSES OF HERC: (1) CAUSED BY THE EQUIPMENT BEING USED OR OPERATED IN VIOLATION OF ANY OF THE TERMS; (2) IN CASE OF NEGLIGENCE, AS DETERMINED IN HERC'S SOLE DISCRETION; AND/OR (3) IF COVERAGE IS EXCLUDED UNDER THE RPP TERMS AND CONDITIONS POSTED ON HERC'S WEBSITE. Upon accepting RPP, Customer agrees to pay an RPP fee. Customer must review the RPP Terms and Conditions posted on Herc's website at <https://www.hercrentals.com/services/rpp-rental-protection-plan/terms-and-conditions.html> before deciding whether to accept RPP. If Herc offers RPP to Customer for certain Equipment and Customer accepts RPP and pays Herc the RPP fee, in return for the RPP fee, if at the time of the claim, RPP covers such repair or replacement, Herc agrees to waive certain claims for accidental damages to or theft of such covered Equipment occurring during normal and careful use. Customer remains liable for all other damages as set forth in the Terms. RPP IS NOT INSURANCE. TO THE EXTENT HERC DOES NOT OFFER RPP TO CUSTOMER, OR CUSTOMER DOES NOT ACCEPT RPP, CUSTOMER MUST MAINTAIN THE PROPERTY INSURANCE COVERAGE REQUIRED BY PARAGRAPH 8. PLEASE BE AWARE THAT IF CUSTOMER DOES NOT ELECT TO TAKE RPP AND IT ELECTS TO MAINTAIN PROPERTY INSURANCE COVERAGE, AND IF THE CERTIFICATE OF INSURANCE PROVIDED TO HERC TO EVIDENCE SUCH INSURANCE COVERAGE IS UNACCEPTABLE TO HERC OR THE APPLICABLE POLICIES EXPIRE, CUSTOMER AGREES THAT HERC MAY CHARGE RPP FOR ALL APPLICABLE RENTALS UNTIL SUCH TIME AS AN ACCEPTABLE AND VALID CERTIFICATE OF INSURANCE IS PROVIDED AND SUCH MATTERS ARE CORRECTED TO HERC'S REASONABLE SATISFACTION. NOTWITHSTANDING ANY NOTATION ON THE RENTAL RECORD, RPP IS NOT OFFERED ON OR AVAILABLE FOR THE RENTAL OF PASSENGER MOTOR VEHICLES AND CERTAIN OTHER EQUIPMENT LISTED ON HERC'S WEBSITE.

A detailed description of fees and surcharges that may be applicable to Customer's rental can be found on Herc's website at <https://www.hercrentals.com/services-associated-charges.html>. Customer agrees to pay, in addition to all rental charges, all fees and charges set forth above and, the following charges as applicable: (i) based on Customer's possession and/or use of the Equipment, all consumables, fees, licenses, present and future taxes and any other governmental charges; (ii) additional charges for more than one shift use; (iii) freight, delivery, pick up, transportation charges; (iv) transportation service surcharges; (v) repairs and replacement per this contract; (vi) cleaning charge for Equipment returned with excessive dirt, concrete and/or paint; (vii) fees for lost keys; (viii) refueling service charges; (ix) fines for use of dyed diesel fuel in on road Equipment; (x) preventative maintenance charges; (xi) emissions and environmental surcharges and fees; (xii) vehicle license fees. HERC COLLECTS THESE FEES AND CHARGES AS REVENUE AND USES THEM AT ITS DISCRETION.

THE EQUIPMENT IS RENTED BY HERC TO THE CUSTOMER PURSUANT TO THE TERMS. CUSTOMER REPRESENTS HAVING READ AND AGREED TO SAME.

PARAGRAPH 11 ON THE BACK OF THIS PAGE IS IN LIEU OF (i) ALL WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTY OF MERCHANTABILITY AND THE IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; AND (ii) ALL OBLIGATIONS ON THE PART OF HERC TO CUSTOMER FOR DAMAGES.

CUSTOMER WAIVES ALL INDIRECT, INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, THE RENTAL, MAINTENANCE, USE, OPERATION, STORAGE, ERECTION, DISMANTLING OR TRANSPORTATION OF THE EQUIPMENT.

Customer is obligated to return the Equipment in a good, clean, and uncontaminated condition, free of any and all hazardous substances.

Quote Valid For 30 Days From Order Date

Terms are due upon receipt Not valid without Barcode

Customer Name _____ Title _____
 Customer Signature _____ Date _____

For GREAT DEALS on USED EQUIPMENT - visit us on-line at HercRentals.com



RESERVATION AND RENTAL CONTRACT - HERC RENTALS INC. AND AFFILIATES ("HERC")

This Agreement ("Agreement") is for the rental of the vehicles and equipment and related services described on the other side of this page ("Front"), including all parts of and attachments and accessories to such equipment ("Equipment"). This Agreement is between the customer identified on the Front ("Customer") and Herc. Both parties acknowledge that this Agreement consists of the terms written or printed on this page and the Front.

- 1. NATURE OF THIS AGREEMENT.** This Agreement is solely for the purpose of creating a rental transaction, which allows Customer to use the Equipment as permitted by this Agreement. CUSTOMER REPRESENTS THAT THE EQUIPMENT IS TO BE USED SOLELY AND EXCLUSIVELY FOR BUSINESS OR COMMERCIAL PURPOSES. The Equipment is owned by Herc. Customer acknowledges that no one other than Herc may transfer or assign the Equipment or any rights or obligations under this Agreement. Neither Customer nor any Authorized Operators (as defined below) are agents of Herc. No one may repair or alter the Equipment without Herc's prior written approval. Customer will not suffer any liens or encumbrances to attach to the Equipment and will defend, indemnify, and hold Herc harmless from all loss, liability, and expense by reason thereof.
- 2. WHO MAY OPERATE THE EQUIPMENT.** Only Customer and the following persons with Customer's express permission, subject to the requirements of this Section, ("Authorized Operators") may operate the Equipment: Customer's employer, employees, and fellow employees operating the Equipment in the course and scope of such employee's regular employment, and persons approved by Herc in writing. Customer and all Authorized Operators must: only use the Equipment in the course and scope of Customer's or Customer's employer's regular business operations, hold a valid driver's license to operate a motor vehicle, be of legal age to operate the Equipment, be properly qualified and trained to operate the Equipment; and have a valid operator's license with respect to the Equipment where required by law. Customer is solely responsible for determining that the Authorized Operators have met the requirements of this Section and are properly qualified and trained to use the Equipment prior to operating the Equipment. Customer is solely responsible for limiting the use of the Equipment to Authorized Operators meeting the requirements of this Section and for the acts and omissions of any person that operates, uses, stores or moves the Equipment regardless of whether that person is an Authorized Operator.
- 3. RENTAL FEES AND OTHER CHARGES.** Customer will pay Herc on demand to the address and by the date specified in the applicable invoice, all charges, including without limitation, rental, time, mileage, service, transportation, refueling service, surcharges, sales and use taxes, and tax reimbursements imposed with respect to the Equipment and this Agreement, and all expenses, including reasonable attorney's fees and costs incurred in collecting same, all in accordance with this Agreement. A detailed description of all fees and surcharges that may be applicable to Customer's rental can be found on Herc's website at <https://www.hercrentals.com/services-associated-charges.html>. Customer must notify Herc in writing of any disputed charge within 30 days of receipt of such invoice or Customer shall be deemed to have irrevocably waived such disputed charge. The basic daily, weekly and 4-week rental rates will entitle Customer to a maximum of one-shift use (i.e., a maximum of 8 hours per day; 40 hours per week; 160 hours per 4 weeks). Use in excess of one shift will be payable at the hourly rate of 1/8 of the daily charge (for a daily rental), 1/40 of the weekly charge (for a weekly rental) and 1/160 of the 4-week charge (for a 4-week rental), plus applicable taxes. All charges are subject to final audit by Herc. Herc will have a lien as allowed by law for charges incurred hereunder upon the premises and improvements upon which the Equipment is employed. Rentals are F.O.B. the Herc Branch unless otherwise specified. Shipping charges from such Branch to the Customer's destination and return and all loading, unloading, assembling and dismantling will be paid by Customer. All rates for rentals in excess of 4 weeks are subject to change on 30 days written notice to the Customer with respect to any portion of the rental period then remaining. Charges not paid on time, as required by this Agreement, may be subject to a late payment fee as provided in this Agreement. Customer may also be charged a reasonable fee for any check used for payment hereunder that is returned unpaid. Customer agrees in the event of a default, that any deposit made by Customer shall be used by Herc for unpaid rent and other charges, damages and costs incurred due to the default.
- 4. CUSTOMER'S RESPONSIBILITIES.** Customer is responsible to Herc for all loss or damage to the Equipment, and for its return in the same condition it was received, except for ordinary wear, and free of any hazardous materials and/or contaminants. Such responsibility is limited to the full value of the Equipment at the time it is lost or damaged, less its salvage value, plus any administrative fees and Herc's related expenses, such as loss of use, appraisal fees or recovery costs ("Full Value"). The Equipment must be returned to Herc at the renting Herc Branch by the Estimated Return Date (EST RETURN) specified on the Front, or sooner if demanded by Herc. Customer must notify Herc if it desires to change the EST RETURN for all or some of the Equipment. Customer acknowledges that it must confirm return receipt of the Equipment by Herc at the expiration or earlier termination of the rental. Until such time as Herc receives actual possession of the Equipment, Customer agrees to hold said Equipment in a safe and secure manner. The Equipment will be used and kept only at Customer's place of business or the job site at which the Equipment is used and will not be moved without the prior written consent of Herc. The Equipment will be used only in accordance with the manufacturer's instructions within its rated capacity. Customer will perform or cause to be performed and pay for all normal periodic and other basic service, adjustments and lubrication of the Equipment, including but not limited to: checking of the Equipment before each shift, checking and maintaining crankcase, transmission, cooling and fuel systems daily, and checking tire pressures and battery fluid and charge levels weekly. If the Equipment fails to operate properly or becomes in need of repair, Customer will immediately cease using same and will immediately notify Herc. Customer is solely responsible for providing a secure and safe work environment for all parties, including Herc and its employees, and for ensuring that the possession, storage, use and operation of the Equipment is carried out in compliance with applicable laws and industry standards, (including but not limited to those relating to worker safety and the environment). Customer is solely responsible for supervising the use and operation of the Equipment to ensure it is used in accordance with manufacturer instructions for proper operation and safety, for ensuring that the Equipment is proper for Customer's intended use and environment, and for ensuring users of the Equipment are qualified, trained, and familiar with the Equipment.
- 5. RISK OF LOSS.** All loss of or damage to the Equipment from any cause whatsoever while on rental and whether or not due to the fault of Customer, including, but not limited to, fire, flood, theft, comprehensive losses, collision and rollover, and Acts of God, will be the sole responsibility of Customer and will be paid to Herc promptly upon Customer's receipt of an invoice therefor. Such responsibility is limited to the Full Value of the Equipment at the time it is lost or damaged. THE COST OF LABOR FOR REPAIRS WILL BE EITHER HERC'S THEN PREVAILING HOURLY RATE FOR LABOR, POSTED AT THE HERC BRANCH WHERE THE EQUIPMENT IS TO BE REPAIRED, OR THE REPAIRER'S HOURLY RATE FOR LABOR CHARGED TO HERC FOR REPAIRS AS THE CASE MAY BE. PARTS WILL BE CHARGED AT HERC'S COST PLUS A RETAIL MARKUP. Use of the Equipment by persons other than Customer or Authorized Operators will be at Customer's sole risk.
- 6. EVENTS OF DEFAULT.** Customer shall be in default of this Agreement if Customer fails to pay any amount when due hereunder, or if Customer breaches any of the other terms of this Agreement, or if Customer becomes insolvent or ceases to do business as a going concern, or if a petition in bankruptcy is filed by or against Customer, or if Customer is in default pursuant to the provisions of any other agreement by and between Customer and Herc. Customer will further be deemed to be in default if the Equipment is obtained from Herc through fraud or misrepresentation or is stored or used: (A) in violation of any law or ordinance including without limitation, any local, state or federal law or regulation involving "Hazardous Materials," including "DOT Hazardous Materials," as set forth in 49 C.F.R. 171-180; (B) in a reckless, negligent or abusive manner, or is damaged while being rented by Customer; (C) in violation of Paragraph 4 above; (D) in any fashion or manner for which the Equipment was not designed or beyond the manufacturer's rated capacity for the Equipment.
- 7. REMEDIES OF HERC.** In case of default by Customer, or if Herc deems itself insecure, Herc may, but is not required to, peaceably enter the premises where the Equipment is located and render it inoperative or remove same with or without process of law and without any notice to Customer or liability. Customer hereby waives any right to any hearing or to receive any notice of legal process, as a pre-condition for Herc recovering the Equipment. Customer agrees to permit such entry and action by Herc. In such case Herc may also terminate this Agreement without notice to Customer or prejudice to any remedies or claims which Herc might otherwise have for any amount due hereunder, expense of retaking, court costs and reasonable attorneys' fees. Customer will remain liable for the Equipment or for any loss or injury to the Equipment, any property and/or persons, notwithstanding such termination. Herc shall have the right to issue and circulate theft notices, cause warrants to be issued and take any other steps which Herc may reasonably deem necessary to recover the Equipment, if the Equipment is not returned on the date specified on the Front or sooner as permitted by the terms of this Agreement. The remedies provided herein in favor of Herc are not exclusive but shall be cumulative and in addition to all other remedies existing at law or in equity, any one or more of which may be exercised simultaneously or successively.
- 8. INSURANCE.** Liability Insurance for Injury/Damage to Third Parties - Customer agrees to maintain and carry, at its own expense and at all times during the term of this Agreement, the following insurance: (1) commercial automobile insurance, with at least a per occurrence limit of \$1 million, which includes coverage for owned and non-owned motor vehicles. Herc shall be named as an additional insured for all claims arising out of the maintenance, operation, or use of the vehicle. All insurance, whether issued on a primary or umbrella/excess basis, afforded to Herc hereby shall be primary to, and non-contributory with, any other insurance on which Herc is named insured, whether such other insurance is primary, excess, self-insurance, or insurance on any other basis, to the furthest extent permitted by law. Where, by operation of law, Herc is required to provide primary coverage, such primary and non-contributory protection shall not exceed the minimum limits required by the automobile financial responsibility laws of the applicable state. Such protection will conform to the basic requirements of the applicable No-Fault law, BUT DOES NOT INCLUDE UNINSURED/UNDERINSURED MOTORIST, SUPPLEMENTARY NO FAULT OR ANY OTHER OPTIONAL COVERAGE. TO THE EXTENT PERMITTED BY LAW, HERC AND CUSTOMER REJECT THE INCLUSION OF ANY SUCH COVERAGE. If such coverage is imposed by operation of law, then the limits of such coverage will be the minimum required by the law of the applicable state; (2) commercial general liability insurance (providing coverage equal to or greater than the standard ISO CG 00 11 24 04 form), including contractual liability coverage covering Customer's indemnity obligations of Section 9, with limits of insurance not less than \$1 million per occurrence and \$2 million in the aggregate. Customer shall name Herc as an additional insured for all claims and liability arising out of the maintenance, operation, or use by the Customer of equipment leased to Customer by Herc (providing coverage equal to or greater than the standard ISO CG 20 28 11 85). Such insurance shall be primary and non-contributory to any other insurance maintained by Herc. Customer further agrees that the amount of insurance available to Herc shall be for the full amount of the loss up to policy limits of liability and shall not be limited to the minimum requirements of this agreement. In the event any policy provided in compliance with this agreement states that the insurance afforded to an additional insured will not be broader than that required by contract, or words of similar meaning, Customer agrees that nothing in this agreement is intended to restrict or limit the breadth of such insurance; and (3) property insurance for the full replacement cost of the Equipment, including coverage for all risks of loss or damage to the Equipment. The policy must expressly cover owned and non-owned Equipment, including motor vehicles (if applicable), while in your care, custody and control. Customer shall carry workers compensation and employees' liability insurance with at least a per occurrence limit of \$1 million. Customer shall name Herc as an additional insured for all claims arising out of the maintenance, operation or use of the equipment, and as an additional loss payee. Any deductibles or self-insured retentions shall be the sole responsibility of the Customer. All insurance required by this Rental Agreement shall include a waiver of rights of recovery against Herc or its insurers by the Customer and its insurers, as well as a waiver of subrogation against Herc or its insurers. The policies required hereunder shall provide that Herc must receive not less than 30 days' notice prior to any cancellation. **Customer shall provide Herc with documented proof of all required insurance coverage, including copies of all applicable additional insured endorsements. FOR RENTAL OF EQUIPMENT NOT LICENSED FOR ROAD USE, CUSTOMER MUST EITHER (i) ELECT TO NAME HERC AS LOSS PAYEE EVIDENCING PROPERTY INSURANCE COVERAGE, OR (ii) ELECT TO PURCHASE THE RENTAL PROTECTION PLAN.** Nothing contained in this insurance Section shall limit or modify the obligations set forth in Section 9.
- 9. INDEMNIFICATION.** TO THE FULLEST EXTENT PERMITTED BY LAW, AND FOR AND IN ADDITIONAL CONSIDERATION OF PROVIDING THE EQUIPMENT HEREIN, CUSTOMER WILL DEFEND, INDEMNIFY AND HOLD HARMLESS HERC, ITS PARENT COMPANY, THEIR AFFILIATES, AND THEIR RESPECTIVE DIRECTORS, OFFICERS, AGENTS AND EMPLOYEES (COLLECTIVELY "HERC INDEMNIFIED PARTIES"), FROM AND AGAINST ANY AND ALL ACTUAL, ALLEGED, POTENTIAL OR PERCEIVED RISKS OF INJURY, DEMANDS, CLAIMS, SUITS, LIABILITIES, LOSSES, SETTLEMENTS, JUDGMENTS, DAMAGES (INCLUDING BUT NOT LIMITED TO COSTS, EXPENSES, DELAYS, DEDUCTIBLE AMOUNTS OF INSURANCE, THE COSTS OF ENFORCING ANY RIGHT TO INDEMNIFICATION UNDER THIS AGREEMENT, THE COST OF PURSUING ANY INSURANCE PROVIDERS, AND LIQUIDATED, CONSEQUENTIAL AND PUNITIVE DAMAGES), ENVIRONMENTAL SPILLS, ATTORNEYS' FEES AND DISPUTE RESOLUTION COSTS, WHETHER OR NOT SUCH LOSSES, LIABILITIES, CLAIMS OR DAMAGES ARE BASED, IN WHOLE OR IN PART UPON ANY OF THE HERC INDEMNIFIED PARTIES' ALLEGED NEGLIGENCE OR PARTICIPATION IN THE WRONG OR UPON ANY ALLEGED BREACH OF A STATUTORY OR REGULATORY DUTY OR OBLIGATION ON THEIR PART, ARISE OUT OF OR ALLEGED TO HAVE ARISING OUT OF ANY ACT OR OMISSION IN CONNECTION WITH THE CUSTOMER'S MAINTENANCE, USE, POSSESSION, OPERATION, ERECTION, DISMANTLING, SERVICING OR TRANSPORTATION OF THE EQUIPMENT OR MOTOR VEHICLE OR CUSTOMER'S FAILURE TO COMPLY WITH THE TERMS OF THIS AGREEMENT BY REASON OF BODILY INJURY, INCLUDING DEATH, AND PROPERTY DAMAGE, SUSTAINED BY ANY PERSON OR PERSONS, INCLUDING BUT NOT LIMITED TO EMPLOYEES OF CUSTOMER. CUSTOMER WILL, AT ITS SOLE 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 HERC INDEMNIFIED PARTIES HARMLESS FROM ALL LOSS, LIABILITY OR EXPENSE RESULTING FROM ACTUAL OR ALLEGED VIOLATIONS OF ANY SUCH LAWS, REGULATIONS OR REQUIREMENTS. The foregoing indemnification provisions will not reduce or affect the other rights or obligations which would otherwise exist in favor of the Herc Indemnified Parties. Any insurance requirements set forth in this Agreement or any Agreement will not limit foregoing indemnification.
- 10. NOTICE OF LOSS OR ACCIDENT.** In the event of an accident, loss, theft of, or damage to, spill or leak of hazardous materials from, the Equipment, Customer agrees to notify Herc as soon as possible by telephone and, thereafter, to immediately report in writing to Herc and to the public authorities (where required by law or by Herc) all necessary information relating to the loss or accident.
- 11. CONDITION OF THE EQUIPMENT.** Customer acknowledges having examined the Equipment upon its delivery to Customer. The Equipment shall be deemed to be accepted by Customer upon delivery and subject to the terms and conditions of this Agreement. Customer shall notify Herc in writing within 24 hours of delivery of the Equipment of any problem with the Equipment. If the Equipment is found by Customer not to be in good mechanical condition, as a result of conditions not the responsibility of Customer, nor caused by the fault or negligence of Customer or Customer's employees or agents, Customer will so notify Herc, whereupon Herc will then, at its option and without any other liability or responsibility by Herc to Customer: (a) repair or suitably replace the Equipment within a reasonable time during Herc's normal working hours, with the commencement or running of the terms of this Agreement to be tolled for the period the Equipment is "down"; or (b) remove the Equipment and terminate this Agreement and refund payments of rental charges, if any, for the unexpired term of the Agreement, less whatever is due Herc for damage to or maintenance of Equipment which is the responsibility of Customer. Customer agrees to provide full access to the Equipment to Herc's representatives to enable Herc to meet its responsibilities hereunder.
- 12. LATE PAYMENT FEE.** Should Customer fail to pay any invoice to Herc in accordance with the terms of such invoice, Customer will pay a late payment fee to Herc on such delinquent payment until fully paid, at an amount up to the maximum rate allowed by the laws of the jurisdiction in which the Herc location specified on the Front is located.
- 13. FUELING SERVICE CHARGE.** Herc agrees to provide the Equipment to Customer with full fuel tanks. Customer agrees to return the Equipment with full fuel tank(s). If Customer returns the Equipment with the fuel tank(s) less than full, Customer will pay to Herc a sum equal to Herc's then applicable refueling service charge posted at Herc's location where the Equipment is returned for the number of gallons required to refill the tank(s) at the time of return.
- 14. MERGER/MODIFICATION/SEVERABILITY.** This Agreement expresses the entire agreement between the parties with respect to the subject matter hereof. No modification or alteration of the terms hereof will be effective as against Herc unless same is in writing and signed by a duly authorized officer of Herc. Customer's use and/or delivery of the Equipment and/or Customer's signing of this Agreement shall be deemed execution of this Agreement and shall constitute Customer's acceptance of all of the Terms contained on the Front hereof and herein, and the exclusion of any terms and conditions otherwise stated by Customer or contained in any of Customer's documents. The paragraph headings contained in this Agreement are for convenience only and will not be used to expand or limit the actual terms and conditions hereof. Customer and the person signing this Agreement represent that: (a) they both have full authority to execute, deliver and perform this Agreement; and (b) this Agreement is a legal, valid and binding obligation of Customer, enforceable in accordance with its terms.
- 15. GOVERNING LAW/JURISDICTION/TRIAL WAIVER/LIMITATION OF LIABILITY.** This Agreement shall be governed by and construed in accordance with the laws of the state of Delaware without regard to its rules of conflict of laws. Customer irrevocably and unconditionally consents to submit to the jurisdiction of the state and federal courts within the State of Delaware (the "Delaware Courts") or Florida ("Florida Courts") for any litigation arising out of or relating to this Agreement and the transactions contemplated hereby, and waives any objection to the laying of venue and forum in the Delaware Courts and/or the Florida Courts. If any provision, or any part of any provision of this Agreement or the application thereof is thereafter held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and to this end the provisions of this Agreement are declared severable. Each party hereby waives and releases all right to trial by jury in any action, proceeding or counterclaim brought by either party hereto against the other (and/or against its officers, directors, employees, agents, or subsidiary or affiliated entities) on any matters whatsoever arising out of or in any way connected with this Agreement. THE MAXIMUM LIABILITY OF HERC, ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS OR AFFILIATES UNDER THIS AGREEMENT (REGARDLESS OF WHETHER A CLAIM IS BASED UPON WARRANTY, CONTRACT, TORT, NEGLIGENCE OR OTHERWISE) SHALL NOT EXCEED THE AMOUNT PAID TO HERC BY CUSTOMER UNDER THIS AGREEMENT.
- 16. ELECTRONIC SIGNATURES.** Customer agrees that this Agreement may be signed manually or by scanning and sending .pdf or other copies thereof via email or via any other electronic means and in one or more counterparts, each of which shall be (i) an original, and all of which taken together shall constitute one and the same agreement; (ii) a valid and binding agreement and fully admissible under state and federal rules of evidence; and (iii) enforceable under the applicable Uniform Commercial Code Section 2A-204, Section 3-309 and under any other similar statute applicable to this Agreement.
- 17. FAMILIARIZATION.** All familiarization requests must be made in writing not less than five (5) calendar days before scheduled delivery date or at time of purchase. Request(s) must be submitted to the location in which the Equipment was rented and identify the name of the person(s) designated to receive the Equipment. If requested, the User as defined by ANSI A92/CSA B354 agrees to have the person designated present at the time of delivery to receive the equipment familiarization. Familiarization will be made in accordance to ANSI A92 & CSA B354. Familiarization is not considered training or certification and does not impact the obligations of Section 2.