

ASB RENTAL AGREEMENT

This Contract is entered into this ____ day of _____, by the SCHOOL ASB, hereinafter called ASB, of **SAN DIEGUITO UNION HIGH SCHOOL DISTRICT**, hereinafter called District, and _____, hereinafter called the Contractor.

The ASB and the Contractor in consideration of the mutual covenants, promises, agree as follows:

SCOPE OF WORK: The Contractor shall provide to the ASB the following services:

Provide rental equipment and services to ASB as specified in Attachment.

Contract Documents: The contract documents consist of this signed agreement, Attachment, Attachment B, certificate of insurance, and the respective purchase order.

Rates:

Insurance: Contractor shall retain and maintain the following insurance requirements for the duration of the contract:

a. Commercial General Liability Coverage, using a standard ISO CG 00 01 occurrence form, including operations, products and completed operations and contractual liability with limits not less than \$1,000,000.00 per occurrence, \$2,000,000 General Aggregate and \$2,000,000 Products - Completed Operations Aggregate for bodily injury, personal injury, and property damage. Include the following endorsements: Aggregate Limit Per Location endorsement; Additional Insured Endorsement naming San Dieguito Union High School District, its Board, officers, agents and employees as Additional Insureds using ISO Additional Insured endorsements CG 20 10 and CG 20 37; A Waiver of Subrogation endorsement in favor of San Dieguito Union High School District, its Board, officers, agents and employees; A Primary, Non-contributory endorsement in favor of San Dieguito Union High School District, its Board, officers, agents and employees.

b. Business Auto Coverage, using a standard ISO Business Auto CA 00 01 form with limits not less than \$1,000,000.00 per accident for bodily injury and property damage for all owned, hired and non-owned automobiles. Coverage shall include Contractual Liability. include the following endorsements: Broadened Pollution Coverage Endorsement; Additional Insured Endorsement naming San Dieguito Union High School District, its Board, officers, agents and employees as Designated Insureds; A Waiver of Subrogation endorsement in favor of San Dieguito Union High School District, its Board, officers, agents and employees; A Primary, Non-contributory endorsement in favor of San Dieguito Union High School District, its Board, officers, agents and employees.

c. Workers' Compensation Coverage; including statutory coverage as required by the State of California and including Employers' Liability with limits not less than \$1,000,000.00 each accident; \$1,000,000.00 policy limit bodily injury by disease; \$1,000,000.00 each employee bodily injury by accident.

Contractor and all of its employees or agents shall secure and maintain in force such licenses and permits as are required by law, in connection with the furnishing of services covered under this contract. All operations and materials shall be in accordance with the law.

INDEMNIFICATION: District shall not be liable for, and Contractor shall defend and indemnify the District, its Board, officers, agents and employees against any and all claims, demands, liability, judgments, awards, fines, mechanics' liens or other liens, labor disputes, losses, damages, expenses, charges or costs of any kind or character, including attorneys' fees and court costs (hereinafter collectively referred to as "Claims"), which arise out of or are in any way connected to the work covered by this contract arising either directly or indirectly from any act, error, omission or negligence of Contractor or its contractors, subcontractors, licensees, agents, servants or employees, including, without limitation, Claims caused by the concurrent act, error, omission or negligence of District or its agents or employees. However, Contractor shall have no obligation to defend or

indemnify District from a claim if it is determined by a court of competent jurisdiction that such claim was caused by the active negligence, sole negligence, or willful misconduct of District or its agents or employees.

FINGERPRINTING REGULATIONS: In the event that the Contractor conducts business on school grounds while students are present, the District has determined under Education Code section 45125.1, subdivision (c) that in performing services pursuant to this Agreement, Contractor's employees may have contact with pupils. As required under Education Code section 45125.1, subdivision (a), Contractor shall require their employees who will provide services pursuant to this Agreement to submit their fingerprints in a manner authorized by the Department of Justice together with a fee determined by the Department of Justice in order to conduct a criminal background check to determine whether such employees have been convicted of or have charges pending for a felony as defined under Education Code Section 45122.1.

Contractor shall not permit any employee to perform services who may come in contact with pupils under this Agreement until the Department of Justice has determined that the employee has not been convicted of a felony or has no criminal charges pending for a felony as defined in Section 45122.1.

Contractor shall defend, indemnify, protect, and hold the District and its agents, officers and employees harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property which arise from or are connected with or are caused or claimed to be caused by Contractor's failure to comply with all of the requirements contained in Education Code section 45125.1, including, but not limited to, the requirement prohibiting Contractor from using employees who may have contact with pupils who have been convicted or have charges pending for a felony as defined in Education Code section 45122.1.

STORM WATER MANAGEMENT: Contractor shall comply with the lawful requirements of the District, the State of California, and all applicable municipalities and local agencies regarding discharges to separate storm drain systems or other watercourses under their jurisdiction, including applicable requirements in municipal storm water management programs.

TERMINATION: ASB reserves the right to terminate the agreement by giving written notice to Contractor of such termination at least thirty (30) days before effective date of such termination.

FORCE MAJEURE: Force Majeure is defined as any Act of God (including fire, flood, earthquake, storm, hurricane or other natural disaster), or interruption or failure of electricity or telephone service, an unavoidable casualty, embargo, labor dispute, strike, lockout, government order, act of civil or military authorities, emergency conditions (including weather conditions) incompatible with safety or good quality workmanship, or similar unforeseen event that renders performance commercially implausible.

Neither the District nor the Contractor will be held responsible for the cancelation of the Agreement because of Force Majeure. Any deposits and/or payments will be refunded or applied to a future event per the District's request.

The party experiencing the force majeure circumstances shall cooperate with and assist the injured party in all reasonable ways to minimize the impact of force majeure on the injured party.

INDEPENDENT CONTRACTOR STATUS: (a) Contractor is not being engaged by ASB or District on a fulltime, exclusive basis and Contractor will retain the right to perform Contractor's services for other third parties and engage in other activities during the term of this Agreement, provided such other services do not create a conflict of interest with ASB or cause ASB to be in violation of any applicable law, rule or regulation. Contractor and ASB and District intend and agree that Contractor is an independent contractor and that nothing in this Agreement will be interpreted or construed as creating or establishing the relationship of employer and employee, agency, partnership, or joint venture between ASB, the District and the Contractor. Contractor hereby acknowledges and agrees that it will have no authority to enter into or incur any obligation or liability on ASB or District's behalf.

(b) ASB and District will not control and will have no right to control the manner, means or method by which Contractor performs services. However, ASB will have the right to exercise general supervision over the results to be derived from Contractor's services and the date by which such services will be completed, and will determine whether such services were satisfactory to ASB.

(c) Contractor will bear sole responsibility for compliance with all applicable laws and for reporting and payment on behalf of Contractor and any of its employees or agents providing services to ASB pursuant to this Agreement, of any federal, state or local income or employment tax or withholding, unemployment insurance, workers' compensation insurance, liability insurance, health insurance, retirement or other welfare or pension benefits, and/or other payments and expenses. Contractor understands and agrees that neither Contractor nor any of its employees or agents providing services under this Agreement are eligible for, and will not be eligible to participate in, any ASB or District employee benefit plans or programs. Contractor, and its employees and agents providing services to ASB under this Agreement, hereby waive any right or claim to wages, compensation incentives, bonuses, profit sharing participation, unemployment insurance, health insurance, or participation in any employee benefit plan, policy or program sponsored by ASB or District that may be provided to employees of ASB or District.

PRECEDENCE OF CONTRACTS OVER EXHIBITS: Should there be any ambiguity or inconsistency between any exhibits or attachments to this contract and the terms and conditions of this contract, the terms and conditions of this contract take precedence.

ORDINARY WEAR AND TEAR: "Ordinary wear and tear" shall mean the normal deterioration of the items caused by ordinary, reasonable and proper use of the items. Unless a Damage Waiver applies, ASB shall be responsible for all damages beyond ordinary wear and tear.

COMPLIANCE WITH LAWS/USE OF RENTAL ITEMS: ASB agrees not to use, or knowingly allow anyone to use, the items for any illegal purpose or in any illegal manner. ASB acknowledges that Contractor has no physical control over the use of the items. Unless otherwise agreed upon by the parties in writing, ASB agrees at their sole cost and expense to comply with all municipal, county, state, and federal laws, ordinances and regulations (including O.S.H.A.) which may apply to the use of the items during the rental period. ASB further agrees to pay all licenses, fees, permits or taxes arising from use of the items, including any subsequently determined to be due as a result of an audit. ASB shall not allow any person who is not qualified to operate items requiring special expertise or licensing.

ASB shall not allow any person to use or operate the items when it is in need of repair or when it is in an unsafe condition or situation. ASB agrees not to modify, misuse, harm or abuse the items; permit any repairs to the items without Contractor's written permission; or, allow a lien to be placed upon the items.

If the items become unsafe or require repair, ASB agrees to discontinue use and immediately notify Contractor.

DAMAGE WAIVER: Damage Waiver is not insurance. If Contractor provides, and ASB agrees to, Damage Waiver, Contractor and ASB agree that Contractor will waive any claim against ASB and/or the District for direct physical damage to the items except as follows:

- a) Any item or items of part thereof which is not returned for whatever reason, including theft;
- b) Loss or damage resulting from overloading or exceeding rated capacity of the items;
- c) Loss or damage to motors or other electrical appliances or devices caused by ASB non-compliance with the electrical requirements specified by the contractor;
- d) All damage or loss resulting from use of the items in violation of any provision of this agreement, violation of any law, ordinance or regulation or operation in an improper or negligent manner;
- e) Damage of items by paint, plaster, concrete, rosin or any other material.

District shall have the option to exercise all rights available under their insurance and take all action necessary to process a claim under their insurance. District agrees to provide Contractor with complete information concerning insurance coverage carried if requested.

SUBLETTING/LOCATION OF RENTAL ITEMS: ASB agrees not to sublet, loan or assign the items. ASB shall not move the items from the address or location at which ASB represented it was to be used.

DEFAULT: Should ASB in any way fail to observe or comply with any provision of this agreement, Contractor may, at his sole option exercise any and all of the following remedies

- a) Terminate this agreement.
- b) Retake the items.
- c) Declare any outstanding rent and charges due and payable and initiate legal process to recover the monies.
- d) Pursue any of the remedies available to Contractor (exercise of any remedy available to Contractor shall not constitute an election of remedies or a waiver of any additional remedies to which Contractor may be entitled).

Should Contractor in any way fail to observe or comply with any provision of this agreement, ASB may, at their sole option exercise any and all of the following remedies

- a) Terminate this agreement.
- b) Arrange for rental through another rental company
- c) Declare any outstanding rent and charges void and initiate legal process to recover losses.
- d) Pursue any of the remedies available to ASB (exercise of any remedy available to ASB shall not constitute an election of remedies or a waiver of any additional remedies to which ASB may be entitled).

ACCIDENTS REPORTING: In the event of any accident resulting in property damage or bodily injury arising from the use of the items while in the ASBs possession, ASB agrees to notify contractor.

NOTICE OF NON-WAIVER/SEVERABILITY: The provisions of this agreement shall be severable, so that the unenforceability, invalidity or waiver of any provision shall not affect any other provision.

AMENDMENTS: In the event new services are required Contractor will notify the ASB of the change. The change will not be in effect until after approval by the ASB. All amendments must be in writing and approved by an authorized District representative.

In witness whereof the parties have caused this Contract to be duly executed, intending to be bound thereby:

_____ School ASB

Contractor

Tina Douglas
Associate Superintendent

Authorized Agent

Name & Title: _____

Date: _____

Date: _____