

herein shall apply to additional *Schedules*, whenever executed.

5. DAMAGES. Damage to Lessor's equipment caused by normal wear and tear is hereby assumed by the Lessor. The decision as to whether such damage has been caused by normal wear and tear shall be made by the District Engineer or the Mechanical Services Administrator. Other claims for damage caused to privately owned equipment or vehicles while in use under contract to the Lessee shall be referred to the Mechanical Services Administrator for a determination as to the Lessee's liability.

6. INDEMNIFICATION. The Lessor shall defend, indemnify, and hold harmless the Lessee, its officers, employees, agents, and assigns from and against any and all losses suffered by the Lessee, its officers and employees, and any and all claims, liabilities or penalties asserted against the Lessee, its officers and employees, by or on behalf of any person, on account of, based on, resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Lessor, including claims based upon breach of warranty, personal injury, property damage, strict liability or negligence, for any loss, damage or injury caused by or relating to the design, manufacture, selection, delivery, condition, operation, use, ownership, maintenance or repair of any unit. Further, Lessor agrees to be responsible for all costs and expenses, including reasonable attorneys' fees, incurred by lessee or its officers, employees, agents and assigns in defending such claims or in enforcing this provision. Under no condition or cause of action shall lessee be liable for any loss of actual or anticipated business or profits or any special, indirect or consequential damages. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant shall survive the termination of this agreement.

7. OPERATORS, PERMITS, LICENSES, INSPECTIONS, CERTIFICATIONS, REGISTRATIONS FOR OPERATORS AND EQUIPMENT. If an operator(s) is rented from the Lessor under this agreement, each operator(s) shall have all required licenses, permits, and certifications for the operation of the equipment, and the Lessor shall maintain all required insurance (including workers compensation) to cover this operator. The Lessee may provide any employee, contractor or agent of the Lessee to operate general equipment. For any equipment that requires licensing or permits greater than a general driver license, the operator and equipment must currently possess all appropriate certifications, licenses, or permits for operation of the equipment. The Lessor shall obtain and keep in force during the rental period all certifications, registrations or inspections necessary to operate and utilize the leased equipment. In no case is Lessor or an operator to be construed as an employee or agent of the Lessee.

8. INSURANCE.

8.1. Comprehensive insurance. The Lessor shall, at its own expense, obtain, and maintain in force during the term of this agreement, comprehensive general liability insurance, including contractual coverage, in amounts not less than \$350,000 per incident. Prior to the beginning of the lease, the Lessor shall provide a Certificate of Insurance demonstrating the required insurance coverage which shall specify that "*State of New Hampshire is additional named insured with respect to comprehensive general liability,*" shall be primary, without the right of contribution from any other insurance carried by Lessor.

8.2. Automobile insurance. The Lessor shall maintain "any auto" coverage with a combined single limit of \$350,000. All equipment identified above shall, wherever possible, possess a vehicle registration issued by a State or Commonwealth in the U.S. Automobile insurance shall provide coverage to all equipment users, passengers, or operators.

8.3. Workman's Compensation. The Lessor hereby agrees to purchase and maintain as required by law the appropriate workman's compensation insurance to cover all claims of employees of said Lessor; should the Lessor fail to purchase and maintain such insurance, and

should the Lessee be found liable to the employees of the Lessor, the Lessee may recover the amount of any compensation or damages paid to the Lessee's employees and any expenses related thereto, including attorneys fees and costs.

8.4 All policies shall be the standard form employed in New Hampshire, issued by underwriters acceptable to the State and authorized to do business in the State. Each policy shall contain a clause prohibiting cancellation or modification of the policy earlier than 10 days after written notice thereof has been received by the State.

9. MODIFICATION OF SCHEDULED EQUIPMENT. Lessee shall not, without prior approval of the Lessor, alter or affix any accessory to any scheduled equipment to it if doing so will impair its originally intended function or use or reduce its value. Lessee shall not make any "non-reversible" addition to equipment without the prior written consent of Lessor. Any alteration or addition to equipment shall be the responsibility of and at the sole risk of Lessor.

10. TAXES: The Lessor shall be responsible for all federal, State or local taxes, fees, registrations, permits or approvals of any kind required for the equipment and operators subject to this agreement, and shall not be entitled to any rebate, or pro-rata exemption for its use by the State.

11. LOSS OR DAMAGE: Lessor shall bear the risk of any loss where the equipment is worn out, lost, stolen, destroyed, or, in Lessor's opinion, irreparably damaged or other damages while in Lessee's possession. Lessee shall give Lessor notice of any loss or other damage.

12. LESSOR'S RIGHTS: Lessor shall have no vested right or interest in the use of Lessor's equipment or operators for any project undertaken by the Lessee. The Lessor may not assign this agreement to any other party, and this agreement is not intended to benefit any third party.

13. EFFECT OF WAIVER; ENTIRE AGREEMENT; MODIFICATION OF LEASE; NOTICES: A delay or omission by Lessee to exercise any right or remedy shall not impair any right or remedy and shall not be construed as a waiver of any breach or default. Any waiver or consent by Lessee must be in writing. This agreement completely states the rights of Lessor and Lessee and supersedes all prior agreements. No variation or modification of this Lease shall be valid unless in writing. All notices shall be in writing, addressed to the other party at the address stated on the front or at such other address as may hereafter be furnished in writing.

14. GOVERNING LAW. This agreement shall be governed and construed under New Hampshire law. Lessor acknowledges and agrees to comply with all applicable State, federal and local laws and regulations in force and effect during the term of this agreement, including but not limited to the Federal Motor Carrier Safety Act.

15. SEVERABILITY; SURVIVAL OF COVENANTS: If any provision of this agreement shall be invalid, it shall be deemed omitted but the remaining provisions shall be given effect. All of Lessor's obligations under this agreement shall survive expiration or termination, to the extent required for their full observance and performance.

16. DURATION. This agreement shall be valid until terminated in writing by either party.

17. ENTIRE AGREEMENT. This rental agreement is not valid until all details (including equipment identification, proof of registration, insurance, etc.) have been identified on the agreement and received by NHDOT. This agreement, along with all non-conflicting provisions of Section 100 of the most recent version of the NHDOT *Standard Specifications for Bridge & Road Construction*, which is incorporated herein by reference, identifies all terms and conditions of this agreement, and may not be modified without approval of the Attorney General's Office for any special terms or

conditions.