

CITY CLERK ORIGINAL

C-7929
02/14/2012



EMPIRE POWER SYSTEMS
1-888-CAT POWER

EMPIRE RENTAL
1-800-RENT-CAT

RENTAL AGREEMENT

CITY OF GLENDALE
POLICE DEPT
6835 N 57TH DR
GLENDALE AZ

BUTTERFIELD LANDFILL
40404 S. 99TH AVE

85301-3218

MOBILE, AZ

RENTAL DATE	CUSTOMER NUMBER	CUSTOMER ORDER NUMBER	STORE	DIV	SALESMAN	TERMS	PAGE
1/31/12	8000908	TO FOLLOW	16	G	RB1	2	1
AGREEMENT NUMBER	DOC DATE	PC	LC	MC	SHIP VIA		
A47127	1/25/12			10			
MAKE	MODEL	SERIAL NUMBER	EQUIPMENT NUMBER	METER READING	ID NUMBER		
AA	328D LCRTH	OGTN00211		1,846.0	E114956		
		CAT0328DPGNTN00211					

CUSTOMER CONTACT: ERNIE RUIZ

PHONE: 623-640-1046

CURRENCY: USD

CUSTOMER RESPONSIBILITY FOR EXPENSES BEYOND RENTAL RATE, TRANSPORTATION AND FUEL;

" CLEANING: SHOULD THE CUSTOMER ELECT TO HAVE EMPIRE CLEAN THE MACHINE AFTER THE RENTAL TERM IS COMPLETE, A MINIMUM OF 16 HOURS AT CURRENT FIELD SERVICE RATE WILL BE CHARGED, PLUS TRAVEL TIME TO AND FROM THE JOB SITE. CLEANING HOURS WILL NOT EXCEED 80 HOURS. THIS HOWEVER IS CLEANING ONLY AND DOES NOT INCLUDE ADDITIONAL CHARGES FOR DAMAGES. THE MACHINE WILL ALWAYS BE CLEANED ON SITE BEFORE TRANSPORT TO ITS NEXT JOB OR EMPIRE FACILITY. MATERIAL FROM THE LANDFILL WHERE OPERATED WILL STAY ON THAT SITE.

" THE FOLLOWING PROCEDURE WILL BE FOLLOWED BY EITHER THE CUSTOMER OR THE EMPIRE TECHNICIAN.
BELLY PANS DROPPED

COMPONENTS THOROUGHLY CLEANED
WIRE WRAP ON ANY AXLE REMOVED WITHOUT SEAL GUARD DAMAGE

TRACKS ON CRAWLER MACHINE MUST BE REMOVED AND MATERIAL CLEANED FROM ALL UC COMPONENTS
MACHINE RETURNED IN THE SAME CONDITION AND

This is your Rental Agreement. Please read both sides before signing.

FIRE, THEFT AND VANDALISM PROTECTION: By Initialing in the box below, customer agrees to accept and pay for the Fire, Theft and Vandalism Protection described on the back of this agreement.

NIA

Accept



Decline



WRITTEN SAFETY INSTRUCTIONS: I have been given and agree to read safety instructions before operating or allowing rented equipment to be operated or used.

If I do not understand or forget the safety/operating instructions I have been given, or if the equipment fails, I will not attempt either to operate or repair it. I will discontinue use and notify Empire Rental immediately.



Charges will be based on time out and not necessarily on time used. See RENTAL PERIOD AND EXCESS USAGE CHARGE on reverse hereof.

By signing below, Customer hereby grants Empire a security interest in the equipment and grants a power of attorney to Empire to execute and record all UCC-1s and security documents on Customer's behalf.

I have read, discussed and understand the terms and conditions of the Agreement and agree to be bound thereto. SIGNING PERSONALLY AND FOR THE CUSTOMER:

Printed Name

See attached

Signature

Date

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				.0			

RENTAL BEGAN

SHEET METAL DAMAGE MUST BE REPAIRED BY EMPIRE
TECHNICIAN AT WILL BE AT CURRENT SHOP HOURLY RATE
EXCESSIVE TIP OR UC WARE FROM TRAVELING LONG
DISTANCES

DAILY LUBE

EMPIRE RESPONSIBILITIES:

PROVIDE OPERATOR TRAINING AND OPERATION
CONSULTATION (SITE ASSESSMENT) PRIOR TO DELIVERY
GET WEAR

U/C WEAR (2.8% WEAR ALLOWED PER 160 HOUR MONTH.
BASED ON 3000 HOUR LIFE. EXCESSIVE WEAR FROM
TRAVELING OR MISADJUSTED UC WILL BE BILLED TO
CUSTOMER)

PM MAINTENANCE

RUNNING REPAIRS AND WARRANTY REPAIRS NOT CAUSED
BY ABUSE OR MISUSE

RENTAL OF LANDFILL MACHINE HAVE AN INHERENTLY
HIGHER RISK OF UNINTENDED EXPENSES FOR BOTH THE
CUSTOMER AND EMPIRE. THE OPERATOR OF A LANDFILL
MACHINE SHOULD BE OF THE HIGHEST CALIBER WITH A
GREAT DEAL OF PERSONAL INITIATIVE TO PROTECT THE
MACHINE FROM THE MANY OBJECTS THAT WILL DO MAJOR
DAMAGE. EMPIRE WILL PROVIDE AN OPERATOR TRAINER TO

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Printed Name See attached

Signature _____ Date _____

The California Air Resources Board (ARB) has adopted a regulation for off-road diesel vehicles. This regulation imposes idling limitations on owners, renters and lessees of off-road vehicles, which ARB is authorized to enforce. No vehicle or engine, subject to this regulation may idle for more than 6 consecutive minutes. For more information on idling limits, please visit: <http://www.arb.ca.gov/msprog/ardise/guidance/idling.pdf>

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				.0			

EXPLAIN THOSE RISKS WITH ALL DELIVERIES OF A LANDFILL RENTAL MACHINE AT NO CHARGE TO THE CUSTOMER. THE ONE DAY TRAINING WILL INCLUDE MAINTENANCE AND RENTAL RETURN CONDITIONS TO TRY AND ELIMINATE OR REDUCE ANY UNEXPECTED CHARGES TO THE CUSTOMER.
NOTWITHSTANDING THE TERMS ON THE REVERSE SIDE OF THIS DOCUMENT, EMPIRE ACKNOWLEDGES THAT THE CITY IS A SELF-INSURED ENTITY AND THAT ALL INSURANCE REQUIREMENTS ARE SATISFIED BY THE CITY'S SELF-INSURANCE RETENTION.

****PLEASE REQUEST A CONFIRMATION NUMBER WHEN STOPPING THE RENTAL ON THIS MACHINE.****

ITEM	QTY	RENTAL RATE	PERIOD	OVERTIME
IDNO: E114956 MODEL: 328D LCRTH	1.0	11,300.00	4 WEEK	70.63
SERIAL NUMBER: 0GTN00211		3,770.00	WEEK	94.25
PIN: *CAT0328DPGTN00211*		1,260.00	DAY	157.50
DESC: 328DL CR				
TIME OUT: 06:37	DATE OUT: 1/31/12	EXPECTED RETURN DATE: 3/01/12		
METER OUT: 1846.0				

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				.0			

MISCELLANEOUS CHARGES

FREIGHT IN	1	922.00
FREIGHT OUT	1	922.00

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Accept Initials Decline Initials

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THIS AGREEMENT IS FOR THE RENTAL OF THE EQUIPMENT SHOWN ON THE OTHER SIDE OF THIS PAGE, INCLUDING ALL PARTS AND ACCESSORIES ("EQUIPMENT").

1. TITLE: Empire is and shall remain the owner of the Equipment. Customer will not acquire any equity or ownership interest in the Equipment by making rental payments or repairs. Customer will not place any liens on the Equipment and shall not allow third parties to encumber Empire's title. Rental Rates, in compliance with A.R.S. § 44.1789.41, include an amount sufficient to cover personal property tax due in connection with the Equipment.

2. RENTAL PERIOD: The period commencing on the delivery of the Equipment to Customer and ending upon its return to Empire's premises. No allowances made for Saturdays, Sundays, holidays, transit time or for any period Equipment is not in actual use.

3. EXCESS USAGE CHARGE: Rental rates are based upon maximum Equipment usage of: one shift of 8 hours per day; or upon 40 hours per week; or upon 160 hours per four weeks. If the Equipment is used longer during any specified period, rental for overtime will be charged as a set percentage of the rental rate.

4. RECEIPT OF EQUIPMENT AND WAIVER OF DEFECTS: By accepting delivery, Customer acknowledges the Equipment to be in good, safe and serviceable condition, fit for its intended use, and accepts the Equipment "AS IS" regardless of defects, latent or otherwise.

5. MACHINE MAINTENANCE AND REPAIRS: Customer, at its own cost, shall keep the Equipment in good working order and shall maintain the Equipment as prescribed in the Manufacturer's Lube and Maintenance Guide. Customer is not authorized to incur any expense for the account of Empire.

6. RETURN OF EQUIPMENT: At the termination of this agreement or upon demand, Customer shall return all of the Equipment to Empire's premises during Empire's regular business hours. Customer shall be liable for all damages to or loss of the Equipment occurring because it was not returned within Empire's regular business hours. If Empire has agreed to deliver or pick up the Equipment, Customer shall be responsible for all loss or damage to the Equipment from time of delivery until Empire actually picks up the Equipment.

7. DAMAGED EQUIPMENT; REASONABLE WEAR AND TEAR: If the Equipment is returned in a damaged or excessively worn condition, Customer shall pay Empire the reasonable cost of repair and shall also pay rental on the Equipment at the regular rental rate until repairs have been completed. Reasonable wear and tear shall mean only the normal deterioration of the Equipment caused by ordinary and reasonable use on a one-shift (eight hours per day, five days per week) basis. The following shall not be deemed reasonable wear and tear: damage resulting from lack of lubrication or failing to maintain necessary oil, water, and air pressure levels; damage resulting from lack of servicing or preventative maintenance suggested in the manufacturer's operation and maintenance manual. Repairs to the Equipment shall be made to the reasonable satisfaction of Empire, and in a manner which will not adversely affect the operation or value of the Equipment, such as welding instead of replacing a part.

8. TIRE REPAIR OR REPLACEMENT: Repair and replacement of tires are not included in the rental rate. Upon return of Equipment, Customer agrees to pay a tire wear charge. Customer shall pay for any tire damage, regardless of the cause. All tires substituted by Customer shall become Empire's property.

9. INSURANCE:

A. Liability Insurance: During the term of this rental, Customer must maintain commercial general liability insurance covering its operations and covering Empire as an additional insured for a minimum of \$1 million.

B. Auto/Truck: For rental of trucks licensed for use on public highways, Customer shall maintain primary business auto liability insurance covering Empire as additional insured. Such insurance shall include coverage for hired and non-owned autos with minimum limits of \$1 million per occurrence. Customer agrees that any insurance carried by Empire is not intended to

cover Customer, Customer's employees or any person to whom Customer may assign the Equipment or Trucks. The maximum amount of coverage available to a person or entity (other than Empire) required by law to be insured on Empire's policy will be the limit of insurance needed to comply with the minimum limits in the appropriate jurisdiction.

C. Physical Damage Insurance: Customer shall, during the term of this rental, keep the Equipment insured for full value through a company or companies acceptable to Empire. Customer agrees to pay for the Fire, Theft and Vandalism Protection until appropriate evidence of insurance is received by Empire. The physical damage insurance requirement shall not apply when Customer pays for the Fire, Theft and Vandalism Protection, but the Fire, Theft and Vandalism Protection is not available for trucks licensed for use on public highways.

D. Evidence of Insurance: Customer must provide Empire with a certificate of insurance confirming:

1. Coverage applies to rented Equipment (and, if applicable, to rented trucks licensed for use on public highways);
2. Empire is named "additional insured" with respect to liability insurance and auto liability insurance, if applicable;
3. Empire is named "loss payee" with respect to physical damage insurance; and
4. Such insurance may not be canceled or materially modified without giving Empire at least 30 days written notice.

10. FIRE, THEFT AND VANDALISM PROTECTION: The Fire, Theft and Vandalism Protection ("FTVP") will provide some limited protection from accidental, direct physical loss or damage to rented/leased Equipment. The FTVP is available for up to \$1 million of off-highway construction Equipment per customer and will cover losses of up to \$500,000 per accident or occurrence. The FTVP is not insurance. It is not a substitute for insurance of any kind. The FTVP will not be in effect if Customer fails to pay the appropriate fees when due. The FTVP will not cover the following exclusions or causes of loss, which will remain the responsibility of Customer:

A. The first \$5,000 of damage, or an amount equal to one month's rent, whichever is less. This deductible applies to each accident and to each separate piece of Equipment stolen or damaged.

B. That portion exceeding \$500,000 of damage or loss to one or more pieces of Equipment from a single occurrence or accident.

C. Damage caused by overloading or exceeding the rated capacity of the Equipment.

D. Damage to motors or other electrical devices caused by a surge in electric current.

E. Damage to tires and tubes caused by blowouts, bruises, cuts, road hazards, or other causes inherent in the use of the Equipment.

F. Damage resulting from lack of lubrication or other normal servicing of Equipment.

G. Wrongful conversion by Customer or through infidelity of Customer's employees or of persons to whom the Equipment is entrusted (carriers for hire excepted).

H. Voluntarily parting with the Equipment by Customer or by others to whom the Equipment may be entrusted, except carriers for hire, if induced to do so by any fraudulent scheme, trick or false pretense.

I. Loss or damage caused by use of the Equipment in violation of any of the terms of the rental agreement.

J. Failure to file a police report following the theft, disappearance or vandalism of the Equipment.

K. Damage caused by using straight gas in 2-cycle engines.

L. Loss or damage caused by failure to keep the Equipment in a locked enclosure or otherwise secured when not in use.

M. Loss or damage caused by intentional acts.

N. Loss or damage that was, or should have been, expected due to an extraordinary application or use of the Equipment.

O. Delay, loss of market, loss of use, loss of profit, business interruption or indirect or consequential damages of any kind.

11. DISCLAIMER OF WARRANTIES AND LIABILITY: Empire makes no warranties, expressed or implied, as to the Equipment's merchantability or fitness for any

particular purpose. Customer's sole remedy shall be the termination of the rental charges at the time of failure or discovery of defect, provided the Equipment is returned to Empire within 24 hours. Empire shall not be responsible for any loss, damage or injury, including lost profits, incidental, special or consequential damages, and, Customer shall indemnify and hold Empire harmless from all claims (including claims brought by third parties) arising out of the operation, possession, use, failure, maintenance or return of the Equipment, including Empire's legal costs incurred in defense of such claims.

12. DEFAULT: Customer is in default if (a) Customer fails to pay any installment of rent or other payment to Empire when due; (b) Customer fails to return the Equipment upon termination of the rental or upon demand; (c) Customer fails to perform or observe any condition of this or any other agreement with Empire; (d) Customer ceases doing business as a going concern, makes an assignment for the benefit of creditors, files a petition in bankruptcy or consents to or acquiesces in the appointment of a trustee, receiver or liquidator of all or any substantial part of its assets or properties; (e) Customer abuses, neglects or attempts to remove, sell, transfer, encumber, part with possession of or sublease the Equipment or any item thereof; or (f) Empire in good faith deems itself insecure.

13. REMEDIES; RETAKING OF EQUIPMENT: Upon Customer's default, Empire reserves all rights and remedies available at law or under contract and may, at its option, demand that Customer immediately deliver the Equipment to Empire at Customer's expense. If the Equipment is not returned at the termination of the rental or for any reason it becomes necessary for Empire to retake the Equipment to protect it from loss or damage, Empire and its agents may, without notice or legal process, enter into any job, building or place where the Equipment may be and repossess same by using all force necessary to do so. In the event of default, Customer waives all rights to a prior judicial hearing, any further right to possession of the Equipment and all claims for injuries, damages or loss arising out of the repossession of the Equipment. Customer shall pay all costs and expenses incurred by Empire in retaking the Equipment.

14. COMPLIANCE WITH LAWS AND REGULATIONS; HAZARDOUS MATERIALS: Customer shall not abuse, harm or improperly operate the Equipment. Customer, at its sole expense, shall comply with all laws and regulations applying to the use, operation or possession of the Equipment. Customer warrants and represents that it shall return the Equipment free from all toxic, hazardous or regulated materials, as those terms may be defined in applicable federal, state and local regulations and laws. Customer shall indemnify and hold Empire harmless from any loss, claim or damage which may arise out of Customer's breach of these representations and warranties.

15. ADDITIONAL CUSTOMER OBLIGATIONS: Customer shall not sublet or assign this rental agreement. Customer shall at all times advise Empire of the exact location and condition of the Equipment and shall give Empire immediate notice of any lien or judicial process affecting the Equipment. Empire may enter any job, building or place to inspect the Equipment. Customer shall furnish Empire with a complete report of any accident involving the Equipment, including names and addresses of all witnesses and persons involved. Empire may assign its right to receive rent (or any of its other rights hereunder), and Customer, upon receiving notice, shall make payment to the assignee as directed.

16. MISCELLANEOUS: This document supercedes all previous oral or written communications and may be modified only by writings signed by both parties. If any portion of this agreement is unenforceable, the remainder shall continue in full force and effect. Counterpart, facsimile and photocopy signatures are binding upon the Customer.

17. CONSENT TO JURISDICTION AND ENFORCEMENT: Customer agrees that this agreement shall be construed under the laws of the state of Arizona and consents to the jurisdiction of the federal or state courts located in Maricopa County, Arizona. Customer shall participate in any judicial proceedings and agree that the decisions of the courts are binding and enforceable.

CITY OF GLENDALE, an Arizona
municipal corporation



Ed Beasley, City Manager

ATTEST:



Pamela Hanna, City Clerk (SEAL)

APPROVED AS TO FORM:



Craig Tindall, City Attorney