Lori Hendricks
Wagoner County Clerk

307 E. Cherokee St.
Wagoner, OK 74467
918.485.7716
Fax 918.485.7718

Invitation to Bid

The Board of County Commissioners, Wagoner County, Oklahoma is seeking sealed bids for a new Hydraulic Excavator for District 3. The Excavator shall be 18,000 to 21,000 lb operating weight and 15 ft digging depth class. A 2008 Gradall will be used as a trade-in on this bid.

Bid #3
Date Published: August 23, 2012 (Wagoner Tribune)
Bidding Period Closing Date and Hour: September 7, 2012 @ 4:00 PM
Sealed Bid Opening Date and Hour: September 10, 2012 @ 9:00 AM
Requesting Authority: Wagoner County District 3

Bid submissions are to be: Addressed to:
Wagoner County Purchasing Agent
P O Box 156
Wagoner, OK 74477

Delivered to:
Wagoner County Purchasing Agent
307 E Cherokee
Wagoner, OK 74467

Please review the attached Terms and Conditions pertaining to the submission of this bid.

Please pay particular attention to Item 1 of the Terms and Conditions. This item specifies how the bid envelopes are to be identified to prevent inadvertent or premature opening of sealed bids. Your compliance will ensure consideration of your bid by the awarding body. Late bids will not be considered.

Included in this packet is a Non-Collusion Affidavit which must be signed and submitted as part of the bid.

This packet contains:
1. Invitation to Bid
2. Terms and Conditions for Bidding
3. Affidavit of Non-Collusion
4. Specifications
5. Bid Form
6. Lease Purchase Agreement with Letter
7. List of Wagoner County Financial Institutions

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TERMS AND CONDITIONS

THESE ITEMS APPLY TO AND BECOME A PART OF THE BID
NO EXCEPTIONS TO THESE TERMS AND CONDITIONS WILL BE CONSIDERED

1. Bids must be submitted on the included form only. Each bid shall be placed in a separate envelope. Be sure the envelope is completely and properly identified and sealed, showing the bid name and number in the lower left hand corner.

2. All bids shall be entered on the Bid Form enclosed or a copy thereof. Bids are to be typewritten or in ink. No bidder may withdraw his proposal for a period of thirty (30) days after the date and hour set for the opening of bids.

3. The bidder shall attach the manufacturer's name of the equipment or material to be furnished, type, model numbers, manufacturer's descriptive bulletins and specifications. All guarantees and warranties should be clearly stated. This data shall be in sufficient detail to describe accurately the equipment or material to be furnished. Manufacturer's specifications, in respect to the successful bidder, shall be considered as part of the contract with Wagoner County.

4. Any exceptions or deviations from written specifications shall be identified in writing and attached to the bid form.

5. The enclosed Non-Collusion Agreement MUST be returned with the bid.

6. Wagoner County reserves the right to reject any and all bids and to waive any technicalities in the bidding.

7. Direct purchase of certain items of equipment or material by Wagoner County is exempt from Federal Excise Tax and Oklahoma Sales Tax. In such cases, the bidder shall quote prices which do not include Federal Excise Tax and Oklahoma Sales Tax.

8. Bid must show number of days required for delivery under normal conditions. Contractor must keep the County advised at all times of the status of the order. For any exception to the delivery date as specified on this order, vendor shall give prior notification and obtain written approval from the Purchasing Agent. Default in promised delivery date, or failure to meet specifications, authorizes the County to purchase supplies elsewhere and charge the full increase of cost and handling to defaulting contractor.

9. Bidder agrees to defend and save Wagoner County from and against all demands, claims, costs expense, damage and judgments based upon infringement of any patent to goods specified in this order or the ordinary use or operation of such goods

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by the County or use or operation of such goods in accordance with the bidders' direction.

10. If financing through a Lease/Purchase Agreement is necessary, Bidder is required to provide the arrangements with a financial institution as part of the bid package. See letter included in bid package.

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AFFIDAVIT OF NON-COLLUSION

I, the undersigned, of lawful age, being first duly sworn on oath say that he (she) is the agent authorized by the bidder to submit the above bid. Affiant further states that the bidder has not been a party to any collusion among bidders in restraint of freedom of competition by agreement to bid at a fixed price or to refrain from bidding; or with any state official or employee as to quantity; quality or price in the prospective contract or any other terms of said prospective contract; or in any discussion between bidders and any state official concerning exchange of money or other thing of value for special consideration in the letting of a contract; that the bidder/contractor has not paid, given or donated or agreed to pay, give or donate to any officer or employee of the State of Oklahoma (or other entity) any money or other thing of value, either directly or indirectly in the procuring of the award of a contract pursuant to this bid.

(Typed/Printed)
Name:_____ Title:_____

Signature: _____

Firm: _____ Address: _____

City:_____ State:_____ Zip:_____

Phone: _____ Fax:_____

Subscribed and sworn before me this _____ day of _____, 200____.

_____
Signature: Notary Public (Clerk or Judge)

My commission expires _____

SPECIFICATIONS FOR HYDRAULIC EXCAVATOR

18,000 to 21,000 lb operating weight and 15 ft digging depth class.
Unit shall be new year manufacture, latest design and production, complete, serviced, ready for work, zero (0) hours of operation and include all standard equipment.

	YES	NO
SIZE:		
Unit shall have a minimum digging depth of at least 14 ft 8 inches	_____	_____
OPERATING WEIGHT:		
Minimum operating weigh of 18,000 lbs and a maximum of 21,000 lbs	_____	_____
ENGINE:		
Four cylinder diesel turbocharged with intercooler. 133 cu. in. displacement min.	_____	_____
Minimum SAE Net HP 65 HP at 2,200 RPM	_____	_____
Certified to EPA interim tier 4 emissions. Unit shall be equipped with auto-idle fuel saving system.	_____	_____
PROPEL:		
A separate hydraulic propel motor shall be used for each track for independent track control.	_____	_____
Each track motor shall be completely enclosed within track shoe width to provide motor protection and adequate ground clearance.	_____	_____
Tracks shall be capable of being counter rotated to allow for maximum maneuverability.	_____	_____
High speed travel shall be at least 3.1 MPH for mobility.	_____	_____
Rated drawbar pull shall be a minimum of 14,388 lbs for climbing slopes and turning in soft ground.	_____	_____
SWING:		
Unit shall be capable of 360 degree swing.	_____	_____
0-10 RPM swing revolutions per minute	_____	_____
Swing break shall be hydraulically released, spring applied multiple wet disk type.	_____	_____
UNDERCARRIAGE:		
Unit shall have excavator-type undercarriage.	_____	_____

	YES	NO
Track guides shall be a minimum of 5 bottom rollers on side and one roller on top.	_____	_____
Minimum track length of 9 ft 4 in and minimum gauge of 6 ft 2 in	_____	_____
18 in steel track shoes with rubber pads bonded or bolted to track shoes	_____	_____
HYDRAULIC SYSTEM:		
Hydraulic system shall have variable displacement pumps with load sensing	_____	_____
Hydraulic control quick change for standard or SAE controls	_____	_____
Main control valves shall provide straight line propel with simultaneous boom, arm and bucket functions.	_____	_____
Unit shall have operator selectable application mode control of hydraulic and engine output.	_____	_____
Maximum hydraulic flow for main hydraulic system shall be at least 36 GPM to provide adequate hydraulic flow to all functions.	_____	_____
Implement system operating pressure to be a minimum of 3771 PSI	_____	_____
Aux. hydraulic and plumbing lines to the end of arm for hydraulic thumb use	_____	_____
BOOM, ARM, BUCKET AND BLADE:		
Arm shall have minimum length of 6 ft 11 in	_____	_____
Unit shall be equipped with heavy duty 24 in bucket with matching hydraulic thumb and 48 in hydraulic tilt ditching bucket.	_____	_____
Dozer blade with a minimum of 7 ft 7 in	_____	_____
Maximum digging depth shall be at least 11 ft 8 in with an 8 ft flat bottom.	_____	_____
Reach at ground level shall be at least 22 ft 2 in	_____	_____
Lift capacity over the front or rear at ground level, 15 ft from center-line of swing shall be at least 4,479 lbs.	_____	_____
Lift capacity over the side at ground level, 15 ft from center-line of swing shall be a least 2,350 lbs.	_____	_____
SAE bucket digging force shall be at least 12,368 lbs.	_____	_____

	YES	NO
SAE arm digging force shall be at least 7,209 lbs.	_____	_____
Quick coupler operated from cab, progressive hydraulic thumb mounted to arm of machine.	_____	_____
COOLING SYSTEM: Pressurized liquid cooling system with thermostat. Radiator shall be filled with manufacturer's approved anti-freeze solution that provides protection to at least -30 degrees F.	_____	_____
ELECTRICAL: Batteries shall have a minimum reserve capacity rating of 100 minutes. Alternator shall be a minimum of 30 amps.	_____	_____
24 to 12 volt DC convertor for 12 power port and 2-way radios	_____	_____
STANDARD INSTRUMENTATION: Unit shall have side-mounted gauges and/or monitoring system that will include: engine coolant temperature, engine oil pressure, hydraulic oil lever, air cleaner restriction and alternator charge, fuel and electric hour meter. Engine coolant temperature and engine oil pressure shall include audible and visual warning.	_____	_____
CAB: Cab shall be all-weather steel, lockable, isolation mounted.	_____	_____
Unit shall be equipped with a deep-cushioned, adjustable, full reclining seat and padded arm rest with seat belt.	_____	_____
For optimum ventilation the door, left door window shall be the type that can be locked open. The front window must be storable.	_____	_____
The cab must be heated/air conditioned and include an interior light. Unit is to be equipped with front windshield wiper and washer and floor mat.	_____	_____
ADDITIONAL EQUIPMENT: Unit shall be equipped with all standard equipment and shall include: Key ignition switch with safety start, hand throttle, horn, cold weather starting aid, dry-type air cleaner and restriction indicator, muffler, lockable, engine side shields, engine fuel filter, mounting steps and safety hand holds. GPS monitor system with a minimum of 5 year monitoring at no charge.	_____	_____

WARRANTY:
Standard manufacturer's warranty but also have a minimum 5-year, 5,000 hour extended full machine warranty. (Include copy of extended warranty). Travel time and mileage, overtime, upcharges, will not be charged. If machine is down for 48 hours, a like

	YES	NO
machine will be supplied free of charge.	_____	_____
MANUALS: Successful bidder shall provide 2 copies of operator's manual and 2 copies of current parts manual (1 copy of each manual is to be paper and 1 on CD)	_____	_____
LIGHTING: Work lights: 1 mounted on boom and 1 mounted on frame or cab	_____	_____
DELIVERY: Machine is to be delivered to the Wagoner County District 3 Barn. Time of delivery may be an important factor in determining successful bidder. Bid may be thrown out if not received by date provided on Bid Form by bidder.	_____	_____

A 2008 Gradall, Model XL3100 Series III, will be used as a trade-in on this bid. The Gradall is equipped with upper and lower air conditioning, 60" ditch cleaning bucket, 4 wheel drive, AM/FM radio and fixed thumb grapple. The machine has 602 hours and 2024 miles. For questions or to inspect the equipment, please call 918-486-2170.

The winning bidder will provide financing information for the full price of the Excavator for 5 and 6 years (as specified in the bid document) and will write the County a check for the Gradall.

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BID FORM

INVITATION FOR SEALED BIDS FOR A NEW HYDRAULIC EXCAVATOR
WITH A 2008 GRADALL USED AS A TRADE-IN

DATE AND TIME OF OPENING: _____

Bidder agrees to furnish Wagoner County with NEW HYDRAULIC EXCAVATOR PER ATTACHED SPECIFICATIONS.

PRICE FOR EXCAVATOR: $_____

TRADE-IN ALLOWED FOR GRADALL: $_____

The undersigned acknowledges receipt of the following Addenda. (Give number and date of each):

_____
_____
_____

Delivery will be available in not more than _____ days after receipt of order.

I have examined the terms and specifications and instructions to bidders herein, and agree, provided I am awarded a contract, to provide the above described items for the sum shown in accordance with the terms and specifications stated herein. All deviations are in writing and attached hereto.

MUST BE SIGNED BY AUTHORIZED AGENT TO BE VALID

SIGNATURE: _____

PRINTED NAME: _____

TITLE: _____ FIRM NAME: _____

ADDRESS: _____

PHONE NO: _____ DATE: _____

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BID FORM - FINANCING

Financial Institution: _____

Item: Hydraulic Excavator

Amount Financed: $_____

Annual Rate for 60 Months: _____%

Monthly Payment for 60 Months: $_____

Annual Rate for 72 Months: _____%

Monthly Payment for 72 Months: $_____

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Lease-Purchase Requirements

Under the Constitution of the State of Oklahoma, County governments are not allowed to incur indebtedness except by a vote of the people. Under 62 O.S. 430.1, however, the County is allowed to rent, lease or purchase property under a lease purchase agreement effective for the fiscal year but which may contain provisions for mutual ratification of renewal each fiscal year pending funds being available.

If the County has specified that the item to be bid is to be financed through a lease-purchase agreement and has indicated the length of time the financing is to occur, then the vendor must provide the financing for the item bid as part of the bid package. The vendor may contact financial institutions to procure the financing. If more than one institution responds, the vendor is to select the most appropriate response and include it in the bid package when submitted. The financing arrangement may be considered by the County when selecting the successful vendor.

The State Auditor has provided a lease-purchase agreement that meets the requirements of the law for Counties which is included in this bid package. If another form is used, it must contain ALL the terms of the one approved by the State Auditor.

For vendors who wish to provide the financing through a financial institution, a list of Wagoner County financial institutions which are familiar with the lease-purchase requirements of the County is included in the bid package.

While the County is interested in competitive financing rates, it is recommended that the vendor utilize an institution that is familiar with the County lease-purchase agreement.

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The selected vendor is responsible for arranging financing on lease purchase items. Please consider using a Wagoner County financial institution to secure financing.

Wagoner County Financial Institutions:

First Bank & Trust Co.
Attn: Charles Adams
111 S Casaver Ave.
Wagoner, OK 74467
Ph: (918)485-2173

American Bank
Attn: Jimmy Hall
201 E Cherokee
Wagoner, OK 74467
Ph: (918)485-5555

Armstrong Bank
Attn: Marshall Hammons
1500 W Hwy 51
Wagoner, OK 74467
Ph: (918)485-4104

Arvest Bank
100 S Gertrude
Wagoner, OK 74467
Ph: (918)485-7380

First State Bank
P O Box 89
Porter, OK 74454
Ph: (918)483-2241

Wagoner County Purchasing Agent:
Ph: (918) 485-7712 or 485-2216
Fax: (918) 485-8635

LEASE PURCHASE AGREEMENT FOR EQUIPMENT

THIS AGREEMENT IS MADE ON THIS ____ DAY OF _____, 20 _, BY AND BETWEEN THE BOARD OF COUNTY COMMISSIONERS OF _____ COUNTY, OKLAHOMA, DESIGNATED THROUGHOUT THIS AGREEMENT AS THE LESSEE, AND _____ DESIGNATED THROUGHOUT THIS AGREEMENT AS THE LESSOR.

I. EQUIPMENT

SUBJECT TO THE TERMS AND CONDITIONS AS SET FORTH IN THIS AGREEMENT, THE LESSOR LEASES TO THE LESSEE THE FOLLOWING DESCRIBED EQUIPMENT, ALL OF WHICH SHALL BE DESIGNATED THROUGHOUT THIS INSTRUMENT AS THE "EQUIPMENT":

MAKE MODEL	DESCRIPTION	QUANTITY	UNIT PRICE	LEASE PURCHASE PRICE

II. PAYMENT OF LEASE PURCHASE INSTALLMENTS

IN CONSIDERATION OF THE AGREEMENT BY THE LESSOR TO LEASE PURCHASE THE EQUIPMENT, THE LESSEE PROMISES TO PAY THE LESSOR, FOR THE EQUIPMENT, THE SUM OF $_____ PER _____, DURING THE TERM OF THIS AGREEMENT OR ANY RENEWAL OF THE AGREEMENT. IN THE ALTERNATIVE, THE LESSEE PROMISES TO PAY TO THE LESSOR LEASE PAYMENTS AS SET FORTH IN THE LEASE SCHEDULE WHICH IS ATTACHED TO THIS INSTRUMENT AND WHICH IS INCORPORATED BY REFERENCE NO PAYMENT SHALL BE MADE BY THE LESSEE UNDER THE TERMS OF THIS AGREEMENT UNLESS THE EQUIPMENT SHALL HAVE BEEN DELIVERED TO THE REQUISITIONING AGENCY AND IS AT ALL TIMES, EXCEPT WHEN MADE NECESSARY BY AN EMERGENCY, RETAINED BY THE AGENCY.

III. LEASE TERM

THIS LEASE SHALL COMMENCE ON THE DATE THE EQUIPMENT IS ACCEPTED BY THE LESSEE AND SHALL AUTOMATICALLY TERMINATE, UNLESS RENEWED IN ACCORDANCE WITH THE TERMS SET FORTH BELOW, AT THE END OF THE FISCAL YEAR OF THE STATE OF OKLAHOMA DURING WHICH THE LEASE IS COMMENCED.

IV. OPTION TO RENEW

THE LESSEE IS HEREBY GRANTED _____ SUCCESSIVE OPTIONS TO RENEW THIS LEASE FOR ADDITIONAL TERMS NOT TO EXCEED ONE FISCAL YEAR EACH, PLUS ONE FINAL OPTION TO RENEW THIS LEASE FOR A PERIOD OF _____ MONTHS, ALL UPON THE SAME TERMS AND CONDITIONS, PROVIDED THAT SUCH OPTIONS MAY BE EXERCISED, AS A MATTER OF RIGHT, SOLELY AND EXCLUSIVELY BY THE LESSEE. THE EXERCISE OF ANY SUCH OPTION SHALL BE ACCOMPLISHED BY THE ISSUANCE OF A PURCHASE ORDER UPON OR WITHIN TEN (10) DAYS AFTER THE EXPIRATION OF THE TERMS OF THIS LEASE OR ANY RENEWAL THEN IN EFFECT.

V. TITLE TO EQUIPMENT

THE EQUIPMENT IS AND SHALL AT ALL TIMES DURING THE TERM OF THIS LEASE AND ANY RENEWAL TERMS REMAIN THE SOLE PROPERTY OF THE LESSOR AND THE LESSEE SHALL HAVE OR ACQUIRE NO RIGHT, OR TITLE TO THE EQUIPMENT UNTIL THE FINAL PAYMENT IS MADE.

VI. OPTION TO PURCHASE

IN THE EVENT THE LESSEE SHALL HAVE EXERCISED ALL OF ITS OPTIONS FOR RENEWAL OF THIS LEASE AS PROVIDED IN PARAGRAPH IV, ABOVE, UPON TENDER OF THE LAST LEASE PAYMENT DUE UNDER THE LAST RENEWAL TERM, THE LESSEE SHALL ACQUIRE TITLE TO AND OWNERSHIP OF THE EQUIPMENT. IN THE ALTERNATIVE, THE LESSEE, AT ITS SOLE AND EXCLUSIVE OPTION, MAY PURCHASE THE EQUIPMENT AT ANY TIME DURING THE TERM OF THIS LEASE OR DURING ANY RENEWAL TERM AS PROVIDED BY PARAGRAPH IV, ABOVE, GIVING WRITTEN NOTICE TO THE LESSOR OF LESSEE'S INTENT TO PURCHASE ACCOMPANIED BY A SINGLE, FINAL PAYMENT OF $ _____ (IF THE PURCHASE PRICE IS TO BE REDUCED BY A PERCENTAGE OF THE LEASE PAYMENTS MADE PRIOR TO THE EXERCISE OF THE PURCHASE OPTION, DESCRIBE FULLY, IN THE SPACE PROVIDED, THE MANNER IN WHICH SUCH REDUCTION SHALL BE COMPUTED. IF ADDITIONAL SPACE IS NECESSARY, ATTACH A WRITTEN SCHEDULE OF PURCHASE OPTION PRICES WHICH SHALL BE INCORPORATED IN THE TERMS OF THIS AGREEMENT BY REFERENCE). IN THE EVENT THE LESSEE SHALL EXERCISE ANY OPTION TO PURCHASE THE EQUIPMENT, THE LESSOR ASSIGNS TO THE LESSEE ALL RIGHTS AND CLAIMS WHICH THE LESSOR MAY HAVE OR ACQUIRE ARISING UNDER THE ANTITRUST LAWS OF THE UNITED STATES OR OF ANY STATE REGARDING THE EQUIPMENT PURCHASED UNDER THE TERMS OF THIS AGREEMENT.

VII. DELIVERY AND RETURN OF EQUIPMENT

THE LESSOR SHALL BEAR ALL COSTS OF SHIPPING AND DELIVERING THE EQUIPMENT TO THE LESSEE. INSTALLATION COSTS, IF ANY, SHALL BE BORNE BY THE LESSOR. THE EQUIPMENT SHALL BE DELIVERED TO OR INSTALLED AT THE LOCATION DESIGNATED BY THE LESSEE.

VIII. REPAIRS AND MAINTENANCE

THE LESSEE SHALL MAINTAIN THE EQUIPMENT IN GOOD WORKING ORDER AND SHALL MAKE ALL NECESSARY ROUTINE ADJUSTMENTS AND REPAIRS, AS A RESULT OF FAIR WEAR AND TEAR, ALL AT THE EXPENSE OF THE LESSEE. THE LESSOR AND THE LESSEE MAY PROVIDE FOR THE MAINTENANCE AND REPAIR OF THE EQUIPMENT BY SEPARATE WRITTEN AGREEMENT, AND, IN THE EVENT THEY MAKE SUCH AGREEMENT, ITS TERMS SHALL SUPERSEDE AND REPLACE THE PROVISIONS OF THIS PARAGRAPH OF THIS LEASE.

IX. TAXES

THE LESSOR SHALL FORTHWITH PAY ALL TAXES WHICH MAY BE IMPOSED UPON IT WITH RESPECT TO THE EQUIPMENT.

X. INSURANCE

THE LESSEE SHALL OBTAIN AND MAINTAIN FIRE AND EXTENDED COVERAGE CASUALTY INSURANCE COVERING THE EQUIPMENT FROM THE TIME THE EQUIPMENT IS DELIVERED UNTIL THIS LEASE IS TERMINATED. THIS INSURANCE SHALL BE IN A FORM ACCEPTABLE TO THE LESSOR AND SHALL INSURE THE FULL VALUE OF THE EQUIPMENT AGAINST THE RISK OF LOSS OR DAMAGE. THE LESSEE SHALL PROVIDE THE LESSOR WITH WRITTEN NOTICE AT LEAST TEN (10) DAYS PRIOR TO ANY CHANGE IN THE INSURANCE REQUIRED UNDER THE TERMS OF THIS PARAGRAPH.

XI. PATENTS

IN THE EVENT ANY SUIT IS INSTITUTED AGAINST THE LESSEE WHICH IS BASED UPON ANY CLAIM THAT ANY OF THE EQUIPMENT IS IMPLICATED IN AN INFRINGEMENT OF ANY PROVISION OF UNITED STATES PATENT LAW, THE LESSOR SHALL, AT ITS OWN EXPENSE, DEFEND SUCH SUIT AGAINST THE LESSEE; PROVIDED, LESSEE PROVIDES THE LESSOR WITH PROMPT NOTICE OF THE INSTITUTION OF SUCH SUIT AND PERMITS THE LESSOR TO FULLY PARTICIPATE IN THE DEFENSE. THE LESSEE SHALL ALSO RETAIN THE RIGHT TO PARTICIPATE IN SUCH DEFENSE AND SHALL, IN ANY EVENT, PROVIDE: THE LESSOR WITH ALL AVAILABLE INFORMATION, ASSISTANCE AND AUTHORITY TO ENABLE THE LESSOR TO CONDUCT THE DEFENSE. NO COMPROMISE OR SETTLEMENT OF SUCH SUIT RESULTING IN A JUDGMENT AGAINST THE LESSEE SHALL OBLIGATE OR BIND THE

LESSOR UNLESS THE: LESSOR SHALL HAVE ACCEPTED SUCH COMPROMISE OR SETTLEMENT. THE LESSOR SHALL HAVE THE RIGHT TO ENTER INTO NEGOTIATIONS FOR AND EFFECT A COMPROMISE OR SETTLEMENT OF SUCH PATENT ACTION, BUT NO SUCH COMPROMISE OR SETTLEMENT SHALL BE BINDING UPON LESSEE UNLESS APPROVED By LESSEE. SUBJECT ONLY TO THE TERMS OF THIS PARAGRAPH, THE LESSOR SHALL HOLD THE LESSEE HARMLESS FROM ANY LIABILITY ARISING FROM ANY PATENT SUIT SUCH AS IS DESCRIBED ABOVE. IN THE EVENT ANY OF THE EQUIPMENT SHALL BE HELD, IN ANY SUIT, TO CONSTITUTE AN INFRINGEMENT OF PATENT LAW, AND ITS USE SHALL BE ENJOINED, THEN THE LESSOR SHALL, AT ITS SOLE OPTION AND AT THE LESSOR'S EXPENSE:

1. OBTAIN FOR THE LESSEE THE RIGHT TO CONTINUE TO USE THE EQUIPMENT;

2. REPLACE OR MODIFY THE EQUIPMENT IN A MANNER ACCEPTABLE TO THE LESSEE SO THAT THE EQUIPMENT NO LONGER INFRINGES ANY PROVISION OF PATENT LAW.

XII. FUNDING

NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, THE PARTIES ACKNOWLEDGE AND AGREE THAT FUNDS TO BE PAID BY THE LESSEE UNDER THE TERMS OF THIS LEASE WILL BE AVAILABLE ONLY AS APPROPRIATED ON A FISCAL YEAR-TO-FISCAL YEAR BASIS BY PROPERLY CONSTITUTED LEGAL AUTHORITY. IN THE EVENT THAT THE LESSEE DETERMINES THAT SUFFICIENT FUNDS HAVE NOT BEEN APPROPRIATED To MAKE THE PAYMENTS REQUIRED UNDER THE TERMS OF THIS AGREEMENT, THE OBLIGATIONS OF THE LESSEE UNDER THIS AGREEMENT SHALL TERMINATE. IN SUCH EVENT, THE LESSEE SHALL GIVE PROMPT WRITTEN NOTICE OF TERMINATION TO THE LESSOR.

XIII. ASSIGNMENT

THE LESSOR MAY, WITH THE PRIOR WRITTEN APPROVAL OF THE LESSEE, ASSIGN ITS RIGHT TO RECEIVE PAYMENT OF LEASE DUE UNDER THE TERMS OF THIS AGREEMENT. HOWEVER, ANY SUCH ASSIGNMENT SHALL NOT RELIEVE THE LESSOR OF ITS RESPONSIBILITIES TO PERFORM THE DUTIES AND OBLIGATIONS IMPOSED UPON IT BY THIS AGREEMENT.

XIV. ROAD MACHINERY AND EQUIPMENT

IF THE TERMS OF THIS AGREEMENT ARE IN REGARDS TO ROAD MACHINERY OR EQUIPMENT, THE LESSEE ASSUMES ALL RISK AND LIABILITY FOR AND SHALL HOLD THE LESSOR HARMLESS FROM ALL DAMAGES TO PROPERTY AND INJURIES AND DEATH TO PERSONS ARISING OUT OF THE USE, POSSESSION OR TRANSPORTATION OF SAID ROAD MACHINERY OR EQUIPMENT.

XV. ENTIRE AGREEMENT OF THE PARTIES AND SEVERABILITY

EXCEPT As OTHERWISE PROVIDED IN THE ABOVE TERMS AND CONDITIONS, THIS LEASE, TOGETHER WITH APPLICABLE PURCHASE ORDERS AND THE INVITATION TO BID, CONSTITUTE THE ENTIRE AGREEMENT OF THE PARTIES. THIS AGREEMENT MAY NOT BE MODIFIED OR TERMINATED EXCEPT AS PROVIDED IN THE ABOVE TERMS AND CONDITIONS OR BY WRITTEN AGREEMENT OF THE LESSOR AND THE LESSEE. IF ANY PROVISION OF THIS AGREEMENT SHALL BE DETERMINED TO BE INVALID, IT SHALL BE CONSIDERED AS DELETED FROM THIS AGREEMENT AND NO REMAINING PROVISION OF THE AGREEMENT SHALL BE DEEMED INVALID.

XVI. CHOICE OF LAW

THIS LEASE SHALL BE GOVERNED IN ALL RESPECTS BY THE LAWS OF THE STATE OF OKLAHOMA. IN THE EVENT ANY LITIGATION SHALL OCCUR CONCERNING THE TERMS AND CONDITIONS OF THIS LEASE OR THE RIGHTS AND DUTIES OF THE PARTIES, THE PARTIES AGREE: THAT ANY SUCH SUIT SHALL BE MAINTAINED IN THE DISTRICT COURT IN AND FOR _____ COUNTY (LEASING COUNTY), STATE OF OKLAHOMA.

BOARD OF COUNTY COMMISSIONERS AT

_____, OKLAHOMA

_____

_____

_____

FOR THE LESSOR:

_____

TITLE

ATTEST: _____

COUNTY CLERK