



LEASE AGREEMENT

THIS AGREEMENT is made by and between

Tomco₂ Systems
3340 Rosebud Road

and

City of Minneapolis
4300 Marshall St. NE
Minneapolis, MN 55421

Loganville, Georgia 30052
a Georgia corporation
(hereinafter referred to as "Lessor")

(hereinafter referred to as "Lessee")
Federal ID #

For and in consideration of the mutual promises and mutual benefits herein the parties agree as follows:

1. RENTAL. During the term of this Agreement and any renewal thereof and upon the terms and conditions hereinafter stated, Lessor hereby leases to Lessee and Lessee hereby leases from Lessor the equipment ("Equipment") for use at Lessee's facility(ies) ("Facilities") at the location(s) and for the monthly rental ("Rental Charge") and other charge(s) set forth below or on the attached "Schedule of Additional Up-front Costs" (incorporated herein by this reference) or both.

Description of Equipment	Facility Where Located	Term Rent	Post Term	
			Rent	Purchase Price
pH Controlled Pressurized Solution Feed Panel (4") – USED Solution Diffuser	Minneapolis WW Minneapolis, MN	\$1500.00 Per Month	\$1500.00 Per Month	N/A

2. TERM. The term of this Agreement shall commence upon the first day of April, 2014 and shall continue for Two (2) months. This Agreement shall hereafter continue on a month-to-month basis unless (or until) written notice of termination is given by either party to the other at least thirty (30) days prior to the expiration of the initial term (or thirty (30) days prior to the expiration of extension thereof). The termination date of this agreement is January 31st, 2015.
3. INSTALLATION. By Lessee
4. MAINTENANCE. Lessor shall provide normal and reasonable maintenance or repair to the Equipment leased hereunder at its expense. Lessee shall diligently inspect the Equipment on a daily basis and shall immediately report any abnormal or unusual conditions or circumstances to Lessor. Lessee shall not make any repairs or modifications to the Equipment. If Lessor is called upon by Lessee to service any equipment pursuant to this Agreement and, upon Lessor's inspection of such equipment, Lessor determines that maintenance work is not needed, Lessor shall be entitled to receive payment for such service call in accordance with its then current schedule of prices. Lessor shall, at Lessee's request, maintain Lessee storage equipment. In such event, Lessee shall pay Lessor for such maintenance in accordance with Lessor's then current schedule of prices.
5. PAYMENT OF RENT. The Rental Charges shall be payable in advance on the first day of each month during the term of this Agreement. Monthly rental for any partial month shall be prorated at the rate of one-thirtieth (1/30th) of the monthly Rental Charge per day. Lessee shall pay all freight and all rigging costs, if any, for installation and removal, and shall reimburse Lessor costs in this regard. Lessor may charge Lessee at installation for the estimated minimum removal costs.
6. TITLE. Title to the Equipment shall at all times remain in Lessor. Lessee agrees to take all necessary action to protect Lessor's title to the Equipment and to maintain the Equipment free and clear of any liens and encumbrances. Notwithstanding any manner in which the Equipment may be affixed to the real property of Lessee, the parties agree that the Equipment is not intended to and shall not become a fixture to such real property.

7. **MODIFICATION/RELOCATION.** Lessee shall not make any modifications, changes, or alterations to the Equipment without first obtaining Lessor's written permission, including, without limitation, the removal or alteration of, or addition to, any trademark, trade name, or other label affixed to Equipment by Lessee. Lessee shall not relocate the Equipment without Lessor's approval. The expense of any relocation of Equipment shall be borne by Lessee.
8. **USE AND INDEMNITY.** Lessee agrees to use the Equipment in conjunction only with carbon dioxide and Lessee shall operate the Equipment in compliance with the manufacturer's recommendations and all applicable laws, orders or regulations of any applicable governmental or public authority.
9. **RISK OF LOSS.** Lessee agrees that until the Equipment is returned to Lessor, Lessee assumes all risk of loss or damage to the Equipment unless caused by negligence of Lessor. Lessee agrees to pay Lessor on demand the actual cost of repair for any damage to the Equipment. In the event that the Equipment is damaged beyond repair, Lessee agrees to pay to Lessor on demand the full replacement value of the Equipment at Lessor's then current valuations. Lessee agrees to pay the repair or replacement cost of the equipment under its self-insurance program. The estimated full replacement cost of the equipment shall not exceed \$40,000.00. A copy of the Minneapolis self-insured certificate is attached to this agreement.
10. **RETURN OF EQUIPMENT.** Upon the termination of the lease of Equipment, Lessee shall surrender and return the Equipment to Lessor in good and functioning condition, ordinary wear and tear excepted, and Lessor shall have the unrestricted right, with or without notice and legal process, to enter the premises and remove the Equipment. In the event of legal process, Lessee shall reimburse Lessor for all expenses incurred as a result of the repossession of the Equipment and shall indemnify and hold Lessor harmless from any and all claims, loss, costs and expense, including reasonable attorneys' fees, arising from such repossession.
11. **LATE PAYMENT.** All Rental Charges not timely paid shall bear interest at the rate of one and one-half percent (1.5%) per month or portion thereof (or such lesser amount as maybe the maximum permitted by law) that such amount remains outstanding after the due date. If Lessee fails to timely pay Rental Charges for a period of thirty (30) days, in addition to other available remedies, Lessor may suspend performance and Lessee shall pay any attorneys' fees and/or other costs incurred by Lessor in collecting any amount due hereunder.
12. **WARRANTIES.** Lessor warrants that Lessor shall have good title and right to lease the Equipment to Lessee free of encumbrances to Lessee, and that any Equipment manufactured by it and leased or supplied hereunder shall be free from defects in materials and workmanship at the time of delivery. Lessor hereby assigns to Lessee any manufacturer's warranties for Equipment leased hereunder by Lessee. **LESSOR MAKES NO WARRANTIES FOR EQUIPMENT NOT MANUFACTURED BY LESSOR. LESSOR MAKES NO OTHER WARRANTIES, EXPRESSED OR IMPLIED, AND MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**
13. **REMEDIES.** Lessee's sole remedy and measure of recoverable damage for breach of warranty shall be Lessor's replacement or repair, at Lessor's option, of any nonconforming Equipment promptly after Lessor receives proper notice from Lessee, no later than fifteen (15) days after delivery to Lessee of the Equipment, and makes verification of non-conformance.
14. **LIMITATION OF LIABILITY.** Lessee understands and acknowledges that there are hazards associated with the use and storage of carbon dioxide and the Equipment. Lessee shall be responsible for warning, protecting, and educating its employees and other persons exposed to such hazards due to Lessee's storage or use of carbon dioxide or Equipment. Lessee assumes all risk of liability for loss, damage or injury to persons or property of Lessee or others arising out of the delivery, presence or use of carbon dioxide whether used alone or in combination with other substances, or arising out of the delivery, presence or use of the Equipment. Except direct damage from breach of contract, neither party shall be liable to the other for any incidental, consequential, indirect, special or other damages, that are related to this Agreement, or the Equipment, whether in tort (including negligence), contract, or other legal theory. Lessor agrees to indemnify Lessee for damages of Lessor to third parties to the extent caused by Lessor's negligence, gross negligence or willful misconduct in performance of this Agreement. Lessee shall otherwise indemnify and hold harmless Lessor from any claims, proceedings, liability, damages, or losses, including related costs and expenses, sought by third parties arising from or in any way related to performance, conformance or quality of Lessor's Equipment.
15. **EXCUSE OF PERFORMANCE.** Neither party hereto shall be liable to the other for default or delay in performance of any of its obligations hereunder, other than a default in payment, due to causes or events beyond its control, including, without limitation, any act of God, fire, riot, labor problems, legal action, present or future law, governmental order, rule or regulation, accidents to machinery or pipelines, freezing of pipelines, temporary failure of natural gas, electricity or fuel supply, and any other causes whether of the kind herein enumerated or otherwise, not reasonably within the control of the party claiming suspension and which by exercising due diligence such party is unable to prevent or overcome. Once any such contingency has terminated, both parties shall be bound by the obligations set forth herein.
16. **SETOFF, COUNTERCLAIM, TAXES.** All payments to Lessor by Lessee shall be made without setoff or counterclaim. Lessee shall pay or reimburse Lessor for any tax, assessment or other charge including sales, use, excise and property taxes with respect to, or which is ascertained by reference to, or measured by, the ownership, possession, or use of Equipment or services furnished by Lessor hereunder by virtue of any present or future federal, state or other law applicable thereto.
17. **MISCELLANEOUS.** This Agreement shall be binding upon and inure to the benefit of the parties and their successors and assigns and Lessee shall not assign this Agreement without Lessor's prior written consent. This is a commercial contract. If any provision of this Agreement is held invalid under applicable law, such a provision shall be waived to the extent of such invalidity and the balance of the Agreement shall continue in full force and effect. Headings are inserted in this Agreement for convenience only and shall not affect the terms, conditions or interpretations thereof. All notices or other communications required or desired to be given under this Agreement shall be in writing, and shall be delivered by U.S. mail, certified, postage prepaid, return receipt requested and addressed to the party for whom intended at the address set forth below. Notices shall be deemed given upon deposit in the mail. This Agreement represents the entire

agreement between the parties hereto and neither party has relied upon any fact or representation not expressly set forth herein; and this Agreement may not be modified or amended except by written instrument executed by the parties. No term or condition in any purchase order of Lessee issued or purported to be issued with respect to the sale of carbon dioxide or lease of Equipment shall vary.

(Lessee)

TOMCO₂ SYSTEMS

Approved: _____
Dept Head responsible for Contract Monitoring
for this contract

By: _____

Name: _____

Countersigned: _____
Finance Officer Designee

Date: _____

Lease # _____

Approved as to Form
By: _____
Assistant City Attorney

LEASE AGREEMENT NO. _____
SUPPLEMENT
SCHEDULE OF ADDITIONAL UPFRONT COSTS

Equipment	Cost Item	Cost	Post Term	
			Rent	Purchase Price
All	Preparation for shipment/Loading	\$1000.00		
All	Freight to the job-site	\$1000.00		
All	Return Freight	\$1000.00		
All	Start-up and training	\$4000.00		
	Solution Diffuser	\$1700.00		
	pH electrode	\$800.00		
<u>Total</u>	<u>Total Estimated upfront Costs</u>	<u>\$9,500.00</u>		



Office of the City Attorney

Susan L. Segal
City Attorney

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January 9, 2014

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TO: CITY OF MINNEAPOLIS CONTRACTORS

Pursuant to authority granted in Minn. Stat. §471.981, please be advised that the City of Minneapolis is a self-insured municipality. Minn. Stat. §466.04 (2012) limits liability of a municipality on any claim within the scope of Minn. Stat §§466.01 to 466.15 (2012) to \$500,000 to any claimant on or after July 1, 2009; and \$1,500,000 for all claims arising out of a single occurrence for claims arising on or after July 1, 2009.

The City of Minneapolis also is self-insured under the State of Minnesota's workers compensation laws. Finally, any contract entered into by the appropriate officials of the City of Minneapolis can be enforced in state district court.

Very truly yours,

A handwritten signature in black ink that reads "Susan Segal". The signature is written in a cursive style with a large, looped "S" and "G".

SUSAN L. SEGAL
City Attorney

SLS:lw.2014letters1.9.14.selfinsuredltr



www.ci.minneapolis.mn.us

Affirmative Action Employer