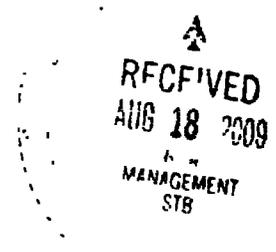




2200 IDS Center  
80 South 8th Street  
Minneapolis MN 55402-2157  
tel 612.977.8400  
fax 612.977.8650



August 14, 2009

John R. Brennan  
612.977.8195  
jrbrennan@briggs.com

**VIA ELECTRONIC FILING AT WWW.STB.DOT.GOV**

Secretary, Surface Transportation Board  
Washington, D.C.

RECORDATION NO. 28014 FILED

AUG 18 '09 2-37 PM

Re: Recordation

SURFACE TRANSPORTATION BOARD

Dear Secretary:

I have attached a true and correct copy of the document described below, to be recorded pursuant to Section 11301 of Title 49 of the U.S. Code.

This document is a Lease Agreement (the "Lease"), a primary document, dated May 22, 2009.

The names and addresses of the parties to the Lease are as follows:

Lessor:

Lessee:

Brandt Road Rail Corporation  
302 Mill Street, P.O. Box 1876  
Regina, Saskatchewan  
S4P 3E1

Drill Tech Drilling & Shoring, Inc.  
2200 Wymore Way  
Antioch, CA 94509

A description of the equipment covered by the Lease is as follows:

Certain railway equipment including one (1) Brandt Power Unit (serial number INPTXBEX09D779246) with one (1) 3028 Rail Tie Loader and one (1) 30' 5KW magnet generator.

A fee of \$41.00 will be sent under separate cover.

A short summary of the Lease to appear in the index is as follows:

Lease Agreement, a primary document, dated May 22, 2009 by and between Brandt Road Rail Corporation, 302 Mill Street, P.O. Box 1876, Regina, Saskatchewan, S4P 3E1, as Lessor, and Drill Tech Drilling & Shoring, Inc., 2200 Wymore Way, Antioch, CA 94509, as Lessee, and covering certain railway equipment including one (1) Brandt Power Unit (serial number INPTXBEX09D779246) with one (1) 3028 Rail Tie Loader and one (1) 30' 5KW magnet generator.

**BRIGGS AND MORGAN**

**Secretary, Surface Transportation Board  
August 14, 2009  
Page 2**

**Please contact me with any questions and provide email confirmation to [JBrennan@Briggs.com](mailto:JBrennan@Briggs.com) to confirm formal acceptance of this recordation.**

**Very truly yours,**

A handwritten signature in black ink, appearing to read "John R. Brennan", with a long, sweeping underline.

**John R. Brennan**

**Briggs and Morgan, P.A.,  
attorneys for Brandt Road Rail Corporation**

**Attached: Lease**

THE UNIVERSITY OF CHICAGO

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CLASSIFICATION: [Faint text]

ADDITIONAL INFORMATION: [Faint text]



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80 South 8th Street  
Minneapolis MN 55402-2157  
tel 612.977.8400  
fax 612.977.8650

RECEIVED  
AUG 18 2009  
MANAGEMENT  
STB

August 14, 2009

John R. Brennan  
612.977.8195  
jbrennan@briggs.com

**VIA CERTIFIED MAIL**

Surface Transportation Board  
395 E Street, SW  
Washington, DC 20423-000

**Re: Recordation Fee**

Dear Secretary:

Enclosed please find a check in the amount of \$41.00 as payment of the filing fee for that certain Recordation filed on the date hereof, a copy of which is enclosed.

Please contact me with any questions.

Very truly yours,

John R. Brennan

Enclosure



# **Brandt**

## **ROAD RAIL CORPORATION**

**THIS LEASE AGREEMENT (the "Lease") dated 5/12, 2009 MADE BETWEEN Drilltech Drilling and Shoring, Inc. (hereinafter called "Lessee") and BRANDT ROAD RAIL CORPORATION (hereinafter called "Lessor")**

For good and valuable consideration, the parties agree as follows:

### **1. Lease/Term**

Subject to the terms of this Lease, Lessor leases to Lessee and Lessee leases from Lessor, one (1) Brandt Power Unit (serial number INPTXBGX09D779246) with one (1) 3028 Rail Tie Loader and one (1) 30' 5KW magnet generator, (hereinafter called the "Equipment") Notwithstanding the delivery of the Equipment to, and its possession and use by Lessee, Lessor shall retain the full legal title to the Equipment, it being expressly understood that this Lease is an agreement of lease only.

The initial non-cancellable term of the Lease shall begin on the date hereof and expire 5 months thereafter.

In the event the purchase option in paragraph 12 is not exercised, this lease agreement shall be automatically renewed for 30 day increments until 30 days written notice is given by Lessee and the Equipment is returned to Lessor's point of shipment.

### **2. Non-Cancelable Lease**

**THIS LEASE CANNOT BE CANCELLED OR TERMINATED EXCEPT AS EXPRESSLY PROVIDED HEREIN.**

### **3. Title**

At all times, the Equipment shall be the sole and separate property of Lessor, and Lessee shall have no property rights therein, but only the right to use the Equipment upon the conditions of this Lease.

### **4. Lease Payments**

Lessee shall pay to Lessor for use of the Equipment during the term of this Lease monthly lease payments in the amount of \$25,000 USD plus any applicable taxes (the "Periodic Lease Amount"). The first and last payment is due and must be paid upon signing of the lease agreement before delivery can be made. Lessor reserves the right to charge interest at a per annum rate equal to 18% on any overdue balance.

### **5. Assignment; Liens**

The Equipment shall not be sold, transferred, delivered, or sublet to any other person, entity, or corporation, and Lessee agrees not to sell, assign, sublet, hypothecate or otherwise encumber or suffer a lien upon or against any interest in this Lease or Equipment.

Lessor may at any time without notice to Lessee, but subject to the rights of Lessee hereunder, transfer or assign the Lease or any Equipment or any lease payment or other moneys and benefits due or become due hereunder. In the event of any assignment by Lessor, Lessee agrees to recognize such assignment and waives notice thereof. Upon demand, Lessee agrees to provide an acknowledgment, on a form as Lessor may require, to any assignee

of the terms and conditions of this Lease and the payments made hereunder.

### **6. Taxes**

Lessee agrees to pay Lessor or its assigns, when due, all license fees, assessments, sales, use, personal property, excise, withholding and other taxes (except for taxes based on Lessor's income), now or hereafter imposed on the Equipment or the possession, operation or use thereof. Lessor reserves the right, at any time during the term of the Lease, to request Lessee to pay, and Lessee shall, forthwith upon such a request, pay to Lessor any such remaining taxes.

### **7. Risk of Loss or Damage**

Lessee shall bear the entire risk of loss or damage to the Equipment from any cause whatsoever, other than causes related to defects in the Equipment, from the date of delivery to Lessee until it is returned pursuant to paragraph 11 below and received by Lessor. Lessee shall promptly notify Lessor of any loss or damage. No loss or damage to the Equipment, other than loss or damage related to defects in the Equipment, shall relieve Lessee of the obligation to pay the Periodic Lease Amount or perform any other obligation under this Lease. In the event of loss or damage, Lessee, at Lessor's option, shall either place the Equipment in good condition and repair, replace the Equipment with the identical product, or pay Lessor the then current fair market value of the Equipment as determined by the Lessor acting reasonably and in good faith.

### **8. Use**

Lessee will operate and maintain the Equipment within the USA only and in accordance with Lessor's manuals and instructions, by competent and duly qualified personnel only in accordance with applicable governmental laws and regulations, if any, and for business, or commercial purposes only, and not for personal use.

Lessee will not alter, modify or make additions or improvements to the Equipment without Lessor's prior written consent. Unless otherwise agreed in writing, any such modifications, additions or improvements shall forthwith upon the making thereof: (i) become the property of Lessor without any further repayment by Lessee, (ii) be free and clear of all liens and encumbrances, and (iii) become subject to the terms of this Lease.

### **9. Repairs**

Subject to Lessor's obligation to repair defects in the Equipment covered by Lessor's warranty obligations, Lessee, at its own costs and expense, shall keep the Equipment in good repair, condition and working order in accordance with manufacturer's manuals and instructions and shall furnish all required parts, mechanisms,

devices, and servicing, and said furnished items shall thereupon become the property of Lessor for all purposes hereunder.

#### 10. Insurance

During the term of this Lease, Lessee, at its sole expense, shall maintain insurance with a company or companies, of recognized responsibility against: (i) All risk of loss and physical damage to the Equipment in amounts not less than the replacement value of the Equipment; and (ii) comprehensive public liability and property damage insurance with respect to the condition, possession, maintenance, operation and use of the Equipment, for an amount of not less than \$2,000,000 USD or such amount as Lessor or its assignee may reasonably require.

All such insurance shall cover the interests of both Lessee, Lessor, and Lessor's assigns, as the case may be, and such insurance policies shall name the Lessor and any assignee(s) as a named insured(s) and additional loss payee(s), providing an unequivocal thirty (30) day written notice to Lessor and any assignee(s) of cancellation, policy change or failure of renewal by Lessee. Upon request, Lessee shall furnish to Lessor a Certificate of Insurance or other evidence to Lessor that such insurance coverage is in effect and any additional data related to the insurance.

#### 11. Return of Equipment

Provided Lessee has not purchased the Equipment pursuant to the option to purchase provided to it in Section 12, upon expiration or termination of this Lease, Lessee, at its own risk and expense, shall have the Equipment packed for shipment in accordance with Lessor's specifications and shall immediately return the Equipment to Lessor in the same condition as when delivered, ordinary wear and tear excepted, freight prepaid and insured, to such place as Lessor may specify.

In the event Lessee fails to comply with the provisions of the above and Lessee has not returned the Equipment as provided therein, in addition to all other rights and remedies available to Lessor hereunder, Lessor shall have the right to extend the term of the Lease through the last day of the month on which Lessee returns the Equipment for a lease payment equal to the Periodic Lease Amount; provided, however, the exercise by Lessor of such rights shall not be deemed a waiver by Lessor of any other right or remedy available to Lessor under this Lease.

#### 12. Option to Purchase

Lessee may, upon notice provided to Lessor not less than 30 days prior to the end of the initial term of this Lease, elect to purchase the Equipment at the end of the initial term of this Lease. In the event Lessee elects to so purchase the Equipment, the purchase price to be paid by Lessee for the Equipment shall be 776,000.00 USD less the "Applied Rental Amount". The "Applied Rental Amount" shall be 100% of the lease payments made during the term of the lease less 1% of the purchase price per month leased.

#### 13. Warranty

Lessor warrants that the Equipment shall be free from defects in the parts, components and workmanship comprising the Equipment for a period ending one year from the Lease Commencement Date.

#### 14. No other warranties

THE WARRANTY STIPULATED ABOVE IS EXCLUSIVE AND NO OTHER WARRANTY, WHETHER WRITTEN OR ORAL, IS EXPRESSED OR IMPLIED. LESSOR SPECIFICALLY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

#### 15. Limitation of Liability

THE REMEDIES PROVIDED HEREIN ARE LESSEE'S SOLE AND EXCLUSIVE REMEDIES. IN NO EVENT SHALL LESSOR BE LIABLE DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL (INCLUDING LOST PROFIT AND LOSS OF DATA), OR OTHER DAMAGE WHETHER BASED IN CONTRACT, TORT OR ANY OTHER LEGAL THEORY.

#### 16. Indemnification

Lessee shall and does agree to defend, indemnify, and hold Lessor, any assignee and any secured party, harmless from and against any and all claims, costs, expenses, damages, and liabilities, including reasonable attorney fees arising out of or pertaining to the Lease, possession, operation, control, use, maintenance, delivery, or return of the Equipment. Lessor, at its option and at its sole expense, may participate in any such action with counsel of its own choice. Lessee agrees that it shall not settle or compromise any claim, action, or proceeding without first obtaining Lessor's prior written consent. The provisions of this section shall survive any expiration or sooner termination of this Lease.

#### 17. Representations and Warranties of Lessee

Lessee represents, warrants, and covenants that, with respect to this Lease executed pursuant to this Lease:

- (a) The execution, delivery, and performance by Lessee has been authorized by all necessary corporate action and shall not contravene any law or the provisions of any agreement to which Lessee is bound;
- (b) The individual executing such was duly authorized to do so as an authorized officer of the Lessee;
- (c) This Lease constitutes a legal, valid, and binding agreement of Lessee enforceable in accordance with its terms.

#### 18. Events of Default; Remedies

The occurrence of any of the following shall constitute an "Event of Default":

- (1) Lessee fails to pay all or any portion of any Periodic Lease Payment or other payment on or before the date such sum becomes due and payable;
- (2) Any material representation or warranty made in this Lease, or in any report, certificate, financial statement, or other statement furnished to Lessor or any assignee pursuant to the provisions of this Lease proves to have been false in any material respect as of the date on which the same was made, or
- (3) Lessee fails or refuses to duly observe or perform any other covenant, condition, or agreement made by it in this Lease and such failure remains uncured for a period in excess of thirty (30) days; or
- (5) An attachment or other lien against the Equipment resulting from any Lessee action, failure to act, or

responsibility is issued or entered and remains undischarged or unbounded for ten (10) days; or

- (6) Lessee petitions for any relief for itself under the Bankruptcy and Insolvency Act or any reorganization law or a petition is brought against it or a receiver is appointed for it, under such code or law which petition or receiver is not dismissed within thirty (30) days or Lessee is adjudicated bankrupt or Lessee makes an assignment for the benefit of creditors.

If an Event of Default occurs under this Lease, Lessor may give Lessee notice of the Event of Default and, upon the giving of such notice or at any time thereafter, do any or all of the following (as Lessor in its sole discretion elects):

- (a) proceed by appropriate court action or actions to enforce performance by Lessee of the applicable covenants and terms of this Lease or to recover damages for the breach thereof;
- (b) with due process of law, and without being deemed to disturb the peace in so doing, take possession of any or all Equipment without prejudice to any other remedy or claim herein referred;
- (c) hold, sell, lease or otherwise dispose of, any or all Equipment, in any manner Lessor (in its sole discretion) elects;
- (d) receive from Lessee upon demand for any or all Equipment the following amounts which Lessee shall be obligated to pay:
- (1) any unpaid Periodic Lease Payment which is past due,
  - (2) the fair market value of the Equipment as determined by Lessor acting reasonably and in good faith,
  - (3) all reasonable costs and expenses incurred in searching for, taking, removing, keeping, storing, repairing, and restoring such items of Equipment,
  - (4) all other amounts then owing by Lessee hereunder, and
  - (5) all reasonable costs and expenses (including, without limitation, reasonable legal fees and expenses) incurred by Lessor as a result of an Event of Default, termination of this Lease, or the exercise by Lessor of its remedies under this Section;
- (e) by notice to Lessee, declare this Lease (for any or all Equipment) terminated without prejudice to Lessor's rights in respect of all obligations set forth in this Section and any other obligations under this Lease then accrued and remaining unsatisfied; and
- (f) avail itself of any other remedy or remedies provided for by any statute or otherwise available by law.

remedies set forth in this section are not intended to be cumulative, and each shall be cumulative. The amounts to be paid under clause (d) of this Section shall be increased by interest, at a per annum rate of 15%, to the date of receipt by Lessor of the amount payable under said clause, from the respective due date of such amounts or (with respect to costs, expenses, and losses) from the date which Lessor is entitled to payment or reimbursement under said clause. No express or implied waiver by Lessor of any default should constitute a waiver of any other default by Lessor or a waiver of any of Lessor's remedies. If any action is brought by either party to enforce this Lease or to protect its interest in the Equipment, the losing party agrees to

pay the costs thereof including reasonable attorneys' fees and other costs of collection.

#### 19. Currency of Account and Currency of Payment

All payments payable to Lessor under this Lease shall be made in United States dollars. United States Dollars are both the currency of account and the currency of payment.

#### 20. Governing Law

This Lease shall be governed by and construed in accordance with the laws of the Province of Saskatchewan. Nothing herein shall be deemed to preclude or prevent Lessor from bringing any action or claim to enforce the provisions of this Lease in any appropriate jurisdiction or forum.

#### 21. Notices

All communications or notices required or permitted by this Lease shall be made in writing, and shall be deemed to have been given or made when delivered in hand or five (5) days following deposit in the Canadian Post. Communications or notices shall be delivered personally or by certified mail or Express mail, return receipt requested, post thereon fully paid, and addressed as follows, unless and until either of such parties notifies the other in writing of a change of address:

If to Lessee: Drilltech Drilling and Sharing, Inc.  
2200 Wymore Way  
Antioch, CA 94509  
Attention: Dave  
Fax: 510-715-0666

If to Lessor: Brandt Road Rail Corporation  
302 Mill Street, P.O. Box 1876  
Regina, Saskatchewan  
S4P 3E1  
Attention: Chief Financial Officer  
Fax: 306-525-9024

Any notice required under this Lease shall be a sufficient notice from the date of mailing such notice, provided it is signed by an officer of the party giving notice, and mailed by certified or Express mail, return receipt requested, with postage thereon fully prepaid, addressed to the other party at its principal place of business.

#### 22. Further Assurances; Financing Statements

If requested by Lessor, Lessee shall promptly secure, execute, and deliver to Lessor such further documents and take such further action as Lessor shall deem necessary or desirable to carry out the intent and purpose of this Lease and to protect Lessor's interest of Lessor, assignee, and any secured party in the Equipment, to be filed and Lessee agrees to execute and deliver such financing statements or other documents interest in the Equipment.

Lessor is authorized by Lessee to cause this Lease, or any other statement or instrument showing the interest of Lessor, assignee, and any secured party in the Equipment, to be filed and Lessee agrees to execute and deliver such financing statements or other documents as reasonably requested by Lessor for such purpose.

#### 23. Entire Agreement; Amendment

This agreement shall constitute the entire understanding between the parties and supersedes any previous communications, representations, or agreements, whether oral or written. No change

or modification of any term or condition hereof shall be valid or binding on either party unless made in writing and signed by an authorized representative of each party.

**24. No Waiver**

No delay or failure by either party to exercise any right under this Lease, and no partial or single exercise of that right, shall constitute a waiver of that or any other right under this Lease, unless otherwise expressly provided herein.

**25. Headings**

Headings in the Lease are for convenience only and shall not be used to interpret, construe, or limit its provisions.

**26. Binding Effect**

The provisions of this Lease shall be binding upon and inure to the benefit of both parties and their legal representatives, successors, and assigns.

**27. Severability**

If any provision of this Lease is deemed to be invalid or unenforceable, the remaining provisions shall remain in full force and effect as though said invalid or unenforceable provision was never a part hereof.

By execution hereof, the signer hereby certifies that s/he has read this Lease and the referenced schedules and attachments, and that s/he is duly authorized to execute this Lease on behalf of the Lessee.

**LESSOR:** Brandt Road Rail Corporation

By: Neil Marotte  
Name: Neil Marotte  
Title: Sales Manager.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**LESSEE:** Drilltech Drilling and Shoring, Inc.

By: Mason Davenezed  
Name: Mason Davenezed  
Title: Controller

By: Bruce W. Ashford  
Name: Bruce W. Ashford  
Title: VICE PRESIDENT