

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (this “**Agreement**”) is entered into as of May 4, 2023 (the “**Effective Date**”), by and among the **COWETA COUNTY DEVELOPMENT AUTHORITY** (the “**Authority**”), **COWETA COUNTY, GEORGIA** (the “**County**”), **HITACHI CONSTRUCTION MACHINERY AMERICAS INC.** (the “**Company**”), the **COWETA COUNTY BOARD OF TAX ASSESSORS** (the “**Board of Assessors**”), the **COWETA COUNTY TAX COMMISSIONER** (the “**Tax Commissioner**”) and the **COWETA COUNTY SCHOOL DISTRICT** (the “**School District**”) (each a “**Party**” and collectively the “**Parties**”).

1. THE PROJECT.

1.1. Description of the Project and Transaction. The project consists of the real property improvements (the “**Improvements**”) described in site plan attached hereto as Schedule 1.1 on the Site (hereinafter defined). The Improvements will be financed by the Company with cash on hand or a bank loan. However, in order to carry out the ad valorem property tax abatement described below, the Authority will issue a single taxable revenue bond (the “**Bond**”) that will be purchased by the Company. The Improvements and the Site (collectively, the “**Project**”) will be owned by the Authority and leased to the Company pursuant to a lease (the “**Lease**”). The Company will execute a guaranty agreement (the “**Guaranty**”) guaranteeing the payment of the principal of and interest on the Bond as the same become due.

1.2. Total Project Costs. “**Total Project Costs**” include all reasonable costs, fees and expenses incurred by the Company in connection with the Improvements. As between the Parties, the Company will be responsible for any costs of or related to the Improvements (including, without limitation, those related to any change orders or cost overruns).

1.3. Closing. As used herein, the “**Closing**” is the event at which the Bond is issued. References herein to a “**Closing Condition**” are to the optional right of a Party hereto, based on a Closing Condition, to exercise a right provided herein in its favor and to avoid the Closing and terminate this Agreement as provided in Sections 5.2, 5.3 and 5.4, respectively, below.

1.4. The Site; Conveyance. The Site is more particularly described on Schedule 1.4 (the “**Site**”). The Company shall, on and subject to the terms and conditions of this Agreement, convey the Site to the Authority at the Closing by limited warranty deed, subject to Permitted Exceptions (hereinafter defined).

1.5. Site Due Diligence.

1.5.1. Environmental Phase I. Prior to the Closing, the Company, at the Company’s expense, shall provide to the Authority an environmental site assessment report (the “**Phase I Report**”) that summarizes the results of an environmental site assessment (the “**Phase I Assessment**”) of the Site. The Phase I Assessment shall be conducted by an environmental engineering or consulting firm reasonably acceptable to the Authority and shall be dated (or reaffirmed) and provided to the Authority less than 180 days prior to the Closing. In addition, the Phase I Report and the Phase I Assessment

shall comply with ASTM International Designation E1527-21, “Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process,” as the same may be amended, modified or supplemented from time to time. The Phase I Report shall expressly authorize reliance on its contents, including its conclusions and any recommendations for further assessment, by both the Company and the Authority. If the Phase I Report contains a recommendation for further assessment, the Company shall, at its own expense, commission such further assessment prior to the Closing (the “**Phase II Assessment**”). Any Phase II Assessment shall be performed by an environmental engineering or consulting firm reasonably acceptable to the Authority and shall be dated (or reaffirmed) and provided to the Authority less than 90 days prior to the Closing. In addition, the Phase II Assessment shall comply with ASTM International Designation E1903-11, “Standard Practice for Environmental Site Assessments: Phase II Environmental Site Assessment Process,” as the same may be amended, modified or supplemented from time to time prior to the Closing. Any report prepared to summarize the results of such Phase II Assessment shall expressly authorize both the Company and the Authority to equally rely on its contents, including its conclusions. The Authority’s reasonable satisfaction with the Phase I Assessment and any Phase II Assessment conducted pursuant to this Section 1.5.1 shall be Closing Conditions in favor of the Authority.

1.5.2. [Reserved].

1.6. Construction of the Improvements.

1.6.1. Design. The Company shall be responsible for the design of the Improvements.

1.6.2. Utilities. The Company shall be responsible for the delivery of adequate water, sewer, natural gas, electricity and any other utilities required for the operation of the Improvements to the Site (“**Required Utilities**”). The Company’s ability to acquire governmental approvals or permits to allow for delivery of Required Utilities, if any, by acceptable providers, or in quantities or at pressures which are acceptable to the Company, shall each be a Closing Condition in favor of the Company.

1.6.3. Construction. The Company will be responsible for the construction of the Improvements at the Company’s own expense. Without limiting the foregoing, the Company will select the contractor (“**Contractor**”) for such construction and enter into an agreement with the Contractor. The Improvements shall be constructed in accordance with all applicable laws, including zoning laws, building codes, and environmental laws. All general liability insurance policies maintained by the Company or the Contractor during construction shall name the Authority as an additional insured.

1.7. Indemnity by the Company. The Company shall indemnify, hold harmless and defend the Authority, the County, the Board of Assessors and the School District and their members, officers, employees and representatives (collectively, the “**Indemnified Parties**”) from and against any and all loss, liabilities and claims that may arise out of or relate to: (a) any act or omission by or attributable to the Company or the Contractor (including, without limitation, the

acts or omissions of their respective vendors, contractors or subcontractors, agents, employees or representatives) related to the Project, (b) the operation of the Project, (c) any hazardous substances on the Site, (d) title to, or boundaries of, the real property of the Site or (e) this Agreement, including the Bond or the issuance thereof, but excluding losses, liabilities, and claims resulting from the negligence or willful misconduct of any Indemnified Party. The indemnities set forth above specifically extend to, but are not limited to, governmental or other claims relating to any actual or alleged violation of any federal, state and local laws, rules, regulations, ordinances, programs, permits, guidance, orders, and consent decrees relating to health, safety, and environmental matters, including, but not limited to, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, the Toxic Substances Control Act, as amended, the Clean Water Act, as amended, the Clean Air Act, as amended, the Superfund Amendments and Reauthorization Act of 1986, as amended, state and federal superlien and environmental cleanup programs and laws, U.S. Environmental Protection Agency regulations, and Georgia Environmental Protection Division rules regardless of whether or not any such violation relates to any period prior to the acquisition or renting of the Project by the Company. The foregoing notwithstanding, if a court of competent jurisdiction determines that any of the provisions of this Section 1.7 violate O.C.G.A. § 13-8-2, the indemnity contained in this Section 1.7 shall not extend to any indemnification which is prohibited by O.C.G.A. § 13-8-2. The indemnity contained herein shall survive the Closing and the expiration or earlier termination of this Agreement. A similar indemnity shall also be included in the Lease.

1.8. Year 1. For all purposes of this Agreement, including, without limitation, any Schedules and “Exhibits” hereto, “**Year 1**” shall be the calendar year following the calendar year in which the Improvements are substantially complete and the Company receives a certificate of occupancy for the buildings labeled as “2-Story Main Office” on Schedule 1.1 (the “**Operation Date**”), but not later than December 31, 2025.

2. BOND ISSUE AND LEASE.

2.1. Bond. In order to establish the bond-financed sale-leaseback structure that is necessary for the provision of the ad valorem property tax savings for the Project, the Authority will issue the Bond and sell it to the Company in exchange for legal title to the Project. The Bond shall be issued pursuant to a bond resolution adopted by the Authority (the “**Bond Resolution**”). The Bond shall bear interest at a taxable rate determined by the Company prior to the issuance of the Bond. The Bond shall mature in December of the 10th year after the Operation Date (i.e., Year 9 of the tax abatement period).

2.2. Principal Amount of Bond; Ad Valorem Property Cap. The principal amount of the Bond shall accommodate the Total Project Costs. Therefore, the principal amount of the Bond is expected to be \$33,000,000. The principal amount of the Bond shall act as a cap on the ad valorem property tax abatement should the Company spend more than \$33,000,000 on the Improvements or the Company make additional improvements on the Site (an “**Increase in the Property Costs**”). The Company shall pay the Increase in Costs PILOT Payments as described more fully below in the event there is an Increase in the Property Costs.

2.3. Transaction Costs. The Company shall be responsible for all transaction costs related to the issuance of the Bond and all other matters related thereto. Such transaction costs

include, without limitation, the following: (a) the Authority's one-time fee equal to 1/8th of 1% of the principal amount of the Bond on the first \$25,000,000 and 1/16th of 1% of the principal amount of the Bond in excess of \$25,000,000, (b) the Bond Counsel's fee of \$75,000, (c) the Authority and the County Counsel's fee of \$75,000, (d) the Company Counsel's fee, (e) the reasonable out-of-pocket expenses of Bond Counsel, the Authority's and the County's Counsel and the Company's Counsel and (f) the court costs relating to the validation of the Bond and recording and filing fees.

2.4. Tax Status of the Bond. The interest on Bond issued to the Company will not be exempt from federal income taxation.

2.5. Roles of Counsel. By agreement of the Parties, the law firm of Murray Barnes Finister LLP shall serve as Bond Counsel to the Authority, the law firm of Glover & Davis, P.A. shall serve as the Authority's and the County's Counsel, and the law firm of Nelson Mullins Riley & Scarborough LLP shall serve as the Company's Counsel. Each counsel shall provide a normal and customary legal opinion with respect to its client and the Definitive Documents (hereinafter defined).

2.6. Repayment of the Bond. The Company shall be responsible for the repayment of the Bond. The Bond shall not be a general obligation of the Authority, but shall be a special and limited obligation payable solely from the payments received under the Lease and other pledged security, as described in the Definitive Documents. Neither the County nor the State of Georgia (the "State") shall have any obligation or liability for the repayment of the Bond. As long as the Company is the owner of the Bond, no actual cash payments will be made on the Bond.

2.7. The Lease. The Authority and the Company shall enter into the Lease at the Closing. Pursuant to the Lease, the Authority will lease the Project to the Company. The Lease shall contain terms and provisions substantially of the type normally included in leases between governmental "conduit" bond issuers and users of bond-financed property. The Lease will be a triple net type lease. The Lease will prohibit the Company from (a) transferring a majority (whether through one conveyance or a series of conveyances) of its equity interest to an entity that is not an affiliate, (b) merging or consolidating with another entity unless the Company is the surviving entity or (c) selling all or substantially all of the assets of the Company without the written consent of the Authority, which consent shall not be unreasonably conditioned, delayed or withheld. The Lease will also contain the transfer and lien restrictions discussed in Section 2.10 below. The Lease shall terminate in the year that the Bond matures.

2.8. Purchase Option. The Lease shall grant the Company the option to purchase (the "**Purchase Option**") the Project. The amount paid by the Company in the event of its exercise of the Purchase Option shall be the sum of the following: (a) an amount of money which will be sufficient to pay the principal of and interest on the Bond as the same become due, plus (b) all amounts owed to the Authority under this Agreement, the Bond Resolution and the Lease, plus (c) the sum of \$10. Notwithstanding the foregoing, if the Company is the owner of the Bond, the Company may cancel the Bond in lieu of paying the principal of and interest on the Bond.

2.9. Definitive Documents. The term “**Definitive Documents**” means and includes the Bond Resolution, the Bond, the Lease, the Guaranty and any other related documents necessary to implement the transaction described herein. The Definitive Documents shall be prepared by Bond Counsel and shall be subject to the approval of the Authority and the Company, and the legal counsel therefor. The Parties agree to negotiate in good faith to establish the terms and conditions to be included in the Definitive Documents. It shall be a Closing Condition in favor of each of the Company and the Authority that they reach an agreement on such terms and conditions.

2.10. Liens and Transfers.

2.10.1. Sale or Encumbrance of Project. The Company shall not sell, assign, transfer, convey, mortgage or otherwise encumber its interest in the Project or any portion thereof or any interest therein, unless (a) consented to by the owner of the Bond and the Authority, (b) such sale, assignment, transfer or conveyance is in whole to an Affiliate (hereinafter defined) or (c) such encumbrance is a bona fide leasehold mortgage (the “**Leasehold Mortgage**”) in favor of a lender of the Company (the “**Lender**”). Notwithstanding the foregoing, the Parties acknowledge and agree that the ad valorem tax abatement shall not transfer to the Lender or to any other entity taking possession of the Project by virtue of the Leasehold Mortgage without the consent of the Authority. The term Affiliate means any entity that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with, the Company. The term “control” means the possession, directly or indirectly, of the power: (a) to vote 51% or more of the voting securities of such person or entity (on a fully diluted basis) having ordinary power to vote in the election of the governing body of such person or entity, or (b) to direct or cause the direction of the management or policies of a person or entity, whether through the ownership of voting securities, by contract or otherwise.

2.10.2. Assignment of Lease and Agreement; Subleases. The Company shall not assign its interest in the Lease or this Agreement unless (a) consented to by the owner of the Bond and the Authority or (b) such assignment is (i) in whole to an Affiliate or (i) to a Lender pursuant to a Leasehold Mortgage. The Company shall not sublease all or any portion of the Project unless (a) consented to by the owner of the Bond and the Authority or (b) such sublease is for a portion of the Project and (i) such sublease is in the ordinary course of the Company’s business, (ii) such sublease is expressly made subject and subordinate to the Lease and (iii) the Company is not released from its obligations under the Lease under the terms of such sublease.

3. INCENTIVE TO BE PROVIDED.

3.1. Purpose of Incentive. In order to induce the Company to make the Improvements, the ad valorem property tax abatement described below will be provided for the Project by the Authority and other entities, as applicable. The Authority has found and determined that the economic benefits that will inure to the County, the Authority, the School District and the State from the Project and the operation thereof and the PILOT Payments and the taxes to be paid by the Company will be equal to or greater than the benefits to be derived by the Company.

3.2. Ad Valorem Tax Savings; PILOT Payments.

3.2.1. Basis for Savings. Under the Development Authorities Law and the other applicable laws of the State, the Authority pays no ad valorem property tax on its interest in the property comprising the Project. The Parties agree that the Lease shall be structured so that the Company's leasehold interest in the Project is a taxable leasehold estate for years. The valuation of the Company's leasehold interest shall be as provided on Schedule 3.2.1 attached hereto and incorporated herein by reference. The Company shall pay normal ad valorem property taxes with respect to property it owns which is not titled to the Authority in connection with the issue of the Bond, including the personal property owned by the Company and used at the Project.

3.2.2. Reversion to Normal Taxability. If the Purchase Option is exercised upon termination of the Lease or earlier, in whole or in part, or if the Lease is otherwise terminated or expires, from and after the date of such exercise, termination or expiration, the Project will be taxable according to normal ad valorem property taxation rules that are applicable to privately-owned property.

3.2.3. PILOT Payments. The Company shall pay (a) \$59,125 in each year of the tax abatement as a payment in lieu of taxes in order to reflect the \$6,000,435 approximate fair market value of the real property prior to the Company making the Improvements (the "**Existing Value PILOT Payment**") and (b) in each year of the tax abatement as a payment in lieu of taxes an amount equal to the normal taxes that would be paid on the fair market value of the Project in excess of \$39,000,435 (i.e., the current value of \$6,000,435 plus the \$33,000,000 cap on the tax abatement referred to above) in order to reflect an Increase in the Property Costs (the "**Increase in Costs PILOT Payment**" and together with the Existing Value PILOT Payment, the "**PILOT Payments**"). For example, if the Company makes additional improvements so that the fair market value of the Project is \$50,000,000 and the combined millage rate for all taxing entities is 25 mills, the Company will be required to pay an Existing Value PILOT Payment of \$59,125 and an Increase in Costs PILOT Payment of \$109,996 ($\$50,000,000 - \$39,000,435 = \$10,999,565$, the assessed value of which is \$4,399,826, and the tax on which is \$109,996). The PILOT Payments shall be billed and paid as described below. The PILOT Payments shall be divided between the County and the School District based upon the applicable millage rates in that year and shall be remitted to the County and the School District by the Tax Commissioner.

3.2.4. Procedures.

(a) In order to determine the amount of taxes on the Company's leasehold interest pursuant to this Agreement, at the time property tax returns are due in the County, the Company shall file a report with the Board of Assessors of the property comprising the Project and its value, in the same format and in the same manner, but only to the extent required in a standard non-incentive property tax return. The Company shall indicate on its reports those items that have been conveyed to the Authority and are part of the Project and subject to the provisions of this Agreement. The Board of Assessors shall determine the assessed value of the Project as though legal title to it were held by the Company and shall notify the Tax Commissioner thereof, who shall calculate the amount of taxes payable by the Company with respect thereto pursuant to this Agreement, and shall invoice the

Company for the taxes and the PILOT Payments separately, with copy to the Authority. Such public bodies shall coordinate such procedures with general procedures applicable to the payment of normal property taxes, such that, for example, the Tax Commissioner shall mail such invoice for the PILOT Payments at the time tax bills are mailed for the relevant tax year. Likewise, the Company shall pay by separate check (or other acceptable form of payment) to the Tax Commissioner, on or before the date set for the payment of ad valorem property taxes in the County generally, an amount equal to the taxes and PILOT Payments due for such year as so calculated.

(b) Should the Company fail to make PILOT Payments required by this Agreement at the times and in the manner provided for in this Agreement, the Company shall be obligated to pay to the Tax Commissioner, in addition to such PILOT Payments, an amount that shall be equal to the penalties and interest that would be assessed against the Company if such PILOT Payments were delinquent ad valorem taxes. The Tax Commissioner shall notify the Company of any such penalties and interest, with copy to the Authority. The Board of Assessors and the Tax Commissioner shall have all of the rights and remedies (including, without limitation, audit rights) related to PILOT Payments, interest and penalties as they would have in the case of ad valorem taxes (including, without limitation, delinquent ad valorem taxes), and the Authority and the Company agree upon request of the Board of Assessors or the Tax Commissioner to grant any security lien or security interest necessary such that the taxing authorities have the equivalent of tax liens for such purposes. Likewise, the Parties hereto agree that, to the fullest extent allowed by law, the Company shall have all of the same rights and remedies as it would have in the case of a dispute over ad valorem property taxes, including, without limitation, the right to dispute the valuation used by the Board of Assessors.

(c) The normal taxing procedures shall apply to the ad valorem taxes paid by the Company on the value of its leasehold interest in the Project.

3.2.5. Responsible Parties. The provisions of this Agreement relative to the valuation of the Project, the ad valorem property tax bills and the PILOT Payments shall be the obligation and responsibility of the Board of Assessors and Tax Commissioner, respectively, and not of the Authority, the School District or the County.

4. ECONOMIC DEVELOPMENT GOALS.

4.1. Inducement. The Company has made and agrees to make the Improvements at the Site; provided, however, nothing herein contained shall obligate the Company to make any particular level of investment or created any particular number of jobs. Rather, the Company's responsibilities regarding such matters shall be governed exclusively by the provisions hereof relating to Recovery Payments (hereinafter defined). The Company's agreement to make the Improvements at the Site is based, in part, on the incentive being provided by the Authority. Such incentive is being provided to induce the Company to make the Improvements at the Site, with attendant investment and job creation on the part of the Company, all of which constitutes valuable,

non-cash consideration to the Authority and the citizens of the County and of the State. The Parties acknowledge that the incentive provided for in this Agreement serves a public purpose through the investment and job creation represented by the Project. The Parties further acknowledge that the cost/benefit requirements applicable to the Authority in the course of providing such incentive dictate that some measure of recovery must be applied in the event that the anticipated investment or job creation do not for any reason fully materialize.

4.2. Jobs Goal. For each year that the Company receives an ad valorem property tax abatement (the “Performance Period”), the Company shall have the goal of creating since May 4, 2023 and maintaining at least 20 new full-time jobs at the Project with an average salary of \$85,000 (the “**Jobs Goal**”), subject to Force Majeure. For purposes of this Agreement, the number of new “full-time jobs” shall be defined and determined, from time to time, as provided under the “Rules for Satisfying the Jobs Goal” on Schedule 4.2. For avoidance of doubt, the Parties acknowledge and agree that the Jobs Goal shall be determined for each of the years 1-10 in the Incentive Schedule. The term “*Force Majeure*” as used herein shall mean any of the following events that are not caused by the Company, that are beyond the Company’s reasonable control and that cause the cessation of Company operations at the Project: (a) acts of God, including earthquakes, tornados, storms or floods; (b) acts of public enemies or terrorists; (c) civil insurrections; (d) orders of any kind of the government of the United States of America or of the State or any of their departments, agencies, or officials; (e) epidemics and pandemics; or (f) fires. The Company agrees, however, to use reasonable efforts to remedy with reasonable dispatch the cause or causes preventing the Company from carrying out its agreements. In no event shall a Force Majeure last for more than six months and apply to more than one Jobs Report (hereinafter defined).

4.3. Jobs Shortfall Percentage. If, for any year in the Performance Period, the number of new full-time jobs with an average salary of \$85,000 created and maintained the Company at the Project is less than the Jobs Goal, the actual number of full-time jobs with an average salary of \$85,000 shall be subtracted from the Jobs Goal to obtain the “**Jobs Shortfall**.” The number of jobs constituting the Jobs Shortfall shall be divided by the Jobs Goal and converted to a percentage to determine the “**Jobs Shortfall Percentage**.” For example, if the Company has created and maintained 15 new full-time jobs with an average salary of \$85,000 on or before December 31 of a particular year, the Jobs Shortfall Percentage would be 25% (20-15/20).

4.4. Investment Goal. For each year of the Performance Period, the Company shall have the goal of its having invested \$33,000,000 in real property Improvements (the “**Investment Goal**”). For purposes of the Investment Goal, the investment at the Project shall be calculated on a cumulative basis from March 1, 2022 to the end of each year of the Performance Period. Schedule 4.2 provides rules that shall apply to satisfying the Investment Goal. The Parties acknowledge that the personal property owned by the Company and used at the Project shall not count towards the Investment Goal. For avoidance of doubt, the Parties acknowledge and agree that the Investment Goal shall be determined for each of the years 1-10 in the Incentive Schedule.

4.5. Investment Shortfall Percentage. If, for any year in the Performance Period, the cumulative amount of capital investment by the Company in the Project is less than the Investment Goal, the actual amount of such investment shall be subtracted from the Investment Goal to obtain the “**Investment Shortfall**.” The amount of investment constituting the Investment Shortfall shall be divided by the applicable Investment Goal and converted to a percentage to determine the

“Investment Shortfall Percentage.” For example, if the Company invested \$30,000,000 in real property Improvements, the Investment Shortfall Percentage would be 9% ($\$33,000,000 - \$30,000,000 / \$33,000,000$).

4.6. Annual Report. On or before April 1 of each year following a year that is in the Performance Period, the Company shall provide to the Authority a report (the **“Annual Report”**) for the preceding calendar year which shall include a **“Jobs Report”** and an **“Investment Report.”** The Jobs Report shall contain a statement as to the number of full-time jobs with an average salary of \$85,000 for the preceding calendar year. The Investment Report shall contain a statement as to the Company’s investment in real property Improvements through the December 31 of the preceding calendar year. Each Annual Report shall be in substantially the form of Schedule 4.6, as revised for the matters being reported.

4.7. Inspection Rights. The Authority and its agents shall be permitted to inspect the employment and investment records of the Company specifically related to the Project in the presence of a representative of the Company to verify such information during normal business hours and upon reasonable notice. The Company may reasonably redact such records to protect the confidentiality of the Company, its employees or its customers and to protect attorney-client privilege and attorney work product.

4.8. Shortfall Percentages and Recovery Payments. The Annual Report shall calculate any Jobs Shortfall Percentage and any Investment Shortfall Percentage. If an Annual Report shows that, for the immediately preceding calendar year, there is a Jobs Shortfall Percentage or an Investment Shortfall Percentage, then, the Company, in such Annual Report, shall calculate the amount of the **“Recovery Payments”** and shall pay the same. If the Jobs Shortfall Percentage AND the Investment Shortfall Percentage is each 20% or less, there shall be no Recovery Payment due. If the Jobs Shortfall Percentage OR the Investment Shortfall Percentage is more than 20%, then the Recovery Payment shall be equal to the ad valorem property tax savings from the preceding year. When determining the ad valorem tax savings, the PILOT Payment shall be taken into account. For example, if the Jobs Shortfall Percentage is 25%, the Company paid a PILOT Payment of \$59,125 and ad valorem taxes of \$250,000 based upon the value of its leasehold interest and the normal tax on the Project would have been \$400,000 had the Company owned the Project in fee simple, the Recovery Payment would be \$90,875. The Company shall pay the Recovery Payment to the Tax Commissioner on or before June 1. The PILOT Payments shall be divided between the County and the School District based upon the applicable millage rates in that year and shall be remitted to the County and the School District by the Tax Commissioner. Late Recovery Payments shall be treated the same as late PILOT Payments and shall accrue interest and penalties and collected as described above.

4.9. Failure to File Report and Make Required Payments. If the Company fails to file the Annual Report or pay any amounts owing hereunder, the Authority may (a) terminate this Agreement and the Lease and end the ad valorem property tax abatement or (b) pursue any remedy available to it to enforce its rights hereunder. Prior to exercising its termination rights, the Authority shall give the Company written notice of such failure and 30-days from such notice date to cure such failure. The Company shall indemnify the Authority for all costs of enforcement, including any court costs and reasonable and actual attorneys’ fees and court costs associated with enforcing its rights hereunder.

5. TERMINATION OF AGREEMENT.

5.1. Delay. If, despite the good faith efforts of the Parties, this Agreement is not fully executed on or before October 31, 2023 or the Closing has not been consummated by December 31, 2023, then (unless and until such execution and/or Closing has occurred) the Authority or the Company may terminate this Agreement by written notice to the other Parties, without any further liability except as otherwise expressly provided in this Agreement.

5.2. Closing Conditions. Any Party shall have the right to terminate this Agreement prior to the Closing, without any further liability except as otherwise expressly provided in this Agreement, effective immediately upon giving written notice to the other Parties, if:

5.2.1. The other Party is in breach of this Agreement (subject to any cure periods expressly contemplated herein).

5.2.2. There has been commenced or threatened against the Authority or the Company, or any Affiliate of the Company, any proceeding (a) involving any challenge to, or seeking damages or other relief in connection with, any of the matters that are the subjects of this Agreement, or (b) that may have the effect of preventing, delaying, making illegal, imposing limitations or conditions on, or otherwise interfering with, any of such matters. An uncontested validation proceeding for the Bond shall not be considered a proceeding within the meaning of this Section.

5.3. The Authority's Termination Rights. The Authority shall have the right to terminate this Agreement, without any further liability except as otherwise expressly provided in this Agreement, effective immediately upon giving written notice thereof to the Company, pursuant to any provision allowing it to do so contained elsewhere in this Agreement. Without limitation, the Authority shall have the right to terminate this Agreement, effective immediately upon giving written notice to the Company, if, by the Closing (or if this Agreement specifies another time therefor, then by such time) each Closing Condition set forth herein in favor of the Authority has not been satisfied. If the Authority does not exercise any such right to terminate by Closing (or by such other time specified), then, as of the Closing, or such other time, as appropriate, such right shall be deemed waived with respect to the subject thereof.

5.4. The Company's Termination Rights. The Company shall have the right to terminate this Agreement, without any further liability except as otherwise expressly provided in this Agreement, effective immediately upon giving written notice thereof to the Authority pursuant to any provision allowing it to do so contained elsewhere in this Agreement. Without limitation, the Company shall have the right to terminate this Agreement, effective immediately upon giving written notice to the Authority, if, by the Closing (or if this Agreement specifies another time therefor, then by such time) each Closing Condition set forth herein in favor of the Company has not been satisfied. If the Company does not exercise any such right to terminate by Closing (or by such other time specified), then, as of the Closing, or such other time, as appropriate, such right shall be deemed waived with respect to the subject thereof.

5.5. Expiration of Lease. This Agreement shall automatically terminate upon the payment or cancellation of the Bond or the expiration or termination of the Lease.

5.6. Illegal Transfer or Assignment. This Agreement shall automatically terminate in the event that the Company transfers or assigns this Agreement or its interest in the Project or the Lease in violation of the terms of this Agreement.

5.7. Effect of Termination. If any Party terminates this Agreement pursuant to a right provided herein or if this Agreement expires, this Agreement shall terminate or expire as to all Parties without any further liability on the part of any Party, except as may theretofore have accrued, or except as otherwise expressly provided in this Agreement, or as shall exist as a result of any prior breach hereof.

6. MISCELLANEOUS.

6.1. Notices. Any notice required to be given by any Party pursuant to this Agreement, shall be in writing and shall be deemed to have been properly given, rendered or made only if either (a) delivered personally to the Party or, if such Party is not an individual, to an officer or other legal representative of the Party to whom the same is directed, or (b) mailed by registered or certified mail, return receipt requested, postage prepaid or (c) sent via nationally recognized overnight courier for next business day delivery, addressed to each other Party at the addresses set forth below (or to such other address as any particular Party may designate for notices to it to each other Party from time to time by written notice), and shall be deemed to have been given, rendered or made on the day so delivered or on the date of personal delivery, or the first business day after having been deposited with the courier service or the United States Postal Service:

If to the Authority: Coweta County Development Authority
19 C Jefferson St.
Newnan, Georgia 30263
Attn: Executive Director

with a copy to: Glover & Davis, P.A.
10 Brown St.
Newnan, Georgia 30264
Attn: Nathan T. Lee

If to the Company: Hitachi Construction Machinery Americas Inc.
60 Amlajack Blvd
Newnan, Georgia 30265
Attn: Director of General Affairs

with a copy to: Nelson Mullins Riley & Scarborough LLP
201 17th Street NW, Suite 1700
Atlanta, Georgia 30363
Attention: Earle R. Taylor, III

If to the County: Coweta County
22 East Broad Street
Newnan, Georgia 30263
Attn: County Administrator

If to the Board of Assessors: Coweta County Board of Tax Assessors
37 Perry Street
Newnan, Georgia 30263
Attn: Chief Appraiser

If to the Tax Commissioner: Coweta County Tax Commissioner
87 Newnan Station Drive, Suite 100
Newnan, Georgia 30265
Attention: Tax Commissioner

If to the School District: Coweta County School District
167 Werz Industrial Drive
Newnan, Georgia 30264
Attn: Superintendent

6.2. Confidential Information. All confidential information acquired by the Authority, the Board of Assessors, the Tax Commissioner or the School District relating to the Company shall be held in confidence by them, subject to their legal obligations as public bodies, including without limitation, O.C.G.A. § 50-18-70, *et seq.* and § 50-14-1, *et seq.* The Company and its advisors shall, prior to the execution and delivery hereof treat the contents of this Agreement as confidential, and, without limitation, shall not disclose such contents to competing communities or states.

6.3. No Partnership or Agency. No partnership or agency relationship between or among the Parties shall be created as a result of this Agreement.

6.4. Survival of Certain Obligations; Conflict. The Company's obligations to indemnify, to pay PILOT Payments, to pay Recovery Payments and to pay attorney's fees shall survive the Closing and the expiration or termination of the Lease and this Agreement. To the extent that the terms and provisions of this Agreement conflict with the Lease, the terms and provisions of this Agreement shall control.

6.5. Governing Law; Jurisdiction and Venue. The transactions contemplated hereunder and the validity and effect of this Agreement are exclusively governed by, and shall be exclusively construed and enforced in accordance with, the laws of the State. The Company consents to jurisdiction over it and to venue in the County.

6.6. Amendments. Any amendments, deletions, additions, changes or corrections hereto must be in writing executed by the Parties hereto.

6.7. Entire Agreement. This Agreement, together with the Definitive Documents (when executed), constitute the entire agreement among the Parties with respect to the subject matter hereof.

6.8. Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

6.9. Counterparts; Electronic Transmittal. This Agreement may be signed in counterparts, each of which shall be an original and all of which together shall constitute one and the same instrument. To facilitate execution of this Agreement, the Parties expressly acknowledge and agree that, notwithstanding any statutory or decisional law to the contrary, the printed product of a facsimile or electronic transmittal of this Agreement shall be deemed to be “written” and a “writing” for all purposes and shall otherwise constitute an original document binding upon the transmitting party.

6.10. No Personal Liability of Representatives of Public Bodies. No official, member, director, officer, agent, or employee of the Authority, the County, the Board of Assessors, the Tax Commissioner or the School District shall have any personal liability under or relating to this Agreement. Rather, the agreements, undertakings, representations, and warranties contained herein are and shall be construed only as corporate agreements, undertakings, representations, and warranties, as appropriate, of such public bodies. Without limitation, and without implication to the contrary, all Parties hereto waive and release any and all claims against each such official, member, director, officer, agent, or employee, personally, under or relating to this Agreement, in consideration of the entry of such public bodies into this Agreement.

6.11. No Personal Liability of Representatives of Company. No official, member, manager, director, officer, agent, or employee of the Company shall have any personal liability under or relating to this Agreement. Rather, the agreements, undertakings, representations, and warranties contained herein are and shall be construed only as corporate agreements, undertakings, representations, and warranties, as appropriate, of such entity. Without limitation, and without implication to the contrary, all Parties hereto waive and release any and all claims against each such official, member, manager, director, officer, agent, or employee, personally, under or relating to this Agreement, in consideration of the entry of such entity into this Agreement.

6.12. Legal Compliance. The Company agrees that it and its officers and employees acting for it in matters relating to this Agreement shall comply with all applicable provisions of law, including, without limitation, O.C.G.A. Section 50-36-1 relating, in part, to public benefits.

6.13. Effective Date. This Agreement shall not be effective until it has been fully executed by all Parties hereto, and such date shall be inserted by or with the approval of the Authority hereon.

6.14. Consequential Damages. IN NO EVENT SHALL ANY PARTY BE LIABLE TO ANY PARTY OR ANY PERSON OR ENTITY, WHETHER IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY) OR OTHERWISE FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND OR NATURE WHATSOEVER.

IN WITNESS WHEREOF, the Parties have executed this Agreement under seal as of its Effective Date.

**COWETA COUNTY DEVELOPMENT
AUTHORITY**

(SEAL)

By: _____
Chairman

Attest:

Secretary

**HITACHI CONSTRUCTION MACHINERY
AMERICAS INC.**

By: _____ SEAL
Name:
Title:

COWETA COUNTY, GEORGIA

(SEAL)

By: _____
Chairman

Attest:

Clerk

**COWETA COUNTY BOARD OF TAX
ASSESSORS**

(SEAL)

By: _____
Chairman

COWETA COUNTY TAX COMMISSIONER

(SEAL)

By: _____
Coweta County Tax Commissioner

(Memorandum of Understanding)

COWETA COUNTY SCHOOL DISTRICT

(SEAL)

By: _____
Chairman

Attest:

Secretary

SCHEDULE 1.1

SITE PLAN

[To be Provided]

SCHEDULE 1.4

LEGAL DESCRIPTION OF SITE

ALL THAT TRACT OR PARCEL OF LAND lying and being in Land Lot 84, Fifth District, Coweta County, Georgia, and being more particularly bounded and described as follows:

BEGINNING AT A POINT marked by an iron pin found at the intersection of the western margin of the right-of-way of Amlajack Boulevard (having a right-of-way width of 200 feet) with the southern margin of the right-of-way of Dart Road (having a right-of-way width of 60 feet); THENCE south 00 degrees 20 minutes 09 seconds west along the western margin of the right-of-way of Amlajack Boulevard a distance of 810.06 feet to a point; THENCE southerly along the western margin of the right-of-way of Amlajack Boulevard and following the arc thereof a distance of 136.06 feet to a point marked by an iron pin found (the said arc being subtended by a chord having a chord distance of 136.01 feet and a chord bearing of south 03 degrees 15 minutes 40 seconds west, the arc being northwest of its chord); THENCE south 89 degrees 42 minutes 20 seconds west a distance of 864.73 feet to a point marked by an iron pin found on the eastern margin of the right-of-way of an Atlanta West Point Railroad spur (having a right-of-way width of 100 feet); THENCE north 00 degrees 07 minutes 22 seconds east along the eastern margin of the right-of-way of the said Atlanta West Point Railroad spur a distance of 946.20 feet to a point marked by an iron pin found at the intersection of the eastern margin of the right-of-way of the said Atlanta West Point Railroad spur with the southern margin of the right-of-way of Dart Road; THENCE north 89 degrees 43 minutes 59 seconds east along the southern margin of the right-of-way of Dart Road a distance of 875.19 feet to the POINT OF BEGINNING; being as depicted on plat of survey for Kawasaki Loaders Manufacturing Corp., USA, by B. K. Rochester, Jr., Georgia Registered Land Surveyor No. 1534 with Rochester & Associates, Inc., dated April 2, 1987 and revised June 11, 1987, and containing 18.961 acres according to the aforesaid plat.

SCHEDULE 3.2.1

VALUATION OF LEASEHOLD INTEREST

The parties understand and agree that the Authority is not subject to ad valorem taxation on its interest in the Project. The parties further understand and agree that the Company is subject to ad valorem taxation on its leasehold interest pursuant to the decision of the Supreme Court of Georgia in *W.C. Harris, et al. vs. DeKalb County Board of Tax Assessors* (the “**Harris Case**”). In order to provide the Company with sufficient information and certainty upon which it can base its decision to carry out the Project in the County, the Parties agree that it is important to set forth the methodology by which the leasehold interest will be valued pursuant to the Harris Case. Beginning in Year 1 and each calendar year thereafter, the fair market value of the leasehold interest shall be equal to the percentage of the “Fee Interest” (hereinafter defined) in the Project set forth below:

| <u>Year</u> | <u>Percentage of Fee Interest</u> |
|-------------|-----------------------------------|
| 1 | 0% |
| 2 | 10 |
| 3 | 20 |
| 4 | 30 |
| 5 | 40 |
| 6 | 60 |
| 7 | 70 |
| 8 | 80 |
| 9 | 90 |
| 10 | 100 |

The “Fee Interest” is fair market value of the Project had the Company owned the Project in its own name. The determination of the fair market value of the Project in any year is subject to periodic reassessment, for which the Tax Assessor will employ standard valuation methods, including depreciation of improvements, using customary useful life tables and other consideration where appropriate.

SCHEDULE 4.2

RULES FOR SATISFYING THE JOBS GOAL

1. For purposes of this Agreement, the number of net, new “full-time jobs” shall be defined and determined, from time to time, as provided follows:
 - a) Only direct employees of the Company shall be counted.
 - b) In determining the number of full time jobs a portion of the definition of “full-time job” from the job tax credit regulations of the Georgia Department of Community Affairs, which portion is set forth below, shall be used, but shall be modified as follows: “In no event shall any temporary employee or leased employee be counted as occupying a full-time job, regardless of whether or not such person is employed by the Company or any other person or entity.”
 - c) Subject to the modification in (b) above, “**full-time job**” means the following: “a job with no predetermined end date (other than a retirement date), with a regular work week of 35 hours or more on average for the entire normal year of local Company operations, and with benefits provided to other regular employees of the local Company, but does not mean a job classified for federal tax purposes as an independent contractor.”
2. The number of full-time jobs shall be calculated as provided below.
 - a) The number of jobs shall be determined based on the monthly average number of full-time employees subject to Georgia income tax withholding for the taxable year.
 - b) The monthly average number of full-time employees in a taxable year shall be determined by the following method:
 - (i) for each month of the taxable year, count the total number of full-time employees of the business enterprise that are subject to Georgia income tax withholding as of the last payroll period of the month or as of the payroll period during each month used for the purpose of reports to the Georgia Department of Labor;
 - (ii) add the monthly totals of full-time employees; and
 - (iii) divide the result by the number of months the business enterprise was in operation during the taxable year. Transferred jobs, except for jobs transferred to the Project from outside the State of Georgia, and replacement jobs may not be included in the monthly totals.

SCHEDULE 4.2 CONTINUED

RULES FOR SATISFYING THE INVESTMENT GOAL

1. Only capital investments in the Project by the Company shall be counted.
2. Original cost, without regard to depreciation, shall be used in calculating whether the Investment Goal is met.

SCHEDULE 4.6

FORM OF ANNUAL REPORT

Coweta County Development Authority
Newnan, Georgia

[DATE]

Re: Memorandum of Understanding, dated as of _____ (the "MOU"), by and among the COWETA COUNTY DEVELOPMENT AUTHORITY ("Authority"), HITACHI CONSTRUCTION MACHINERY AMERICAS INC. ("Company") and the other parties thereto regarding the capital project located in Coweta County, Georgia (the "Project") – 20__ Annual Report

Dear _____:

This letter shall serve as the 20__ Annual Report, as required under the MOU.

1. Jobs Report

For the year _____, the total number of full-time jobs with average salaries of \$85,000 located at the Project, based on the monthly average number of full-time jobs, was _____. We have enclosed _____, as evidence of such job creation.

The Jobs Goal for 20__ was 20 jobs with average salaries of \$85,000. The Jobs Shortfall for the year _____ is _____ jobs. The Jobs Shortfall Percentage is _____% ($\frac{\text{_____}}{20}$).

2. Investment Report.

As of December 31, 20__, the Company has invested \$_____ in real estate Improvements at the Project.

The Investment Goal for 20__ was \$33,000,000. Therefore, the Investment Shortfall Percentage is _____% ($\frac{\text{_____}}{\$33,000,000}$).

3. Recovery Payments.

Based on the above Jobs Shortfall Percentage and the Investment Shortfall Percentage, the amount of Recovery Payment due with respect to 20__ is \$_____ (as calculated below). [IF A RECOVERY PAYMENT IS DUE, THAT PAYMENT SHOULD BE CALCULATED HERE BASED ON THE RECOVERY SCHEDULE IN THE MOU. Note that a Recovery Payment is not due unless either the Jobs Shortfall Percentage or the Investment Shortfall Percentage is greater than 20%.]

Please do not hesitate to let us know if you require any additional information.

Sincerely,

Enclosures