

□ SO. CALIFORNIA: 2044 South Vineyard Avenue, Ontario, CA 91761 • (909) 930-1822 • FAX (909) 923-2356  
□ NO. CALIFORNIA: 800 East Grant Line Road, Tracy, CA 95376 • (209) 830-8600 • FAX (209) 830-8884

**City of San Leandro  
14200 Chapman Road  
San Leandro, CA 94577**

**April 12, 2018**

**Attention: Frank Rivera**

**Reference: Rental Proposal for a Cold Milling Machine. Wirtgen 2016 Model W120 CFI Track Mounted Grinder - Serial # 1810.0361 – Nixon-Egli Stock # 216044.**

Note: Minimum rental period for this piece of equipment is **Three (3) consecutive months**

Dear Mr. Rivera

We've prepared the following rental proposal for your consideration:

**One 2016' Wirtgen Cold Milling Machine Model W120 CFI, equipped as follows:**

- Cummins QSL-9 Turbo Diesel engine - 345 HP - **Tier IV Final Engine.**
- Operator's station with drivers seat.
- Right rear track assembly swivels in front of drum for milling close to curb.
- FB 1200 Milling Drum (3' 11" Drum width)
- 1200mm Milling Drum with HT22 Holders LA15 and 115 picks
- Hydraulic side plate lifters.
- Infinitely variable hydraulic, all wheel drive with three speed ranges.

**Options Included:**

- **Four tracks in lieu of wheels.**
- **Hydraulically Folding Conveyor in lieu of standard conveyor**
- **Level Pro Plus Grade/Slope control system including Rapid Slope sensor**
- **Milling Drum Rotation System**

**Rental Proposal:**

<b>Rental Charges – (3 Months @ \$27,000.00 per Month = 84 Days):</b>	<b>\$ 81,000.00</b>
<b>One box (50 each) teeth # W6-G/20X:</b>	<b>\$ 396.78</b>
<b>Taxable Total:</b>	<b>\$ 81,396.78</b>
<b>Sales Tax @ 9.75%</b>	<b>\$ 7,936.18</b>
<b>Freight Charges:</b>	<b>\$ 4,000.00</b>
<b>Total Customer Charges – 3 Month (84 Days) Rental</b>	<b>\$ 93,332.96</b>

**Freight Charges\* = 4 total moves of unit – delivery to customer yard, return of unit to Tracy, CA and movement to and from a job location within San Leandro.**

## Rental Agreement Special Notes:

1. Unit is in our inventory at Nixon-Egli, Tracy, CA.
2. Unit is subject to prior sale or disposition
3. This unit is equipped with the features and options that we purchase for our inventory.
4. Monthly rental consists of **28 consecutive calendar days**
5. It is the responsibility of the City of San Leandro to pay drayage for pick up and return of the unit at the Nixon-Egli facility located in Tracy, CA. Nixon-Egli will provide a drayage quote to customer and add drayage costs incurred to related rental invoice(s).
6. Quoted drayage costs are \$1,000.00 per move – this will be added on to Monthly rental invoice(s) as movements take place
7. Nixon-Egli to provide operator/maintenance training on the first day of rental at location determined by the customer

**Note: Nixon Egli will only lock in reservation of the unit for the anticipated Rental period (12 weeks commencing 5/29/18) upon receipt of a signed Purchase Order from customer**

If you have any questions, or require additional information, please feel free to contact us.

Sincerely,  
**Nixon-Egli Equipment Co.**

Michael Knight  
Area Sales Manager

## CONDITIONS OF LEASE

1. Lessor agrees to Lease to Lessee, and Lessee agrees to Lease from Lessor, the equipment listed. A violation of any of the following constitutes a breach of this Lease: (1) Lessor retains title to the equipment and at the end of the Lease term, lessee shall return the equipment to Lessor's business premises. (2) Lessee shall keep the equipment free from all liens, writs of attachment or legal process of any kind. (3) Lessee shall not hire the equipment to any other party. (4) Lessee shall not assign any interest in the contract, or in the equipment. (5) Lessee shall pay all transportation costs, including loading and unloading, and the cost of assembling and preparing the equipment for operation. (6) Lessee is liable for all damage to, or loss of the equipment while in transit. (7) Lessee has the right to inspect equipment before loading for shipment. If no inspection is made, inspection is deemed waived, and the equipment is conclusively presumed to be in good operating condition and repair, upon delivery to lessee. (8) Lessee shall not remove the equipment from the designated place of use set forth above, nor relinquish possession or control of the equipment.
2. The monthly Lease rate is based on 20 workdays per month (i.e. 160 hours). The weekly Lease rates are based on a 5 day work week. The daily Lease rates are based on an 8 hour day. For leases exceeding 1 full month, any partial month thereafter shall be charged at the monthly rate, prorated on the basis of 20 working days (i.e. 5.00% of the monthly rate for each working day). Leases with a term of less than 1 month shall be charged as follows: Weekly rate (5 working days) is equal to 33% of the monthly rate. Daily rate is equal to 11% of the monthly rate; Hourly rate is equal to 1.4% of the rate, and the weekly rate shall be used until it exceeds the monthly rate. Any hours over 8 hours per day, or on Saturdays and Sundays, shall be charged at an additional rate equal to 80% of the applicable base rate. The Lease term and rental due shall further not be reduced by the surrender of the equipment prior to expiration of the minimum Lease period.
3. Lease payments to be paid in advance, unless prior credit approval is granted by the Lessor, in which case terms of payment are net 10 days from date of invoice. A 2% per month service charge will be levied against all accounts not paid within the above time limits, but not to exceed the highest applicable legal rate of interest.
4. The lease term shall continue for the minimum Lease period stated above. Extensions of Lease term beyond the minimum period is not automatically granted. If Lessee desires to extend the term, Lessee must obtain written approval from lessor by fax or otherwise. If Lessee retains the equipment beyond the expiration of the minimum Lease period without obtaining such written approval, Lessee shall be responsible for all consequential damages incurred by Lessor, and shall indemnify Lessor.
5. Lessee is liable for all damage to the equipment. Lessee shall notify Lessor in writing within 48 hours of any damage to the equipment, but Lessee shall perform no repairs on the equipment. All repairs shall be performed by a manufacturer's authorized dealer, and the full cost of repairs shall be borne by the Lessee. Upon termination of the Lease, Lessee shall return all equipment in the same condition as when received by Lessee, normal wear and tear expected. If equipment is returned in a damaged condition, Lessor will repair the damage, with full cost of repairs borne by Lessee, and the Lease period shall be extended as necessary, to include the period of the repairs. When said repairs are completed, the lease period shall terminate.
6. Lessee shall perform, at its own expense, all required maintenance of the equipment in accordance with manufacturer's recommendations and instructions. However, Lessee shall not remove or alter any logo, numbers, or letters on the equipment.
7. Lessee shall permit only experienced, trained, reliable, personnel to operate the equipment. Lessee shall operate the equipment in a safe manner, at or below rated capacity, and shall obey all federal, state, and local safety orders, including but not limited to California Code of Regulations, Title 8 Sec. 5006.1 and all of the manufacturer's safety instructions. Prior to use, Lessee's personnel shall read and familiarize themselves with the operation manual and all safety warnings and decals, and use the equipment as instructed therein. The equipment is not designed nor intended to carry personnel other than the operator, and Lessee shall not hoist, lower, swing, or travel while any person other than the operator is on the equipment.
8. Lessee shall pay when due all taxes, assessments, licenses, CAL/OSHA Certification registration fees, and Municipal, State, Federal, and other governmental charges, that may now or hereafter be imposed on the rent payments hereunder, ownership, possession, leasing, operation, control, use and maintenance of the equipment, excluding only Lessor's franchise and income tax.
9. Prior to Lessee's taking delivery of equipment, Lessee shall furnish the following Certificates of Insurance which are satisfactory to the Lessor: (A) Comprehensive General Liability insurance with minimum single limit of \$1,000,000; (B) Hazard Insurance covering all risk of conditions and expressly including all equipment Leased within this agreement to the extent of its full replacement cost. At all times during the term of this Lease, the Lessee shall, at its own cost, maintain these insurance policies. Each Such policy must name the Lessor as an additional insured and loss payee, and require the insurer to give 30 days of advance notice to the Lessor prior to cancellation or reduction of coverage. Cancellation or reduction of insurance coverage without the written consent of the Lessor, shall constitute a default of the terms of this Agreement by the Lessee.
10. This Lease contains the entire agreement of the parties. Lessee has not relied upon any representations not set forth herein. This Lease shall not be interpreted by any prior course of dealing between the parties, or by any customer or usage of the trade. No modification of this Lease shall be binding, unless it is in writing and signed by Lessor and Lessee.
11. If Lessee: (1) defaults on any payment or (2) fails to comply with any term or condition of this Lease or (3) if a proceeding in bankruptcy of receivership, voluntary or involuntary, is instituted by or against Lessee, or (4) if Lessor in its sole and absolute discretion deems such action necessary to protect the equipment against loss or damage, or (5) upon termination of expiration of the term of the Lease, Lessor may in addition to all other rights at law or equity, its sole and without previous notice or demand, enter any premises where the equipment is located, and may repossess all, or any part of, the equipment. In such event, Lessee admits that continued possession is unlawful, and waives any action for trespass or damages. In order to secure all sums which may become due pursuant to this Lease, Lessee grants to Lessor a lien upon the equipment leased hereunder, and also upon all its inventory, chattel paper, causes of action, accounts, equipment and general intangibles, whether any of the foregoing is owned now or acquired later, and including all additions, and replacements relating to any of the foregoing.
12. If Lessor assigns this Lease, such assignment shall be free of all claims or offsets in favor of Lessee. Upon such assignment, the term "Lessor" herein shall be deemed to refer to Lessor's assignee.
13. Time is of the essence in the performance of all terms and conditions of this Lease. Lessor's failure to require strict performance of any of the Lease provision, shall not constitute a waiver of any prior or subsequent defaults.
14. The laws of the State of California shall govern the validity, construction, performance, and enforcement of this Lease agreement. Should either party institute legal action to enforce any obligation contained herein, it is agreed that the venue of such suit or action shall be the County of Los Angeles and Lessor and Lessee further agree that all disputes connected in anyway with this Lease agreement, including any claims for breach, default, damage or loss of property, injury or death of any person, shall be filed and litigated in the Los Angeles Superior Court, Central District, located at 111 North Hill Street, City of Los Angeles, County of Los Angeles, in the State of California.

Should any party to the Lease file an action in any jurisdiction and/or venue other than the one provided in this section, the offending party shall pay the other party its reasonable attorneys' fees and costs incurred in effecting the matter's transfer to the proper jurisdiction and/or venue herein described. In the event that either Lessor or Lessee shall institute any action or proceeding against the other relating to the provisions of this Lease, or any default hereunder, the unsuccessful party in such action or proceeding agrees to pay the successful party the reasonable attorneys' fees and costs (including expert witness fees) incurred therein by the successful party.

15. If Lessee is a corporation, the undersigned individual waives the provisions of Civil Code Sections 2819, 2849, and 2850, and in consideration of the Lease of the equipment, personally and unconditionally guarantees the performance by the said corporation of all of its obligations under this Lease, including the indemnity in favor of Lessor, and the payment of all sums due to Lessor. If the said corporation fails to make timely payment of any sum due under this agreement, the undersigned individual agrees to pay such sum on demand. The undersigned individual's consent will not be required for any modification of this Lease, and any such modification by the corporation will not cancel, relieve, or alter the undersigned's personal liability.
16. Lessee hereby indemnifies Lessor, and its officers, employees and agents, and holds them harmless against all liability, damages, judgments or awards of any kind and nature, resulting directly or indirectly from, or connected in any way with all the equipment leased hereunder, including but not limited to, Lessee's employee wages, benefits, and taxes, as well as attorney fees, and other legal fees and costs incurred in defending against any claims alleging damage or loss of property, or injury or death of any person (including Lessee, Lessee's employees, and Lessee's customers) or any interruption of service, lost profits, or loss of use of the equipment, irrespective of whether such liabilities, damages, judgments, or awards were actually or allegedly caused wholly or in part, through the negligence of Lessor, or any of its employees or agents.
17. **DISCLAIMER OF WARRANTIES: TO THE EXTENT OF ANY WRITTEN MANUFACTURER'S WARRANTY IS, BY ITS TERMS, AVAILABLE TO THE LESSEE, THE LESSEE MAY BENEFIT THEREFROM. HOWEVER, LESSOR HAS MADE NO REPRESENTATIONS OR WARRANTIES, EITHER WRITTEN OR ORAL, EXPRESSED OR IMPLIED, WITH RESPECT TO THE EQUIPMENT LEASED HEREUNDER. ANY DESCRIPTION OF THE EQUIPMENT CONTAINED IN LESSOR'S DOCUMENTS ARE FOR THE SOLE PURPOSE OF IDENTIFYING THE EQUIPMENT, AND DO NOT CONSTITUTE ANY SORT OF WARRANTY. LESSOR MAKES NO WARRANTY AGAINST PATENT OR LATENT DEFECTS IN MATERIAL, WORKMANSHIP, OR CAPACITY, NOR ANY WARRANTY THAT SAID EQUIPMENT WILL MEET THE REQUIREMENTS OF ANY LAWS, SPECIFICATIONS, OR CONTRACTS WHICH PROVIDE FOR ANY SPECIFIC MACHINES, EQUIPMENT, CAPACITY, OR PERFORMANCE. LESSOR HAS MADE NO REPRESENTATIONS OR WARRANTIES REGARDING SUITABILITY, DURABILITY, OR FITNESS FOR LESSEE'S INTENDED PURPOSE, AND LESSOR DISCLAIMS ANY AND ALL SUCH IMPLIED WARRANTIES OF MERCHANTABILITY AND/ OR FITNESS FOR PARTICULAR PURPOSE OR USE. LESSEE IS KNOWLEDGEABLE AND EXPERIENCED CONCERNING THE SPECIFIC TYPE OF EQUIPMENT LEASED, SO LESSEE HAS RELIED UPON HIS OWN JUDGMENT AND EXPERTISE IN SELECTING THE SAID EQUIPMENT, RATHER THAN THE JUDGMENT AND EXPERTISE OF LESSOR OR ANY OF ITS REPRESENTATIVES. FURTHER, LESSEE HAS INSPECTED THE EQUIPMENT, AND HAS SELECTED ALL THE ITEMS OF EQUIPMENT, AND IS SATISFIED THAT THEY ARE THE DESIGN AND CAPACITY WHICH ARE SUITABLE FOR LESSEE'S INTENDED PURPOSE, AND IS ALSO SATISFIED WITH THE CONDITION AND QUALITY OF THE EQUIPMENT LEASED.**
18. **Off-road diesel mobile vehicles 25 horsepower and greater may not idle more than 5 consecutive minutes in accordance with Section 2449(d)(3), Title 13, California Code of Regulations. Idling of a rental vehicle of this type is the responsibility of the renter of the lessee.**

**DISCLAIMER OR WARRANTIES: LESSOR DISCLAIMS ANY RESPONSIBILITY FOR THE CONDITION, REPAIR, FITNESS AND MERCHANTABILITY OF THE EQUIPMENT AND MAKES NO WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED. LESSEE SHALL HAVE THE BENEFIT OF ANY MANUFACTURER'S WARRANTY WHICH BY ITS TERMS IS AVAILABLE TO THE LESSEE, TO THE EXTENT SUCH WARRANTY IS AVAILABLE TO LESSEE BY ITS TERMS. IT IS EXPRESSLY UNDERSTOOD AND AGREED BY AND BETWEEN THE LESSOR AND LESSEE THAT THE "CONDITIONS OF LEASE" SET FORTH HEREOF ARE INCORPORATED IN, AND CONSTITUTE A BINDING PART OF THIS LEASE".**

**Transportation charges are to be paid both ways by LESSEE including all loading and/or unloading charges incurred.**

**LEASE SHALL BE PAID IN ADVANCE IN LAWFUL MONEY OF THE UNITED STATES. LEASE COMMENCES IMMEDIATELY UPON DELIVERY TO LESSEE AT LESSOR'S WAREHOUSE AND ENDS UPON RETURN OF THE EQUIPMENT TO LESSOR'S WAREHOUSE. NO ALLOWANCE WILL BE MADE FOR SUNDAYS, HOLIDAYS OR TIME IN TRANSIT, OR FOR ANY PERIOD OF TIME EQUIPMENT MAY NOT BE IN ACTUAL USE WHILE IN LESSEE'S POSSESSION. ALL TRANSPORTATION OR TRUCKING CHARGES TO BE PAID BY LESSEE.**

**PICKUP OF EQUIPMENT, OR ACCEPTANCE OF DELIVERY CONSTITUTES A BINDING ACCEPTANCE OF ALL OF THE ABOVE CONDITIONS OF LEASE**  
LESSOR: NIXON-EGLI EQUIPMENT CO. LESSEE:

BY: \_\_\_\_\_  
SIGNATURE

BY: \_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
PRINTED NAME

\_\_\_\_\_  
PRINTED NAME

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DATE

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DATE