

North Dakota Department of Transportation  
**INVITATION TO BID**

Bid Number: 975-34-14-050-04	Bid Opening Date & Time: 10/24/2014 02:00 PM
Items: AWD Wheel Loader Rental	Buyer: Vanessa Brosten
Bid Mailing Address: 608 East Boulevard Avenue	Telephone Number: 701-328-4466
City, State, Zip: Bismarck, North Dakota, 58505	Email: vbrosten@nd.gov
Contract Period: 10/24/2014 TO 04/30/2015	Date Prepared: 10/09/2014

**BID RESPONSE**

Please submit your bid response on the attached forms in conformance with the instructions and specifications in the NDAC 04-12-01 – 04-12-16. One copy of your bid response must be returned to the North Dakota Department of Transportation (NDOT) prior to the time and date specified for the bid opening. Bid responses received after the time and day specified for the bid opening will be rejected. Mark envelope with word "BID" and the opening time and date. **If your bid response is accepted by NDDOT, then your bid response will constitute a binding contract.**

**CONTRACT**

This contract is made and entered into by and between NDDOT for the state of North Dakota (hereinafter state) and

Vendor Name ASC Construction Equipment USA, Inc	Vendor Address 750 Yegen Rd Bismark, ND 58504
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(hereinafter vendor). In consideration of and for the acceptance by the state of the offer made by the vendor pursuant to the bid response, the vendor agrees and promises to sell, furnish, and deliver to the state, at the time, places, and prices specified in the bid response, all goods, merchandise, supplies, commodities, equipment, or other items contained in the bid response and for which the vendor has been awarded this contract by the state. The vendor shall fully perform this contract in accordance with the terms and conditions contained in the bid response including all specifications, rules, or regulations mentioned therein, and shall comply with all applicable provisions of the NDAC 04-12-01 – 04-12-16 promulgated by the State Purchasing Division; such manual being made a part of this contract by reference. The Risk Management Appendix and Civil Rights Appendix, both attached, are hereby incorporated into and made a part of this agreement.

**The following must be completed by the vendor;** failure to do so may result in the rejection of the vendors bid proposal.

Vendor Name ASC Construction Equipment USA, Inc		
Mailing Address 950 Yegen Rd Bismark, ND 58504		
Telephone Number 701-250-4882	Fax Number 701-250-7017	E-mail Address john.vanpatton@ascvolvo.com

Kristin Parker VP Sales and Marketing  
Name & Title (Type or Print)

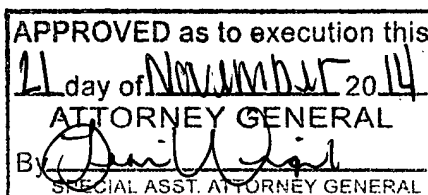
Signature

10/23/14  
Date

To be signed by Owner; Partner; Corp. Pres., Vice Pres., or other authorized Corp. Officer or bid may be rejected. (if signed by other authorized Corp. Officer, please attach copy of Power of Attorney or other documentation showing authority to sign.)

**FOR ND DEPARTMENT OF TRANSPORTATION USE ONLY** Accepted by the state according to provisions of award.

Authorized Signature For Grant Levi Darcy R. Rosenbahl, Dep. Dir.	Date 21 NOV 2014
Recommended for approval Brad	Date 11-20-14
	Approximate contract amount \$



CLA 7480 (Div. 50)

### **MAILING INSTRUCTIONS**

Mail only one completed and signed request for bid document per envelope, unless instructed otherwise. Request for bid documents not signed or received after the date and time specified in the request for bid will be rejected.

**BID IS: ☒ SEALED ☐ NOT SEALED**

Address the envelope containing your response in the following manner:

BID NUMBER - 975-34-14-050-04  
BID OPENING DATE/TIME - October 24, 2014; 2:00 PM Central  
N. D. DEPT. OF TRANSPORTATION  
PROCUREMENT SECTION  
608 E BOULEVARD AVE  
BISMARCK ND 58505-0700

### **BIDDERS INSTRUCTIONS**

1. **Acceptance/Rejection/Waiver.** The state of North Dakota reserves the right to accept or reject any or all bids and to waive minor irregularities or technicalities, provided such waiver does not substantially change the offer or provide a competitive advantage to any vendor, in the judgment of the state.
2. **Affirmative Action.** The contractor will take affirmative action in complying with all Federal and State requirements concerning fair employment and employment of individuals with disabilities, and concerning the treatment of all employees without regard to discrimination by reason of race, color, religion, sex, national origin, or disability.
3. **Assistance to Bidders with a Disability.** Bidders with a disability that need an accommodation must contact the Procurement Officer prior to the deadline for receipt of bids so that reasonable accommodations can be made.
4. **Alterations and/or Corrections.** The person signing the bid response must initial any or all manual alterations and/or corrections to the bid response. Those bid responses with alterations and/or corrections that are not initialed may be rejected.
5. **Award.** Award will be made to a responsive, responsible bidder with the lowest price considering conformity with specifications, terms of delivery, quality, and serviceability. NDDOT reserves the right to consider bids varying in minor respects from any specific requirements herein, but judged to meet the intent of this request.

Past performance may also affect the award at the discretion of the NDDOT. References must be furnished upon request by NDDOT.

Contracts are not awarded at the bid opening. Bid responses will be firm for 30 days, unless stated otherwise.

6. **Awards, Splitting of.** The state reserves the right to make awards by item, groups of items, or on the total low bid for all the items specified as indicated in the detailed specifications. Bidders interested only in the total low bid for all items are to state 'all or nothing' on their bid response.

7. **Bidder Checklist.** HAVE YOU REMEMBERED TO:

- Bid F.O.B. Destination (Ship To: Address) Freight Prepaid.
- Mark envelope as indicated.
- Review Standard Terms and Conditions contained in this solicitation.
- Sign your bid on the cover sheet.
- Initial all bid/pricing changes you made.
- Bid responses must be submitted in ink or type written.
- Review and complete all requirements contained in this solicitation to ensure compliance.

8. **Bidder's Responsibility and Late Bids.** It is the bidder's responsibility to ensure that a bid response is physically deposited with the NDDOT Procurement Office prior to the date and time specified for the opening. Late bid responses will not be opened and will be rejected and returned regardless of the degree of lateness or the reasons. It is the bidder's responsibility to comply with the State of North Dakota's laws and regulations.

9. **Bid Summary.** Bid summaries are available when the bid has been awarded. When bids are issued using the State's electronic bidding system, the bid summary will be posted and available for download from:  
<http://www.nd.gov/spo/>

Bid summaries will be mailed to those bidders who supply a self-addressed, stamped envelope with their bid response. A copy of the bid summary may also be obtained by visiting the NDDOT Procurement Office during normal working hours.

10. **Bid Bond.** Waived in this instance: however, bidder(s) failing to enter into a contract with this office, upon notification of award, may be subject to removal from the bidder's list.

11. **Clarifications, Bid Changes and Questions Deadline.** The Procurement Officer is the point of contact. Any irregularities, lack of clarity, requested bid changes and all questions regarding this bid and the procurement process must be addressed to the Procurement Officer referenced on the first page of this document not later than end of business October 17, 2014. (Contact information is indicated on cover page). If a bid amendment is required, it will generally be issued after this date.

The bidder is cautioned that the requirement of this solicitation can be altered only by written amendments and that verbal communications from whatever source are of no effect.

12. **Definitions.**

- Bidder - any person or firm submitting a competitive bid in response to a solicitation.
- Bid summary - a summary of all bid responses received by the NDDOT Procurement Office.
- Bid response - the executed document submitted by a bidder in response to a solicitation.
- Contract - a deliberate written agreement between two or more competent persons to perform specific act or acts.
- Contractor - any person or firm having a contract with a governmental body.
- Solicitation - the process of notifying prospective bidders that the state wishes to receive bids for furnishing goods or services.

13. **Deviation from Specifications Supplied by NDDOT.** Unless otherwise indicated by the bidder, it will be assumed that specifications will be met in all respects. Any deviation from the minimum specifications indicated herein must be clearly pointed out PRIOR TO THE DEADLINE FOR RECEIPT OF QUESTIONS; otherwise, it will be considered that the items offered are in strict compliance with these specifications, and the bidder will be held responsible.

14. **Electronic & Facsimile Bids.** Bid responses are not to be email attached or faxed to the NDDOT unless this transmittal method has been authorized by the Procurement Officer or bid document. (Contact the Procurement officer regarding additional requirements and exceptions.) Bid responses electronically submitted or faxed may be rejected as non-responsive.

15. **Freight/F.O.B. Destination.** Freight and transportation charges are to be included in the price of the products, unless otherwise specified in the solicitation. (F.O.B. - Free On Board).

16. **Indemnification.** The attached Equipment Rental Agreement will be incorporated into the contract.

Bidders must review the attached Equipment Rental Agreement for indemnifications and insurance requirements.

Objections to any of the provisions must be in writing to the attention of the Procurement Officer by the time and date set for receipt of questions.

17. **Multiple Bid(s).** Bidders may submit more than one bid response(s) for the item(s) specified in the solicitation. Each bid submitted must comply in all aspects with the bid requirements and these instructions.

18. **Negotiation.** NDDOT reserves the right to negotiate with the successful bidder to ensure the best possible consideration is afforded to all concerned.

19. **Open Records.** After award, bid documents will be subject to the North Dakota open records law. Records are closed or confidential only if specifically stated in law. If a request for public information is received, the procurement officer will determine whether the information is an exception to the North Dakota open records law,

and the information will be processed appropriately. Those interested in reviewing the bid file are to make arrangements with the NDDOT Procurement Office. The NDDOT Procurement Office hours are 8:00 a.m. - 12:00 p.m. and 1:00 p.m. - 5:00 p.m. Monday through Friday.

20. **Performance Bond.** Successful bidders will not be required to furnish a performance bond; however, failure to perform satisfactorily will result in the immediate termination of the contract(s) and bidders may be subject to removal from the bidder's list.

21. **Preparation of Bid.** Bids will be accepted on NDDOT forms only. If the document is located on the State Procurement Office website, then bidder is to download the document and type or write their responses as indicated by the bid document. Alteration of the bid document may be cause for bid rejection. Bidders are cautioned to examine specifications and all instructions. Failure to do so will be at the bidder's risk.

22. **Pricing.** Unit prices are to be stated in United States currency and based on the unit of measurement specified in the solicitation, F.O.B. Destination, to the NDDOT delivery locations specified herein.

In the event of mathematical differences between the unit price and extended total, the unit price will prevail.

23. **Protest of Award.** An interested party may protest the award within seven days after receiving notice in accordance with N.D.C.C. 54-44.4-12 and N.D.A.C. 4-12-14.

24. **Receipt of Bids.** All sealed bids received by the NDDOT Procurement Office will be opened and read at 608 East Boulevard Avenue, Bismarck, North Dakota, at the time specified in the solicitation.

25. **Rejection.** Bid responses may be rejected if:

- The bid response is not legible.
- The bid response is not submitted on the form supplied.
- The bid response is not completed as requested.
- The bid response is completed and/or signed in pencil.
- The bid response is faxed to the procurement office.
- The bid response is not signed by an authorized company representative.
- The bid response is not responsive to the specifications or other requirements of the solicitation.
- Changes to the bid response are not initialed.
- The bid response is received after the time and date specified.
- The bidder has not met Vendor Registration requirements or is suspended or debarred.
- The bid document has been altered by the bidder.
- The bidder is determined to be not responsible (N.D.A.C. 4-12-11-04).
- The price is not fair and reasonable
- Or a combination of above.

26. **Signature.** The bid must be signed manually in ink. The name and title of the person signing the bid response must be typed or printed above the signature. The bid must be signed by **Owner, Partner, Corp. Pres., Vice Pres., or other authorized Corp. Officer** or the bid may be rejected. If signed by other authorized Corp. Officer or representative, please attach a letter signed by the Owner, Partner, Corp. Pres., or Vice Pres. indicating the individual has authority to enter into a contract on behalf of the company (or a Power of Attorney).

27. **Supplemental Terms and Conditions.** Bids including supplemental terms and conditions will be accepted, but supplemental conditions that conflict with any conditions contained in this ITB or that diminish the State's rights will be considered null and void. The State is not responsible for identifying conflicting supplemental terms and conditions before issuing a contract award.

After award of contract:

- a) If a conflict arises between a supplemental term or condition included in the bid and a term or condition of the ITB, the term or condition of the ITB will prevail, and,
- b) If the State's rights would be diminished as a result of application of a supplemental term or condition included in the bid, the supplemental term or condition will be considered null and void.

Changes, modifications, additions, or alterations to the bid document could be cause for rejection of the submitted bid at the sole discretion of the NDDOT. Contact the Procurement Officer in writing prior to the deadline for clarifications.

28. **Taxes.** The State does not pay sales tax or federal excise tax. The state sales tax exemption number is E-2001. The federal tax-free transaction number is 45-0309764.

29. **Vendor Registration.** Bids will be accepted from bidders who are not currently Approved Bidders for the State of North Dakota; however, the successful bidder may be required to become approved prior to award, in accordance with N.D.C.C. 54-44.4-09. To become an Approved Bidder, you must: 1) register with the North Dakota Secretary of State (fees apply), and 2) submit a completed Bidder List Application to the ND State Procurement Office. Registration instructions and forms are available on-line at: [www.nd.gov/spo/vendor](http://www.nd.gov/spo/vendor). Contact the ND State Procurement Office at 701-328-2683 or [infospo@nd.gov](mailto:infospo@nd.gov) for assistance.

30. **Withdrawal or changes to a bid response prior to the bid opening date and time.** A bidder may withdraw or make a change to his bid response prior to the bid opening date and time. The request to make a change or withdraw must be in writing by a representative of the firm. The request to withdraw or change must be signed by the bidder or his designated representatives.

31. **Withdrawals after the bid opening date and time.** Withdrawals after the bid opening will be allowed only upon written approval from the NDDOT Procurement Office. Vendors continually withdrawing bids after the bid opening may be removed from the Vendor Database.

### **GENERAL CONTRACT TERMS AND CONDITIONS**

1. **Applicable Law and Venue.** Any dispute arising out of this agreement will be resolved under the laws of the State of North Dakota.

2. **Binding Contract.** The acceptance of a bid response in writing by the purchasing agency constitutes a contract between the bidder and the State. Written acceptance from the purchasing agency will be in the form of a purchase order, notification of award, or contract. Any oral agreement or arrangement by a bidder with a State employee or purchasing agency will have no force or effect unless reduced to writing.

3. **Compliance with Laws, Nondiscrimination and Affirmative Action.** The contractor must, in performance of work under this contract, fully comply with all applicable federal, state or local laws, rules, regulations and policies, including those relating to nondiscrimination, affirmative action, accessibility and civil rights including Title VI of the Civil Rights Act of 1964. The contractor agrees to file all required reports on time, to make required payroll deductions, and to pay all taxes and premiums owed on time, including sales and use taxes and unemployment compensation and workers' compensation premiums. The contractor shall have and keep current at all times during the term of this contract all licenses and permits required by law.

4. **Contract Amendments, Waivers.** After a binding contract has been entered into, no changes (i.e. additions, substitutions, subcontracting or a price adjustment) may be made, unless prior approval has been obtained from the purchasing agency and Procurement Officer.

The terms of this contract shall not be waived, altered, modified, supplemented, or amended, in any manner whatsoever, except by written instrument signed by the parties. No waiver consent, modification or change of terms of this agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification, or change, if made shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this agreement.

5. **Contract Management.** The day to day activities of the rental will be dealt with on the district level between district personnel and the awarded dealership(s). Any changes in the contract must be approved by the Procurement Officer.

6. **Contract Volume.** The quantities to be rented as indicated herein are best estimates. NDDOT reserves the right to vary actual quantities from those indicated at any time before the bid opening and by written notification to the contractor(s) after award and throughout the term of the contract.

7. **Service Locations.** Service and repair are critical. Bidders must identify their nearest service locations by district and describe their ability to keep their loaders running during the term of the contract with minimal down

time. Bidders must include a narrative describing their ability to respond to breakdowns with emergency service or replacement equipment.

8. **Delivery.** NDDOT requests delivery of the units **not later than DECEMBER 1, 2014**. If rental equipment is not available within the specified time, the bidder must indicate the approximate date delivery can be expected on the bid document. Dealer is responsible for delivery to and pick up from the receiving NDDOT district(s).

9. **Contract Term and Renewal Option.** The NDDOT will enter into a contract which will be effective beginning upon an acceptable delivery date, not later than December 1, 2014, to extend through April 30, 2015.

10. **Contract Termination.**

a. **Termination without Cause.** This contract may be terminated by mutual consent of both parties, or by either party upon 30 days' written notice.

b. **Termination for Lack of Funding or Authority.** The State may terminate this contract effective upon delivery of written notice to the contractor, or on any later date stated in the notice, under any of the following conditions:

- i. If funding from federal, state, or other sources is not obtained and continued at levels sufficient to allow for purchase of the services or supplies in the indicated quantities or term. The contract may be modified by agreement of the parties in writing to accommodate a reduction in funds.
- ii. If federal or state regulations or guidelines are modified, changed or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this contract or are no longer eligible for the funding proposed for payments authorized by this contract.
- iii. If any license or certificate required by law or regulation to be held by the contractor to provide the services required by the contract is for any reason denied, revoked or not renewed.

Any such termination of this contract under (i), (ii), or (iii), above, shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination.

c. **Termination for Cause.** The State by written notice to the contractor may terminate the whole or any part of this contract:

- i. If the contractor fails to provide services required by this contract within the time specified herein or any extension thereof; or
- ii. If the contractor fails to perform any of the other provisions of this contract, or so fails to pursue the work as to endanger performance of this contract in accordance with its terms and after receipt of written notice from the State, fails to correct such failures within ten days or such longer period as NDDOT may authorize.
- iii. The rights and remedies of the State provided in the above clause related to defaults by the contractor are not exclusive and are in addition to any other rights and remedies provided by law or under this contract.

d. **Termination, Deliveries.** If the contract is terminated for any reason, the contractor is responsible for delivery of all commodities and services ordered prior to the termination, unless those orders had been canceled by the Purchasing Agency or Entity.

11. **Contract Price Adjustment.** The Contract Unit Prices shall be firm for the duration of the contract period.

12. **Inspection and Investigations.** The State reserves the right to conduct inspections and investigations related to the bidder and offered commodities or services to make determinations regarding compliance with the bid requirements and responsibility of the bidder.

13. **Billing and Payment Procedures.** Invoices are to be submitted to the individual districts. Failure to submit correct invoices to the appropriate NDDOT office may delay contractor payment.

Payment will normally be made within thirty days after delivery and acceptance of commodities or services under this contract and receipt of a correct invoice. All invoice and payment inquiries must be directed to the purchasing agency.

14. **Subcontracts, Assignment.** The contractor shall not subcontract, assign or transfer the contractor's interests or duties under this contract without express written consent of the purchasing agency.

15. **Successors in Interest.** The provisions of this agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and assigns.

16. **Receiving.** Deliveries must arrive at the designated destination(s) during normal business hours unless other shipping/receiving instructions are issued by NDDOT personnel. The contractor shall contact the NDDOT to schedule delivery dates and times at least 24 hours in advance of delivery.

All NDDOT offices will be closed in recognition of State holidays. Any day declared a holiday by the President or Governor will also be recognized by office closure.

17. **Specifications.** Bidders shall submit detailed manufacturer's specifications and literature along with the bid response.

18. **Equipment Rental Agreement (ERA).** Attached is an example of NDDOT's Equipment Rental Agreement which will serve as the rental agreement for the Lessor and the Lessee. Suppliers' rental agreements will not apply to this rental. Where the bid document and the ERA conflict, the bid specifications will prevail.

Objections to any of the provisions must be in writing to the attention of the Procurement Officer by the time and date set for receipt of questions.

After the contract has been awarded and as soon as the required insurance information is available; ERA(s) will be provided to the Lessor(s), to be signed and returned to the NDDOT.

19. **Equipment Summary.** An equipment summary will be maintained which will include the equipment data (vendor, serial number, make, model, description, unit value). Awarded contractors will provide serial numbers and assist in the maintenance of accurate data in the equipment summary.

#### **BIDDER CHECKLIST**

##### **HAVE YOU REMEMBERED TO?**

- ☐ Bid F.O.B. Destination (Ship To: Address) Freight Prepaid
- ☐ Mark bid envelope as indicated
- ☐ Review this solicitation document - then provide questions or objections by date specified
- ☐ Provide an authorized signature on the bid cover sheet
- ☐ Initial all bid or pricing changes you made
- ☐ Bid responses must be submitted in ink or type written
- ☐ Identify service locations
- ☐ Attach rental conditions and a brief narrative of your company's ability to respond to breakdowns with emergency service or replacement equipment
- ☐ Indicate bidders' award preference by district as requested
- ☐ Provide manufacturer's specifications and literature
- ☐ If offering more than one size, then attach a list of models

**NORTH DAKOTA DEPARTMENT OF TRANSPORTATION  
SPECIFICATIONS  
FOR RENTAL OF  
FOUR-WHEEL-DRIVE (AWD) ARTICULATED WHEEL LOADER**

The intent of this bid specification is to request pricing for the rental of AWD articulated wheel loaders for stockpile and general highway maintenance operations. The machines shall be new or used less than 200 hours and be of the current make and model. All machine serial numbers shall be provided to the lessee as soon as they become available to allow for adequate time for insurance processing. Two working days' notice shall be given to on site DOT personnel prior to delivery and pickup. Dealer shall be responsible for delivery to and pickup from the District Headquarters at no additional cost to the department. Quantities and location(s) are shown below. The quantities are estimates and could change depending on pricing. The department may not rent the AWD articulated wheel loaders depending on the bid pricing. This will be determined once the bids are received. The Lessor can exchange any unit during the contract period as long as the Lessee always has a machine on site and meets the specification.

AWD articulated wheel loaders are to be used for an estimated 100 engine hours during the rental period of 5 months per machine. Additional hours over 100 shall be invoiced at the quoted hourly rate for hours over 100. Minimum payment for each machine shall be the hourly rate times the estimated usage of 100 hours. (\$Hourly Rate as bid x 100 hours = Minimum payment)

Lessee will carry physical damage insurance on the machines. Lessee will accept responsibility for any breakage due to negligence done by them. The machines will have normal wear from general use when returned. The awarded dealer and DOT representative must agree on any excessive damage within 10 working days of the machines' return. No claims for damage after the 10 working days will be permitted.

Lessor, or an authorized representative, shall provide 24-hour parts availability as feasible. Major repairs shall be done at the dealer's service facility. Lessee personnel will be responsible for daily maintenance, greasing, and checking fluids. Machines out of service for five working days or more shall require a replacement machine of similar features and horsepower to be setup and delivered to the assigned location as mutually agreed upon by the specific delivery lessee.

**Lessor, or an authorized representative, shall provide all oil and filters for routine maintenance at no charge to NDDOT.** The routine maintenance will be performed by the lessee as required by the manufacturer and/or the operator's handbook. The lessor may require the maintenance be performed by the servicing dealer. If the lessor requires the routine maintenance be performed by the authorized servicing dealer, this shall be done at no cost to the department.

Lessor, or an authorized representative, shall at the time of delivery be available to make recommendations to prevent damage to the machines. Lessor, or an authorized representative, shall also at the time of delivery provide familiarization training to ensure efficient operation, identify daily maintenance items, lessor's requirements on the machines cleanliness, and basic operation.

Payment/compensation shall be paid as follows: 70% of the total price bid for 100 hours of use will be paid upon satisfactory acceptance of the contract and delivery of the machines. The remaining 30% plus any additional amount over 100 hours shall be paid upon satisfactory completion of the contract rental period. **Invoices shall be addressed to the Districts receiving the machines.**



### AWD LOADER

(Caterpillar 924H, John Deere 444K, Case 521F, Volvo L60G or Similar Equivalent)

As a minimum each four-wheel-drive articulated wheel loader shall be equipped with:

	COMPLY		COMMENTS
	YES	NO	
Minimum of 120 HP diesel engine, <b>can be larger</b>	✓	_____	_____
Full power shift with torque converter or hydrostatic	✓	_____	_____
Deluxe cab, ROPS, air conditioning/heat	✓	_____	_____
Standard Instrumentation	✓	_____	_____
Hour meter, must only mark time when engine is running	✓	_____	_____
Suspension seat	✓	_____	_____
Single joystick hydraulic controls	✓	_____	_____
3 <sup>rd</sup> valve hydraulics plumbed to the front of the loader arms	✓	_____	_____
Four wheel drive	✓	_____	_____
Limited slip differentials minimum, prefer differential lock	✓	_____	_____
Hydraulic quick coupler with <b>minimum of 2.5 yd.</b> general purpose bucket <b>with bolt on cutting edge installed on machine.</b>	✓	_____	_____
Rylind horizontal pin quick attach system, capable of mating to Rylind PL20 female attachments – <b><i>Preferred if available, not required</i></b>	✓	_____	_____ <u>Depends on Availability</u>
Engine heater, 120v	✓	_____	_____
Hydraulic tank heater, 120v - or low viscosity fluid for winter time use. Please indicate which in comments	✓	_____	_____
Back up alarm	✓	_____	_____
Headlights, warning and tail lights, manufacturers standard	✓	_____	_____
Factory wired strobe light with cab mounted switch	✓	_____	_____
Full factory warranty throughout the rental period	✓	_____	_____

The AWD articulated wheel loader shall be delivered and operational and scheduled maintenance training provided at the following location(s):

BIDDER: ASC Construction Equipment USA, Inc

ITB 975-34-14-050-04, Wheel Loader, AWD Rentals  
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5 each                      Bismarck, ND

ITEM NO. 1	AWD ARTICULATED WHEEL LOADER	5 EACH
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ITEM NO. 2      AWD LOADER (ITEM 1)      USAGE IN EXCESS OF 100HRS

**ITEM NO. 3 Option 1 ADDITIONAL AWD LOADER FOR OTHER DISTRICTS IF REQUIRED**

YEAR 2014 or 2015 MAKE Volvo MODEL L60G

BIDDER: ASC Construction Equipment USA, Inc ITB 975-34-14-050-04, Wheel Loader, AWD Rentals  
Page 9 of 17

**Please complete the information below as it applies to the bid that has been submitted:**

**PRIMARY CONTACT NAME AND BUSINESS LOCATION (Required)**

PRIMARY CONTACT NAME John Van Patton  
BUSINESS NAME: ASC Construction Equipment USA, Inc  
MAILING ADDRESS: 950 Yegen Rd  
CITY & STATE: Bismark, ND ZIP CODE: 58504  
PHONE NUMBER: 701-250-4882 TOLL FREE: \_\_\_\_\_  
FAX NUMBER: 701-250-7017 EMAIL: john.vanpatton@ascvolvo.com

**BISMARCK DISTRICT SERVICE FACILITY** (Indicate 'Same as above' if applicable)

SERVICE CONTACT NAME Brandon Thigpen  
BUSINESS NAME: ASC Construction Equipment USA, Inc  
SERVICE ADDRESS: 950 Yegen Rd  
CITY & STATE: Bismark, ND ZIP CODE: 58504  
PHONE NUMBER: 701-250-4882 TOLL FREE: \_\_\_\_\_  
FAX NUMBER: 701-250-7017 EMAIL: brandon.thigpen@ascvolvo.com

**VALLEY CITY DISTRICT SERVICE FACILITY** (Indicate 'Same as above' if applicable)

SERVICE CONTACT NAME Greg Johnson  
BUSINESS NAME: ASC Construction Equipment USA, Inc  
SERVICE ADDRESS: 3739 38 Street South Suite E  
CITY & STATE: Fargo, ND ZIP CODE: 58104  
PHONE NUMBER: 701-271-2360 TOLL FREE: \_\_\_\_\_  
FAX NUMBER: \_\_\_\_\_ EMAIL: greg.johnson2@ascvolvo.com

**DEVILS LAKE DISTRICT SERVICE FACILITY** (Indicate 'Same as above' if applicable)

SERVICE CONTACT NAME Brandon Thigpen  
BUSINESS NAME: ASC Construction Equipment USA, Inc  
SERVICE ADDRESS: 1830 27th Street SE  
CITY & STATE: Minot, ND ZIP CODE: 58701  
PHONE NUMBER: 701-837-4020 TOLL FREE: \_\_\_\_\_  
FAX NUMBER: \_\_\_\_\_ EMAIL: brandon.thigpen@ascvolvo.com

**MINOT DISTRICT SERVICE FACILITY** (Indicate 'Same as above' if applicable)

SERVICE CONTACT NAME Brandon Thigpen  
BUSINESS NAME: ASC Construction Equipment USA, Inc  
SERVICE ADDRESS: 1830 27th Street SE  
CITY & STATE: Minot, ND ZIP CODE: 58701  
PHONE NUMBER: 701-837-4020 TOLL FREE: \_\_\_\_\_  
FAX NUMBER: \_\_\_\_\_ EMAIL: brandon.thigpen@ascvolvo.com

**DICKINSON DISTRICT SERVICE FACILITY** (Indicate 'Same as above' if applicable)

SERVICE CONTACT NAME Brandon Thigpen  
BUSINESS NAME: ASC Construction Equipment USA, Inc  
SERVICE ADDRESS: 750 Yegen Rd  
CITY & STATE: Bismark, ND ZIP CODE: 58504  
PHONE NUMBER: 701-250-4882 TOLL FREE: \_\_\_\_\_  
FAX NUMBER: \_\_\_\_\_ EMAIL: brandon.thigpen@ascvolvo.com

**GRAND FORKS DISTRICT SERVICE FACILITY** (Indicate 'Same as above' if applicable)

SERVICE CONTACT NAME Greg Johnson  
BUSINESS NAME: ASC Construction Equipment USA, Inc  
SERVICE ADDRESS: 3738 38 Street South Suite F  
CITY & STATE: Fargo, ND ZIP CODE: 58104  
PHONE NUMBER: 701-271-2360 TOLL FREE: \_\_\_\_\_  
FAX NUMBER: \_\_\_\_\_ EMAIL: greg.johnson2@ascvolvo.com

**WILLISTON DISTRICT SERVICE FACILITY** (Indicate 'Same as above' if applicable)

SERVICE CONTACT NAME Brandon Thigpen  
BUSINESS NAME: ASC Construction Equipment USA, Inc  
SERVICE ADDRESS: 13551 Hamilton Lane  
CITY & STATE: Williston, ND ZIP CODE: 58801  
PHONE NUMBER: 701-570-5309 TOLL FREE: \_\_\_\_\_  
FAX NUMBER: \_\_\_\_\_ EMAIL: brandon.thigpen@ascvolvo.com

**FARGO DISTRICT SERVICE FACILITY** (Indicate 'Same as above' if applicable)

SERVICE CONTACT NAME Greg Johnson

BUSINESS NAME: ASC Construction Equipment USA, Inc

SERVICE ADDRESS: 3739 38 Street South Suite E

CITY & STATE: Fargo, ND ZIP CODE: 58104

PHONE NUMBER: 701-271-2360 TOLL FREE: \_\_\_\_\_

FAX NUMBER: \_\_\_\_\_ EMAIL: greg.johnson2@ascvolvo.com

**SAMPLE DOCUMENT****EQUIPMENT RENTAL AGREEMENT**

North Dakota Department of Transportation  
Financial Management Division  
608 East Boulevard Avenue  
Bismarck, ND 58505-0700

NAME	LESSOR (VENDOR)	LESSEE (STATE)
		ND DEPARTMENT OF TRANSPORTATION
ADDRESS		608 E BOULEVARD AVENUE
CITY, STATE ZIP CODE		BISMARCK ND 58505-0700
CONTACT		VANESSA BROSTEN
PHONE NO		701-328-4466

DATE	RENTAL TERM	BEGINS ON	ENDS ON
DAY (8HRS.)	RENTAL RATES * \$	TRANSPORTATION CHARGES IF APPLICABLE	METER READING OUT
WEEK (44HRS.)	\$		
MONTH (176 HRS.)	\$	MINIMUM RENTAL AMOUNT GUARANTEED BY LESSEE	METER READING IN
EXCESS HOURS BILLED AT	\$		
* RENTAL RATES ARE BASED ON HOUR METER USAGE			
EQUIPMENT WILL BE USED AT			LESSEE WILL NOT REMOVE THE EQUIPMENT FROM THIS LOCATION WITHOUT NOTIFICATION.
SERIAL NUMBER	MAKE	MODEL	DESCRIPTION
			UNIT VALUE

BILL TO INFORMATION				
NAME				
ADDRESS				
CITY	STATE		ZIP	
CONTACT	PHONE NO			

**TERMS AND CONDITIONS****AGREEMENT:**

Lessor, in consideration of the covenants, promises, and agreements on the part of the Lessee, hereinafter contained, hereby leases the equipment to Lessee in accordance with the terms of this agreement.

**AMENDMENTS:**

The terms of this agreement shall not be waived, altered, modified, supplemented, or amended, in any manner whatsoever, except by written instrument signed by the parties.

**TRANSPORTATION CHARGES:**

Lessee shall pay to the Lessor transportation charges incurred by Lessor in delivering the equipment to Lessee, and shall pay all such charges to return the equipment to Lessor upon termination of the lease. If applicable, transportation charges may be included in the rental rate.

BIDDER: ASC Construction Equipment USA, Inc ITB 975-34-14-050-04, Wheel Loader, AWD Rentals  
Page 13 of 17

**OPERATION OF EQUIPMENT:**

Lessee agrees that the equipment will be operated only by competent employees and will not be operated beyond the manufacturer's rated capacity nor improperly cared for or abused. The Lessee will pay for all costs of operation including regular maintenance and all repairs necessary due to improper use. Lessor shall supply all information necessary for Lessee to properly prepare operators and maintenance for their responsibilities. The equipment shall be returned to Lessor in as good condition as received, less reasonable wear and tear.

**REPAIRS:**

The expense of all major repairs made during the rental period, which shall be made by the Lessor's maintenance personnel, including labor, parts, mileage and other items will be paid by the Lessor unless required repairs are due to abuse or misuse of the equipment. The Lessee agrees to pay for repair of damaged tires or excessive wear. Cuts resulting in permanent damage to a tire will be subject to repair or replacement by Lessee if due to improper use or abuse. If the machine is down for more than 24 hours due to repairs, Lessor will issue credit of the prorated rental rate, or replace with a like or similar machine, if mutually agreed upon, or the agreement may be terminated and credited accordingly.

**WARRANTY:**

Lessor assigns to Lessee, for and during the term of this agreement, so long as Lessee shall not be in default, all manufacturer's warranties and guarantees, express or implied, issued on or applicable to the equipment.

**ALTERATIONS AND MODIFICATIONS OF EQUIPMENT:**

Lessee shall not make any additions, attachments, alterations or improvements to the equipment without the prior written consent of Lessor. Any addition, attachment, alteration or improvement of equipment shall belong to and become the property of Lessor unless, at the request of the Lessor, it is removed prior to the return of such item of equipment by Lessee. Lessee shall be responsible for all costs relating to such removal and shall restore such item of equipment to its operating condition that existed at the time it became subject to the applicable lease.

**LIABILITY:**

Lessee and Lessor each agrees to assume its own liability for any and all claims of any nature including all costs, expenses and attorneys' fees which may in any manner result from or arise out of this agreement.

**INSURANCE:**

Insurance shall be secured and kept in force during the term of this agreement, from insurance companies or a government self-insurance pool authorized to do business in the state of North Dakota, to include the following coverage:

- 1) Lessee and Lessor shall provide commercial general liability with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence.
- 2) Lessee shall provide property insurance insuring the full and true value of the equipment. Insurance policy shall name Lessee as insured and Lessor as an additional insured and loss payee thereof as Lessor's interest may appear. An Evidence of Property Insurance shall be provided to the Lessor by the Lessee.

The insurance coverage listed above shall meet the following additional requirements:

- 1) Any deductible or self insured retention amount or other similar obligation shall be the sole responsibility of the party purchasing the coverage.
- 2) This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and must be placed with insurers rated "A" or better by A. M. Best Company Inc., provided any excess policy follows form for coverage. "Follows form" means the excess policy must be written with the same terms and conditions as the policy to which is in excess.
- 3) Either party may request a certificate of insurance evidencing the required coverage that is in effect and providing that the coverage may not be canceled or modified without thirty (30) days prior written notice to the other party.
- 4) Failure to provide insurance as required in this agreement is a material breach of contract.

**TAXES:**

The State does not pay sales tax or most federal taxes. The State's sales tax exemption number is E-2001. The federal tax free transaction number is 45-70-0010K. the federal employer identification number is 45-6002432.

**INSPECTION:**

Lessee agrees to permit Lessor or its representatives to inspect equipment leased hereunder at all reasonable times upon request of Lessor.

**TERMINATION:**

- a. This agreement may be terminated by mutual consent of both parties, or by either party upon 30 day's notice, in writing or delivered by certified mail or in person.
- b. In addition, Lessee may terminate this agreement effective upon delivery of written notice to the Lessor, or at such later date as may be established by Lessee, under any of the following conditions:
  - 1) If Lessee funding from federal, state, or other sources is not obtained and continued at levels sufficient to allow for purchase of the indicated quantity of services. The agreement may be modified unilaterally to accommodate a reduction in funds.
  - 2) If federal or state regulations or guidelines are modified, changed, or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this agreement or are no longer eligible for the funding proposed for payments authorized by this agreement.
  - 3) If any license or certificate required by law or regulation to be held by the Lessor to provide the services required by the agreement is for any reason denied or revoked.

Any such termination of this agreement under (1), (2), or (3), above, shall be without prejudice to any obligations of either party already accrued prior to such termination.

- c. Either party, by written notice, may terminate the whole or any part of this agreement:

- 1) If either party fails to provide services called for by this agreement within the time specified herein or any extension thereof; or
- 2) If either party fails to perform any other provisions of this agreement, or so fails to pursue the work as to endanger performance of this agreement in accordance with its terms, and after receipt of written notice from either party, fails to correct such failures within ten days or such longer period as either party may authorize.

**LESSEE AGREES TO:**

1. Notify Lessor of any change in agreed location.
2. Not sublease, rent or loan above equipment.
3. Not hold Lessor responsible for weather conditions, such as rain, snow, etc. No credit is expected because of these conditions.
4. Notify Lessor immediately of any mechanical failure, at which time a decision will be made who is responsible for repairs.
5. Pay a clean up charge for excessively dirty equipment.

**PURCHASE ORDER:**

A Purchase Order will not be issued as a result of this agreement. The executed agreement will bind the contractual obligation of the Lessee. Purchase Orders or Claim for Payments will be executed for payment of monthly invoices.

**RENTAL PAYMENTS:**

Lessee shall pay Lessor, upon invoice, rental payments. Payment for itemized additional charges is upon invoice. All rent and other amounts payable by Lessee to Lessor hereunder shall be paid to Lessor at the address specified above or at such other place as Lessor may designate in writing to Lessee.

**LATE PAYMENTS:**

Customary late charges on accounts not paid within thirty (30) days of invoice are allowable, not to exceed the maximum rate of interest permitted by law.

**EXTENDED RENTAL PERIOD:**

Lessee shall notify Lessor of extended rental needs. Lessee reserves the right to negotiate seasonal rates with the Lessor and may opt to extend the agreement upon mutual consent.

**REQUEST FOR BID:**

If a written request for bid for the equipment rental was solicited, any accompanying specific terms, conditions and specifications therein will become part of this agreement.

BIDDER: ASC Construction Equipment USA, Inc ITB 975-34-14-050-04, Wheel Loader, AWD Rentals  
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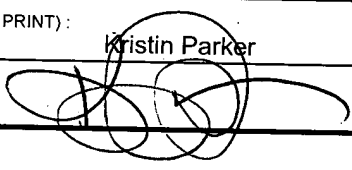


**GOVERNING LAW AND VENUE:**

Notwithstanding any rules regarding the choice of law or venue, it is agreed by the parties that this agreement shall be governed by and construed in accordance with applicable Federal Law and the laws of the state of North Dakota, at the time the agreement was executed. All disputes arising from this agreement shall be brought in the South Central District Court of the state of North Dakota.

**MERGER AND WAIVER:**

This agreement constitutes the entire agreement between the parties. No waiver, consent, modification, or change of terms of this agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification, or change, if made, shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this agreement. The Lessor, by the signature below of its authorized representative, hereby acknowledges that the Lessor has read this agreement, understands it, and agrees to be bound by its terms and conditions.

LESSOR (Vendor) TO BE SIGNED BY OWNER; PARTNER; CORPORATE PRESIDENT; VICE PRESIDENT. OR OTHER AUTHORIZED CORPORATE OFFICER OR BID MAY BE REJECTED. (IF SIGNED BY OTHER CORP. OFFICER, PLEASE ATTACH COPY OF POWER OF ATTORNEY OR OTHER DOCUMENTATION SHOWING AUTHORITY TO SIGN.)	
NAME (TYPE OR PRINT): Kristin Parker	TITLE: VP Sales and Marketing
SIGNATURE: 	DATE: 10/23/14

LESSEE (Agency)	
APPROVED AS TO SUBSTANCE BY:	DATE:
AGENCY DIRECTOR SIGNATURE:	DATE:

**SAMPLE DOCUMENT**

## RENTAL EQUIPMENT RETURN FORM

Check lights for damage:

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Check sheet metal and fiber glass for damage:

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Check cab roof, antenna, mirrors, and glass for damage:

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Check cab interior for smoking, tears, etc.:

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Check all tires/tracks for damage (take pictures if any tires/tracks are in question):

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Date: \_\_\_\_\_

Model: \_\_\_\_\_

Serial Number: \_\_\_\_\_

Hours: \_\_\_\_\_

Dealer: \_\_\_\_\_

Dealer Signature: \_\_\_\_\_

District: \_\_\_\_\_

District Signature: \_\_\_\_\_

**NORTH DAKOTA DEPARTMENT OF TRANSPORTATION  
CIVIL RIGHTS APPENDIX**

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the Contractor), agrees as follows:

1. Compliance with Regulations: The Contractor shall comply with the regulations relative to nondiscrimination in federally-assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
2. Nondiscrimination: The Contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, national origin, sex, age, disability/handicap, or income status\*\*, in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor shall not participate, either directly or indirectly, in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
3. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding or negotiation, made by the Contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, national origin, sex, age, disability/handicap, or income status.\*\*
4. Information and Reports: The contractor shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the North Dakota Department of Transportation or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to the North Dakota Department of Transportation, or the Federal Highway Administration, as appropriate, and shall set forth what efforts it has made to obtain the information.
5. Sanctions for Noncompliance: In the event of the Contractor's noncompliance with the nondiscrimination provisions of this contract, the North Dakota Department of Transportation shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including but not limited to:
  - a. withholding of payments to the Contractor under the contract until the Contractor complies, and/or
  - b. cancellation, termination, or suspension of the contract, in whole or in part.
6. Incorporation of Provisions: The Contractor shall include the provisions of paragraphs 1 through 6 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto.

The Contractor shall take such action with respect to any subcontract or procurement as the North Dakota Department of Transportation or the Federal Highway Administration may direct as a means of enforcing such provisions, including sanctions for noncompliance provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation by a subcontractor or supplier as a result of such direction, the Contractor may request the North Dakota Department of Transportation to enter into such litigation to protect the interests of the State; and, in addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

\*\*The Act governs race, color, and national origin. Related Nondiscrimination Authorities govern sex, 23 U.S.C. 324; age, 42 U.S.C. 6101; disability/handicap, 29 U.S.C. 790; and low income, E.O. 12898.



## RENTAL AGREEMENT

Branch	Sales Rep	County Use:	End Use:
Rental Term: From: / /	to: / /	Customer No.	Contract No.
		Customer	
		Address	
City	State	Zip	
Phone:	Fax:		
Ship to: City	County	State	

**UNIT RENTED:**

Make	Model	Serial Number	
Hour Meter: OUT	IN	USED	

**RATE PER BILLING PERIOD**

THE BILLING PERIOD IS  
4 WEEKS (28 DAYS)

**Attachments:**

Tag #	Make	Model	Serial Number

**OTHER FEES:**

Freight Delivery	\$
Freight Return	\$
Total Freight Charge	\$
Damage Waiver 13% of Rental Rate	\$
Purchase Option? Yes* No	
*The terms of the attached Purchase Option Rider are incorporated herein by reference.	

Insurance Value \$ \_\_\_\_\_

1. **Terms of Rental.** ASC Construction Equipment USA (hereinafter "ASC") hereby rents the equipment listed above (hereinafter "Equipment") to Customer pursuant to the following terms and conditions, **including the terms and conditions set out on the reverse side hereof**, for the rental term and at the rental rates as specified above. All rentals are billable in advance, based upon actual elapsed time out, and payments shall be made to ASC at the address specified in its invoice.

☐ **Initial** \_\_\_\_\_ Customer has reviewed the terms and conditions set forth on the reverse side of this document and agrees to be bound by such terms and conditions.

2. **Damage Waiver.** Following payment of the damage waiver set forth above, ASC shall be responsible for any damage or loss to the Equipment hereunder over Two Thousand Five Hundred Dollars (\$2500.00). Customer shall be liable for the first Two Thousand Five Hundred Dollars (\$2500.00) in damages with respect to any Equipment for which a damage waiver is purchased (the "Customer Liability Amount"). Notwithstanding the foregoing, acceptance by Customer of the damage waiver shall not relieve the Customer from liability for any loss or damage to the Equipment provided hereunder for any:

- (i) damage to tires, tubes or wheels caused by deflation of tires, or blowout bruises, dents, cuts or other causes resulting from the use of the Equipment
- (ii) damage caused by the negligence or other misuse or abuse of the Equipment or any use of the Equipment in violation of the provisions of this Agreement by Customer, its employees or agents, or other persons to whom the Equipment is entrusted by Customer; and
- (iii) loss or damage due to the mysterious or unexplained disappearance of Equipment, or caused by conversion by Customer, its employees or agents or other persons to whom the Equipment is entrusted by Customer.

In cases of theft, vandalism, arson or similar criminal acts causing loss or destruction to the Equipment, the Customer must pay to ASC the amount owed hereunder for damages to or loss of such Equipment (including, without limitation the Customer Liability Amount) and must also notify the police within ten (10) days of the loss and promptly provide ASC with a copy of the police report.

Accepted Damage Waiver \_\_\_\_\_

Declined Damage Waiver \_\_\_\_\_

3. **Insurance Requirements.** Customer shall, (or shall authorize ASC to provide), at Customer's expense, and continue in full force and effect during the entire term of this Rental Agreement, insurance against loss to the Equipment due to perils covered by all risk contractors equipment insurance for the full replacement value of the Equipment. Customer shall also provide (or authorize ASC to provide), at Customer's expense, and continue in force and effect during the entire term of this Rental Agreement, general liability and property damage insurance, the policy or policies to be standard form to be written in the state in which such unit will be registered. Said policy or policies shall be written with the limits of not less than \$500,000 for any one person for bodily injury or death; \$500,000 for any one accident for body injury or death; and \$500,000 for property damage. In the event Customer elects the damage waiver as set forth above, it shall not be required to provide ASC with proof of property insurance as set forth in this paragraph 3; provided, however, that Customer shall remain liable for any damage to the Equipment not covered by the damage waiver as set forth herein. The foregoing policies will be endorsed to waive any insurer rights of subrogation against ASC and will name ASC as an additional insured. Customer will provide certificates acceptable to ASC evidencing the foregoing insurance coverage prior to taking possession of the Equipment and evidencing that the same may not be canceled or modified without thirty (30) days' prior written notice to ASC.

4. **Financing Statement.** Customer authorizes ASC to file a financing statement with respect to the Equipment detailed herein. In addition, Customer agrees, upon demand, to execute any and all instruments and documents that may be reasonably necessary or desirable to protect ASC's Interest in the Equipment, and Customer will otherwise cooperate to defend the title of ASC by whatever means necessary.

5. **Tier IV Equipment.** Any usage of equipment with Tier 4 componentry requires strict adherence to the regeneration guidelines as noted in the Operator's Manual. Proper fuel type must also be utilized as noted in the Operator's Manual. By initialing below, customer acknowledges that failure to follow these procedures and guidelines will result in additional charges to the customer for repairs and or excessive maintenance. ASC will provide additional information about the procedures and guidelines upon request.

**IMPORTANT NOTICE**

Failure to return rental property or equipment upon expiration of the rental period and/or failure to pay all amounts due (including costs for damage to Property or equipment) are prima facie evidence of intent to defraud, punishable in accordance with state law. By signing and initialing in the spaces provided, Customer acknowledges receipt of the Equipment described above in good operating condition. Further, Customer agrees to all rental terms and conditions shown on the front and reverse side of this Rental Agreement.

X \_\_\_\_\_  
Customer Signature (Checked Out)

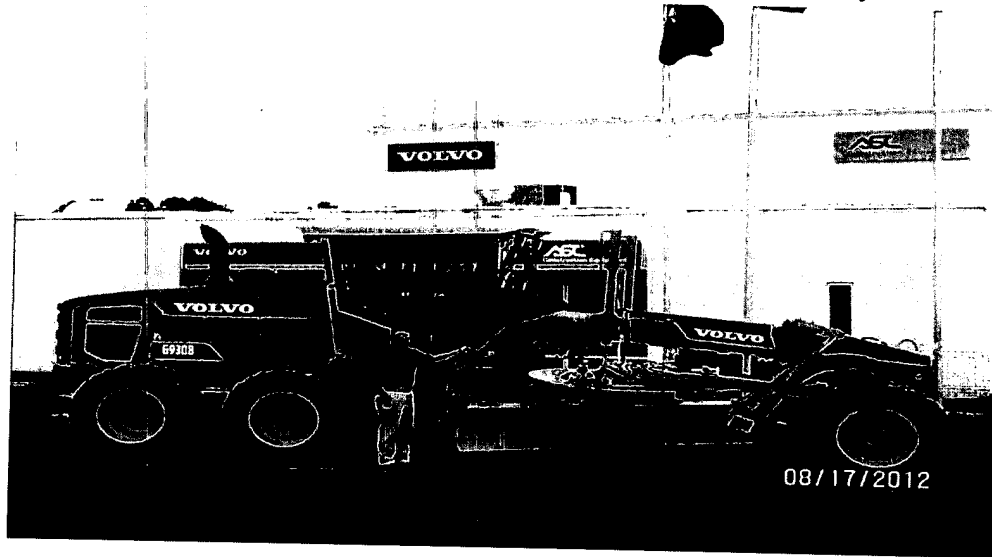
Date: \_\_\_\_\_

X \_\_\_\_\_  
ASC Construction Equipment USA

Date: \_\_\_\_\_

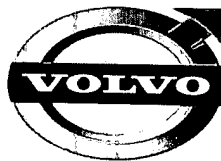
1. **Renting.** ASC Construction Equipment USA ("ASC") rents to Customer (named on the face hereof) and Customer hires from ASC the Equipment described on the face hereof.
2. **Rental Rates.** It is agreed that the rental rates shown on the face hereof are predicated on Equipment being operated not in excess of one hundred sixty (160) hours per 4-week period. Customer agrees to pay for excess hours at the overtime rate specified on the face hereof or 1/160th of the 4-week period rate for each hour of use in excess of 160, if an overtime rate has not been specified. In addition to the rental rates set forth herein, all pick-up and delivery charges are to be paid by Customer as well as any other charges listed on the face hereof. In the event customer elects to return equipment any time after the minimum term of rental, rent shall be charged on a basis of one third (1/3) of a period's rate for each week's use or any part thereof.
3. **Terms and Payment.** Payment shall be made within ten (10) days of invoice date unless otherwise specified on the face hereof. Payments not received within ten (10) days after invoice date shall bear interest at the rate of one and one-half percent (1.5 %) per month or the highest legal rate, whichever is less. All rents and other sums of money payable by Customer under the terms of this Rental Agreement shall be due and payable in U.S. dollars at the address specified on ASC's invoice.
4. **Fees.** Customer shall be liable for, and shall reimburse ASC for, the amounts equal to any sales, use, license or registration fees levied or based upon the rentals, the Equipment, or the use or operation thereof.
5. **Condition of Equipment.** It is agreed and understood that Customer has carefully inspected the Equipment and all attachments and accepts same in good condition, and that the Equipment is free from any defect and is properly and carefully assembled. Customer agrees that should any defect ever exist in the Equipment, the Equipment will not be used until it is properly repaired.
6. **Standard of Care; Liability for Damage.** Customer will operate the Equipment with reasonable care and will use it only for the purpose for which such Equipment was designed, specifically excluding such use as would result in abnormal wear. Customer will comply with all laws, regulations, and ordinances applicable to the possession, maintenance and operation of the Equipment. Customer agrees to care for the Equipment properly, to use it within its rated capacity, to operate it only with all required safety devices and guards installed, to restrict its use to qualified operators in Customer's direct employ, and to prohibit anyone other than ASC's authorized personnel to repair or adjust the Equipment unless, as indicated on the face hereof, Customer is to be responsible for the repair of such Equipment. Customer will not make any alterations to the Equipment or alter or substitute any attachments or components thereto or add any plate affixed to the Equipment. Except as otherwise expressly set forth herein, Customer agrees to accept full responsibility and liability for any and all damages to the Equipment due to improper operation and/or lubrication, freezing, fire, theft, windstorm, hailstorm, flood, riot, insurrection, strike, explosion, collision, upset, damages while being transported, loaded or unloaded, or for any cause whatsoever other than ordinary wear and tear. Customer shall notify ASC immediately of accidents, disabilities, and failures or like information concerning the Equipment or of any other damage whatsoever to the Equipment. The Equipment rented to Customer is not to be used in the handling and/or transportation of hazardous substances or chemicals without proper notification to and approval by ASC. In the event ASC grants the approval to utilize the Equipment for the transportation of hazardous substances or chemicals, Customer must clean the unit prior to returning it to ASC, and such cleaning shall be within the tolerance level for toxic substances for the state where rented.
7. **Equipment Maintenance and Repair.** Subject to the provisions of any purchase option rider executed in connection herewith, ASC will perform routine maintenance on the Equipment, at its expense, hours. In the event that Customer requires service at times other than during ASC's normal business hours, Customer agrees to pay the difference between the straight time and overtime rate for mechanic's time. In the event that additional maintenance or repairs are required on the Equipment due to the negligence or misuse of such Equipment by Customer or its agents or employees or otherwise due to events for which Customer assumes liability pursuant to Section 6 hereof, ASC shall repair or replace such Equipment at Customer's expense. Customer further agrees to pay for all damage to the Equipment upon receipt of invoices therefor from ASC for the cost and expense of repair.
8. **Fuel.** Customer is responsible for all fuel used in the Equipment. All Equipment is delivered with full fuel tanks, and all Equipment is to be returned with full fuel tanks. In the event Equipment is returned and the fuel tanks are not full, Customer will be charged for the fuel required to fill the tanks at the current price then in effect for premium fuel.
9. **Hold Harmless.** Customer agrees to indemnify, save and hold harmless ASC from all loss, damage, claims, attorneys' fees and other expenses arising from any claim or action alleging bodily injury, sickness, disability or death of Customer's employees and other persons or damage to property or loss of use thereof occasioned by or arising out of the Equipment, its operation, possession, transportation, storage or maintenance and from any breach by Customer of this Agreement. During the entire Term of this Rental Agreement, Customer agrees to indemnify and reimburse ASC against any and all loss or damage to the Equipment as set forth herein. All accidents shall be reported promptly to ASC in writing with full details of the incident.
10. **Term.** Rental charges commence when the Equipment leaves ASC's location and cease when returned to ASC's location in as good condition as when received, ordinary wear and tear excepted. Customer bears the risk of loss for damage to or destruction of Equipment from the time such Equipment is placed on a carrier at ASC's place of business until such Equipment is unloaded from a carrier and returned to ASC's place of business. Customer shall remain liable for rental hereunder until any repairs or replacements to the unit for damage other than normal wear and tear have been completed. Unless otherwise expressly set forth on the face hereof, Customer will be responsible for all load-out, unloading assembly and disassembly of the Equipment. Following the initial term set forth on the face hereof, Customer may terminate this Rental Agreement at any time by notifying ASC when Customer wishes to return the Equipment and terminate this Rental Agreement, and then ASC shall arrange for transportation for such Equipment. ASC shall pick up the Equipment at the time requested by Customer or as soon thereafter as reasonably possible. ASC may terminate this Agreement at any time by providing 10 days notice thereof to Customer and Customer shall cooperate with ASC to return such Equipment promptly upon termination hereof. Termination of this Agreement shall not relieve Customer of any obligations to make payments for rent or other charge due hereunder, including, without limitation, any charges associated with the loss or damage of Equipment.
11. **Termination of Agreement.** Customer shall be in default of this Rental Agreement upon the happening of any one of the following events: (i) the failure to make any payment within ten (10) days of the date when due; (ii) the institution by or against Customer, or against Customer's property, of a proceeding in bankruptcy, receivership, insolvency or reorganization; (iii) any assignment by Customer for the benefit of its creditors; (iv) the insolvency of Customer; (v) the cessation of Customer to do business as a going concern; or (vi) the breach by Customer of any other term or condition hereof. Customer shall give ASC immediate notice of any attachment, the filing of a lien, or any other judicial process affecting the Equipment or ASC's title herein. Upon the occurrence of any event of default, ASC may, at its option, without notice, terminate this Rental Agreement, take possession of the Equipment without becoming liable for trespass, proceed by appropriate court action or actions or other proceedings either by law or equity to enforce performance by Customer of any and all terms and provisions of this Rental Agreement and to recover damages for the breach thereof and, including, but not limited to, all rental due, full damages for any injury to the Equipment, all costs and expenses incurred in repossession of the Equipment and such other damages as may be recoverable. Customer shall pay to ASC all costs and expenses, including, without limitation, reasonable attorneys' fees incurred by ASC in exercising any of its rights and remedies hereunder. The remedies provided herein in favor of ASC shall not be deemed exclusive but shall be cumulative and shall be in addition to all other remedies of ASC existing at law or in equity.
12. **Limitation of Liability.** Regardless of whether a claim against ASC sounds in contract under this Rental Agreement, tort or otherwise, ASC will not be liable to Customer for any loss, delay or damage of any kind or character resulting from accidental breakage, defects in or inefficiency of the Equipment, or from the failure of ASC to properly perform services or repair. IN NO EVENT SHALL ASC BE LIABLE FOR THE INABILITY OF CUSTOMER TO USE THE EQUIPMENT FOR ANY PURPOSE AND, SPECIFICALLY, ASC WILL NOT BE LIABLE FOR LOSS OF PROFITS, "DOWN TIME," OR SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES. The exclusive remedy of Customer is the return of the Equipment, and Customer waives all claims for damages or other relief.
13. **Equipment Location.** Customer agrees not to remove or permit removal of the Equipment, without the prior written consent of ASC, to a location other than that shown on the face hereof.
14. **ASC's Title.** Customer acknowledges that the Equipment is the sole and exclusive property of ASC, and that Customer has not and will not acquire any interest (other than its interest as Customer in possession and use of the Equipment as granted hereby), or title to the Equipment. There are no prior or contemporaneous agreements to transfer title to Customer by sale. The filing of any financing statement in connection with this Rental Agreement shall not convert this Rental Agreement into or constitute it a sale. Customer shall at all times keep the Equipment free from any and all liens, claims, encumbrances and security interest and do, or permit, no act whereby ASC's title or rights may be encumbered or impaired. If Customer fails to promptly discharge or remove any such claim, lien or legal process, ASC may, at its option, discharge the same, advancing any amounts necessary therefor. Customer shall promptly reimburse ASC for all such amounts with interest at the maximum legal rate.
15. **Lender Acknowledgment.** Customer acknowledges that the purchase of certain inventory of ASC may be financed by ASC through certain financing sources (each a "Financing Source"), and that in connection with such transaction ASC may have been required to assign certain of its rights (but not its obligations) under this Rental Agreement, including rights to payments due and Equipment covered hereby, to such Financing Source. Upon receipt of written notice, Customer agrees to recognize the Financing Source or its successors and assigns as the owner of all rights under the Rental Agreement (including the payments due and payable hereunder) and to the Equipment and to comply with the Financing Source's instructions regarding the same. Customer also understands that until the Financing Source is paid in full for the Equipment financed by the Financing Source, Customer's interest in the Equipment is subordinate to Financing Source's first priority security interest. Customer acknowledges that any right or recourse under any service or warranty agreements respecting the Equipment are exclusively against ASC, the manufacturer or other vendor or supplier supplying the same and that Financing Source has no obligations with respect to such matters.
16. **Notices.** Notices relating to this Rental Agreement shall be in writing and either personally delivered to an officer of Customer or ASC or sent by registered or certified mail to their respective addresses set forth on the face hereof.
17. **Complete Agreement.** Customer acknowledges that ASC has not made any covenant or representation of any kind except as specifically set forth herein. This Rental Agreement contains all of the terms of the agreement between the parties, and no amendment or revision of this Rental Agreement shall bind ASC or any assignee of ASC, unless in writing signed by ASC or such assignee. CUSTOMER SPECIFICALLY AUTHORIZES ASC TO FILL IN ANY BLANKS IN ORDER TO REFLECT THE PARTIES' AGREEMENT AND TO CORRECT ANY APPARENT ERRORS. CUSTOMER ACKNOWLEDGES RECEIPT OF A TRUE COPY OF THIS RENTAL AGREEMENT WITH BLANKS FILLED IN TO CUSTOMER'S SATISFACTION.
18. **Waiver of Warranty.** Customer acknowledges that ASC is not the manufacturer or an agent of the manufacturer of the Equipment. The Equipment is rented "as is" and "where is." ASC MAKES NO WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS, IMPLIED OR STATUTORY, AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WRITTEN OR ORAL, ARE HEREBY DISCLAIMED BY ASC AND EXCLUDED AS A BASIS OF ANY ORDER. ASC WILL NOT BE LIABLE FOR ANY CLAIM THAT THE EQUIPMENT SUPPLIED HEREUNDER WAS NEGLIGENTLY DESIGNED OR MANUFACTURED.
19. **Consent to Jurisdiction/Jury Trial.** Customer and ASC each hereby waive any right to a trial by jury in any action brought by or against Customer and involving ASC, whether such claims sound in contract, tort or otherwise, involving any Equipment sold or leased by ASC to Customer, any repairs to any Equipment or any credit extended by ASC to Customer. Any judicial proceedings brought against Customer with respect to this Rental Agreement, or any credit extended by ASC to Customer, may be brought in the United States District Court for the Western District of North Carolina or in Mecklenburg County, North Carolina. By executing and delivering this Rental Agreement, customer accepts for itself, generally and unconditionally, the non-exclusive jurisdiction of the aforesaid courts and irrevocably agrees to be bound by any judgment rendered thereby in connection with any said matters. Customer agrees that a summons and complaint commencing an action or proceeding in either of the aforesaid courts shall be properly served and shall confer personal jurisdiction if served personally or by certified mail to it at its address designated pursuant hereto, or as otherwise provided under the laws of the state of North Carolina. The parties hereby waive any claim that the United States District Court for the Western District of North Carolina or Mecklenburg County, North Carolina, is an inconvenient forum and any claim that any action or proceeding arising out of or relating to the transactions contemplated by this Rental Agreement in either of the aforesaid courts lacks proper venue and/or jurisdiction. In addition, at its option, ASC may initiate proceedings in any other court having jurisdiction.
20. **Non-Waiver.** The failure of ASC at any time to enforce any default or right reserved to it or to require strict performance of any of the terms of this Rental Agreement or any contract by Customer at the time designated will not be a waiver of any such default or right, nor will it in any way affect the right of ASC to later enforce such provisions. The remedies of ASC are cumulative and not alternative.
21. **Purchase Orders.** In the event that any purchase order or other terms on documents used in connection with the rental or purchase of Equipment conflict with the terms hereof, the terms hereof shall govern.
22. **Choice of Law.** The terms and conditions of this Rental Agreement will be construed in accordance with the laws of the state of North Carolina without regard to the laws or court decisions concerning choice-of-law in said state.
23. **Severability.** If any provision of this Rental Agreement is held to be illegal, invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision hereof. Such provision shall be deemed modified to the reasonable extent necessary to render such provision and the remaining provisions hereof enforceable.
24. **Definition.** The word "Customer" as used herein shall be construed to include all singular and plural, masculine and feminine, individual and corporate parties, and shall include all successors or assignees of Customer, but only with the prior written consent of ASC.

# ASC Construction Equipment USA, INC



ASC offers an extensive product line with an informed staff to support all of your heavy equipment needs.

ASC is committed to meet the expectations of our customers and provide the high level of service that our customers deserve. In addition to providing your heavy equipment solutions, Volvo Construction Equipment and ASC will continue to offer the best product support programs for your equipment. ASC Construction Equipment can ensure 95% parts availability within 48HRS and also guarantee 24HR availability on consumable and preventative maintenance parts items. ASC maintains a network of 12 dealerships across the South East and each location is stocked with Volvo parts inventory based on the models sold within that respective region. ASC also operates two large "virtual" parts warehouses at our Charlotte, NC and Buford, GA locations to support our parts business at a local level. Each of our twelve locations utilizes integrated parts inventory and order management software so that inventory is always available at a local level from any of our South East locations. Each ASC Dealer location maintains a Volvo Dealer recommended stock list (RSL) for each respective Volvo model sold or working within the dealer's area of responsibility. Beyond our local ASC dealer parts inventory Volvo Construction Equipment has two main US parts hubs with locations in Memphis, TN and Reno, Nevada. Each VCE warehouse supports overnight shipping with order cut off times of 8PM daily. Our Raleigh service department consist of several mobile field technicians who are all Volvo trained Master Technicians. All techs are factory trained by Volvo on the complete Volvo product line and receive ongoing training year round and also specifically on new models as they are released. All ASC locations maintain 24hr/7-Day after hours emergency product support for both parts and service issues.



## EQUIPMENT RENTAL AGREEMENT

North Dakota Department of Transportation  
Financial Management Division, Rm. 22  
608 East Boulevard Avenue  
Bismarck, ND 58505-0700

NAME	LESSOR (VENDOR)	LESSEE (STATE)
	ASC CONSTRUCTION EQUIPMENT USA, INC.	ND DEPARTMENT OF TRANSPORTATION
ADDRESS	750 YEGEN RD	608 E BOULEVARD AVENUE
CITY, STATE ZIP CODE	BISMARCK, ND 58504	BISMARCK ND 58505-0700
CONTACT	JOHN VANPATTON	VANESSA BROSTEN
PHONE NO	701-250-4882 JOHN.VANPATTON@ASCVOLVO.COM	701-328-4466

DATE		RENTAL TERM	BEGINS ON DECEMBER 1, 2014	ENDS ON APRIL 30, 2015
RENTAL RATES *		TRANSPORTATION CHARGES IF APPLICABLE		METER READING OUT
DAY (8HRS.)	\$	NONE		
WEEK (44HRS.)	\$	MINIMUM RENTAL AMOUNT GUARANTEED BY LESSEE		METER READING IN
MONTH (176 HRS.)	\$	\$10.00 PER HOUR UP TO 100 HOURS		
EXCESS HOURS BILLED AT	\$ 25.00			
* RENTAL RATES ARE BASED ON HOUR METER USAGE				
EQUIPMENT WILL BE USED AT BISMARCK DISTRICT OFFICE				LESSEE WILL NOT REMOVE THE EQUIPMENT FROM THIS LOCATION WITHOUT NOTIFICATION.
SERIAL NUMBER	MAKE	MODEL	DESCRIPTION	UNIT VALUE
611311	VOLVO	L60G	AWD ARTICULATED WHEEL LOADER	175,000

BILL TO INFORMATION					
NAME	NORTH DAKOTA DEPARTMENT OF TRANSPORTATION				
	BISMARCK DISTRICT OFFICE				
ADDRESS	218 AIRPORT RD				
CITY	BISMARCK	STATE	NORTH DAKOTA	ZIP	58504
CONTACT	GARY FEIST	PHONE NO	701-328-6952		

### TERMS AND CONDITIONS

#### AGREEMENT:

Lessor, in consideration of the covenants, promises, and agreements on the part of the Lessee, hereinafter contained, hereby leases the equipment to Lessee in accordance with the terms of this agreement.

**AMENDMENTS:**

The terms of this agreement shall not be waived, altered, modified, supplemented, or amended, in any manner whatsoever, except by written instrument signed by the parties.

**TRANSPORTATION CHARGES:**

Lessee shall pay to the Lessor transportation charges incurred by Lessor in delivering the equipment to Lessee, and shall pay all such charges to return the equipment to Lessor upon termination of the lease. If applicable, transportation charges may be included in the rental rate.

**OPERATION OF EQUIPMENT:**

Lessee agrees that the equipment will be operated only by competent employees and will not be operated beyond the manufacturer's rated capacity nor improperly cared for or abused. The Lessee will pay for all costs of operation including regular maintenance and all repairs necessary due to improper use. Lessor shall supply all information necessary for Lessee to properly prepare operators and maintenance for their responsibilities. The equipment shall be returned to Lessor in as good condition as received, less reasonable wear and tear.

**REPAIRS:**

The expense of all major repairs made during the rental period, which shall be made by the Lessor's maintenance personnel, including labor, parts, mileage and other items will be paid by the Lessor unless required repairs are due to abuse or misuse of the equipment. The Lessee agrees to pay for repair of damaged tires or excessive wear. Cuts resulting in permanent damage to a tire will be subject to repair or replacement by Lessee if due to improper use or abuse. If the machine is down for more than 24 hours due to repairs, Lessor will issue credit of the prorated rental rate, or replace with a like or similar machine, if mutually agreed upon, or the agreement may be terminated and credited accordingly.

**WARRANTY:**

Lessor assigns to Lessee, for and during the term of this agreement, so long as Lessee shall not be in default, all manufacturer's warranties and guarantees, express or implied, issued on or applicable to the equipment.

**ALTERATIONS AND MODIFICATIONS OF EQUIPMENT:**

Lessee shall not make any additions, attachments, alterations or improvements to the equipment without the prior written consent of Lessor. Any addition, attachment, alteration or improvement of equipment shall belong to and become the property of Lessor unless, at the request of the Lessor, it is removed prior to the return of such item of equipment by Lessee. Lessee shall be responsible for all costs relating to such removal and shall restore such item of equipment to its operating condition that existed at the time it became subject to the applicable lease.

**LIABILITY:**

Lessee and Lessor each agrees to assume its own liability for any and all claims of any nature including all costs, expenses and attorneys' fees which may in any manner result from or arise out of this agreement.

**INSURANCE:**

Insurance shall be secured and kept in force during the term of this agreement, from insurance companies or a government self-insurance pool authorized to do business in the state of North Dakota, to include the following coverage:

- 1) Lessee and Lessor shall provide commercial general liability with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence.
- 2) Lessee shall provide property insurance insuring the full and true value of the equipment. Insurance policy shall name Lessee as insured and Lessor as an additional insured and loss payee thereof as Lessor's interest may appear. An Evidence of Property Insurance shall be provided to the Lessor by the Lessee.

The insurance coverage listed above shall meet the following additional requirements:

- 1) Any deductible or self insured retention amount or other similar obligation shall be the sole responsibility of the party purchasing the coverage.
- 2) This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and must be placed with insurers rated "A" or better by A. M. Best Company Inc., provided any excess policy follows form for coverage. "Follows form" means the excess policy must be written with the same terms and conditions as the policy to which is in excess.
- 3) Either party may request a certificate of insurance evidencing the required coverage that is in effect and providing that the coverage may not be canceled or modified without thirty (30) days prior written notice to the other party.
- 4) Failure to provide insurance as required in this agreement is a material breach of contract.

**TAXES:**



The State does not pay sales tax or most federal taxes. The State's sales tax exemption number is E-2001. The federal tax free transaction number is 45-70-0010K. the federal employer identification number is 45-0309764..

**INSPECTION:**

Lessee agrees to permit Lessor or its representatives to inspect equipment leased hereunder at all reasonable times upon request of Lessor.

**TERMINATION:**

- a. This agreement may be terminated by mutual consent of both parties, or by either party upon 30 day's notice, in writing or delivered by certified mail or in person.
- b. In addition, Lessee may terminate this agreement effective upon delivery of written notice to the Lessor, or at such later date as may be established by Lessee, under any of the following conditions:
  - 1) If Lessee funding from federal, state, or other sources is not obtained and continued at levels sufficient to allow for purchase of the indicated quantity of services. The agreement may be modified unilaterally to accommodate a reduction in funds.
  - 2) If federal or state regulations or guidelines are modified, changed, or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this agreement or are no longer eligible for the funding proposed for payments authorized by this agreement.
  - 3) If any license or certificate required by law or regulation to be held by the Lessor to provide the services required by the agreement is for any reason denied or revoked.

Any such termination of this agreement under (1), (2), or (3), above, shall be without prejudice to any obligations of either party already accrued prior to such termination.

- c. Either party, by written notice, may terminate the whole or any part of this agreement:
  - 1) If either party fails to provide services called for by this agreement within the time specified herein or any extension thereof; or
  - 2) If either party fails to perform any other provisions of this agreement, or so fails to pursue the work as to endanger performance of this agreement in accordance with its terms, and after receipt of written notice from either party, fails to correct such failures within ten days or such longer period as either party may authorize.

**LESSEE AGREES TO:**

- 1 Notify Lessor of any change in agreed location.
- 2 Not sublease, rent or loan above equipment.
- 3 Not hold Lessor responsible for weather conditions, such as rain, snow, etc. No credit is expected because of these conditions.
- 4 Notify Lessor immediately of any mechanical failure, at which time a decision will be made who is responsible for repairs.
- 5 Pay a clean up charge for excessively dirty equipment.

**PURCHASE ORDER:**

A Purchase Order will not be issued as a result of this agreement. The executed agreement will bind the contractual obligation of the Lessee. Purchase Orders or Claim for Payments will be executed for payment of monthly invoices.

**RENTAL PAYMENTS:**

Lessee shall pay Lessor, upon invoice, rental payments. Payment for itemized additional charges is upon invoice. All rent and other amounts payable by Lessee to Lessor hereunder shall be paid to Lessor at the address specified above or at such other place as Lessor may designate in writing to Lessee.

**LATE PAYMENTS:**

Customary late charges on accounts not paid within thirty (30) days of invoice are allowable, not to exceed the maximum rate of interest permitted by law.

**EXTENDED RENTAL PERIOD:**

Lessee shall notify Lessor of extended rental needs. Lessee reserves the right to negotiate seasonal rates with the Lessor and may opt to extend the agreement upon mutual consent.

**REQUEST FOR BID:**

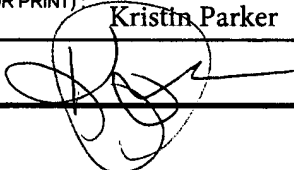
If a written request for bid for the equipment rental was solicited, any accompanying specific terms, conditions and specifications therein will become part of this agreement.

**GOVERNING LAW AND VENUE:**

Notwithstanding any rules regarding the choice of law or venue, it is agreed by the parties that this agreement shall be governed by and construed in accordance with applicable Federal Law and the laws of the state of North Dakota, at the time the agreement was executed. All disputes arising from this agreement shall be brought in the South Central District Court of the state of North Dakota.

**MERGER AND WAIVER:**

This agreement constitutes the entire agreement between the parties. No waiver, consent, modification, or change of terms of this agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification, or change, if made, shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this agreement. The Lessor, by the signature below of its authorized representative, hereby acknowledges that the Lessor has read this agreement, understands it, and agrees to be bound by its terms and conditions.

<b>LESSOR (Vendor)</b> TO BE SIGNED BY <b>OWNER; PARTNER; CORPORATE PRESIDENT; VICE PRESIDENT. OR OTHER AUTHORIZED CORPORATE OFFICER</b> OR BID MAY BE REJECTED. (IF SIGNED BY OTHER CORP. OFFICER, PLEASE ATTACH COPY OF POWER OF ATTORNEY OR OTHER DOCUMENTATION SHOWING AUTHORITY TO SIGN.)	
NAME (TYPE OR PRINT): <b>Kristin Parker</b>	TITLE: <b>VP- Sales and Marketing</b>
SIGNATURE: 	DATE: <b>11/14/14</b>

<b>LESSEE (Agency)</b>	
APPROVED AS TO SUBSTANCE BY :	DATE :
AGENCY DIRECTOR SIGNATURE :	DATE:



## RENTAL AGREEMENT

Branch 401 Bismarck Sales Rep Gregor Schmidt  
Rental Term: From: 12/1/14 to: 4/30/15

County Use:	End Use:
Customer No. 110363	Contract No.
Customer NDDOT Bismarck	
Address 606 E Boulevard Avenue 218 Airport RD	
City Bismarck	State ND Zip 58505-0700 58509
Phone: 701-328-4466	Fax:
Ship to: City Dickinson	County Stark State ND

### UNIT RENTED:

Make:	Model:	Serial Number
Volvo	L60	611311
Hour Meter:	IN	USED

### RATE PER BILLING PERIOD

THE BILLING PERIOD IS  
4 WEEKS (28 DAYS)  
\$10/hour, up to 100 hours  
\$25/hour, overage

### Attachments:

Tag #	Make	Model	Serial Number

### OTHER FEES:

Freight Delivery	\$ ASC to deliver, N/C
Freight Return	\$ ASC to pickup, N/C
Total Freight Charge	\$ N/C
Damage Waiver 13% of Rental Rate	\$
Purchase Option? Yes* X No	
*The terms of the attached Purchase Option Rider are incorporated herein by reference.	

Insurance Value \$175,000\_\_

1. **Terms of Rental.** ASC Construction Equipment USA (hereinafter "ASC") hereby rents the equipment listed above (hereinafter "Equipment") to Customer pursuant to the following terms and conditions, **including the terms and conditions set out on the reverse side hereof**, for the rental term and at the rental rates as specified above. All rentals are billable in advance, based upon actual elapsed time out, and payments shall be made to ASC at the address specified in its invoice.

Initial SH Customer has reviewed the terms and conditions set forth on the reverse side of this document and agrees to be bound by such terms and conditions.

2. **Damage Waiver.** Following payment of the damage waiver set forth above, ASC shall be responsible for any damage or loss to the Equipment hereunder over Two Thousand Five Hundred Dollars (\$2500.00). Customer shall be liable for the first Two Thousand Five Hundred Dollars (\$2500.00) in damages with respect to any Equipment for which a damage waiver is purchased (the "Customer Liability Amount"). Notwithstanding the foregoing, acceptance by Customer of the damage waiver shall not relieve the Customer from liability for any loss or damage to the Equipment provided hereunder for any:

- (i) damage to tires, tubes or wheels caused by deflation of tires, or blowout bruises, dents, cuts or other causes resulting from the use of the Equipment
- (ii) damage caused by the negligence or other misuse or abuse of the Equipment or any use of the Equipment in violation of the provisions of this Agreement by Customer, its employees or agents, or other persons to whom the Equipment is entrusted by Customer; and
- (iii) loss or damage due to the mysterious or unexplained disappearance of Equipment, or caused by conversion by Customer, its employees or agents or other persons to whom the Equipment is entrusted by Customer.

In cases of theft, vandalism, arson or similar criminal acts causing loss or destruction to the Equipment, the Customer must pay to ASC the amount owed hereunder for damages to or loss of such Equipment (including, without limitation the Customer Liability Amount) and must also notify the police within ten (10) days of the loss and promptly provide ASC with a copy of the police report.

Accepted Damage Waiver \_\_\_\_\_

Declined Damage Waiver SH

3. **Insurance Requirements.** Customer shall, (or shall authorize ASC to provide), at Customer's expense, and continue in full force and effect during the entire term of this Rental Agreement, insurance against loss to the Equipment due to perils covered by all risk contractors equipment insurance for the full replacement value of the Equipment. Customer shall also provide (or authorize ASC to provide), at Customer's expense, and continue in force and effect during the entire term of this Rental Agreement, general liability and property damage insurance, the policy or policies to be standard form to be written in the state in which such unit will be registered. Said policy or policies shall be written with the limits of not less than \$500,000 for any one person for bodily injury or death; \$500,000 for any one accident for body injury or death; and \$500,000 for property damage. In the event Customer elects the damage waiver as set forth above, it shall not be required to provide ASC with proof of property insurance as set forth in this paragraph 3; provided, however, that Customer shall remain liable for any damage to the Equipment not covered by the damage waiver as set forth herein. The foregoing policies will be endorsed to waive any insurer rights of subrogation against ASC and will name ASC as an additional insured. Customer will provide certificates acceptable to ASC evidencing the foregoing insurance coverage prior to taking possession of the Equipment and evidencing that the same may not be canceled or modified without thirty (30) days' prior written notice to ASC.

4. **Financing Statement.** Customer authorizes ASC to file a financing statement with respect to the Equipment detailed herein. In addition, Customer agrees, upon demand, to execute any and all instruments and documents that may be reasonably necessary or desirable to protect ASC's Interest in the Equipment, and Customer will otherwise cooperate to defend the title of ASC by whatever means necessary.

5. **Tier IV Equipment.** Any usage of equipment with Tier 4 componentry requires strict adherence to the regeneration guidelines as noted in the Operator's Manual. Proper fuel type must also be utilized as noted in the Operator's Manual. By initialing below, customer acknowledges that failure to follow these procedures and guidelines will result in additional charges to the customer for repairs and or excessive maintenance. ASC will provide additional information about the procedures and guidelines upon request:

Initial SH

### IMPORTANT NOTICE

Failure to return rental property or equipment upon expiration of the rental period and/or failure to pay all amounts due (including costs for damage to Property or equipment) are prima facie evidence of intent to defraud, punishable in accordance with state law. By signing and initialing in the spaces provided, Customer acknowledges receipt of the Equipment described above in good operating condition. Further, Customer agrees to all rental terms and conditions shown on the front and reverse side of this Rental Agreement.

x Shawn Schmidt For NDDOT  
Customer Signature (Checked Out)

Date: 11/17/2014

x \_\_\_\_\_  
ASC Construction Equipment USA (Checked In)

Date: \_\_\_\_\_

## EQUIPMENT RENTAL AGREEMENT

North Dakota Department of Transportation  
Financial Management Division, Rm. 22  
608 East Boulevard Avenue  
Bismarck, ND 58505-0700

NAME	LESSOR (VENDOR)	LESSEE (STATE)
	ASC CONSTRUCTION EQUIPMENT USA, INC.	ND DEPARTMENT OF TRANSPORTATION
ADDRESS	750 YEGEN RD	608 E BOULEVARD AVENUE
CITY, STATE ZIP CODE	BISMARCK, ND 58504	BISMARCK ND 58505-0700
CONTACT	JOHN VAN PATTON	VANESSA BROSTEN
PHONE NO	701-250-4882 JOHN.VANPATTON@ASCVOLVO.COM	701-328-4466

DATE		RENTAL TERM	BEGINS ON DECEMBER 1, 2014	ENDS ON APRIL 30, 2015
RENTAL RATES *		TRANSPORTATION CHARGES IF APPLICABLE		METER READING OUT
DAY (8HRS.)	\$	NONE		
WEEK (44HRS.)	\$	MINIMUM RENTAL AMOUNT GUARANTEED BY LESSEE		METER READING IN
MONTH (176 HRS.)	\$	\$10.00 PER HOUR UP TO 100 HOURS		
EXCESS HOURS BILLED AT	\$ 25.00			
* RENTAL RATES ARE BASED ON HOUR METER USAGE				
EQUIPMENT WILL BE USED AT BISMARCK DISTRICT OFFICE				LESSEE WILL NOT REMOVE THE EQUIPMENT FROM THIS LOCATION WITHOUT NOTIFICATION.
SERIAL NUMBER	MAKE	MODEL	DESCRIPTION	UNIT VALUE
614426	VOLVO	L70G	AWD ARTICULATED WHEEL LOADER	190,000

BILL TO INFORMATION					
NAME	NORTH DAKOTA DEPARTMENT OF TRANSPORTATION				
	BISMARCK DISTRICT OFFICE				
ADDRESS	218 AIRPORT RD				
CITY	BISMARCK	STATE	NORTH DAKOTA	ZIP	58504
CONTACT	GARY FEIST	PHONE NO	701-328-6952		

### TERMS AND CONDITIONS

#### **AGREEMENT:**

Lessor, in consideration of the covenants, promises, and agreements on the part of the Lessee, hereinafter contained, hereby leases the equipment to Lessee in accordance with the terms of this agreement.

**AMENDMENTS:**

The terms of this agreement shall not be waived, altered, modified, supplemented, or amended, in any manner whatsoever, except by written instrument signed by the parties.

**TRANSPORTATION CHARGES:**

Lessee shall pay to the Lessor transportation charges incurred by Lessor in delivering the equipment to Lessee, and shall pay all such charges to return the equipment to Lessor upon termination of the lease. If applicable, transportation charges may be included in the rental rate.

**OPERATION OF EQUIPMENT:**

Lessee agrees that the equipment will be operated only by competent employees and will not be operated beyond the manufacturer's rated capacity nor improperly cared for or abused. The Lessee will pay for all costs of operation including regular maintenance and all repairs necessary due to improper use. Lessor shall supply all information necessary for Lessee to properly prepare operators and maintenance for their responsibilities. The equipment shall be returned to Lessor in as good condition as received, less reasonable wear and tear.

**REPAIRS:**

The expense of all major repairs made during the rental period, which shall be made by the Lessor's maintenance personnel, including labor, parts, mileage and other items will be paid by the Lessor unless required repairs are due to abuse or misuse of the equipment. The Lessee agrees to pay for repair of damaged tires or excessive wear. Cuts resulting in permanent damage to a tire will be subject to repair or replacement by Lessee if due to improper use or abuse. If the machine is down for more than 24 hours due to repairs, Lessor will issue credit of the prorated rental rate, or replace with a like or similar machine, if mutually agreed upon, or the agreement may be terminated and credited accordingly.

**WARRANTY:**

Lessor assigns to Lessee, for and during the term of this agreement, so long as Lessee shall not be in default, all manufacturer's warranties and guarantees, express or implied, issued on or applicable to the equipment.

**ALTERATIONS AND MODIFICATIONS OF EQUIPMENT:**

Lessee shall not make any additions, attachments, alterations or improvements to the equipment without the prior written consent of Lessor. Any addition, attachment, alteration or improvement of equipment shall belong to and become the property of Lessor unless, at the request of the Lessor, it is removed prior to the return of such item of equipment by Lessee. Lessee shall be responsible for all costs relating to such removal and shall restore such item of equipment to its operating condition that existed at the time it became subject to the applicable lease.

**LIABILITY:**

Lessee and Lessor each agrees to assume its own liability for any and all claims of any nature including all costs, expenses and attorneys' fees which may in any manner result from or arise out of this agreement.

**INSURANCE:**

Insurance shall be secured and kept in force during the term of this agreement, from insurance companies or a government self-insurance pool authorized to do business in the state of North Dakota, to include the following coverage:

- 1) Lessee and Lessor shall provide commercial general liability with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence.
- 2) Lessee shall provide property insurance insuring the full and true value of the equipment. Insurance policy shall name Lessee as insured and Lessor as an additional insured and loss payee thereof as Lessor's interest may appear. An Evidence of Property Insurance shall be provided to the Lessor by the Lessee.

The insurance coverage listed above shall meet the following additional requirements:

- 1) Any deductible or self insured retention amount or other similar obligation shall be the sole responsibility of the party purchasing the coverage.
- 2) This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and must be placed with insurers rated "A" or better by A. M. Best Company Inc., provided any excess policy follows form for coverage. "Follows form" means the excess policy must be written with the same terms and conditions as the policy to which is in excess.
- 3) Either party may request a certificate of insurance evidencing the required coverage that is in effect and providing that the coverage may not be canceled or modified without thirty (30) days prior written notice to the other party.
- 4) Failure to provide insurance as required in this agreement is a material breach of contract.

**TAXES:**

The State does not pay sales tax or most federal taxes. The State's sales tax exemption number is E-2001. The federal tax free transaction number is 45-70-0010K. the federal employer identification number is 45-0309764..

**INSPECTION:**

Lessee agrees to permit Lessor or its representatives to inspect equipment leased hereunder at all reasonable times upon request of Lessor.

**TERMINATION:**

- a. This agreement may be terminated by mutual consent of both parties, or by either party upon 30 day's notice, in writing or delivered by certified mail or in person.
- b. In addition, Lessee may terminate this agreement effective upon delivery of written notice to the Lessor, or at such later date as may be established by Lessee, under any of the following conditions:
  - 1) If Lessee funding from federal, state, or other sources is not obtained and continued at levels sufficient to allow for purchase of the indicated quantity of services. The agreement may be modified unilaterally to accommodate a reduction in funds.
  - 2) If federal or state regulations or guidelines are modified, changed, or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this agreement or are no longer eligible for the funding proposed for payments authorized by this agreement.
  - 3) If any license or certificate required by law or regulation to be held by the Lessor to provide the services required by the agreement is for any reason denied or revoked.

Any such termination of this agreement under (1), (2), or(3), above, shall be without prejudice to any obligations of either party already accrued prior to such termination.

- c. Either party, by written notice, may terminate the whole or any part of this agreement:
  - 1) If either party fails to provide services called for by this agreement within the time specified herein or any extension thereof; or
  - 2) If either party fails to perform any other provisions of this agreement, or so fails to pursue the work as to endanger performance of this agreement in accordance with its terms, and after receipt of written notice from either party, fails to correct such failures within ten days or such longer period as either party may authorize.

**LESSEE AGREES TO:**

- 1 Notify Lessor of any change in agreed location.
- 2 Not sublease, rent or loan above equipment.
- 3 Not hold Lessor responsible for weather conditions, such as rain, snow, etc. No credit is expected because of these conditions.
- 4 Notify Lessor immediately of any mechanical failure, at which time a decision will be made who is responsible for repairs.
- 5 Pay a clean up charge for excessively dirty equipment.

**PURCHASE ORDER:**

A Purchase Order will not be issued as a result of this agreement. The executed agreement will bind the contractual obligation of the Lessee. Purchase Orders or Claim for Payments will be executed for payment of monthly invoices.

**RENTAL PAYMENTS:**

Lessee shall pay Lessor, upon invoice, rental payments. Payment for itemized additional charges is upon invoice. All rent and other amounts payable by Lessee to Lessor hereunder shall be paid to Lessor at the address specified above or at such other place as Lessor may designate in writing to Lessee.

**LATE PAYMENTS:**

Customary late charges on accounts not paid within thirty (30) days of invoice are allowable, not to exceed the maximum rate of interest permitted by law.

**EXTENDED RENTAL PERIOD:**

Lessee shall notify Lessor of extended rental needs. Lessee reserves the right to negotiate seasonal rates with the Lessor and may opt to extend the agreement upon mutual consent.

**REQUEST FOR BID:**

If a written request for bid for the equipment rental was solicited, any accompanying specific terms, conditions and specifications therein will become part of this agreement.

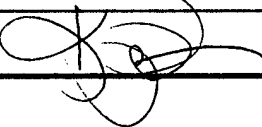


**GOVERNING LAW AND VENUE:**

Notwithstanding any rules regarding the choice of law or venue, it is agreed by the parties that this agreement shall be governed by and construed in accordance with applicable Federal Law and the laws of the state of North Dakota, at the time the agreement was executed. All disputes arising from this agreement shall be brought in the South Central District Court of the state of North Dakota.

**MERGER AND WAIVER:**

This agreement constitutes the entire agreement between the parties. No waiver, consent, modification, or change of terms of this agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification, or change, if made, shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this agreement. The Lessor, by the signature below of its authorized representative, hereby acknowledges that the Lessor has read this agreement, understands it, and agrees to be bound by its terms and conditions.

LESSOR (Vendor) TO BE SIGNED BY OWNER; PARTNER; CORPORATE PRESIDENT; VICE PRESIDENT. OR OTHER AUTHORIZED CORPORATE OFFICER OR BID MAY BE REJECTED. (IF SIGNED BY OTHER CORP. OFFICER, PLEASE ATTACH COPY OF POWER OF ATTORNEY OR OTHER DOCUMENTATION SHOWING AUTHORITY TO SIGN.)	
NAME (TYPE OR PRINT): <b>Kristin Parker</b>	TITLE : <b>VP- Sales and Marketing</b>
SIGNATURE : 	DATE : <b>11/14/14</b>

LESSEE (Agency)	
APPROVED AS TO SUBSTANCE BY :	DATE :
AGENCY DIRECTOR SIGNATURE :	DATE:



## RENTAL AGREEMENT

Branch 401 Bismarck Sales Rep Gregor Schmidt  
Rental Term: From: 12/1/14 to: 4/30/15

County Use:	End Use:
Customer No. 110363	Contract No.
Customer NDDOT Bismarck 218 Airport RD	
Address 608 E Boulevard Avenue	
City Bismarck State ND	Zip 58505-0760-58504
Phone: 701-328-4466	Fax:
Ship to: City Dickinson	County Stark State ND

### UNIT RENTED:

Make	Model	Serial Number	THE BILLING PERIOD IS 4 WEEKS (28 DAYS)	\$10/hour, up to 100 hours \$25/hour, overage
Volvo	L70	614426		
Hour Meter:	IN	USED		

### Attachments:

Tag #	Make	Model	Serial Number

### RATE PER BILLING PERIOD

### OTHER FEES:

Freight Delivery	\$ ASC to deliver, N/C
Freight Return	\$ ASC to pickup, N/C
Total Freight Charge	\$ N/C
Damage Waiver 13% of Rental Rate	\$
Purchase Option? Yes* X No	
*The terms of the attached Purchase Option Rider are incorporated herein by reference.	

Insurance Value \$190,000

1. **Terms of Rental.** ASC Construction Equipment USA (hereinafter "ASC") hereby rents the equipment listed above (hereinafter "Equipment") to Customer pursuant to the following terms and conditions, **including the terms and conditions set out on the reverse side hereof**, for the rental term and at the rental rates as specified above. All rentals are billable in advance, based upon actual elapsed time out, and payments shall be made to ASC at the address specified in its invoice.

Initial SH Customer has reviewed the terms and conditions set forth on the reverse side of this document and agrees to be bound by such terms and conditions.

2. **Damage Waiver.** Following payment of the damage waiver set forth above, ASC shall be responsible for any damage or loss to the Equipment hereunder over Two Thousand Five Hundred Dollars (\$2500.00). Customer shall be liable for the first Two Thousand Five Hundred Dollars (\$2500.00) in damages with respect to any Equipment for which a damage waiver is purchased (the "Customer Liability Amount"). Notwithstanding the foregoing, acceptance by Customer of the damage waiver shall not relieve the Customer from liability for any loss or damage to the Equipment provided hereunder for any:

- (i) damage to tires, tubes or wheels caused by deflation of tires, or blowout bruises, dents, cuts or other causes resulting from the use of the Equipment
- (ii) damage caused by the negligence or other misuse or abuse of the Equipment or any use of the Equipment in violation of the provisions of this Agreement by Customer, its employees or agents, or other persons to whom the Equipment is entrusted by Customer; and
- (iii) loss or damage due to the mysterious or unexplained disappearance of Equipment, or caused by conversion by Customer, its employees or agents or other persons to whom the Equipment is entrusted by Customer.

In cases of theft, vandalism, arson or similar criminal acts causing loss or destruction to the Equipment, the Customer must pay to ASC the amount owed hereunder for damages to or loss of such Equipment (including, without limitation the Customer Liability Amount) and must also notify the police within ten (10) days of the loss and promptly provide ASC with a copy of the police report.

Accepted Damage Waiver \_\_\_\_\_

Declined Damage Waiver SH

3. **Insurance Requirements.** Customer shall, (or shall authorize ASC to provide), at Customer's expense, and continue in full force and effect during the entire term of this Rental Agreement, insurance against loss to the Equipment due to perils covered by all risk contractors equipment insurance for the full replacement value of the Equipment. Customer shall also provide (or authorize ASC to provide), at Customer's expense, and continue in force and effect during the entire term of this Rental Agreement, general liability and property damage insurance, the policy or policies to be standard form to be written in the state in which such unit will be registered. Said policy or policies shall be written with the limits of not less than \$500,000 for any one person for bodily injury or death; \$500,000 for any one accident for body injury or death; and \$500,000 for property damage. In the event Customer elects the damage waiver as set forth above, it shall not be required to provide ASC with proof of property insurance as set forth in this paragraph 3; provided, however, that Customer shall remain liable for any damage to the Equipment not covered by the damage waiver as set forth herein. The foregoing policies will be endorsed to waive any insurer rights of subrogation against ASC and will name ASC as an additional insured. Customer will provide certificates acceptable to ASC evidencing the foregoing insurance coverage prior to taking possession of the Equipment and evidencing that the same may not be canceled or modified without thirty (30) days' prior written notice to ASC.

4. **Financing Statement.** Customer authorizes ASC to file a financing statement with respect to the Equipment detailed herein. In addition, Customer agrees, upon demand, to execute any and all instruments and documents that may be reasonably necessary or desirable to protect ASC's interest in the Equipment, and Customer will otherwise cooperate to defend the title of ASC by whatever means necessary.

5. **Tier IV Equipment.** Any usage of equipment with Tier 4 componentry requires strict adherence to the regeneration guidelines as noted in the Operator's Manual. Proper fuel type must also be utilized as noted in the Operator's Manual. By initialing below, customer acknowledges that failure to follow these procedures and guidelines will result in additional charges to the customer for repairs and or excessive maintenance. ASC will provide additional information about the procedures and guidelines upon request.

Initial SH

### IMPORTANT NOTICE

Failure to return rental property or equipment upon expiration of the rental period and/or failure to pay all amounts due (including costs for damage to Property or equipment) are prima facie evidence of intent to defraud, punishable in accordance with state law. By signing and initialing in the spaces provided, Customer acknowledges receipt of the Equipment described above in good operating condition. Further, Customer agrees to all rental terms and conditions shown on the front and reverse side of this Rental Agreement.

x Shem Shuck  
Customer Signature (Checked Out)

Date: 11/17/14

x \_\_\_\_\_  
ASC Construction Equipment USA (Checked In)

Date: \_\_\_\_\_

## EQUIPMENT RENTAL AGREEMENT

North Dakota Department of Transportation  
Financial Management Division, Rm. 22  
608 East Boulevard Avenue  
Bismarck, ND 58505-0700

NAME	LESSOR (VENDOR)	LESSEE (STATE)
	ASC CONSTRUCTION EQUIPMENT USA, INC.	ND DEPARTMENT OF TRANSPORTATION
ADDRESS	750 YEGEN RD	608 E BOULEVARD AVENUE
CITY, STATE ZIP CODE	BISMARCK, ND 58504	BISMARCK ND 58505-0700
CONTACT	JOHN VAN PATTON	VANESSA BROSTEN
PHONE NO	701-250-4882 JOHN.VANPATTON@ASCVOLVO.COM	701-328-4466

DATE		RENTAL TERM	BEGINS ON DECEMBER 1, 2014	ENDS ON APRIL 30, 2015
RENTAL RATES *		TRANSPORTATION CHARGES IF APPLICABLE		METER READING OUT
DAY (8HRS.)	\$	NONE		
WEEK (44HRS.)	\$	MINIMUM RENTAL AMOUNT GUARANTEED BY LESSEE		METER READING IN
MONTH (176 HRS.)	\$	\$10.00 PER HOUR UP TO 100 HOURS		
EXCESS HOURS BILLED AT	\$ 25.00			
* RENTAL RATES ARE BASED ON HOUR METER USAGE				
EQUIPMENT WILL BE USED AT BISMARCK DISTRICT OFFICE				LESSEE WILL NOT REMOVE THE EQUIPMENT FROM THIS LOCATION WITHOUT NOTIFICATION.
SERIAL NUMBER	MAKE	MODEL	DESCRIPTION	UNIT VALUE
614432	VOLVO	L70G	AWD ARTICULATED WHEEL LOADER	190,000

BILL TO INFORMATION					
NAME	NORTH DAKOTA DEPARTMENT OF TRANSPORTATION				
	BISMARCK DISTRICT OFFICE				
ADDRESS	218 AIRPORT RD				
CITY	BISMARCK	STATE	NORTH DAKOTA	ZIP	58504
CONTACT	GARY FEIST	PHONE NO	701-328-6952		

### TERMS AND CONDITIONS

#### AGREEMENT:

Lessor, in consideration of the covenants, promises, and agreements on the part of the Lessee, hereinafter contained, hereby leases the equipment to Lessee in accordance with the terms of this agreement.

**AMENDMENTS:**

The terms of this agreement shall not be waived, altered, modified, supplemented, or amended, in any manner whatsoever, except by written instrument signed by the parties.

**TRANSPORTATION CHARGES:**

Lessee shall pay to the Lessor transportation charges incurred by Lessor in delivering the equipment to Lessee, and shall pay all such charges to return the equipment to Lessor upon termination of the lease. If applicable, transportation charges may be included in the rental rate.

**OPERATION OF EQUIPMENT:**

Lessee agrees that the equipment will be operated only by competent employees and will not be operated beyond the manufacturer's rated capacity nor improperly cared for or abused. The Lessee will pay for all costs of operation including regular maintenance and all repairs necessary due to improper use. Lessor shall supply all information necessary for Lessee to properly prepare operators and maintenance for their responsibilities. The equipment shall be returned to Lessor in as good condition as received, less reasonable wear and tear.

**REPAIRS:**

The expense of all major repairs made during the rental period, which shall be made by the Lessor's maintenance personnel, including labor, parts, mileage and other items will be paid by the Lessor unless required repairs are due to abuse or misuse of the equipment. The Lessee agrees to pay for repair of damaged tires or excessive wear. Cuts resulting in permanent damage to a tire will be subject to repair or replacement by Lessee if due to improper use or abuse. If the machine is down for more than 24 hours due to repairs, Lessor will issue credit of the prorated rental rate, or replace with a like or similar machine, if mutually agreed upon, or the agreement may be terminated and credited accordingly.

**WARRANTY:**

Lessor assigns to Lessee, for and during the term of this agreement, so long as Lessee shall not be in default, all manufacturer's warranties and guarantees, express or implied, issued on or applicable to the equipment.

**ALTERATIONS AND MODIFICATIONS OF EQUIPMENT:**

Lessee shall not make any additions, attachments, alterations or improvements to the equipment without the prior written consent of Lessor. Any addition, attachment, alteration or improvement of equipment shall belong to and become the property of Lessor unless, at the request of the Lessor, it is removed prior to the return of such item of equipment by Lessee. Lessee shall be responsible for all costs relating to such removal and shall restore such item of equipment to its operating condition that existed at the time it became subject to the applicable lease.

**LIABILITY:**

Lessee and Lessor each agrees to assume its own liability for any and all claims of any nature including all costs, expenses and attorneys' fees which may in any manner result from or arise out of this agreement.

**INSURANCE:**

Insurance shall be secured and kept in force during the term of this agreement, from insurance companies or a government self-insurance pool authorized to do business in the state of North Dakota, to include the following coverage:

- 1) Lessee and Lessor shall provide commercial general liability with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence.
- 2) Lessee shall provide property insurance insuring the full and true value of the equipment. Insurance policy shall name Lessee as insured and Lessor as an additional insured and loss payee thereof as Lessor's interest may appear. An Evidence of Property Insurance shall be provided to the Lessor by the Lessee.

The insurance coverage listed above shall meet the following additional requirements:

- 1) Any deductible or self insured retention amount or other similar obligation shall be the sole responsibility of the party purchasing the coverage.
- 2) This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and must be placed with insurers rated "A" or better by A. M. Best Company Inc., provided any excess policy follows form for coverage. "Follows form" means the excess policy must be written with the same terms and conditions as the policy to which is in excess.
- 3) Either party may request a certificate of insurance evidencing the required coverage that is in effect and providing that the coverage may not be canceled or modified without thirty (30) days prior written notice to the other party.
- 4) Failure to provide insurance as required in this agreement is a material breach of contract.

**TAXES:**

The State does not pay sales tax or most federal taxes. The State's sales tax exemption number is E-2001. The federal tax free transaction number is 45-70-0010K. the federal employer identification number is 45-0309764..

**INSPECTION:**

Lessee agrees to permit Lessor or its representatives to inspect equipment leased hereunder at all reasonable times upon request of Lessor.

**TERMINATION:**

- a. This agreement may be terminated by mutual consent of both parties, or by either party upon 30 day's notice, in writing or delivered by certified mail or in person.
- b. In addition, Lessee may terminate this agreement effective upon delivery of written notice to the Lessor, or at such later date as may be established by Lessee, under any of the following conditions:
  - 1) If Lessee funding from federal, state, or other sources is not obtained and continued at levels sufficient to allow for purchase of the indicated quantity of services. The agreement may be modified unilaterally to accommodate a reduction in funds.
  - 2) If federal or state regulations or guidelines are modified, changed, or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this agreement or are no longer eligible for the funding proposed for payments authorized by this agreement.
  - 3) If any license or certificate required by law or regulation to be held by the Lessor to provide the services required by the agreement is for any reason denied or revoked.

Any such termination of this agreement under (1), (2), or (3), above, shall be without prejudice to any obligations of either party already accrued prior to such termination.

- c. Either party, by written notice, may terminate the whole or any part of this agreement:
  - 1) If either party fails to provide services called for by this agreement within the time specified herein or any extension thereof; or
  - 2) If either party fails to perform any other provisions of this agreement, or so fails to pursue the work as to endanger performance of this agreement in accordance with its terms, and after receipt of written notice from either party, fails to correct such failures within ten days or such longer period as either party may authorize.

**LESSEE AGREES TO:**

- 1 Notify Lessor of any change in agreed location.
- 2 Not sublease, rent or loan above equipment.
- 3 Not hold Lessor responsible for weather conditions, such as rain, snow, etc. No credit is expected because of these conditions.
- 4 Notify Lessor immediately of any mechanical failure, at which time a decision will be made who is responsible for repairs.
- 5 Pay a clean up charge for excessively dirty equipment.

**PURCHASE ORDER:**

A Purchase Order will not be issued as a result of this agreement. The executed agreement will bind the contractual obligation of the Lessee. Purchase Orders or Claim for Payments will be executed for payment of monthly invoices.

**RENTAL PAYMENTS:**

Lessee shall pay Lessor, upon invoice, rental payments. Payment for itemized additional charges is upon invoice. All rent and other amounts payable by Lessee to Lessor hereunder shall be paid to Lessor at the address specified above or at such other place as Lessor may designate in writing to Lessee.

**LATE PAYMENTS:**

Customary late charges on accounts not paid within thirty (30) days of invoice are allowable, not to exceed the maximum rate of interest permitted by law.

**EXTENDED RENTAL PERIOD:**

Lessee shall notify Lessor of extended rental needs. Lessee reserves the right to negotiate seasonal rates with the Lessor and may opt to extend the agreement upon mutual consent.

**REQUEST FOR BID:**


If a written request for bid for the equipment rental was solicited, any accompanying specific terms, conditions and specifications therein will become part of this agreement.

**GOVERNING LAW AND VENUE:**

Notwithstanding any rules regarding the choice of law or venue, it is agreed by the parties that this agreement shall be governed by and construed in accordance with applicable Federal Law and the laws of the state of North Dakota, at the time the agreement was executed. All disputes arising from this agreement shall be brought in the South Central District Court of the state of North Dakota.

**MERGER AND WAIVER:**

This agreement constitutes the entire agreement between the parties. No waiver, consent, modification, or change of terms of this agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification, or change, if made, shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this agreement. The Lessor, by the signature below of its authorized representative, hereby acknowledges that the Lessor has read this agreement, understands it, and agrees to be bound by its terms and conditions.

<b>LESSOR (Vendor)</b> TO BE SIGNED BY <b>OWNER; PARTNER; CORPORATE PRESIDENT; VICE PRESIDENT. OR OTHER AUTHORIZED CORPORATE OFFICER</b> OR BID MAY BE REJECTED. (IF SIGNED BY OTHER CORP. OFFICER, PLEASE ATTACH COPY OF POWER OF ATTORNEY OR OTHER DOCUMENTATION SHOWING AUTHORITY TO SIGN.)	
NAME (TYPE OR PRINT): <b>Kristin Parker</b>	TITLE: <b>VP- Sales and Marketing</b>
SIGNATURE: 	DATE: <b>11/14/14</b>

<b>LESSEE (Agency)</b>	
APPROVED AS TO SUBSTANCE BY:	DATE:
AGENCY DIRECTOR SIGNATURE:	DATE:



**Construction Equipment  
USA, INC.**

# **RENTAL AGREEMENT**

County Use:		End Use:	
Customer No. 110363		Contract No.	
Customer NDDOT Bismarck			
Address 608 E Boulevard Avenue		20 Airport RD	
City Bismarck	State ND	Zip 58605-0760 50504	
Phone: 701-328-4466		Fax:	
Ship to: City Dickinson		County Stark	State ND

Branch 401 Bismarck Sales Rep Gregor Schmidt  
Rental Term: From: 12/1/14 to: 4/30/15

## **UNIT RENTED:**

Make	Model	Serial Number
Volvo	L70	614432
Hour Meter:	IN	USED

## **RATE PER BILLING PERIOD**

THE BILLING PERIOD IS  
4 WEEKS (28 DAYS) \$10/hour, up to 100 hours  
\$25/hour, overage

## **Attachments:**

Tag #	Make	Model	Serial Number

## **OTHER FEES:**

Freight Delivery	\$ ASC to deliver, N/C
Freight Return	\$ ASC to pickup, N/C
Total Freight Charge	\$ N/C
Damage Waiver 13% of Rental Rate	\$
Purchase Option? Yes* X No	

Insurance Value \$190,000

1. **Terms of Rental.** ASC Construction Equipment USA (hereinafter "ASC") hereby rents the equipment listed above (hereinafter "Equipment") to Customer pursuant to the following terms and conditions, *including the terms and conditions set out on the reverse side hereof*, for the rental term and at the rental rates as specified above. All rentals are billable in advance, based upon actual elapsed time out, and payments shall be made to ASC at the address specified in its invoice.

Initial SH Customer has reviewed the terms and conditions set forth on the reverse side of this document and agrees to be bound by such terms and conditions.

2. **Damage Waiver.** Following payment of the damage waiver set forth above, ASC shall be responsible for any damage or loss to the Equipment hereunder over Two Thousand Five Hundred Dollars (\$2500.00). Customer shall be liable for the first Two Thousand Five Hundred Dollars (\$2500.00) in damages with respect to any Equipment for which a damage waiver is purchased (the "Customer Liability Amount"). Notwithstanding the foregoing, acceptance by Customer of the damage waiver shall not relieve the Customer from liability for any loss or damage to the Equipment provided hereunder for any:

- (i) damage to tires, tubes or wheels caused by deflation of tires, or blowout bruises, dents, cuts or other causes resulting from the use of the Equipment
- (ii) damage caused by the negligence or other misuse or abuse of the Equipment or any use of the Equipment in violation of the provisions of this Agreement by Customer, its employees or agents, or other persons to whom the Equipment is entrusted by Customer; and
- (iii) loss or damage due to the mysterious or unexplained disappearance of Equipment, or caused by conversion by Customer, its employees or agents or other persons to whom the Equipment is entrusted by Customer.

In cases of theft, vandalism, arson or similar criminal acts causing loss or destruction to the Equipment, the Customer must pay to ASC the amount owed hereunder for damages to or loss of such Equipment (including, without limitation the Customer Liability Amount) and must also notify the police within ten (10) days of the loss and promptly provide ASC with a copy of the police report.

Accepted Damage Waiver \_\_\_\_\_

Declined Damage Waiver SH

3. **Insurance Requirements.** Customer shall, (or shall authorize ASC to provide), at Customer's expense, and continue in full force and effect during the entire term of this Rental Agreement, insurance against loss to the Equipment due to perils covered by all risk contractors equipment insurance for the full replacement value of the Equipment. Customer shall also provide (or authorize ASC to provide), at Customer's expense, and continue in force and effect during the entire term of this Rental Agreement, general liability and property damage insurance, the policy or policies to be standard form to be written in the state in which such unit will be registered. Said policy or policies shall be written with the limits of not less than \$500,000 for any one person for bodily injury or death; \$500,000 for any one accident for body injury or death; and \$500,000 for property damage. In the event Customer elects the damage waiver as set forth above, it shall not be required to provide ASC with proof of property insurance as set forth in this paragraph 3; provided, however, that Customer shall remain liable for any damage to the Equipment not covered by the damage waiver as set forth herein. The foregoing policies will be endorsed to waive any insurer rights of subrogation against ASC and will name ASC as an additional insured. Customer will provide certificates acceptable to ASC evidencing the foregoing insurance coverage prior to taking possession of the Equipment and evidencing that the same may not be canceled or modified without thirty (30) days' prior written notice to ASC.

4. **Financing Statement.** Customer authorizes ASC to file a financing statement with respect to the Equipment detailed herein. In addition, Customer agrees, upon demand, to execute any and all instruments and documents that may be reasonably necessary or desirable to protect ASC's interest in the Equipment, and Customer will otherwise cooperate to defend the title of ASC by whatever means necessary.

5. **Tier IV Equipment.** Any usage of equipment with Tier 4 componentry requires strict adherence to the regeneration guidelines as noted in the Operator's Manual. Proper fuel type must also be utilized as noted in the Operator's Manual. By initialing below, customer acknowledges that failure to follow these procedures and guidelines will result in additional charges to the customer for repairs and or excessive maintenance. ASC will provide additional information about the procedures and guidelines upon request.

Initial SH

## **IMPORTANT NOTICE**

Failure to return rental property or equipment upon expiration of the rental period and/or failure to pay all amounts due (including costs for damage to Property or equipment) are prima facie evidence of intent to defraud, punishable in accordance with state law. By signing and initialing in the spaces provided, Customer acknowledges receipt of the Equipment described above in good operating condition. Further, Customer agrees to all rental terms and conditions shown on the front and reverse side of this Rental Agreement.

X Sham Shuck For NDDOT  
Customer Signature (Checked Out)

Date: 11/17/2014

X \_\_\_\_\_  
ASC Construction Equipment USA (Checked In)

Date: \_\_\_\_\_



## EQUIPMENT RENTAL AGREEMENT

North Dakota Department of Transportation  
Financial Management Division, Rm. 22  
608 East Boulevard Avenue  
Bismarck, ND 58505-0700

NAME	LESSOR (VENDOR)	LESSEE (STATE)
	ASC CONSTRUCTION EQUIPMENT USA, INC.	ND DEPARTMENT OF TRANSPORTATION
ADDRESS	750 YEGEN RD	608 E BOULEVARD AVENUE
CITY, STATE ZIP CODE	BISMARCK, ND 58504	BISMARCK ND 58505-0700
CONTACT	JOHN VAN PATTON	VANESSA BROSTEN
PHONE NO	701-250-4882 JOHN.VANPATTON@ASCVOLVO.COM	701-328-4466

DATE		RENTAL TERM	BEGINS ON DECEMBER 1, 2014	ENDS ON APRIL 30, 2015
RENTAL RATES *		TRANSPORTATION CHARGES IF APPLICABLE		METER READING OUT
DAY (8HRS.)	\$	NONE		
WEEK (44HRS.)	\$	MINIMUM RENTAL AMOUNT GUARANTEED BY LESSEE		METER READING IN
MONTH (176 HRS.)	\$	\$10.00 PER HOUR UP TO 100 HOURS		
EXCESS HOURS BILLED AT	\$ 25.00			
* RENTAL RATES ARE BASED ON HOUR METER USAGE				
EQUIPMENT WILL BE USED AT BISMARCK DISTRICT OFFICE				LESSEE WILL NOT REMOVE THE EQUIPMENT FROM THIS LOCATION WITHOUT NOTIFICATION.
SERIAL NUMBER	MAKE	MODEL	DESCRIPTION	UNIT VALUE
614430	VOLVO	L70G	AWD ARTICULATED WHEEL LOADER	190,000

BILL TO INFORMATION					
NAME	NORTH DAKOTA DEPARTMENT OF TRANSPORTATION				
	BISMARCK DISTRICT OFFICE				
ADDRESS	218 AIRPORT RD				
CITY	BISMARCK	STATE	NORTH DAKOTA	ZIP	58504
CONTACT	GARY FEIST	PHONE NO	701-328-6952		

### TERMS AND CONDITIONS

#### **AGREEMENT:**

Lessor, in consideration of the covenants, promises, and agreements on the part of the Lessee, hereinafter contained, hereby leases the equipment to Lessee in accordance with the terms of this agreement.

**AMENDMENTS:**

The terms of this agreement shall not be waived, altered, modified, supplemented, or amended, in any manner whatsoever, except by written instrument signed by the parties.

**TRANSPORTATION CHARGES:**

Lessee shall pay to the Lessor transportation charges incurred by Lessor in delivering the equipment to Lessee, and shall pay all such charges to return the equipment to Lessor upon termination of the lease. If applicable, transportation charges may be included in the rental rate.

**OPERATION OF EQUIPMENT:**

Lessee agrees that the equipment will be operated only by competent employees and will not be operated beyond the manufacturer's rated capacity nor improperly cared for or abused. The Lessee will pay for all costs of operation including regular maintenance and all repairs necessary due to improper use. Lessor shall supply all information necessary for Lessee to properly prepare operators and maintenance for their responsibilities. The equipment shall be returned to Lessor in as good condition as received, less reasonable wear and tear.

**REPAIRS:**

The expense of all major repairs made during the rental period, which shall be made by the Lessor's maintenance personnel, including labor, parts, mileage and other items will be paid by the Lessor unless required repairs are due to abuse or misuse of the equipment. The Lessee agrees to pay for repair of damaged tires or excessive wear. Cuts resulting in permanent damage to a tire will be subject to repair or replacement by Lessee if due to improper use or abuse. If the machine is down for more than 24 hours due to repairs, Lessor will issue credit of the prorated rental rate, or replace with a like or similar machine, if mutually agreed upon, or the agreement may be terminated and credited accordingly.

**WARRANTY:**

Lessor assigns to Lessee, for and during the term of this agreement, so long as Lessee shall not be in default, all manufacturer's warranties and guarantees, express or implied, issued on or applicable to the equipment.

**ALTERATIONS AND MODIFICATIONS OF EQUIPMENT:**

Lessee shall not make any additions, attachments, alterations or improvements to the equipment without the prior written consent of Lessor. Any addition, attachment, alteration or improvement of equipment shall belong to and become the property of Lessor unless, at the request of the Lessor, it is removed prior to the return of such item of equipment by Lessee. Lessee shall be responsible for all costs relating to such removal and shall restore such item of equipment to its operating condition that existed at the time it became subject to the applicable lease.

**LIABILITY:**

Lessee and Lessor each agrees to assume its own liability for any and all claims of any nature including all costs, expenses and attorneys' fees which may in any manner result from or arise out of this agreement.

**INSURANCE:**

Insurance shall be secured and kept in force during the term of this agreement, from insurance companies or a government self-insurance pool authorized to do business in the state of North Dakota, to include the following coverage:

- 1) Lessee and Lessor shall provide commercial general liability with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence.
- 2) Lessee shall provide property insurance insuring the full and true value of the equipment. Insurance policy shall name Lessee as insured and Lessor as an additional insured and loss payee thereof as Lessor's Interest may appear. An Evidence of Property Insurance shall be provided to the Lessor by the Lessee.

The insurance coverage listed above shall meet the following additional requirements:

- 1) Any deductible or self insured retention amount or other similar obligation shall be the sole responsibility of the party purchasing the coverage.
- 2) This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and must be placed with insurers rated "A" or better by A. M. Best Company Inc., provided any excess policy follows form for coverage. "Follows form" means the excess policy must be written with the same terms and conditions as the policy to which is in excess.
- 3) Either party may request a certificate of insurance evidencing the required coverage that is in effect and providing that the coverage may not be canceled or modified without thirty (30) days prior written notice to the other party.
- 4) Failure to provide insurance as required in this agreement is a material breach of contract.

**TAXES:**

The State does not pay sales tax or most federal taxes. The State's sales tax exemption number is E-2001. The federal tax free transaction number is 45-70-0010K. the federal employer identification number is 45-0309764..

**INSPECTION:**

Lessee agrees to permit Lessor or its representatives to inspect equipment leased hereunder at all reasonable times upon request of Lessor.

**TERMINATION:**

- a. This agreement may be terminated by mutual consent of both parties, or by either party upon 30 day's notice, in writing or delivered by certified mail or in person.
- b. In addition, Lessee may terminate this agreement effective upon delivery of written notice to the Lessor, or at such later date as may be established by Lessee, under any of the following conditions:
  - 1) If Lessee funding from federal, state, or other sources is not obtained and continued at levels sufficient to allow for purchase of the indicated quantity of services. The agreement may be modified unilaterally to accommodate a reduction in funds.
  - 2) If federal or state regulations or guidelines are modified, changed, or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this agreement or are no longer eligible for the funding proposed for payments authorized by this agreement.
  - 3) If any license or certificate required by law or regulation to be held by the Lessor to provide the services required by the agreement is for any reason denied or revoked.

Any such termination of this agreement under (1), (2), or (3), above, shall be without prejudice to any obligations of either party already accrued prior to such termination.

- c. Either party, by written notice, may terminate the whole or any part of this agreement:
  - 1) If either party fails to provide services called for by this agreement within the time specified herein or any extension thereof; or
  - 2) If either party fails to perform any other provisions of this agreement, or so fails to pursue the work as to endanger performance of this agreement in accordance with its terms, and after receipt of written notice from either party, fails to correct such failures within ten days or such longer period as either party may authorize.

**LESSEE AGREES TO:**

- 1 Notify Lessor of any change in agreed location.
- 2 Not sublease, rent or loan above equipment.
- 3 Not hold Lessor responsible for weather conditions, such as rain, snow, etc. No credit is expected because of these conditions.
- 4 Notify Lessor immediately of any mechanical failure, at which time a decision will be made who is responsible for repairs.
- 5 Pay a clean up charge for excessively dirty equipment.

**PURCHASE ORDER:**

A Purchase Order will not be issued as a result of this agreement. The executed agreement will bind the contractual obligation of the Lessee. Purchase Orders or Claim for Payments will be executed for payment of monthly invoices.

**RENTAL PAYMENTS:**

Lessee shall pay Lessor, upon invoice, rental payments. Payment for itemized additional charges is upon invoice. All rent and other amounts payable by Lessee to Lessor hereunder shall be paid to Lessor at the address specified above or at such other place as Lessor may designate in writing to Lessee.

**LATE PAYMENTS:**

Customary late charges on accounts not paid within thirty (30) days of invoice are allowable, not to exceed the maximum rate of interest permitted by law.

**EXTENDED RENTAL PERIOD:**

Lessee shall notify Lessor of extended rental needs. Lessee reserves the right to negotiate seasonal rates with the Lessor and may opt to extend the agreement upon mutual consent.

**REQUEST FOR BID:**

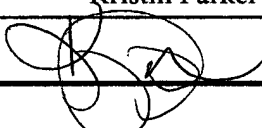
If a written request for bid for the equipment rental was solicited, any accompanying specific terms, conditions and specifications therein will become part of this agreement.

**GOVERNING LAW AND VENUE:**

Notwithstanding any rules regarding the choice of law or venue, it is agreed by the parties that this agreement shall be governed by and construed in accordance with applicable Federal Law and the laws of the state of North Dakota, at the time the agreement was executed. All disputes arising from this agreement shall be brought in the South Central District Court of the state of North Dakota.

**MERGER AND WAIVER:**

This agreement constitutes the entire agreement between the parties. No waiver, consent, modification, or change of terms of this agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification, or change, if made, shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this agreement. The Lessor, by the signature below of its authorized representative, hereby acknowledges that the Lessor has read this agreement, understands it, and agrees to be bound by its terms and conditions.

<b>LESSOR (Vendor)</b> TO BE SIGNED BY <b>OWNER; PARTNER; CORPORATE PRESIDENT; VICE PRESIDENT. OR OTHER AUTHORIZED CORPORATE OFFICER</b> OR BID MAY BE REJECTED. (IF SIGNED BY OTHER CORP. OFFICER, PLEASE ATTACH COPY OF POWER OF ATTORNEY OR OTHER DOCUMENTATION SHOWING AUTHORITY TO SIGN.)	
NAME (TYPE OR PRINT): <b>Kristin Parker</b>	TITLE : <b>VP- Sales and Marketing</b>
SIGNATURE : 	DATE : <b>11/14/14</b>

<b>LESSEE (Agency)</b>	
APPROVED AS TO SUBSTANCE BY :	DATE :
AGENCY DIRECTOR SIGNATURE :	DATE:



## RENTAL AGREEMENT

Branch 401 Bismarck	Sales Rep Gregor Schmidt	County Use:	End Use:
Rental Term: From: 12/1/14 to: 4/30/15		Customer No. 110363	Contract No.
		Customer NDDOT Bismarck	
		Address 600 E Boulevard Avenue	218 Airport RD
		City Bismarck State ND	Zip 58505-0700-58504
		Phone: 701-328-4466	Fax:
		Ship to: City Dickinson	County Stark State ND

### UNIT RENTED:

Make	Model	Serial Number	RATE PER BILLING PERIOD	
Volvo	L70	614430	THE BILLING PERIOD IS 4 WEEKS (28 DAYS)	\$10/hour, up to 100 hours \$25/hour, overage
Hour Meter:	IN	USED		

### Attachments:

Tag #	Make	Model	Serial Number

### OTHER FEES:

Freight Delivery	\$ ASC to deliver, N/C
Freight Return	\$ ASC to pickup, N/C
Total Freight Charge	\$ N/C
Damage Waiver 13% of Rental Rate	\$
Purchase Option? Yes* X No	
*The terms of the attached Purchase Option Rider are incorporated herein by reference.	

Insurance Value \$190,000\_\_

1. **Terms of Rental.** ASC Construction Equipment USA (hereinafter "ASC") hereby rents the equipment listed above (hereinafter "Equipment") to Customer pursuant to the following terms and conditions, *including the terms and conditions set out on the reverse side hereof*, for the rental term and at the rental rates as specified above. All rentals are billable in advance, based upon actual elapsed time out, and payments shall be made to ASC at the address specified in its invoice.

Initial SH Customer has reviewed the terms and conditions set forth on the reverse side of this document and agrees to be bound by such terms and conditions.

2. **Damage Waiver.** Following payment of the damage waiver set forth above, ASC shall be responsible for any damage or loss to the Equipment hereunder over Two Thousand Five Hundred Dollars (\$2500.00). Customer shall be liable for the first Two Thousand Five Hundred Dollars (\$2500.00) in damages with respect to any Equipment for which a damage waiver is purchased (the "Customer Liability Amount"). Notwithstanding the foregoing, acceptance by Customer of the damage waiver shall not relieve the Customer from liability for any loss or damage to the Equipment provided hereunder for any:

- (i) damage to tires, tubes or wheels caused by deflation of tires, or blowout bruises, dents, cuts or other causes resulting from the use of the Equipment
- (ii) damage caused by the negligence or other misuse or abuse of the Equipment or any use of the Equipment in violation of the provisions of this Agreement by Customer, its employees or agents, or other persons to whom the Equipment is entrusted by Customer; and
- (iii) loss or damage due to the mysterious or unexplained disappearance of Equipment, or caused by conversion by Customer, its employees or agents or other persons to whom the Equipment is entrusted by Customer.

In cases of theft, vandalism, arson or similar criminal acts causing loss or destruction to the Equipment, the Customer must pay to ASC the amount owed hereunder for damages to or loss of such Equipment (including, without limitation the Customer Liability Amount) and must also notify the police within ten (10) days of the loss and promptly provide ASC with a copy of the police report.

Accepted Damage Waiver \_\_\_\_\_

Declined Damage Waiver SH

3. **Insurance Requirements.** Customer shall, (or shall authorize ASC to provide), at Customer's expense, and continue in full force and effect during the entire term of this Rental Agreement, insurance against loss to the Equipment due to perils covered by all risk contractors equipment insurance for the full replacement value of the Equipment. Customer shall also provide (or authorize ASC to provide), at Customer's expense, and continue in force and effect during the entire term of this Rental Agreement, general liability and property damage insurance, the policy or policies to be standard form to be written in the state in which such unit will be registered. Said policy or policies shall be written with the limits of not less than \$500,000 for any one person for bodily injury or death; \$500,000 for any one accident for body injury or death; and \$500,000 for property damage. In the event Customer elects the damage waiver as set forth above, it shall not be required to provide ASC with proof of property insurance as set forth in this paragraph 3; provided, however, that Customer shall remain liable for any damage to the Equipment not covered by the damage waiver as set forth herein. The foregoing policies will be endorsed to waive any insurer rights of subrogation against ASC and will name ASC as an additional insured. Customer will provide certificates acceptable to ASC evidencing the foregoing insurance coverage prior to taking possession of the Equipment and evidencing that the same may not be canceled or modified without thirty (30) days' prior written notice to ASC.

4. **Financing Statement.** Customer authorizes ASC to file a financing statement with respect to the Equipment detailed herein. In addition, Customer agrees, upon demand, to execute any and all instruments and documents that may be reasonably necessary or desirable to protect ASC's interest in the Equipment, and Customer will otherwise cooperate to defend the title of ASC by whatever means necessary.

5. **Tier IV Equipment.** Any usage of equipment with Tier 4 componentry requires strict adherence to the regeneration guidelines as noted in the Operator's Manual. Proper fuel type must also be utilized as noted in the Operator's Manual. By initialing below, customer acknowledges that failure to follow these procedures and guidelines will result in additional charges to the customer for repairs and or excessive maintenance. ASC will provide additional information about the procedures and guidelines upon request.

Initial SH

### IMPORTANT NOTICE

Failure to return rental property or equipment upon expiration of the rental period and/or failure to pay all amounts due (including costs for damage to property or equipment) are prima facie evidence of intent to defraud, punishable in accordance with state law. By signing and initialing in the spaces provided, Customer acknowledges receipt of the Equipment described above in good operating condition. Further, Customer agrees to all rental terms and conditions shown on the front and reverse side of this Rental Agreement.

Shawn Hanch For NDDOT  
Customer Signature (Checked Out)

Date: 11/17/2014

ASC Construction Equipment USA (Checked In)

Date: \_\_\_\_\_

## EQUIPMENT RENTAL AGREEMENT

North Dakota Department of Transportation  
Financial Management Division, Rm. 22  
608 East Boulevard Avenue  
Bismarck, ND 58505-0700

NAME	LESSOR (VENDOR)	LESSEE (STATE)
	ASC CONSTRUCTION EQUIPMENT USA, INC.	ND DEPARTMENT OF TRANSPORTATION
ADDRESS	750 YEGEN RD	608 E BOULEVARD AVENUE
CITY, STATE ZIP CODE	BISMARCK, ND 58504	BISMARCK ND 58505-0700
CONTACT	JOHN VANPATTON	VANESSA BROSTEN
PHONE NO	701-250-4882 JOHN.VANPATTON@ASCVOLVO.COM	701-328-4466

DATE		RENTAL TERM	BEGINS ON DECEMBER 1, 2014	ENDS ON APRIL 30, 2015
RENTAL RATES *		TRANSPORTATION CHARGES IF APPLICABLE		METER READING OUT
DAY (8HRS.)	\$	NONE		
WEEK (44HRS.)	\$	MINIMUM RENTAL AMOUNT GUARANTEED BY LESSEE		METER READING IN
MONTH (176 HRS.)	\$	\$10.00 PER HOUR UP TO 100 HOURS		
EXCESS HOURS BILLED AT	\$ 25.00			
* RENTAL RATES ARE BASED ON HOUR METER USAGE				
EQUIPMENT WILL BE USED AT BISMARCK DISTRICT OFFICE				LESSEE WILL NOT REMOVE THE EQUIPMENT FROM THIS LOCATION WITHOUT NOTIFICATION.
SERIAL NUMBER	MAKE	MODEL	DESCRIPTION	UNIT VALUE
614416	VOLVO	L70G	AWD ARTICULATED WHEEL LOADER	190,000

BILL TO INFORMATION					
NAME	NORTH DAKOTA DEPARTMENT OF TRANSPORTATION				
	BISMARCK DISTRICT OFFICE				
ADDRESS	218 AIRPORT RD				
CITY	BISMARCK	STATE	NORTH DAKOTA	ZIP	58504
CONTACT	GARY FEIST	PHONE NO	701-328-6952		

### TERMS AND CONDITIONS

#### AGREEMENT:

Lessor, in consideration of the covenants, promises, and agreements on the part of the Lessee, hereinafter contained, hereby leases the equipment to Lessee in accordance with the terms of this agreement.

**AMENDMENTS:**

The terms of this agreement shall not be waived, altered, modified, supplemented, or amended, in any manner whatsoever, except by written instrument signed by the parties.

**TRANSPORTATION CHARGES:**

Lessee shall pay to the Lessor transportation charges incurred by Lessor in delivering the equipment to Lessee, and shall pay all such charges to return the equipment to Lessor upon termination of the lease. If applicable, transportation charges may be included in the rental rate.

**OPERATION OF EQUIPMENT:**

Lessee agrees that the equipment will be operated only by competent employees and will not be operated beyond the manufacturer's rated capacity nor improperly cared for or abused. The Lessee will pay for all costs of operation including regular maintenance and all repairs necessary due to improper use. Lessor shall supply all information necessary for Lessee to properly prepare operators and maintenance for their responsibilities. The equipment shall be returned to Lessor in as good condition as received, less reasonable wear and tear.

**REPAIRS:**

The expense of all major repairs made during the rental period, which shall be made by the Lessor's maintenance personnel, including labor, parts, mileage and other items will be paid by the Lessor unless required repairs are due to abuse or misuse of the equipment. The Lessee agrees to pay for repair of damaged tires or excessive wear. Cuts resulting in permanent damage to a tire will be subject to repair or replacement by Lessee if due to improper use or abuse. If the machine is down for more than 24 hours due to repairs, Lessor will issue credit of the prorated rental rate, or replace with a like or similar machine, if mutually agreed upon, or the agreement may be terminated and credited accordingly.

**WARRANTY:**

Lessor assigns to Lessee, for and during the term of this agreement, so long as Lessee shall not be in default, all manufacturer's warranties and guarantees, express or implied, issued on or applicable to the equipment.

**ALTERATIONS AND MODIFICATIONS OF EQUIPMENT:**

Lessee shall not make any additions, attachments, alterations or improvements to the equipment without the prior written consent of Lessor. Any addition, attachment, alteration or improvement of equipment shall belong to and become the property of Lessor unless, at the request of the Lessor, it is removed prior to the return of such item of equipment by Lessee. Lessee shall be responsible for all costs relating to such removal and shall restore such item of equipment to its operating condition that existed at the time it became subject to the applicable lease.

**LIABILITY:**

Lessee and Lessor each agrees to assume its own liability for any and all claims of any nature including all costs, expenses and attorneys' fees which may in any manner result from or arise out of this agreement.

**INSURANCE:**

Insurance shall be secured and kept in force during the term of this agreement, from insurance companies or a government self-insurance pool authorized to do business in the state of North Dakota, to include the following coverage:

- 1) Lessee and Lessor shall provide commercial general liability with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence.
- 2) Lessee shall provide property insurance insuring the full and true value of the equipment. Insurance policy shall name Lessee as insured and Lessor as an additional insured and loss payee thereof as Lessor's interest may appear. An Evidence of Property Insurance shall be provided to the Lessor by the Lessee.

The insurance coverage listed above shall meet the following additional requirements:

- 1) Any deductible or self insured retention amount or other similar obligation shall be the sole responsibility of the party purchasing the coverage.
- 2) This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and must be placed with insurers rated "A" or better by A. M. Best Company Inc., provided any excess policy follows form for coverage. "Follows form" means the excess policy must be written with the same terms and conditions as the policy to which is in excess.
- 3) Either party may request a certificate of insurance evidencing the required coverage that is in effect and providing that the coverage may not be canceled or modified without thirty (30) days prior written notice to the other party.
- 4) Failure to provide insurance as required in this agreement is a material breach of contract.

**TAXES:**



The State does not pay sales tax or most federal taxes. The State's sales tax exemption number is E-2001. The federal tax free transaction number is 45-70-0010K. the federal employer identification number is 45-0309764..

**INSPECTION:**

Lessee agrees to permit Lessor or its representatives to inspect equipment leased hereunder at all reasonable times upon request of Lessor.

**TERMINATION:**

- a. This agreement may be terminated by mutual consent of both parties, or by either party upon 30 day's notice, in writing or delivered by certified mail or in person.
- b. In addition, Lessee may terminate this agreement effective upon delivery of written notice to the Lessor, or at such later date as may be established by Lessee, under any of the following conditions:
  - 1) If Lessee funding from federal, state, or other sources is not obtained and continued at levels sufficient to allow for purchase of the indicated quantity of services. The agreement may be modified unilaterally to accommodate a reduction in funds.
  - 2) If federal or state regulations or guidelines are modified, changed, or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this agreement or are no longer eligible for the funding proposed for payments authorized by this agreement.
  - 3) If any license or certificate required by law or regulation to be held by the Lessor to provide the services required by the agreement is for any reason denied or revoked.

Any such termination of this agreement under (1), (2), or (3), above, shall be without prejudice to any obligations of either party already accrued prior to such termination.

- c. Either party, by written notice, may terminate the whole or any part of this agreement:
  - 1) If either party fails to provide services called for by this agreement within the time specified herein or any extension thereof; or
  - 2) If either party fails to perform any other provisions of this agreement, or so fails to pursue the work as to endanger performance of this agreement in accordance with its terms, and after receipt of written notice from either party, fails to correct such failures within ten days or such longer period as either party may authorize.

**LESSEE AGREES TO:**

- 1 Notify Lessor of any change in agreed location.
- 2 Not sublease, rent or loan above equipment.
- 3 Not hold Lessor responsible for weather conditions, such as rain, snow, etc. No credit is expected because of these conditions.
- 4 Notify Lessor immediately of any mechanical failure, at which time a decision will be made who is responsible for repairs.
- 5 Pay a clean up charge for excessively dirty equipment.

**PURCHASE ORDER:**

A Purchase Order will not be issued as a result of this agreement. The executed agreement will bind the contractual obligation of the Lessee. Purchase Orders or Claim for Payments will be executed for payment of monthly invoices.

**RENTAL PAYMENTS:**

Lessee shall pay Lessor, upon invoice, rental payments. Payment for itemized additional charges is upon invoice. All rent and other amounts payable by Lessee to Lessor hereunder shall be paid to Lessor at the address specified above or at such other place as Lessor may designate in writing to Lessee.

**LATE PAYMENTS:**

Customary late charges on accounts not paid within thirty (30) days of invoice are allowable, not to exceed the maximum rate of interest permitted by law.

**EXTENDED RENTAL PERIOD:**

Lessee shall notify Lessor of extended rental needs. Lessee reserves the right to negotiate seasonal rates with the Lessor and may opt to extend the agreement upon mutual consent.

**REQUEST FOR BID:**

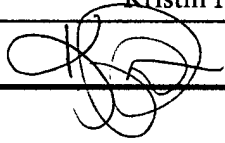
If a written request for bid for the equipment rental was solicited, any accompanying specific terms, conditions and specifications therein will become part of this agreement.

**GOVERNING LAW AND VENUE:**

Notwithstanding any rules regarding the choice of law or venue, it is agreed by the parties that this agreement shall be governed by and construed in accordance with applicable Federal Law and the laws of the state of North Dakota, at the time the agreement was executed. All disputes arising from this agreement shall be brought in the South Central District Court of the state of North Dakota.

**MERGER AND WAIVER:**

This agreement constitutes the entire agreement between the parties. No waiver, consent, modification, or change of terms of this agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification, or change, if made, shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this agreement. The Lessor, by the signature below of its authorized representative, hereby acknowledges that the Lessor has read this agreement, understands it, and agrees to be bound by its terms and conditions.

LESSOR (Vendor) TO BE SIGNED BY <b>OWNER; PARTNER; CORPORATE PRESIDENT; VICE PRESIDENT. OR OTHER AUTHORIZED CORPORATE OFFICER</b> OR BID MAY BE REJECTED. (IF SIGNED BY OTHER CORP. OFFICER, PLEASE ATTACH COPY OF POWER OF ATTORNEY OR OTHER DOCUMENTATION SHOWING AUTHORITY TO SIGN.)	
NAME (TYPE OR PRINT): <b>Kristin Parker</b>	TITLE : <b>VP- Sales and Marketing</b>
SIGNATURE : 	DATE : <b>11/14/14</b>

LESSEE (Agency)	
APPROVED AS TO SUBSTANCE BY :	DATE :
AGENCY DIRECTOR SIGNATURE :	DATE:



## RENTAL AGREEMENT

Ranch 401 Bismarck  
Sales Rep Gregor Schmidt  
Rental Term: From: 12/1/14 to: 4/30/15

County Use:	End Use:
Customer No. 110363	Contract No.
Customer NDDOT Bismarck	
Address 608 E Boulevard Avenue 218 Airport RD	
City Bismarck	State ND Zip 58505-0706 58504
Phone: 701-328-4466	Fax:
Ship to: City Dickinson	County Stark State ND

### UNIT RENTED:

Make	Model	Serial Number
Volvo	L70	614416
Hour Meter:	IN	USED

### RATE PER BILLING PERIOD

THE BILLING PERIOD IS  
4 WEEKS (28 DAYS)  
\$10/hour, up to 100 hours  
\$25/hour, overage

### Attachments:

Tag #	Make	Model	Serial Number

### OTHER FEES:

Freight Delivery	\$ ASC to deliver, N/C
Freight Return	\$ ASC to pickup, N/C
Total Freight Charge	\$ N/C
Damage Waiver 13% of Rental Rate	\$
Purchase Option?	Yes* <input checked="" type="checkbox"/> No <input checked="" type="checkbox"/>

\*The terms of the attached Purchase Option Rider are incorporated herein by reference.

Insurance Value \$190,000

1. **Terms of Rental.** ASC Construction Equipment USA (hereinafter "ASC") hereby rents the equipment listed above (hereinafter "Equipment") to Customer pursuant to the following terms and conditions, *including the terms and conditions set out on the reverse side hereof*, for the rental term and at the rental rates as specified above. All rentals are billable in advance, based upon actual elapsed time out, and payments shall be made to ASC at the address specified in its invoice.

Initial SH Customer has reviewed the terms and conditions set forth on the reverse side of this document and agrees to be bound by such terms and conditions.

2. **Damage Waiver.** Following payment of the damage waiver set forth above, ASC shall be responsible for any damage or loss to the Equipment hereunder over Two Thousand Five Hundred Dollars (\$2500.00). Customer shall be liable for the first Two Thousand Five Hundred Dollars (\$2500.00) in damages with respect to any Equipment for which a damage waiver is purchased (the "Customer Liability Amount"). Notwithstanding the foregoing, acceptance by Customer of the damage waiver shall not relieve the Customer from liability for any loss or damage to the Equipment provided hereunder for any:

- (i) damage to tires, tubes or wheels caused by deflation of tires, or blowout bruises, dents, cuts or other causes resulting from the use of the Equipment
- (ii) damage caused by the negligence or other misuse or abuse of the Equipment or any use of the Equipment in violation of the provisions of this Agreement by Customer, its employees or agents, or other persons to whom the Equipment is entrusted by Customer; and
- (iii) loss or damage due to the mysterious or unexplained disappearance of Equipment, or caused by conversion by Customer, its employees or agents or other persons to whom the Equipment is entrusted by Customer.

In cases of theft, vandalism, arson or similar criminal acts causing loss or destruction to the Equipment, the Customer must pay to ASC the amount owed hereunder for damages to or loss of such Equipment (including, without limitation the Customer Liability Amount) and must also notify the police within ten (10) days of the loss and promptly provide ASC with a copy of the police report.

Accepted Damage Waiver \_\_\_\_\_

Declined Damage Waiver, SH

3. **Insurance Requirements.** Customer shall, (or shall authorize ASC to provide), at Customer's expense, and continue in full force and effect during the entire term of this Rental Agreement, insurance against loss to the Equipment due to perils covered by all risk contractors equipment insurance for the full replacement value of the Equipment. Customer shall also provide (or authorize ASC to provide), at Customer's expense, and continue in force and effect during the entire term of this Rental Agreement, general liability and property damage insurance, the policy or policies to be standard form to be written in the state in which such unit will be registered. Said policy or policies shall be written with the limits of not less than \$500,000 for any one person for bodily injury or death; \$500,000 for any one accident for body injury or death; and \$500,000 for property damage. In the event Customer elects the damage waiver as set forth above, it shall not be required to provide ASC with proof of property insurance as set forth in this paragraph 3; provided, however, that Customer shall remain liable for any damage to the Equipment not covered by the damage waiver as set forth herein. The foregoing policies will be endorsed to waive any insurer rights of subrogation against ASC and will name ASC as an additional insured. Customer will provide certificates acceptable to ASC evidencing the foregoing insurance coverage prior to taking possession of the Equipment and evidencing that the same may not be canceled or modified without thirty (30) days' prior written notice to ASC.

4. **Financing Statement.** Customer authorizes ASC to file a financing statement with respect to the Equipment detailed herein. In addition, Customer agrees, upon demand, to execute any and all instruments and documents that may be reasonably necessary or desirable to protect ASC's interest in the Equipment, and Customer will otherwise cooperate to defend the title of ASC by whatever means necessary.

5. **Tier IV Equipment.** Any usage of equipment with Tier 4 componentry requires strict adherence to the regeneration guidelines as noted in the Operator's Manual. Proper fuel type must also be utilized as noted in the Operator's Manual. By initialing below, customer acknowledges that failure to follow these procedures and guidelines will result in additional charges to the customer for repairs and or excessive maintenance. ASC will provide additional information about the procedures and guidelines upon request.

Initial SH

### IMPORTANT NOTICE

Failure to return rental property or equipment upon expiration of the rental period and/or failure to pay all amounts due (including costs for damage to Property or equipment) are prima facie evidence of intent to defraud, punishable in accordance with state law. By signing and initialing in the spaces provided, Customer acknowledges receipt of the Equipment described above in good operating condition. Further, Customer agrees to all rental terms and conditions shown on the front and reverse side of this Rental Agreement.

Sham Harris For NDDOT  
Customer Signature (Checked Out)

Date: 11/17/2014

ASC Construction Equipment USA  
ASC Construction Equipment USA (Checked In)

Date: \_\_\_\_\_

## EQUIPMENT RENTAL AGREEMENT

North Dakota Department of Transportation  
Financial Management Division, Rm. 22  
608 East Boulevard Avenue  
Bismarck, ND 58505-0700

NAME	LESSOR (VENDOR)	LESSEE (STATE)
	ASC CONSTRUCTION EQUIPMENT USA, INC.	ND DEPARTMENT OF TRANSPORTATION
ADDRESS	750 YEGEN RD	608 E BOULEVARD AVENUE
CITY, STATE ZIP CODE	BISMARCK, ND 58504	BISMARCK ND 58505-0700
CONTACT	JOHN VAN PATTON	VANESSA BROSTEN
PHONE NO	701-250-4882 JOHN.VANPATTON@ASCVOLVO.COM	701-328-4466

DATE		RENTAL TERM	BEGINS ON DECEMBER 1, 2014	ENDS ON APRIL 30, 2015
RENTAL RATES *  DAY (8HRS.) \$  WEEK (44HRS.) \$  MONTH (176 HRS.) \$  EXCESS HOURS BILLED AT \$25.00  * RENTAL RATES ARE BASED ON HOUR METER USAGE		TRANSPORTATION CHARGES IF APPLICABLE  NONE		METER READING OUT
		MINIMUM RENTAL AMOUNT GUARANTEED BY LESSEE  \$10.00 PER HOUR UP TO 100 HOURS		METER READING IN
EQUIPMENT WILL BE USED AT DICKINSON DISTRICT OFFICE				LESSEE WILL NOT REMOVE THE EQUIPMENT FROM THIS LOCATION WITHOUT NOTIFICATION.
SERIAL NUMBER	MAKE	MODEL	DESCRIPTION	UNIT VALUE
614428	VOLVO	L70G	AWD ARTICULATED WHEEL LOADER	190,000

BILL TO INFORMATION					
NAME	NORTH DAKOTA DEPARTMENT OF TRANSPORTATION				
	DICKINSON DISTRICT OFFICE				
ADDRESS	1700 3 <sup>RD</sup> AVE. N.				
CITY	DICKINSON	STATE	NORTH DAKOTA	ZIP	58601
CONTACT	AARON AUER	PHONE NO	701-227-6526		

### TERMS AND CONDITIONS

#### AGREEMENT:

Lessor, in consideration of the covenants, promises, and agreements on the part of the Lessee, hereinafter contained, hereby leases the equipment to Lessee in accordance with the terms of this agreement.

**AMENDMENTS:**

The terms of this agreement shall not be waived, altered, modified, supplemented, or amended, in any manner whatsoever, except by written instrument signed by the parties.

**TRANSPORTATION CHARGES:**

Lessee shall pay to the Lessor transportation charges incurred by Lessor in delivering the equipment to Lessee, and shall pay all such charges to return the equipment to Lessor upon termination of the lease. If applicable, transportation charges may be included in the rental rate.

**OPERATION OF EQUIPMENT:**

Lessee agrees that the equipment will be operated only by competent employees and will not be operated beyond the manufacturer's rated capacity nor improperly cared for or abused. The Lessee will pay for all costs of operation including regular maintenance and all repairs necessary due to improper use. Lessor shall supply all information necessary for Lessee to properly prepare operators and maintenance for their responsibilities. The equipment shall be returned to Lessor in as good condition as received, less reasonable wear and tear.

**REPAIRS:**

The expense of all major repairs made during the rental period, which shall be made by the Lessor's maintenance personnel, including labor, parts, mileage and other items will be paid by the Lessor unless required repairs are due to abuse or misuse of the equipment. The Lessee agrees to pay for repair of damaged tires or excessive wear. Cuts resulting in permanent damage to a tire will be subject to repair or replacement by Lessee if due to improper use or abuse. If the machine is down for more than 24 hours due to repairs, Lessor will issue credit of the prorated rental rate, or replace with a like or similar machine, if mutually agreed upon, or the agreement may be terminated and credited accordingly.

**WARRANTY:**

Lessor assigns to Lessee, for and during the term of this agreement, so long as Lessee shall not be in default, all manufacturer's warranties and guarantees, express or implied, issued on or applicable to the equipment.

**ALTERATIONS AND MODIFICATIONS OF EQUIPMENT:**

Lessee shall not make any additions, attachments, alterations or improvements to the equipment without the prior written consent of Lessor. Any addition, attachment, alteration or improvement of equipment shall belong to and become the property of Lessor unless, at the request of the Lessor, it is removed prior to the return of such item of equipment by Lessee. Lessee shall be responsible for all costs relating to such removal and shall restore such item of equipment to its operating condition that existed at the time it became subject to the applicable lease.

**LIABILITY:**

Lessee and Lessor each agrees to assume its own liability for any and all claims of any nature including all costs, expenses and attorneys' fees which may in any manner result from or arise out of this agreement.

**INSURANCE:**

Insurance shall be secured and kept in force during the term of this agreement, from insurance companies or a government self-insurance pool authorized to do business in the state of North Dakota, to include the following coverage:

- 1) Lessee and Lessor shall provide commercial general liability with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence.
- 2) Lessee shall provide property insurance insuring the full and true value of the equipment. Insurance policy shall name Lessee as insured and Lessor as an additional insured and loss payee thereof as Lessor's interest may appear. An Evidence of Property Insurance shall be provided to the Lessor by the Lessee.

The insurance coverage listed above shall meet the following additional requirements:

- 1) Any deductible or self insured retention amount or other similar obligation shall be the sole responsibility of the party purchasing the coverage.
- 2) This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and must be placed with insurers rated "A" or better by A. M. Best Company Inc., provided any excess policy follows form for coverage. "Follows form" means the excess policy must be written with the same terms and conditions as the policy to which is in excess.
- 3) Either party may request a certificate of insurance evidencing the required coverage that is in effect and providing that the coverage may not be canceled or modified without thirty (30) days prior written notice to the other party.
- 4) Failure to provide insurance as required in this agreement is a material breach of contract.

**TAXES:**

The State does not pay sales tax or most federal taxes. The State's sales tax exemption number is E-2001. The federal tax free transaction number is 45-70-0010K. the federal employer identification number is 45-0309764..

**INSPECTION:**

Lessee agrees to permit Lessor or its representatives to inspect equipment leased hereunder at all reasonable times upon request of Lessor.

**TERMINATION:**

- a. This agreement may be terminated by mutual consent of both parties, or by either party upon 30 day's notice, in writing or delivered by certified mail or in person.
- b. In addition, Lessee may terminate this agreement effective upon delivery of written notice to the Lessor, or at such later date as may be established by Lessee, under any of the following conditions:
  - 1) If Lessee funding from federal, state, or other sources is not obtained and continued at levels sufficient to allow for purchase of the indicated quantity of services. The agreement may be modified unilaterally to accommodate a reduction in funds.
  - 2) If federal or state regulations or guidelines are modified, changed, or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this agreement or are no longer eligible for the funding proposed for payments authorized by this agreement.
  - 3) If any license or certificate required by law or regulation to be held by the Lessor to provide the services required by the agreement is for any reason denied or revoked.

Any such termination of this agreement under (1), (2), or (3), above, shall be without prejudice to any obligations of either party already accrued prior to such termination.

- c. Either party, by written notice, may terminate the whole or any part of this agreement:
  - 1) If either party fails to provide services called for by this agreement within the time specified herein or any extension thereof; or
  - 2) If either party fails to perform any other provisions of this agreement, or so fails to pursue the work as to endanger performance of this agreement in accordance with its terms, and after receipt of written notice from either party, fails to correct such failures within ten days or such longer period as either party may authorize.

**LESSEE AGREES TO:**

- 1 Notify Lessor of any change in agreed location.
- 2 Not sublease, rent or loan above equipment.
- 3 Not hold Lessor responsible for weather conditions, such as rain, snow, etc. No credit is expected because of these conditions.
- 4 Notify Lessor immediately of any mechanical failure, at which time a decision will be made who is responsible for repairs.
- 5 Pay a clean up charge for excessively dirty equipment.

**PURCHASE ORDER:**

A Purchase Order will not be issued as a result of this agreement. The executed agreement will bind the contractual obligation of the Lessee. Purchase Orders or Claim for Payments will be executed for payment of monthly invoices.

**RENTAL PAYMENTS:**

Lessee shall pay Lessor, upon invoice, rental payments. Payment for itemized additional charges is upon invoice. All rent and other amounts payable by Lessee to Lessor hereunder shall be paid to Lessor at the address specified above or at such other place as Lessor may designate in writing to Lessee.

**LATE PAYMENTS:**

Customary late charges on accounts not paid within thirty (30) days of invoice are allowable, not to exceed the maximum rate of interest permitted by law.

**EXTENDED RENTAL PERIOD:**

Lessee shall notify Lessor of extended rental needs. Lessee reserves the right to negotiate seasonal rates with the Lessor and may opt to extend the agreement upon mutual consent.

**REQUEST FOR BID:**

If a written request for bid for the equipment rental was solicited, any accompanying specific terms, conditions and specifications therein will become part of this agreement.

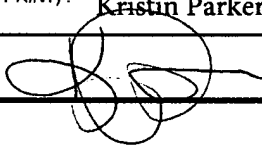


**GOVERNING LAW AND VENUE:**

Notwithstanding any rules regarding the choice of law or venue, it is agreed by the parties that this agreement shall be governed by and construed in accordance with applicable Federal Law and the laws of the state of North Dakota, at the time the agreement was executed. All disputes arising from this agreement shall be brought in the South Central District Court of the state of North Dakota.

**MERGER AND WAIVER:**

This agreement constitutes the entire agreement between the parties. No waiver, consent, modification, or change of terms of this agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification, or change, if made, shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this agreement. The Lessor, by the signature below of its authorized representative, hereby acknowledges that the Lessor has read this agreement, understands it, and agrees to be bound by its terms and conditions.

LESSOR (Vendor) TO BE SIGNED BY OWNER; PARTNER; CORPORATE PRESIDENT; VICE PRESIDENT. OR OTHER AUTHORIZED CORPORATE OFFICER OR BID MAY BE REJECTED. (IF SIGNED BY OTHER CORP. OFFICER, PLEASE ATTACH COPY OF POWER OF ATTORNEY OR OTHER DOCUMENTATION SHOWING AUTHORITY TO SIGN.)	
NAME (TYPE OR PRINT): <b>Kristin Parker</b>	TITLE: <b>VP - Sales &amp; Marketing</b>
SIGNATURE: 	DATE: <b>11/14/14</b>

LESSEE (Agency)	
APPROVED AS TO SUBSTANCE BY:	DATE:
AGENCY DIRECTOR SIGNATURE:	DATE:



## RENTAL AGREEMENT

Branch 401 Bismarck Sales Rep Gregor Schmidt  
Rental Term: From: 12/1/14 to: 4/30/15

County Use:	End Use:
Customer No. 110363	Contract No:
Customer NDDOT Dickinson	
Address 608 E Boulevard Avenue 1700 3rd Ave West	
City Bismarck	State ND Zip 58505-0700 58601
Phone: 701-328-4466	Fax:
Ship to: City Dickinson	County Stark State ND

### UNIT RENTED:

Make	Model	Serial Number
Volvo	L70	614428
Hour Meter:	IN	USED

### RATE PER BILLING PERIOD

THE BILLING PERIOD IS  
4 WEEKS (28 DAYS)  
\$10/hour, up to 100 hours  
\$25/hour, overage

### Attachments:

Tag #	Make	Model	Serial Number

### OTHER FEES:

Freight Delivery	\$ ASC to deliver, N/C
Freight Return	\$ ASC to pickup, N/C
Total Freight Charge	\$ N/C
Damage Waiver 13% of Rental Rate	\$
Purchase Option? Yes* X No	
*The terms of the attached Purchase Option Rider are incorporated herein by reference.	

Insurance Value \$190,000

1. **Terms of Rental.** ASC Construction Equipment USA (hereinafter "ASC") hereby rents the equipment listed above (hereinafter "Equipment") to Customer pursuant to the following terms and conditions, **including the terms and conditions set out on the reverse side hereof**, for the rental term and at the rental rates as specified above. All rentals are billable in advance, based upon actual elapsed time out, and payments shall be made to ASC at the address specified in its invoice.

Initial SH Customer has reviewed the terms and conditions set forth on the reverse side of this document and agrees to be bound by such terms and conditions.

2. **Damage Waiver.** Following payment of the damage waiver set forth above, ASC shall be responsible for any damage or loss to the Equipment hereunder over Two Thousand Five Hundred Dollars (\$2500.00). Customer shall be liable for the first Two Thousand Five Hundred Dollars (\$2500.00) in damages with respect to any Equipment for which a damage waiver is purchased (the "Customer Liability Amount"). Notwithstanding the foregoing, acceptance by Customer of the damage waiver shall not relieve the Customer from liability for any loss or damage to the Equipment provided hereunder for any:

- (i) damage to tires, tubes or wheels caused by deflation of tires, or blowout bruises, dents, cuts or other causes resulting from the use of the Equipment
- (ii) damage caused by the negligence or other misuse or abuse of the Equipment or any use of the Equipment in violation of the provisions of this Agreement by Customer, its employees or agents, or other persons to whom the Equipment is entrusted by Customer; and
- (iii) loss or damage due to the mysterious or unexplained disappearance of Equipment, or caused by conversion by Customer, its employees or agents or other persons to whom the Equipment is entrusted by Customer.

In cases of theft, vandalism, arson or similar criminal acts causing loss or destruction to the Equipment, the Customer must pay to ASC the amount owed hereunder for damages to or loss of such Equipment (including, without limitation the Customer Liability Amount) and must also notify the police within ten (10) days of the loss and promptly provide ASC with a copy of the police report.

Accepted Damage Waiver \_\_\_\_\_

Declined Damage Waiver SH

3. **Insurance Requirements.** Customer shall, (or shall authorize ASC to provide), at Customer's expense, and continue in full force and effect during the entire term of this Rental Agreement, insurance against loss to the Equipment due to perils covered by all risk contractors equipment insurance for the full replacement value of the Equipment. Customer shall also provide (or authorize ASC to provide), at Customer's expense, and continue in force and effect during the entire term of this Rental Agreement, general liability and property damage insurance, the policy or policies to be standard form to be written in the state in which such unit will be registered. Said policy or policies shall be written with the limits of not less than \$500,000 for any one person for bodily injury or death; \$500,000 for any one accident for body injury or death; and \$500,000 for property damage. In the event Customer elects the damage waiver as set forth above, it shall not be required to provide ASC with proof of property insurance as set forth in this paragraph 3; provided, however, that Customer shall remain liable for any damage to the Equipment not covered by the damage waiver as set forth herein. The foregoing policies will be endorsed to waive any insurer rights of subrogation against ASC and will name ASC as an additional insured. Customer will provide certificates acceptable to ASC evidencing the foregoing insurance coverage prior to taking possession of the Equipment and evidencing that the same may not be canceled or modified without thirty (30) days' prior written notice to ASC.

4. **Financing Statement.** Customer authorizes ASC to file a financing statement with respect to the Equipment detailed herein. In addition, Customer agrees, upon demand, to execute any and all instruments and documents that may be reasonably necessary or desirable to protect ASC's interest in the Equipment, and Customer will otherwise cooperate to defend the title of ASC by whatever means necessary.

5. **Tier IV Equipment.** Any usage of equipment with Tier 4 componentry requires strict adherence to the regeneration guidelines as noted in the Operator's Manual. Proper fuel type must also be utilized as noted in the Operator's Manual. By initialing below, customer acknowledges that failure to follow these procedures and guidelines will result in additional charges to the customer for repairs and or excessive maintenance. ASC will provide additional information about the procedures and guidelines upon request.

Initial SH

### IMPORTANT NOTICE

Failure to return rental property or equipment upon expiration of the rental period and/or failure to pay all amounts due (including costs for damage to Property or equipment) are prima facie evidence of intent to defraud, punishable in accordance with state law. By signing and initialing in the spaces provided, Customer acknowledges receipt of the Equipment described above in good operating condition. Further, Customer agrees to all rental terms and conditions shown on the front and reverse side of this Rental Agreement.

X Shawn Hanks For: NDDOT  
Customer Signature (Checked Out)

Date: 11/17/2014

X \_\_\_\_\_  
ASC Construction Equipment USA (Checked In)

Date: \_\_\_\_\_

## EQUIPMENT RENTAL AGREEMENT

North Dakota Department of Transportation  
Financial Management Division, Rm. 22  
608 East Boulevard Avenue  
Bismarck, ND 58505-0700

NAME	LESSOR (VENDOR)	LESSEE (STATE)
	ASC CONSTRUCTION EQUIPMENT USA, INC.	ND DEPARTMENT OF TRANSPORTATION
ADDRESS	750 YEGEN RD	608 E BOULEVARD AVENUE
CITY, STATE ZIP CODE	BISMARCK, ND 58504	BISMARCK ND 58505-0700
CONTACT	JOHN VAN PATTON	VANESSA BROSTEN
PHONE NO	701-250-4882 JOHN.VANPATTON@ASCVOLVO.COM	701-328-4466

DATE		RENTAL TERM	BEGINS ON DECEMBER 1, 2014	ENDS ON APRIL 30, 2015
RENTAL RATES *		TRANSPORTATION CHARGES IF APPLICABLE		METER READING OUT
DAY (8HRS.)	\$	NONE		
WEEK (44HRS.)	\$	MINIMUM RENTAL AMOUNT GUARANTEED BY LESSEE		METER READING IN
MONTH (176 HRS.)	\$	\$10.00 PER HOUR UP TO 100 HOURS		
EXCESS HOURS BILLED AT	\$25.00			
* RENTAL RATES ARE BASED ON HOUR METER USAGE				
EQUIPMENT WILL BE USED AT DICKINSON DISTRICT OFFICE				LESSEE WILL NOT REMOVE THE EQUIPMENT FROM THIS LOCATION WITHOUT NOTIFICATION.
SERIAL NUMBER	MAKE	MODEL	DESCRIPTION	UNIT VALUE
614429	VOLVO	L70G	AWD ARTICULATED WHEEL LOADER	190,000

BILL TO INFORMATION					
NAME	NORTH DAKOTA DEPARTMENT OF TRANSPORTATION				
	DICKINSON DISTRICT OFFICE				
ADDRESS	1700 3 <sup>RD</sup> AVE. N.				
CITY	DICKINSON	STATE	NORTH DAKOTA	ZIP	58601
CONTACT	AARON AUER	PHONE NO	701-227-6526		

### TERMS AND CONDITIONS

#### **AGREEMENT:**

Lessor, in consideration of the covenants, promises, and agreements on the part of the Lessee, hereinafter contained, hereby leases the equipment to Lessee in accordance with the terms of this agreement.

**AMENDMENTS:**

The terms of this agreement shall not be waived, altered, modified, supplemented, or amended, in any manner whatsoever, except by written instrument signed by the parties.

**TRANSPORTATION CHARGES:**

Lessee shall pay to the Lessor transportation charges incurred by Lessor in delivering the equipment to Lessee, and shall pay all such charges to return the equipment to Lessor upon termination of the lease. If applicable, transportation charges may be included in the rental rate.

**OPERATION OF EQUIPMENT:**

Lessee agrees that the equipment will be operated only by competent employees and will not be operated beyond the manufacturer's rated capacity nor improperly cared for or abused. The Lessee will pay for all costs of operation including regular maintenance and all repairs necessary due to improper use. Lessor shall supply all information necessary for Lessee to properly prepare operators and maintenance for their responsibilities. The equipment shall be returned to Lessor in as good condition as received, less reasonable wear and tear.

**REPAIRS:**

The expense of all major repairs made during the rental period, which shall be made by the Lessor's maintenance personnel, including labor, parts, mileage and other items will be paid by the Lessor unless required repairs are due to abuse or misuse of the equipment. The Lessee agrees to pay for repair of damaged tires or excessive wear. Cuts resulting in permanent damage to a tire will be subject to repair or replacement by Lessee if due to improper use or abuse. If the machine is down for more than 24 hours due to repairs, Lessor will issue credit of the prorated rental rate, or replace with a like or similar machine, if mutually agreed upon, or the agreement may be terminated and credited accordingly.

**WARRANTY:**

Lessor assigns to Lessee, for and during the term of this agreement, so long as Lessee shall not be in default, all manufacturer's warranties and guarantees, express or implied, issued on or applicable to the equipment.

**ALTERATIONS AND MODIFICATIONS OF EQUIPMENT:**

Lessee shall not make any additions, attachments, alterations or improvements to the equipment without the prior written consent of Lessor. Any addition, attachment, alteration or improvement of equipment shall belong to and become the property of Lessor unless, at the request of the Lessor, it is removed prior to the return of such item of equipment by Lessee. Lessee shall be responsible for all costs relating to such removal and shall restore such item of equipment to its operating condition that existed at the time it became subject to the applicable lease.

**LIABILITY:**

Lessee and Lessor each agrees to assume its own liability for any and all claims of any nature including all costs, expenses and attorneys' fees which may in any manner result from or arise out of this agreement.

**INSURANCE:**

Insurance shall be secured and kept in force during the term of this agreement, from insurance companies or a government self-insurance pool authorized to do business in the state of North Dakota, to include the following coverage:

- 1) Lessee and Lessor shall provide commercial general liability with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence.
- 2) Lessee shall provide property insurance insuring the full and true value of the equipment. Insurance policy shall name Lessee as insured and Lessor as an additional insured and loss payee thereof as Lessor's interest may appear. An Evidence of Property Insurance shall be provided to the Lessor by the Lessee.

The insurance coverage listed above shall meet the following additional requirements:

- 1) Any deductible or self insured retention amount or other similar obligation shall be the sole responsibility of the party purchasing the coverage.
- 2) This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and must be placed with insurers rated "A" or better by A. M. Best Company Inc., provided any excess policy follows form for coverage. "Follows form" means the excess policy must be written with the same terms and conditions as the policy to which is in excess.
- 3) Either party may request a certificate of insurance evidencing the required coverage that is in effect and providing that the coverage may not be canceled or modified without thirty (30) days prior written notice to the other party.
- 4) Failure to provide insurance as required in this agreement is a material breach of contract.

**TAXES:**

The State does not pay sales tax or most federal taxes. The State's sales tax exemption number is E-2001. The federal tax free transaction number is 45-70-0010K. the federal employer identification number is 45-0309764..

**INSPECTION:**

Lessee agrees to permit Lessor or its representatives to inspect equipment leased hereunder at all reasonable times upon request of Lessor.

**TERMINATION:**

- a. This agreement may be terminated by mutual consent of both parties, or by either party upon 30 day's notice, in writing or delivered by certified mail or in person.
- b. In addition, Lessee may terminate this agreement effective upon delivery of written notice to the Lessor, or at such later date as may be established by Lessee, under any of the following conditions:
  - 1) If Lessee funding from federal, state, or other sources is not obtained and continued at levels sufficient to allow for purchase of the indicated quantity of services. The agreement may be modified unilaterally to accommodate a reduction in funds.
  - 2) If federal or state regulations or guidelines are modified, changed, or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this agreement or are no longer eligible for the funding proposed for payments authorized by this agreement.
  - 3) If any license or certificate required by law or regulation to be held by the Lessor to provide the services required by the agreement is for any reason denied or revoked.

Any such termination of this agreement under (1), (2), or (3), above, shall be without prejudice to any obligations of either party already accrued prior to such termination.

- c. Either party, by written notice, may terminate the whole or any part of this agreement:

- 1) If either party fails to provide services called for by this agreement within the time specified herein or any extension thereof; or
- 2) If either party fails to perform any other provisions of this agreement, or so fails to pursue the work as to endanger performance of this agreement in accordance with its terms, and after receipt of written notice from either party, fails to correct such failures within ten days or such longer period as either party may authorize.

**LESSEE AGREES TO:**

- 1 Notify Lessor of any change in agreed location.
- 2 Not sublease, rent or loan above equipment.
- 3 Not hold Lessor responsible for weather conditions, such as rain, snow, etc. No credit is expected because of these conditions.
- 4 Notify Lessor immediately of any mechanical failure, at which time a decision will be made who is responsible for repairs.
- 5 Pay a clean up charge for excessively dirty equipment.

**PURCHASE ORDER:**

A Purchase Order will not be issued as a result of this agreement. The executed agreement will bind the contractual obligation of the Lessee. Purchase Orders or Claim for Payments will be executed for payment of monthly invoices.

**RENTAL PAYMENTS:**

Lessee shall pay Lessor, upon invoice, rental payments. Payment for itemized additional charges is upon invoice. All rent and other amounts payable by Lessee to Lessor hereunder shall be paid to Lessor at the address specified above or at such other place as Lessor may designate in writing to Lessee.

**LATE PAYMENTS:**

Customary late charges on accounts not paid within thirty (30) days of invoice are allowable, not to exceed the maximum rate of interest permitted by law.

**EXTENDED RENTAL PERIOD:**

Lessee shall notify Lessor of extended rental needs. Lessee reserves the right to negotiate seasonal rates with the Lessor and may opt to extend the agreement upon mutual consent.

**REQUEST FOR BID:**

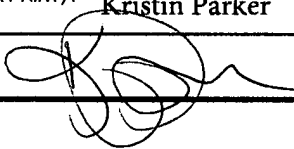
If a written request for bid for the equipment rental was solicited, any accompanying specific terms, conditions and specifications therein will become part of this agreement.

**GOVERNING LAW AND VENUE:**

Notwithstanding any rules regarding the choice of law or venue, it is agreed by the parties that this agreement shall be governed by and construed in accordance with applicable Federal Law and the laws of the state of North Dakota, at the time the agreement was executed. All disputes arising from this agreement shall be brought in the South Central District Court of the state of North Dakota.

**MERGER AND WAIVER:**

This agreement constitutes the entire agreement between the parties. No waiver, consent, modification, or change of terms of this agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification, or change, if made, shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this agreement. The Lessor, by the signature below of its authorized representative, hereby acknowledges that the Lessor has read this agreement, understands it, and agrees to be bound by its terms and conditions.

LESSOR (Vendor) TO BE SIGNED BY OWNER; PARTNER; CORPORATE PRESIDENT; VICE PRESIDENT. OR OTHER AUTHORIZED CORPORATE OFFICER OR BID MAY BE REJECTED. (IF SIGNED BY OTHER CORP. OFFICER, PLEASE ATTACH COPY OF POWER OF ATTORNEY OR OTHER DOCUMENTATION SHOWING AUTHORITY TO SIGN.)	
NAME (TYPE OR PRINT): Kristin Parker	TITLE: VP - Sales & Marketing
SIGNATURE: 	DATE: 11/14/14

LESSEE (Agency)	
APPROVED AS TO SUBSTANCE BY:	DATE:
AGENCY DIRECTOR SIGNATURE:	DATE:



## RENTAL AGREEMENT

Branch 401 Bismarck  
Rental Term: From: 12/1/14 to: 4/30/15  
Sales Rep Gregor Schmidt

County Use:	End Use:
Customer No. 110363	Contract No.
Customer NDDOT Dickinson	
Address: 600 E Boulevard Avenue 1700 3rd Ave West	
City Bismarck	State ND Zip 58505-0700 58601
Phone: 701-328-4466	Fax:
Ship to: City Dickinson	County Stark State ND

### UNIT RENTED:

Make	Model	Serial Number	RATE PER BILLING PERIOD	
Volvo	L70	614429	THE BILLING PERIOD IS 4 WEEKS (28 DAYS)	\$10/hour, up to 100 hours \$25/hour, overage
Hour Meter:	IN	USED		

### Attachments:

Tag #	Make	Model	Serial Number

### OTHER FEES:

Freight Delivery	\$ ASC to deliver, N/C
Freight Return	\$ ASC to pickup, N/C
Total Freight Charge	\$ N/C
Damage Waiver 13% of Rental Rate	\$

Purchase Option? Yes\* ☒ No ☒

\*The terms of the attached Purchase Option Rider are incorporated herein by reference.

Insurance Value \$190,000

1. **Terms of Rental.** ASC Construction Equipment USA (hereinafter "ASC") hereby rents the equipment listed above (hereinafter "Equipment") to Customer pursuant to the following terms and conditions, **including the terms and conditions set out on the reverse side hereof**, for the rental term and at the rental rates as specified above. All rentals are billable in advance, based upon actual elapsed time out, and payments shall be made to ASC at the address specified in its invoice.

Initial SA Customer has reviewed the terms and conditions set forth on the reverse side of this document and agrees to be bound by such terms and conditions.

2. **Damage Waiver.** Following payment of the damage waiver set forth above, ASC shall be responsible for any damage or loss to the Equipment hereunder over Two Thousand Five Hundred Dollars (\$2500.00). Customer shall be liable for the first Two Thousand Five Hundred Dollars (\$2500.00) in damages with respect to any Equipment for which a damage waiver is purchased (the "Customer Liability Amount"). Notwithstanding the foregoing, acceptance by Customer of the damage waiver shall not relieve the Customer from liability for any loss or damage to the Equipment provided hereunder for any:

- (i) damage to tires, tubes or wheels caused by deflation of tires, or blowout bruises, dents, cuts or other causes resulting from the use of the Equipment
- (ii) damage caused by the negligence or other misuse or abuse of the Equipment or any use of the Equipment in violation of the provisions of this Agreement by Customer, its employees or agents, or other persons to whom the Equipment is entrusted by Customer; and
- (iii) loss or damage due to the mysterious or unexplained disappearance of Equipment, or caused by conversion by Customer, its employees or agents or other persons to whom the Equipment is entrusted by Customer.

In cases of theft, vandalism, arson or similar criminal acts causing loss or destruction to the Equipment, the Customer must pay to ASC the amount owed hereunder for damages to or loss of such Equipment (including, without limitation the Customer Liability Amount) and must also notify the police within ten (10) days of the loss and promptly provide ASC with a copy of the police report.

Accepted Damage Waiver \_\_\_\_\_

Declined Damage Waiver SA

3. **Insurance Requirements.** Customer shall, (or shall authorize ASC to provide), at Customer's expense, and continue in full force and effect during the entire term of this Rental Agreement, insurance against loss to the Equipment due to perils covered by all risk contractors equipment insurance for the full replacement value of the Equipment. Customer shall also provide (or authorize ASC to provide), at Customer's expense, and continue in force and effect during the entire term of this Rental Agreement, general liability and property damage insurance, the policy or policies to be standard form to be written in the state in which such unit will be registered. Said policy or policies shall be written with the limits of not less than \$500,000 for any one person for bodily injury or death; \$500,000 for any one accident for body injury or death; and \$500,000 for property damage. In the event Customer elects the damage waiver as set forth above, it shall not be required to provide ASC with proof of property insurance as set forth in this paragraph 3; provided, however, that Customer shall remain liable for any damage to the Equipment not covered by the damage waiver as set forth herein. The foregoing policies will be endorsed to waive any insurer rights of subrogation against ASC and will name ASC as an additional insured. Customer will provide certificates acceptable to ASC evidencing the foregoing insurance coverage prior to taking possession of the Equipment and evidencing that the same may not be canceled or modified without thirty (30) days' prior written notice to ASC.

4. **Financing Statement.** Customer authorizes ASC to file a financing statement with respect to the Equipment detailed herein. In addition, Customer agrees, upon demand, to execute any and all instruments and documents that may be reasonably necessary or desirable to protect ASC's interest in the Equipment, and Customer will otherwise cooperate to defend the title of ASC by whatever means necessary.

5. **Tier IV Equipment.** Any usage of equipment with Tier 4 componentry requires strict adherence to the regeneration guidelines as noted in the Operator's Manual. Proper fuel type must also be utilized as noted in the Operator's Manual. By initialing below, customer acknowledges that failure to follow these procedures and guidelines will result in additional charges to the customer for repairs and or excessive maintenance. ASC will provide additional information about the procedures and guidelines upon request.

Initial SA

### IMPORTANT NOTICE

Failure to return rental property or equipment upon expiration of the rental period and/or failure to pay all amounts due (including costs for damage to property or equipment) are prima facie evidence of intent to defraud, punishable in accordance with state law. By signing and initialing in the spaces provided, Customer acknowledges receipt of the Equipment described above in good operating condition. Further, Customer agrees to all rental terms and conditions shown on the front and reverse side of this Rental Agreement.

Sham Hensch For NDDOT  
Customer Signature (Checked Out)

Date: 11/17/2014

ASC Construction Equipment USA (Checked In)

Date: \_\_\_\_\_





OP ID: JW

**EVIDENCE OF PROPERTY INSURANCE**

DATE (MM/DD/YYYY)

11/19/2014

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<b>AGENCY</b> Vaaler Insurance/Bismarck PO Box 933 Bismarck, ND 58502 Rollin C. Mehlhoff		<b>PHONE</b> (A/C, No, Ext): 701-258-2800	<b>COMPANY</b> Great American Insurance Co Prop & IM Division 6300 S Syracuse Way, Suite 295 Centennial, CO 80111	
<b>FAX</b> (A/C, No): 701-258-2838		<b>E-MAIL ADDRESS:</b>		
<b>CODE:</b>		<b>SUB CODE:</b>		
<b>AGENCY CUSTOMER ID #:</b> NDDE-07				
<b>INSURED</b>  ND Dept. of Transportation Financial Management Division 608 E Boulevard Ave Bismarck, ND 58505		<b>LOAN NUMBER</b> BLKT		<b>POLICY NUMBER</b> IMP118755911
		<b>EFFECTIVE DATE</b> 07/01/14	<b>EXPIRATION DATE</b> 07/01/15	<input type="checkbox"/> <b>CONTINUED UNTIL TERMINATED IF CHECKED</b>
<b>THIS REPLACES PRIOR EVIDENCE DATED:</b>				

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LOCATION/DESCRIPTION

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**COVERAGE INFORMATION**

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BLKT Eq. Leased/rented from others Leased rented -not in excess of 12 mos. ACV = Actual Cash Value Maximum per item Maximum per Loss See Schedule attached or included in remarks	ACV  \$600,000 \$3,000,000	\$15,000

**REMARKS (Including Special Conditions)****CANCELLATION**

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**ADDITIONAL INTEREST**

<b>NAME AND ADDRESS</b>  Gooseneck Implement 800 31st Ave. SW Minot,, ND 58701	<input type="checkbox"/> <b>MORTGAGEE</b>	<b>ADDITIONAL INSURED</b>
	<input checked="" type="checkbox"/> <b>LOSS PAYEE</b>	
	<b>LOAN #</b>	
<b>AUTHORIZED REPRESENTATIVE</b> 		



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<b>FAX</b> (A/C, No): 701-258-2838		<b>E-MAIL ADDRESS:</b>			
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<b>AGENCY CUSTOMER ID #:</b> NDDE-07					
<b>INSURED</b>  ND Dept. of Transportation Financial Management Division 608 E Boulevard Ave Bismarck, ND 58505				<b>LOAN NUMBER</b> BLKT	
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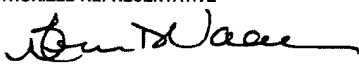
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**ADDITIONAL INTEREST**

<b>NAME AND ADDRESS</b>  Northern Plains Eq. Co. Inc. PO Box 804 Mandan, ND 58554	<b>MORTGAGEE</b>	<b>ADDITIONAL INSURED</b>
	<b>LOSS PAYEE</b>	
	<b>LOAN #</b>	
	<b>AUTHORIZED REPRESENTATIVE</b> 	



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<b>FAX</b> (A/C, No): 701-258-2838		<b>E-MAIL ADDRESS:</b>			
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**ADDITIONAL INTEREST**

<b>NAME AND ADDRESS</b>  Titan Machinery 1500 Industrial Drive Bismarck, ND 58501	<input type="checkbox"/>	<b>MORTGAGEE</b>	<input type="checkbox"/>	<b>ADDITIONAL INSURED</b>
	<input checked="" type="checkbox"/>	<b>LOSS PAYEE</b>		
	<b>LOAN #</b>			
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<b>FAX</b> (A/C, No): 701-258-2838		<b>E-MAIL ADDRESS:</b>			
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<b>AGENCY CUSTOMER ID #:</b> NDDE-07					
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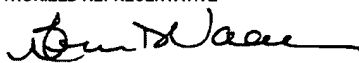
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**ADDITIONAL INTEREST**

<b>NAME AND ADDRESS</b>  Bobcat of Fargo 3450 Main Ave Fargo, ND 58103	<input type="checkbox"/> MORTGAGEE	<input type="checkbox"/> ADDITIONAL INSURED
	<input checked="" type="checkbox"/> LOSS PAYEE	
	<b>LOAN #</b>	
<b>AUTHORIZED REPRESENTATIVE</b> 		



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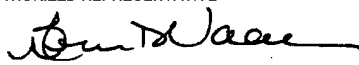
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**ADDITIONAL INTEREST**

<b>NAME AND ADDRESS</b>  Butler Machinery(Bismarck) Bob Kardonowy PO Box 757 Bismarck, ND 58502	<input type="checkbox"/>	MORTGAGEE	<input type="checkbox"/>	ADDITIONAL INSURED
	<input checked="" type="checkbox"/>	LOSS PAYEE		
	<b>LOAN #</b>			
	<b>AUTHORIZED REPRESENTATIVE</b> 			



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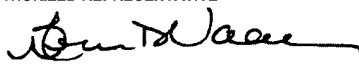
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**ADDITIONAL INTEREST**

<b>NAME AND ADDRESS</b>  Bierschbach Equipment & Supply 4001 Main Ave Fargo, ND 58103	<input type="checkbox"/> MORTGAGEE	<b>ADDITIONAL INSURED</b>
	<input checked="" type="checkbox"/> LOSS PAYEE	
	<b>LOAN #</b>	
<b>AUTHORIZED REPRESENTATIVE</b> 		



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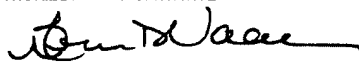
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**ADDITIONAL INTEREST**

<b>NAME AND ADDRESS</b>  Swanston Equipment Companies PO Box 1963 Fargo, ND 58107-1963	<input type="checkbox"/>	<b>MORTGAGEE</b>	<input type="checkbox"/>	<b>ADDITIONAL INSURED</b>
	<input checked="" type="checkbox"/>	<b>LOSS PAYEE</b>		
	<b>LOAN #</b>			
	<b>AUTHORIZED REPRESENTATIVE</b> 			



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<b>AGENCY CUSTOMER ID #:</b> NDDE-07					
<b>INSURED</b>  ND Dept. of Transportation Financial Management Division 608 E Boulevard Ave Bismarck, ND 58505		<b>LOAN NUMBER</b> BLKT		<b>POLICY NUMBER</b> IMP118755911	
		<b>EFFECTIVE DATE</b> 07/01/14		<b>EXPIRATION DATE</b> 07/01/15	
				<input type="checkbox"/> CONTINUED UNTIL TERMINATED IF CHECKED	
<b>THIS REPLACES PRIOR EVIDENCE DATED:</b>					

**PROPERTY INFORMATION**

LOCATION/DESCRIPTION

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS EVIDENCE OF PROPERTY INSURANCE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

**COVERAGE INFORMATION**

COVERAGE / PERILS / FORMS	AMOUNT OF INSURANCE	DEDUCTIBLE
BLKT Eq. Leased/rented from others Leased rented -not in excess of 12 mos. ACV = Actual Cash Value Maximum per item Maximum per Loss See Schedule attached or included in remarks	ACV  \$600,000 \$3,000,000	\$15,000

**REMARKS (Including Special Conditions)****CANCELLATION**

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

**ADDITIONAL INTEREST**

<b>NAME AND ADDRESS</b>  Semi Trailer Sales & Leasing 4009 E.Divide Avenue Bismarck, ND 58501	<input type="checkbox"/>	MORTGAGEE	<b>ADDITIONAL INSURED</b>
	<input checked="" type="checkbox"/>	LOSS PAYEE	
	<b>LOAN #</b>		
	<b>AUTHORIZED REPRESENTATIVE</b> 		





OP ID: JW

**EVIDENCE OF PROPERTY INSURANCE**

DATE (MM/DD/YYYY)

11/19/2014

THIS EVIDENCE OF PROPERTY INSURANCE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE ADDITIONAL INTEREST NAMED BELOW. THIS EVIDENCE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS EVIDENCE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE ADDITIONAL INTEREST.

<b>AGENCY</b> Vaaler Insurance/Bismarck PO Box 933 Bismarck, ND 58502 Rollin C. Mehlhoff		<b>PHONE</b> (A/C, No, Ext): 701-258-2800		<b>COMPANY</b> Great American Insurance Co Prop & IM Division 6300 S Syracuse Way, Suite 295 Centennial, CO 80111	
<b>FAX</b> (A/C, No): 701-258-2838		<b>E-MAIL ADDRESS:</b>			
<b>CODE:</b>		<b>SUB CODE:</b>			
<b>AGENCY CUSTOMER ID #:</b> NDDE-07					
<b>INSURED</b>  ND Dept. of Transportation Financial Management Division 608 E Boulevard Ave Bismarck, ND 58505		<b>LOAN NUMBER</b> BLKT		<b>POLICY NUMBER</b> IMP118755911	
		<b>EFFECTIVE DATE</b> 07/01/14		<b>EXPIRATION DATE</b> 07/01/15	
				<input type="checkbox"/> CONTINUED UNTIL TERMINATED IF CHECKED	
<b>THIS REPLACES PRIOR EVIDENCE DATED:</b>					

**PROPERTY INFORMATION**

LOCATION/DESCRIPTION

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS EVIDENCE OF PROPERTY INSURANCE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

**COVERAGE INFORMATION**

COVERAGE / PERILS / FORMS	AMOUNT OF INSURANCE	DEDUCTIBLE
BLKT Eq. Leased/rented from others Leased rented -not in excess of 12 mos. ACV = Actual Cash Value Maximum per item Maximum per Loss See Schedule attached or included in remarks	ACV  \$600,000 \$3,000,000	\$15,000

**REMARKS (Including Special Conditions)****CANCELLATION**

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

**ADDITIONAL INTEREST**

<b>NAME AND ADDRESS</b>  ASC Construction Eq. USA Inc John VanPatton 750 Yegen Road Bismarck, ND 58504	<input type="checkbox"/> MORTGAGEE	<b>ADDITIONAL INSURED</b>
	<input checked="" type="checkbox"/> LOSS PAYEE	
	<b>LOAN #</b>	
<b>AUTHORIZED REPRESENTATIVE</b> 		

NDDOT District Location	Description	Vendor	Year & Make	Model	Serial Number	Value	From	To	# Mths
BISMARCK	AWD Articulated Wheel Loader	ASC Construction Equipment USA	Volvo	L60G	611311	\$ 175,000.00	12/01/14	04/30/15	5
BISMARCK	AWD Articulated Wheel Loader	ASC Construction Equipment USA	Volvo	L70G	614426	\$ 190,000.00	12/01/14	04/30/15	5
BISMARCK	AWD Articulated Wheel Loader	ASC Construction Equipment USA	Volvo	L70G	614432	\$ 190,000.00	12/01/14	04/30/15	5
BISMARCK	AWD Articulated Wheel Loader	ASC Construction Equipment USA	Volvo	L70G	614430	\$ 190,000.00	12/01/14	04/30/15	5
BISMARCK	AWD Articulated Wheel Loader	ASC Construction Equipment USA	Volvo	L70G	614416	\$ 190,000.00	12/01/14	04/30/15	5
Dickinson	AWD Articulated Wheel Loader	ASC Construction Equipment USA	Volvo	L70G	614428	\$ 190,000.00	12/01/14	04/30/15	5
Dickinson	AWD Articulated Wheel Loader	ASC Construction Equipment USA	Volvo	L70G	614429	\$ 190,000.00	12/01/14	04/30/15	5