

NDDOT Contract No. 50162071

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

Bid Number: 975-34-16-050-03	Bid Opening Date & Time: 12/06/2016 02:00 PM
Items: Rental, Compact Track Loader	Buyer: Vanessa Brosten
Bid Mailing Address: 608 East Boulevard Avenue	Telephone Number: 701-328-4466
City, State, Zip: Bismarck, North Dakota, 58505-0700	Email: vbrosten@nd.gov
Contract Period: 05/01/2017 TO 04/30/2018	Date Prepared: 11/21/2016

**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 (NDDOT) 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 <u>SWANSTON EQUIPMENT</u>	Vendor Address <u>FARGO, ND</u>
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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 Appendices A and E of the Title VI Assurances, 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 <u>SWANSTON EQUIPMENT</u>		
Mailing Address <u>3450 MAIN AVENUE FARGO ND 58103</u>		
Telephone Number <u>701-293-7325</u>	Fax Number <u>701-293-9468</u>	E-mail Address <u>Chris.shea@swanston.com</u>

CHRIS SHEA UP  
Name & Title (Type or Print)

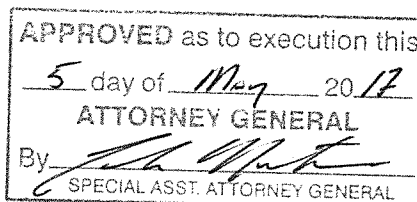
Chris Shea  
Signature

11-29-16  
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 <u>Grant Levi</u>	Date <u>5/8/17</u>		
Recommended for approval <u>Brad Sam</u>	<td>Date <u>5-5-17</u></td> <td>Approximate contract amount <u>\$ 102,000.00</u></td>	Date <u>5-5-17</u>	Approximate contract amount <u>\$ 102,000.00</u>



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 – 975-34-16-050-03  
BID OPENING DATE/TIME – December 6, 2016; 2:00 PM Central  
N. D. DEPT. OF TRANSPORTATION  
PROCUREMENT SECTION  
608 E BOULEVARD AVE  
BISMARCK ND 58505-0700

## BIDDERS INSTRUCTIONS

1. **Assistance to Bidders with a Disability.** Bidders with a disability and/or language assistance, contact Civil Rights Division, NDDOT, 701-328-2978 or [civilrights@nd.gov](mailto:civilrights@nd.gov) or TTY 711, as soon as possible so that reasonable accommodations can be made. Additionally, the Request for Reasonable Accommodations form (SFN 60135) can be accessed at the following NDDOT website location: <http://www.dot.nd.gov/forms/sfn60135.pdf>.
2. **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.
3. **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.
4. **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.
5. **Bid Held Firm.** Bids are not awarded at the bid opening. Bid responses will be firm for 30 days, unless stated otherwise.
6. **Bid Opening.** 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. Interested parties are invited to attend the bid opening.
7. **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.
8. **Bidder Checklist.** HAVE YOU REMEMBERED TO:
  - Review all instructions, terms and conditions, and specifications to ensure your bid response complies?
  - Prepare your price in the specified unit of measure, F.O.B. Destination, Freight Prepaid to the delivery location listed on the cover sheet?
  - Indicate whether you can meet the delivery date indicated on the cover sheet?
  - Sign your bid response on the cover sheet?
  - Initial all changes and corrections?
  - Submit any required samples or enclosures, if applicable?
  - Mark the envelope as indicated above?
  - Review and complete all requirements contained in this solicitation to ensure compliance.

9. **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 November 29, 2016. (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.

10. **Corrections.** The bidder's authorized representative must initial any corrections and alterations (i.e. erasures, whiteouts, correction tape, etc.) made to the bid response. Those bid responses with corrections and alterations that are not initialed are subject to confirmation by the Procurement Officer.

11. **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.

12. **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. Bids may be faxed to a third party who will put it in a properly-addressed envelope and deliver it to the NDDOT Procurement Office before the date and time specified in the solicitation.

13. **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).

14. **Indemnification.** Bidders must review the attached Risk Management Appendix for indemnification and insurance requirements. The indemnification and insurance provisions are incorporated and made part of this solicitation and the resultant final contract. Objections to any of the provisions of the indemnification and insurance requirements must be made in writing to the attention of the Procurement Officer by the time and date set for receipt of questions. No alteration of these provisions will be permitted without prior written approval from the Purchasing Agency or Entity in consultation with the North Dakota Risk Management Division. Upon receipt of the Notice of Award, the successful bidder must obtain the required insurance coverage and provide the Procurement Officer with proof of coverage prior to contract approval. The coverage must be satisfactory to the Purchasing Agency or Entity, in consultation with the North Dakota Risk Management Division. A bidder's failure to provide evidence of insurance coverage is a material breach and grounds for withdrawal of the award or termination of the contract.

15. **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.

16. **Minor Informalities.** The State reserves the right to waive minor informalities in bid responses in accordance with N.D.A.C. 4-12-10. Minor informalities are insignificant omissions or nonjudgmental mistakes that are matters of form rather than substance, evident from the bid document, with a negligible effect on price, quantity, quality, delivery, or contractual conditions that can be waived or corrected without prejudice to other bidders.

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. **New Equipment and Materials.** Unless otherwise indicated in the detailed specifications of this solicitation, all equipment and materials shall be new and under current production for use in the United States.

20. **Open Records.** After the bid opening, 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.

21. **Packaging.** All shipments are to be packaged according to accepted commercial practices to avoid damage in shipment.

22. **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.

23. **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.

24. **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.

25. **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. Notice of award will be issued only to those bidders who submitted responses to this IFB. Seven calendar days after award or issuance of the Notice of Intent to Award; it will be assumed that all interested parties knew or should have known all the facts surrounding the award.

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

- The bid response is not legible.
- The bid response is not completed as requested.
- The bid response is faxed to the procurement office.
- The bid response is not responsive to the specifications or other requirements of the solicitation.
- 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).

27. **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).

28. **Specifications, Brand Name or Equivalent.** Unless otherwise indicated in the detailed specifications of this solicitation, the use of a specific brand name or make/model is for illustrative purposes only, and the State will consider equivalent products. If a commodity or service put forth by a bidder is rejected as not being equivalent, the Procurement Officer will notify the bidder of the rejection.

29. **Specifications, Compliance.** All bids submitted in response to this Invitation for Bid must comply with the specifications contained herein, and the successful bidder will be held responsible. Noncompliance with specifications is grounds for rejection of the bid response. Bidders who desire to submit commodities or services that deviate from these specifications or have any objections to the specifications stated 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.

30. **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.

31. **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 45-70-0010K. The Purchasing Agency will furnish a tax exempt certificate upon request.

32. **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.

Placement on the bidders list does not guarantee a bidder will receive notice of every formal solicitation. Bidders must maintain current information by submitting a Notice of Change form to the State Procurement Office (Fax 701-328-1615). Visit the website for forms: [www.nd.gov/spo/vendor](http://www.nd.gov/spo/vendor).

33. **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.

34. **Withdrawals after the bid opening date and time.** After the bid opening, no changes may be made to the bid response. The bidder may make a written request to withdraw the bid response, subject to approval by 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. **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.

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

3. **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.

4. **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.

5. **Compliance with Laws.** 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.

6. **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.

7. **Contract Price Adjustment.** The Contract Unit Prices shall be firm for the twelve (12) months of the contract period.

8. **Contract Term and Renewal Option.** The NDDOT will enter into a contract which will be effective **beginning upon an acceptable delivery date to extend for a period of not more than twelve months.** This contract is non-renewable.

9. **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.

10. **Contract Volume.** The quantities to be purchased as indicated herein are best estimates. Estimates are not to be considered as either a minimum or maximum, but rather an estimate based upon past and anticipated usage. NDDOT reserves the right to vary actual purchases from those indicated based on actual need. The successful bidder(s) will be required to fulfill purchase order requirements.

11. **Delivery.** NDDOT requests delivery of the units not later than May 1, 2017. 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 the receiving NDDOT district(s).

12. **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.

13. **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.

14. **Inspection and Investigations.** The State reserves the right to conduct inspections and investigations related to the bidder and offered commodities or services, including but not limited to the firm, its facility, personnel, qualifications, and the commodities and/or services offered to make determinations regarding compliance with the bid requirements and responsibility of the bidder.

15. **Materials and Workmanship.** All material and workmanship shall be subject to inspection and testing at the discretion of the purchasing agency either at the point of manufacturer, place of storage, or upon receipt.

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.

14. **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.

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

16. **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. However, the contractor may enter into subcontracts provided that any such subcontractor acknowledges the binding nature of this contract and incorporates this contract, including any attachments. The contractor is solely responsible for the performance

of any subcontractor. The contractor shall not have the authority to contract for or incur obligations on behalf of the State.

17. **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.

#### **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  
COMPACT TRACK LOADERS**

The intent of this bid specification is to request pricing for the rental of compact track loaders for general highway maintenance operations. The compact track loader shall be new or used less than 150 hours and be of the current make and model. The contract rental period will be 12 months. The rental units shall be delivered no later than May 1<sup>st</sup> of 2017 and returned by April 30<sup>±</sup> 2018. All Equipment unit 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 locations are shown below. The quantities are estimates and could change depending on pricing. The department may not rent the compact track 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.

**Rented compact track loaders to be used for an estimated 200 engine hours during the rental period of 12 months.** Additional hours over specified amount shall be invoiced at the quoted hourly rate. Minimum payment for piece shall be the hourly rate times the estimated usage of 200 hours. ( $\text{\$Hourly Rate as bid} \times 200 \text{ hours} = \text{Minimum payment/ per unit}$ ).

Lessee will carry physical damage insurance on the compact track loaders. Lessee will accept responsibility for any breakage due to negligence done by them. Compact track loaders will have normal wear and tear from general use when returned. The dealer and DOT representative must agree on any excessive damage within 10 working days of the return of the equipment. 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, checking fluids, and keeping the rented equipment clean. Compact track loaders out of service for five working days or more shall require a replacement unit 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 the department. 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 compact track loaders. 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 compact track loaders cleanliness, and basic operation to prevent damage to the equipment unit.

BIDDER: Chris Shea

ITB 975-34-16-050-03, Compact Track Loader Rental  
Page 8 of 10

Payment/compensation shall be paid as follows: 70% of the total price bid for minimum hours of use will be paid upon satisfactory acceptance of the contract and delivery of equipment, not earlier than May 10. The remaining 30% plus any additional amount over minimum hours shall be paid upon satisfactory completion of the contract rental period. Invoices shall be addressed to the Districts receiving the said rental equipment.

### Compact Track Loader

As a minimum, each unit shall be equipped with:

	COMPLY		COMMENTS
	YES	NO	
Minimum of 74 HP diesel engine, can be larger	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Track machine, must be factory installed rubber tracks	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Deluxe cab, ROPS, air conditioning/heat	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Standard Instrumentation	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Rearview mirror inside cab	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Bobcat brand machine to have both 7 Pin and 14 pin electrical connectors to interface with Bobcat brand attachments	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Hour meter, must only mark time when engine is running	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Suspension seat	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Two speed drive	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Auxiliary front hydraulic outlets	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
High flow hydraulics with a minimum flow of 31GPM	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Vertical lift system	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Engine and hydraulic 120V heaters	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Back up alarm	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Must provide standard bucket same width as tracks	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Headlights, warning and tail lights, manufacturers standard	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Full warranty throughout the rental period	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

BIDDER: Chris Shea

The compact track loaders shall be delivered and training provided at the following locations:

3 each	Bismarck, ND
2 each	Valley City, ND
2 each	Devils Lake, ND
3 each	Minot, ND
1 each	Dickinson, ND
1 each	Grand Forks, ND
1 each	Fargo, ND

**BIDDER'S PREFERRED DELIVERY DISTRICT(S)**

DISTRICT	QTY	CONFIGURATION	BIDDER'S PREFERENCE FOR DELIVERY (YES, NO, OR N/A)
BISMARCK	3	TRACK	<u>YES</u>
VALLEY CITY	1	TRACK	<u>YES</u>
VALLEY CITY	1	WHEEL	<u>YES</u>
DEVILS LAKE	2	TRACK	<u>YES</u>
MINOT	3	TRACK	<u>YES</u>
DICKINSON	1	WHEEL	<u>YES</u>
GRAND FORKS	1	TRACK	<u>YES</u>
GRAND FORKS	1	ALL WHEEL STEER**	<u>YES</u>
FARGO	1	TRACK	<u>YES</u>

\*\*THIS IS AN OPTION AND WOULD REPLACE THE TRACK UNIT FOR GRAND FORKS DISTRICT. NDDOT RESERVES THE RIGHT TO EXERCISE OR DECLINE THIS OPTION DEPENDING ON PRICE AND AVAILABILITY OF MACHINES.

BIDDER PREFERS TO PROVIDE TO ALL DISTRICTS FOR ALL ITEMS? YES ☒ NO ☐

**PLEASE ATTACH RENTAL CONDITIONS AND A BRIEF NARRATIVE OF YOUR COMPANY'S ABILITY TO RESPOND TO BREAKDOWNS WITH EMERGENCY SERVICE OR REPLACEMENT EQUIPMENT.**

ITEM NO. 1 COMPACT TRACK LOADER 11 EACH \$ 40<sup>00</sup>/HOUR\*  
200 hour minimum  
YEAR/MAKE: 2017 BOBCAT MODEL: T650

ITEM NO. 2, OPTION 1 WHEELED MACHINE IN LIEU OF TRACKS PER SAME SPEC  
This is an option to supply wheeled machine in lieu of a tracked machine meeting the same spec. 2 EACH \$ 30<sup>00</sup>/HOUR\*  
200 hour minimum

ITEM NO. 2, OPTION 2 ALL WHEEL STEER MACHINE IN LIEU OF TRACKS PER SAME SPEC, IF AVAILABLE  
This is an option to supply wheeled all wheel steer machine in lieu of a tracked or skid steer machine meeting the same specifications for Grand Forks District 1 EACH \$ 50<sup>00</sup>/HOUR\*  
200 hour minimum

BIDDER: Chris Shea

## 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	
	RENTAL RATES *	TRANSPORTATION CHARGES IF APPLICABLE	METER READING OUT	
DAY (8HRS.)	\$			
WEEK (44HRS.)	\$	MINIMUM RENTAL AMOUNT GUARANTEED BY LESSEE	METER READING IN	
MONTH (176 HRS.)	\$			
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
SEE ATTACHED SPREADSHEET				

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.

**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) :	TITLE :
SIGNATURE :	DATE :

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

**NORTH DAKOTA DEPARTMENT OF TRANSPORTATION  
APPENDIX A OF THE TITLE VI ASSURANCES**

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 (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, the Federal Highway Administration, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. Non-discrimination: The Contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
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 will be notified by the Contractor of the Contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. Information and Reports: The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the Federal Highway Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to the Recipient or the Federal Highway Administration as appropriate, and will set forth what efforts it has made to obtain the information.
5. Sanctions for Noncompliance: In the event of a contractor's noncompliance with the Nondiscrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:
  - a. withholding payments to the Contractor under the contract until the Contractor complies; and/or
  - b. cancelling, terminating, or suspending a contract, in whole or in part.
6. Incorporation of Provisions: The Contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the Recipient or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.





**NORTH DAKOTA DEPARTMENT OF TRANSPORTATION  
APPENDIX E OF THE TITLE VI ASSURANCES**

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the Contractor) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

**Pertinent Non-Discrimination Authorities:**

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.*), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 *et seq.*).



**Main Office**

3450 West Main Avenue  
P.O. Box 1963  
Fargo, ND 58107-1963  
Phone (701) 293-7325  
FAX (701) 293-9468  
[swanston@swanston.com](mailto:swanston@swanston.com)  
[www.swanston.com](http://www.swanston.com)

**Branch Office**

3915 Burdick Expressway E.  
P.O. Box 1238  
Minot, ND 58701  
Phone (701) 837-9901  
FAX (701) 837-9904  
[minot@swanston.com](mailto:minot@swanston.com)  
[www.swanston.com](http://www.swanston.com)

North Dakota Department of Transportation  
Attn: Vanessa Brosten  
608 East Boulevard Avenue  
Bismarck, ND 58505

Re: Compact Track Loader Rental

Swanston Equipment continues its partnership with various Bobcat Dealers across the state of North Dakota to maximize the Department of Transportation uptime. As in the past all servicing Bobcat Dealers are equipped with field service vehicles and replacement units on hand in the event repairs are needed.

For any and all questions please reach out to me at your convenience.

Sincerely,

A handwritten signature in cursive script that reads "Chris Shea".

Chris Shea



## Product Quotation

Quotation Number: 21718D022135

Date: 2016-11-29 12:51:13

Ship to	Bobcat Dealer	Bill To
NORTH DAKOTA DEPARTMENT OF TRANSPORTATION Attn: VANESSA BROSTEN 608 EAST BOULEVARD AVENUE BISMARCK, ND 58505 Phone: (701) 328-4466	Bobcat of Fargo, a Division of Swanston Equipment, 3450 WEST MAIN AVENUE FARGO ND 58103-1229 Phone: (701) 293-7325 Fax: (701) 293-9468 ----- Contact: Chris Shea Phone: 701-293-7325 Fax: 701-293-9468 Cellular: 701-371-7820 E Mail: chris.shea@swanston.com	NORTH DAKOTA DEPARTMENT OF TRANSPORTATION Attn: VANESSA BROSTEN 608 EAST BOULEVARD AVENUE BISMARCK, ND 58505 Phone: (701) 328-4466

Description	Part No	Qty	Price Ea.	Total
<b>T650 T4 Bobcat Compact Track Loader</b>	M0271	1	\$60,207.00	\$60,207.00
74 HP Tier 4 Turbo Diesel Engine	Lift Path: Vertical			
Auxiliary Hydraulics: Variable Flow	Lights, Front & Rear			
Backup Alarm	Operator Cab			
Bob-Tach	Includes: Adjustable Suspension Seat, Top & Rear			
Bobcat Interlock Control System (BICS)	Windows, Seat Bar, Seat Belt			
Controls: Bobcat Standard	Roll Over Protective Structure (ROPS) meets SAE-J1040 & ISO 3471			
Cylinder Cushioning - Lift, Tilt	Falling Object Protective Structure (FOPS) meets SAE-J1043 & ISO 3449, Level I; (Level II is available through Bobcat Parts)			
Engine/Hydraulic Systems Shutdown	Parking Brake: Spring Applied, Pressure Released (SAPR)			
Glow Plugs (Automatically Activated)	Solid Mounted Carriage with 4 Rollers			
Horn	Spark Arrestor Exhaust System			
Instrumentation: Engine Temp and Fuel Gauges, Hourmeter, RPM and Warning Lights	Tracks: Rubber, 12.6" wide			
Lift Arm Support	Warranty: 12 Months, Unlimited Hours			
<b>A91 Option Package</b>	M0271-P01-A91	1	\$10,113.00	\$10,113.00
Cab enclosure with Heat and AC	Deluxe Instrument Panel			
High Flow Hydraulics	Keyless Start			
Sound Reduction	Attachment Control Kit			
Hydraulic Bucket Positioning	Cab Accessories Package			
Power Bob-Tach	3-Point Seat Belt			
Two Speed Travel				
Selectable Joystick Controls (SJC)	M0271-R01-C04	1	\$945.00	\$945.00
Air Ride Seat 3 pt Belt	M0271-R05-C12	1	\$314.00	\$314.00
17.7" Rubber Track	M0271-R09-C02	1	\$1,494.00	\$1,494.00
Roller Suspension Carriage	M0271-R21-C13	1	\$1,638.00	\$1,638.00
Radio	M0271-R26-C02	1	\$417.00	\$417.00
Automatic Ride Control	M0271-R33-C02	1	\$595.00	\$595.00
80" C/I Heavy Duty Bucket	6726344	1	\$1,535.00	\$1,535.00
--- Bolt-On Cutting Edge, 80"	6718008	1	\$171.00	\$171.00
Attachment Control Kit, 14-Pin (G-, K- and M-Series Loaders)	6733136	1	\$545.00	\$545.00
<b>Description</b>	<b>Part No</b>	<b>Qty</b>	<b>Price Ea.</b>	<b>Total</b>
Rear View Mirror		1	\$150.00	\$150.00

Total of Items Quoted

**\$78,124.00**

Dealer P.D.I.	\$200.00
Freight Charges	\$384.00
Dealer Assembly Charges	\$231.00
Discount	CITY OF FARGO DISCOUNT
	(\$18,750.00)
Quote Total - US dollars	\$60,189.00

**Notes:**

All prices subject to change without prior notice or obligation. This price quote supersedes all preceding price quotes.  
Customer must exercise his purchase option within 30 days from quote date.

**Customer Acceptance:**

Purchase Order: \_\_\_\_\_

**Authorized Signature:**

**Print:** \_\_\_\_\_ **Sign:** \_\_\_\_\_ **Date:** \_\_\_\_\_

# RENTAL AGREEMENT



www.swanston.com

## Main Office

3450 West Main Avenue

Fargo, ND 58103

701-293-7325

swanston@swanston.com

## Branch Office

4100 Hwy 52 S

Minot, ND 58701

701-837-9901

minot@swanston.com

## Branch Office

1848 Hancock Drive

Bismarck, ND 58501

www.swanston.com

## NAME AND ADDRESS OF LESSEE

Company \_\_\_\_\_

ATTENTION \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Phone # \_\_\_\_\_

P.O. # \_\_\_\_\_ /Job Site \_\_\_\_\_

## RENTAL TERMS

Make \_\_\_\_\_ Model \_\_\_\_\_ Serial No. \_\_\_\_\_ Price \_\_\_\_\_

Initial Term \_\_\_\_\_ Rental Rates \$ \_\_\_\_\_ 8 Hour Day \$ \_\_\_\_\_ 40 Hour Week \$ \_\_\_\_\_ 160 Hour Month

Rental Commencement Date \_\_\_\_\_ Time \_\_\_\_\_ Machine Hours \_\_\_\_\_

Date Returned \_\_\_\_\_ Time \_\_\_\_\_ Machine Hours \_\_\_\_\_

Fuel: \_\_\_\_\_ Out \_\_\_\_\_ In Body: \_\_\_\_\_ Out \_\_\_\_\_ In Tires: \_\_\_\_\_ Out \_\_\_\_\_ In Bucket: \_\_\_\_\_ Out \_\_\_\_\_ In

Make \_\_\_\_\_ Model \_\_\_\_\_ Serial No. \_\_\_\_\_ Price \_\_\_\_\_

Initial Term \_\_\_\_\_ Rental Rates \$ \_\_\_\_\_ 8 Hour Day \$ \_\_\_\_\_ 40 Hour Week \$ \_\_\_\_\_ 160 Hour Month

Rental Commencement Date \_\_\_\_\_ Time \_\_\_\_\_ Machine Hours \_\_\_\_\_

Date Returned \_\_\_\_\_ Time \_\_\_\_\_ Machine Hours \_\_\_\_\_

Fuel: \_\_\_\_\_ Out \_\_\_\_\_ In Body: \_\_\_\_\_ Out \_\_\_\_\_ In Tires: \_\_\_\_\_ Out \_\_\_\_\_ In Bucket: \_\_\_\_\_ Out \_\_\_\_\_ In

## Notes / Comments / Special Provisions / Discrepancies

Delivery Time \_\_\_\_\_ Pick up Time \_\_\_\_\_ Delivery \_\_\_\_\_

The rates above are based upon an 8 hour day, a 40 hour week and 160 hours per month. For each hour in excess of these hours, the lessee shall pay to owner the hourly rate as shown above.

Paid \_\_\_\_\_ License # \_\_\_\_\_ State Tax \_\_\_\_\_

City Tax \_\_\_\_\_

County Tax \_\_\_\_\_

LESSEE \_\_\_\_\_ TITLE OWNER: \_\_\_\_\_ Total \_\_\_\_\_

SWANSTON EQUIPMENT CORPORATION

By: \_\_\_\_\_ By: \_\_\_\_\_

Its: \_\_\_\_\_ Salesman: \_\_\_\_\_

WHITE - Office CANARY - Customer

(Terms of Rental Agreement on reverse side.)

## TERMS AND CONDITIONS OF LEASE

Swanston Equipment Corporation, herein called "Owner", hereby rents to the above-named Lessee and Lessee hereby leases from Owner the personal property, herein called "Equipment," described above upon the terms and condition following:

1. **SELECTION OF EQUIPMENT:** Lessee has selected the Equipment without the assistance or recommendation of Owner. The Equipment is accepted by the Lessee "as is" and "with all faults." Owner makes no representation the particular piece of Equipment rented will be fit for the purposes and intended use of the Lessee and Owner assumes no responsibility for loss resulting from the Equipment not being the proper equipment for the Lessee's intended use.
2. **RENTAL PERIOD:** The initial term of this Lease shall begin on the Rental Commencement Date set forth above and shall end upon the expiration of the rental term specified above. After the initial term, this Rental Agreement will automatically renew for successive renewal periods specified above under holding over rental rate.
3. **RENT:** All rentals are due and payable in advance and payable at the office of Owner.
4. **WARRANTIES:**
  - (A) Lessee acknowledges that it has selected the Equipment without the assistance or recommendation of Owner. Owner supplies the Equipment without any obligation to install, test, erect, service or maintain the Equipment.
  - (B) The only warranty applicable to new Equipment is the manufacture's warranty, if any, and Owner makes no warranty to Lessee beyond that contained in the manufacture's warranty.
  - (C) The rental of this Equipment does not contain any warranty of merchantability or fitness for a particular purpose. Lessee alone has selected the Equipment for the use intended. Owner, therefore, assumes no responsibility for loss of use of the Equipment, loss of time, inconvenience or other consequential damage.
  - (D) If the Equipment is used equipment, the Equipments is accepted by Lessee as is" and "with all faults". Lessee agrees that it has inspected the Equipment and that the same is in good operating condition or has otherwise notified Owner to any discrepancies in the Equipment in writing prior to signing this Agreement.
  - (E) Lessee warrants that his operator and his maintenance employees are aware of the proper operation and capabilities of the Equipment.
5. **MAINTENANCE, REPAIR AND USE OF EQUIPMENT:** Lessee agrees to keep and maintain the Equipment in the same condition as when received, usual wear and tear accepted, and agrees to make good all damage, whether by fire, accident or otherwise. In the event use of the Equipment requires licensing by any governmental authority, Lessee shall, at its own expense obtain and maintain such license continuously through the terms of this Agreement. Lessee shall not assign, transfer, sublet or sublease its rights under this Agreement without the written permission of Owner. Owner shall not be liable for any loss, interruption or damage in Lessee's business on account of a mechanical failure or delay in connection with the furnishing or use of the Equipment. Lessee shall indemnify Owner and hold Owner harmless from any and all claims, expenses, damages and liabilities, including attorney's fees, arising in connection with the use of the Equipment.
6. **INSURANCE:** Lessee, at its expense, shall provide and maintain insurance for physical loss, physical damage, fire and extended coverage in the amount not less than the actual cash value of the Equipment, bodily injury, property damage and liability insurance with limits not less than \$1,000,000 per person and 1,000,000 per accident. Lessee shall notify Owner immediately, in writing of any accident involving the Equipment and shall cooperate full with Owner and all insurance companies in the investigation, prosecution and defense of all claims. Lessee also agrees to name owner as loss payee and additional insured. The insurance policy must provide for at least 10 days advance notice to owner of any cancellation or other material change in coverage. Lessee or his agent will promptly provide written proof of such insurance coverage to owner.
7. **SURRENDER OF EQUIPMENT:** On or before the expiration or earlier termination of this Agreement, Lessee, at it expense, shall return the Equipment in good condition and repair, to Owner at its place of business at Fargo, North Dakota. If Lessee holds the Equipment beyond the rental period described above, Lessee shall pay to Owner as rent the amount described above as "holding over rent".
8. **DEFAULT:** Owner may terminate this Agreement at any time without notice and take possession of the Equipment if Lessee shall:
  - (A) Fail to pay when due any rent or amounts required to be paid to Owner by Lessee.
  - (B) Failure to perform any other provision here of within two (2) days after Owner shall have demanded performance.
  - (C) Suffered a receiver to be appointed for its assets or if any proceeding in bankruptcy shall be commenced against Lessee.
7. **OWNER'S REMEDIES:** In the event of default, Owner shall have the right, but shall not be obligated, to effect a cancellation of this Lease and accelerate payment of the full amount due for the rental period described above and/or for any holding over period.

This agreement is the Rental Agreement and not a Security Agreement and Lessee has no right, title and interest in the Equipment except as Lessee. This Rental Agreement shall not become effective or binding upon the parties until accepted by Owner at its place of business. This Rental Agreement contains the entire agreement between the parties and any change or alteration must be in writing.

## EQUIPMENT RENTAL AGREEMENT

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

NAME	LESSOR (VENDOR)	LESSEE (STATE)
	Swanston Equipment	N.D. Department of Transportation
ADDRESS	3450 Main Avenue	608 E. Boulevard Avenue
CITY, STATE ZIP CODE	Fargo, ND 58103	Bismarck, ND 58505-0700
CONTACT	Chris Shea	Vanessa Brosten, Purchasing Agent II
PHONE NO	701-293-7325; chris.shea@swanston.com	701-328-4466

DATE : <div>April 20, 2017</div>		RENTAL TERM	BEGINS ON <div>May 1, 2017</div>	ENDS ON <div>April 30, 2018</div>
RENTAL RATES DAY (8HRS.) \$ <u>0.00</u> WEEK (44HRS.) \$ <u>0.00</u> MONTH (176 HRS.) \$ <u>0.00</u> EXCESS HOURS BILLED AT \$ <u>0.00</u> * RENTAL RATES ARE BASED ON HOUR METER USAGE		TRANSPORTATION CHARGES IF APPLICABLE  None  MINIMUM RENTAL AMOUNT GUARANTEED BY LESSEE  \$40.00 per unit per hour 200 hour minimum		METER READING OUT See Spreadsheet   METER READING IN
EQUIPMENT WILL BE USED AT BISMARCK DISTRICT				
SERIAL NUMBER	MAKE	MODEL	DESCRIPTION	UNIT VALUE
See Spreadsheet	See Spreadsheet	See Spreadsheet	See Spreadsheet	See Spreadsheet

BILL TO INFORMATION				
NAME	NORTH DAKOTA DEPARTMENT OF TRANSPORTATION			
	BISMARCK DISTRICT OFFICE			
ADDRESS	218 SOUTH AIRPORT ROAD			
CITY	BISMARCK	STATE	N.D.	ZIP 58504-6003
CONTACT	DEAN SCHLOSS, MAINTENANCE SUPT.	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:**

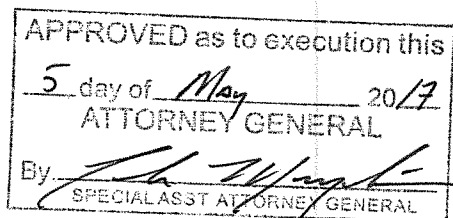
Notwithstanding any rules regarding the choice of law or venue, it is agreed by the parties that this agreement shall be governed by and construed in accordance with applicable Federal Law and the laws of the state of North Dakota, at the time the agreement was executed. All disputes arising from this 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>CHRIS SHEA</b>	TITLE: <b>VP</b>
SIGNATURE: <i>Chris Shea</i>	DATE: <b>5-3-17</b>

LESSEE (Agency)	
APPROVED AS TO SUBSTANCE BY: <i>Grant Lee</i>	DATE: <b>5-5-17</b>
AGENCY DIRECTOR SIGNATURE: <i>Grant Lee</i>	DATE: <b>5/8/17</b>



## EQUIPMENT RENTAL AGREEMENT

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

NAME	LESSOR (VENDOR)	LESSEE (STATE)
	Swanston Equipment	N.D. Department of Transportation
ADDRESS	3450 Main Avenue	608 E. Boulevard Avenue
CITY, STATE ZIP CODE	Fargo, ND 58103	Bismarck, ND 58505-0700
CONTACT	Chris Shea	Vanessa Brosten, Purchasing Agent II
PHONE NO	701-293-7325, chris.shea@swanston.com	701-328-4466

DATE : <div>April 20, 2017</div>		RENTAL TERM	BEGINS ON <div>May 1, 2017</div>	ENDS ON <div>April 30, 2018</div>
RENTAL RATES DAY (8HRS.) \$ <u>0.00</u> WEEK (44HRS.) \$ <u>0.00</u> MONTH (176 HRS.) \$ <u>0.00</u> EXCESS HOURS BILLED AT \$ <u>0.00</u> * RENTAL RATES ARE BASED ON HOUR METER USAGE		TRANSPORTATION CHARGES IF APPLICABLE  None  MINIMUM RENTAL AMOUNT GUARANTEED BY LESSEE  \$40.00 per unit per hour 200 hour minimum		METER READING OUT  See Spreadsheet    METER READING IN
EQUIPMENT WILL BE USED AT DEVILS LAKE DISTRICT				LESSEE WILL NOT REMOVE THE EQUIPMENT FROM THIS LOCATION WITHOUT NOTIFICATION.
SERIAL NUMBER	MAKE	MODEL	DESCRIPTION	UNIT VALUE
See Spreadsheet	See Spreadsheet	See Spreadsheet	See Spreadsheet	See Spreadsheet

BILL TO INFORMATION					
NAME	NORTH DAKOTA DEPT. OF TRANSPORTATION				
	DEVILS LAKE DISTRICT OFFICE				
ADDRESS	316 6 <sup>TH</sup> ST. S.E.				
CITY	DEVILS LAKE	STATE	N.D.	ZIP	58301-3628
CONTACT	MIKE PIKE, MAINTENANCE	PHONE NO	701-665-5106		

### 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.

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- 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:**

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**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): <i>CHRIS SHEA</i>	TITLE: <i>VP</i>
SIGNATURE: <i>Chris Shea</i>	DATE: <i>5-3-17</i>

LESSEE (Agency)	
APPROVED AS TO SUBSTANCE BY: <i>Brent Davis</i>	DATE: <i>5-5-17</i>
AGENCY DIRECTOR SIGNATURE: <i>Brent Davis</i>	DATE: <i>5/8/17</i>

APPROVED as to execution this
<i>5<sup>th</sup></i> day of <i>May</i> 20 <i>17</i>
ATTORNEY GENERAL
By <i>[Signature]</i>
SPECIAL ASST ATTORNEY GENERAL

## EQUIPMENT RENTAL AGREEMENT

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

NAME	LESSOR (VENDOR)	LESSEE (STATE)
	Swanston Equipment	N.D. Department of Transportation
ADDRESS	3450 Main Avenue	608 E. Boulevard Avenue
CITY, STATE ZIP CODE	Fargo, ND 58103	Bismarck, ND 58505-0700
CONTACT	Chris Shea	Vanessa Brosten, Purchasing Agent II
PHONE NO	701-293-7325, chris.shea@swanston.com	701-328-4466

DATE : <div>April 20, 2017</div>		RENTAL TERM	BEGINS ON <div>May 1, 2017</div>	ENDS ON <div>April 30, 2018</div>
DAY (8HRS.) RENTAL RATES \$ <u>0.00</u>		TRANSPORTATION CHARGES IF APPLICABLE  None		METER READING OUT See Spreadsheet
WEEK (44HRS.) \$ <u>0.00</u>		MINIMUM RENTAL AMOUNT GUARANTEED BY LESSEE  \$30.00 per unit per hour 200 hour minimum		METER READING IN
MONTH (176 HRS.) \$ <u>0.00</u>				
EXCESS HOURS BILLED AT \$ <u>0.00</u>				
* RENTAL RATES ARE BASED ON HOUR METER USAGE				
EQUIPMENT WILL BE USED AT DICKINSON DISTRICT				LESSEE WILL NOT REMOVE THE EQUIPMENT FROM THIS LOCATION WITHOUT NOTIFICATION.
SERIAL NUMBER	MAKE	MODEL	DESCRIPTION	UNIT VALUE
See Spreadsheet	See spreadsheet	See Spreadsheet	See Spreadsheet	See Spreadsheet

BILL TO INFORMATION				
NAME	NORTH DAKOTA DEPARTMENT OF TRANSPORTATION			
	DICKINSON DISTRICT OFFICE			
ADDRESS	1700 3 <sup>RD</sup> AVE. W., SUITE 101			
CITY	DICKINSON	STATE	N.D.	ZIP 58601-3009
CONTACT	AARON AUER, MAINTENANCE SUPT.	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.

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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.

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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>CHRIS SHEA</b>	TITLE: <b>VP</b>
SIGNATURE: <b>Chris Shea</b>	DATE: <b>5-3-17</b>

LESSEE (Agency)	
APPROVED AS TO SUBSTANCE BY: <b>Brad Davis</b>	DATE: <b>5-5-17</b>
AGENCY DIRECTOR SIGNATURE: <b>Grant Lewis</b>	DATE: <b>5/8/17</b>

APPROVED as to execution this <u>5</u> day of <u>May</u> 20 <u>17</u> ATTORNEY GENERAL By <b>[Signature]</b> SPECIAL ASST ATTORNEY GENERAL
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## EQUIPMENT RENTAL AGREEMENT

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

NAME	LESSOR (VENDOR)	LESSEE (STATE)
	Swanston Equipment	N.D. Department of Transportation
ADDRESS	3450 Main Avenue	608 E. Boulevard Avenue
CITY, STATE ZIP CODE	Fargo, ND 58103	Bismarck, ND 58505-0700
CONTACT	Chris Shea	Vanessa Brosten, Purchasing Agent II
PHONE NO	701-293-7325, chris.shea@swanston.com	701-328-4466

DATE : <div>April 20, 2017</div>		RENTAL TERM	BEGINS ON <div>May 1, 2017</div>	ENDS ON <div>April 30, 2018</div>
DAY (8HRS.) RENTAL RATES \$ <u>0.00</u>		TRANSPORTATION CHARGES IF APPLICABLE  None		METER READING OUT See Spreadsheet
WEEK (44HRS.) \$ <u>0.00</u>		MINIMUM RENTAL AMOUNT GUARANTEED BY LESSEE  \$40.00 per unit per hour 200 hour minimum		METER READING IN
MONTH (176 HRS.) \$ <u>0.00</u>				
EXCESS HOURS BILLED AT \$ <u>0.00</u>				
* RENTAL RATES ARE BASED ON HOUR METER USAGE				
EQUIPMENT WILL BE USED AT FARGO DISTRICT				LESSEE WILL NOT REMOVE THE EQUIPMENT FROM THIS LOCATION WITHOUT NOTIFICATION.
SERIAL NUMBER	MAKE	MODEL	DESCRIPTION	UNIT VALUE
See Spreadsheet	See Spreadsheet	See Spreadsheet	See Spreadsheet	See Spreadsheet

BILL TO INFORMATION				
NAME	NORTH DAKOTA DEPARTMENT OF TRANSPORTATION			
	FARGO DISTRICT OFFICE			
ADDRESS	503 – 38 <sup>TH</sup> ST SOUTH			
CITY	FARGO	STATE	N.D.	ZIP 58103-1198
CONTACT	TROY GILBERTSON, MAINTENANCE	PHONE NO	701-239-8904	

### 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>CHRIS SHEA</b>	TITLE: <b>VP</b>
SIGNATURE: <b>Chris Shea</b>	DATE: <b>5-3-17</b>

LESSEE (Agency)	
APPROVED AS TO SUBSTANCE BY: <b>Brad Darr</b>	DATE: <b>5-5-17</b>
AGENCY DIRECTOR SIGNATURE: <b>Grant Liu</b>	DATE: <b>5/8/17</b>

APPROVED as to execution this <u>5<sup>th</sup></u> day of <u>May</u> 20 <u>17</u> ATTORNEY GENERAL By <b>[Signature]</b> SPECIAL ASST ATTORNEY GENERAL
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## EQUIPMENT RENTAL AGREEMENT

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

NAME	LESSOR (VENDOR)	LESSEE (STATE)
	Swanston Equipment	N.D. Department of Transportation
ADDRESS	3450 Main Avenue	608 E. Boulevard Avenue
CITY, STATE ZIP CODE	Fargo, ND 58103	Bismarck, ND 58505-0700
CONTACT	Chris Shea	Vanessa Brosten, Purchasing Agent II
PHONE NO	701-293-7325, chris.shea@swanston.com	701-328-4466

DATE :		April 20, 2017		RENTAL TERM	BEGINS ON May 1, 2017	ENDS ON April 30, 2018
DAY (8HRS.)		RENTAL RATES \$ 0.00		TRANSPORTATION CHARGES IF APPLICABLE		METER READING OUT
WEEK (44HRS.)		\$ 0.00		None		See Spreadsheet
MONTH (176 HRS.)		\$ 0.00		MINIMUM RENTAL AMOUNT GUARANTEED BY LESSEE		METER READING IN
EXCESS HOURS BILLED AT		\$ 0.00		\$50.00 per unit per hour-All Wheel Steer		
* RENTAL RATES ARE BASED ON HOUR METER USAGE						
EQUIPMENT WILL BE USED AT GRAND FORKS DISTRICT						LESSEE WILL NOT REMOVE THE EQUIPMENT FROM THIS LOCATION WITHOUT NOTIFICATION.
SERIAL NUMBER		MAKE	MODEL	DESCRIPTION		UNIT VALUE
See Spreadsheet		See Spreadsheet	See Spreadsheet	See Spreadsheet		See Spreadsheet

BILL TO INFORMATION					
NAME	NORTH DAKOTA DEPARTMENT OF TRANSPORTATION				
	GRAND FORKS DISTRICT OFFICE				
ADDRESS	1951 NORTH WASHINGTON, PO BOX 13077				
CITY	GRAND FORKS	STATE	N.D.	ZIP	58208-3077
CONTACT	DALE BREIDENBACH, MAINTENANCE SUPT.	PHONE NO	701-787-6508		

### 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.

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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.



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

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  - 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>CHRIS SHEA</b>	TITLE: <b>VP</b>
SIGNATURE: <i>Chris Shea</i>	DATE: <b>5-3-17</b>

LESSEE (Agency)	
APPROVED AS TO SUBSTANCE BY: <i>Brad Darr</i>	DATE: <b>5-5-17</b>
AGENCY DIRECTOR SIGNATURE: <i>Grant Lewi</i>	DATE: <b>5/8/17</b>

APPROVED as to execution this ____ day of _____ 20____ ATTORNEY GENERAL By _____ SPECIAL ASST ATTORNEY GENERAL
--

## EQUIPMENT RENTAL AGREEMENT

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

NAME	LESSOR (VENDOR)	LESSEE (STATE)
	Swanston Equipment	N.D. Department of Transportation
ADDRESS	3450 Main Avenue	608 E. Boulevard Avenue
CITY, STATE ZIP CODE	Fargo, ND 58103	Bismarck, ND 58505-0700
CONTACT	Chris Shea	Vanessa Brosten, Purchasing Agent II
PHONE NO	701-293-7325, chris.shea@swanston.com	701-328-4466

DATE :		April 20, 2017		RENTAL TERM	BEGINS ON May 1, 2017	ENDS ON April 30, 2018
RENTAL RATES				TRANSPORTATION CHARGES IF APPLICABLE		METER READING OUT
DAY (8HRS.)		\$ 0.00		None		See Spreadsheet
WEEK (44HRS.)		\$ 0.00				
MONTH (176 HRS.)		\$ 0.00				
EXCESS HOURS BILLED AT		\$ 0.00		MINIMUM RENTAL AMOUNT GUARANTEED BY LESSEE		METER READING IN
* RENTAL RATES ARE BASED ON HOUR METER USAGE				\$40.00 per unit per hour 200 hour minimum		
EQUIPMENT WILL BE USED AT MINOT DISTRICT						LESSEE WILL NOT REMOVE THE EQUIPMENT FROM THIS LOCATION WITHOUT NOTIFICATION.
SERIAL NUMBER		MAKE	MODEL	DESCRIPTION		UNIT VALUE
See Spreadsheet		See spradsheet	See Spreadsheet	See Spreadsheet		See Spreadsheet

BILL TO INFORMATION					
NAME	NORTH DAKOTA DEPT. OF TRANSPORTATION				
	MINOT DISTRICT OFFICE				
ADDRESS	1305 HWY. 2 BYPASS EAST				
CITY	MINOT	STATE	N.D.	ZIP	58701-7922
CONTACT	MONTE LEE, MAINTENANCE SUPT.	PHONE NO	701-857-6905		

### 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>CHRIS SHEA</b>	TITLE: <b>VP</b>
SIGNATURE: <i>Chris Shea</i>	DATE: <b>5-3-17</b>

LESSEE (Agency)	
APPROVED AS TO SUBSTANCE BY: <i>Brad Davis</i>	DATE: <b>5-5-17</b>
AGENCY DIRECTOR SIGNATURE: <i>Grant Levi</i>	DATE: <b>5/8/17</b>

APPROVED as to execution this <u>5</u> day of <u>May</u> 20 <u>17</u> ATTORNEY GENERAL By <i>[Signature]</i> SPECIAL ASST ATTORNEY GENERAL
--

## EQUIPMENT RENTAL AGREEMENT

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

NAME	LESSOR (VENDOR)	LESSEE (STATE)
	Swanston Equipment	N.D. Department of Transportation
ADDRESS	3450 Main Avenue	608 E. Boulevard Avenue
CITY, STATE ZIP CODE	Fargo, ND 58103	Bismarck, ND 58505-0700
CONTACT	Chris Shea	Vanessa Brosten, Purchasing Agent II
PHONE NO	701-293-7325, <a href="mailto:chris.shea@swanston.com">chris.shea@swanston.com</a>	701-328-4466

DATE : <div>April 20, 2017</div>		RENTAL TERM	BEGINS ON <div>May 1, 2017</div>	ENDS ON <div>April 30, 2018</div>
DAY (8HRS.) RENTAL RATES \$ <u>0.00</u>		TRANSPORTATION CHARGES IF APPLICABLE  None		METER READING OUT See Spreadsheet
WEEK (44HRS.) \$ <u>0.00</u>		MINIMUM RENTAL AMOUNT GUARANTEED BY LESSEE  \$40.00 per unit per hour-Track \$30.00 per unit per hour-Wheel		METER READING IN
MONTH (176 HRS.) \$ <u>0.00</u>				
EXCESS HOURS BILLED AT \$ <u>0.00</u>				
* RENTAL RATES ARE BASED ON HOUR METER USAGE				
EQUIPMENT WILL BE USED AT VALLEY CITY DISTRICT				LESSEE WILL NOT REMOVE THE EQUIPMENT FROM THIS LOCATION WITHOUT NOTIFICATION.
SERIAL NUMBER	MAKE	MODEL	DESCRIPTION	UNIT VALUE
See Spreadsheet	See Spreadsheet	See Spreadsheet	See Spreadsheet	See Spreadsheet

BILL TO INFORMATION				
NAME	NORTH DAKOTA DEPARTMENT OF TRANSPORTATION			
	VALLEY CITY DISTRICT OFFICE			
ADDRESS	1524 8 <sup>TH</sup> AVENUE SW			
CITY	VALLEY CITY	STATE	N.D.	ZIP 58072-4200
CONTACT	KENT KOSSE, MAINTENANCE	PHONE NO	701-845-8813	

### 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.

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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.

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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:

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**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:**

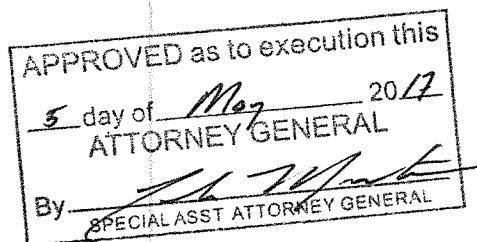
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**MERGER AND WAIVER:**

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>CHRIS SHEA</b>	TITLE: <b>VP</b>
SIGNATURE: <i>Chris Shea</i>	DATE: <b>5-3-17</b>

LESSEE (Agency)	
APPROVED AS TO SUBSTANCE BY: <i>Brad Lee</i>	DATE: <b>5-5-17</b>
AGENCY DIRECTOR SIGNATURE: <i>Brad Lee</i>	DATE: <b>5/8/17</b>





PHUBER

**EVIDENCE OF PROPERTY INSURANCE**DATE (MM/DD/YYYY)  
05/04/2017

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 Inc PO Box 933 Bismarck, ND 58504		<b>PHONE</b> (A/C, No, Ext): (701) 258-2800	<b>COMPANY</b> Great American Insurance Company Property & Inland Marine Division 6300 S Syracuse Way STE 295 Centennial, CO 80111	
<b>FAX</b> (A/C, No): (701) 258-2838		<b>E-MAIL ADDRESS:</b> vaalergf@vaaler.com		
<b>CODE:</b>		<b>SUB CODE:</b>		
<b>AGENCY CUSTOMER ID #:</b> NDDEPTO-03				
<b>INSURED</b> ND Dept. of Transportation Financial Management Division 608 E Boulevard Ave Bismarck, ND 58505			<b>LOAN NUMBER</b>	<b>POLICY NUMBER</b> IMP118755911
			<b>EFFECTIVE DATE</b> 07/01/2016	<b>EXPIRATION DATE</b> 07/01/2017
			<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**

PERILS INSURED BASIC BROAD SPECIAL

COVERAGE / PERILS / FORMS	AMOUNT OF INSURANCE	DEDUCTIBLE
Contractors Equip Leased or Rented From Others Not less than \$25,000 or more than \$650,000 each CAT Auto Physical Damage- per sch Excludes aircraft/watercraft Excludes items <\$50,000 and >\$600,000 80% co-insurance	\$3,000,000	15,000
Contractors Eq. - Actual Cash Value - per sch 80% co-insurance - Actual Cash Value \$25,000 or less	\$24,754,592	25,000
	\$4,678,711	15,000

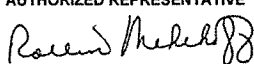
**REMARKS (Including Special Conditions)**

Special Conditions:  
Please reference attached spreadsheet for specific equipment information.

**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>         Swanston Equipment Companies 3450 Main Ave Fargo, ND 58103	<b>ADDITIONAL INSURED</b>	<b>LENDER'S LOSS PAYABLE</b>	<b>LOSS PAYEE</b>
	<b>MORTGAGEE</b>		
	<b>LOAN #</b>		
	<b>AUTHORIZED REPRESENTATIVE</b> 		

	NDDOT District Location	Description	Vendor	Year & Make	Model	Serial Number	Value	From	To	# Mths per Contract	# Hrs Per Yr	Rental Rate	Per	Rate for this period
1	Fargo	Track A91	Swanston	2017 Bobcat	T650	ALJG20488	\$69,000.00	5/1/2017	4/30/2018	12	200	\$40	Hr	\$8,000.00
2	Valley City	Track A91	Swanston	2017 Bobcat	T650	ALJG20500	\$69,000.00	5/1/2017	4/30/2018	12	200	\$40	Hr	\$8,000.00
3	Valley City	Wheel A91	Swanston	2017 Bobcat	S650	ALJ819591	\$53,000.00	5/1/2017	4/30/2018	12	200	\$30	Hr	\$6,000.00
4	Bismarck	Track, A91,SJC,Radio,Rsusp,ARS	Swanston	2017 Bobcat	T650	ALJG20550	\$69,000.00	5/1/2017	4/30/2018	12	200	\$40	Hr	\$8,000.00
5	Bismarck	Track, A91,Radio,Ride Control,RevFan,Rsusp	Swanston	2017 Bobcat	T650	ALJG19975	\$69,000.00	5/1/2017	4/30/2018	12	200	\$40	Hr	\$8,000.00
6	Bismarck	Track, A91,Radio,Ride Control,RevFan,Rsusp	Swanston	2017 Bobcat	T650	ALJG21179	\$69,000.00	5/1/2017	4/30/2018	12	200	\$40	Hr	\$8,000.00
7	Minot	Track, A91 SJC	Swanston	2017 Bobcat	T650	ALJG20943	\$69,000.00	5/1/2017	4/30/2018	12	200	\$40	Hr	\$8,000.00
8	Minot	Track, A91 SJC	Swanston	2017 Bobcat	T650	ALJG20934	\$69,000.00	5/1/2017	4/30/2018	12	200	\$40	Hr	\$8,000.00
9	Minot	Track, A91 SJC	Swanston	2017 Bobcat	T650	ALJG20935	\$69,000.00	5/1/2017	4/30/2018	12	200	\$40	Hr	\$8,000.00
10	Devils Lake	Track	Swanston	2017 Bobcat	T740	BC3CA11127	\$74,000.00	5/1/2017	4/30/2018	12	200	\$40	Hr	\$8,000.00
11	Devils Lake	Track	Swanston	2017 Bobcat	T650	ALJG19956	\$62,000.00	5/1/2017	4/30/2018	12	200	\$40	Hr	\$8,000.00
12	Dickinson	Wheel, A91,SJC,Radio	Swanston	2017 Bobcat	S650	ALJ819620	\$53,000.00	5/1/2017	4/30/2018	12	200	\$30	Hr	\$6,000.00
13	Grand Forks	All-Wheel Steer	Swanston	2017 Bobcat	A770	At5J11560		5/1/2017	4/30/2018	12	200	\$50	Hr	\$10,000.00