



City of Ketchum

October 21, 2019

Mayor Bradshaw and City Councilors
City of Ketchum

Mayor Bradshaw and City Councilors:

Recommendation to Approve Dozer Rental Agreement #20411

Recommendation and Summary

Staff is recommending the council approve the Dozer rental agreement and adopt the following motion:

"I move to authorize the Mayor to approve the contract with WSECO for equipment rental and approve the rental of a second Dozer, if needed."

The reasons for the recommendation are as follows:

- A bulldozer is a vital piece of equipment to our snow hauling operations.
- Western States service personnel have come out to work on the equipment whenever needed, including on Christmas or New Year's Day.

Introduction and History

The Streets Division uses a bulldozer to move snow at the snow storage site south of Serenade Lane. The team has experience using several different types of equipment over the years to push snow at our snow storage site, but the bulldozer has been found to be the most efficient. As may be expected, the City has experienced breakdowns with the rental equipment in the past and Western States has provided phenomenal service on holidays, weekends and after hours.

Analysis

The City typically rents the bulldozer from mid-November through February, unless it is still snowing. The City may keep the equipment longer if it appears to be a long snow year. On bigger snow years we have needed to rent two dozers to keep up with all the snow. The City has been renting a D6LGP from Western States (WSECO) in recent years and have paid approximately \$5,650 per month.

Financial Impact

The transport cost is near \$1,000 each way so our total seasonal cost is about \$23,000 for one bulldozer and an additional \$12,000 for the second, if needed. This rental is funded from the Professional Services account (\$182,000) in the Streets Division.

Brian Christiansen
Director of Streets and Facilities

Attachment: Rental Agreement from WSECO (4 pages)



RENTAL AGREEMENT

NO.: RQ00011996

RENTAL START DATE: 11/18/2019 07:00am

Pocatello
8403 S. 5th Ave Pocatello, ID 83204
208.235.6400

CUSTOMER PO: 2019/2020 Season
ORDERED BY: Brian Christiansen
PHONE: (208) 726-5501
WRITTEN BY: Linda L Monette
SALESMAN: Stephen P Roberts

CUSTOMER 4855600
City Of Ketchum
PO Box 2315
Ketchum, ID 83340-2315

JOB SITE CONTACT: Brain 208-726-5501
Snow Removal

Rental Items	Day	Weekly	4 Week
Hours Allowed	4	22	88
BH00778 2015 CAT D6T Track Type Tractor S/N: RAD00687 SMU: 3,772.00 hrs 2015 Insurance Value: \$405,000.00	\$1,250.00	\$1,900.00	\$5,650.00

This may not be the specific machine we will be using at the time of your rental.

Miscellaneous Items	Amount
Heavy Haul Pickup	\$950.00
Heavy Haul Delivery	\$950.00
Enviro Fee	\$84.75 <i>Every month</i>

Rental Terms

• Prices above do not include any applicable state, county, city, or local sales taxes. Where applicable, WSE will charge sales tax on your invoice unless you have a valid sales tax exemption certificate on file. Valid sales tax exempt certificates can be emailed to SalesTax@wseco.com to ensure a copy is on file prior to invoicing.

• Rental payments are due within 10 days of rental invoice and can't be placed on a WSECO account without prior approval. *30 days J. Monette*

• Any excess hours above the Normal Use stated above will be subject to an overtime charge.

* Rental Equipment Protection (REP):
Our Rental Equipment Protection ("REP") Program is OPTIONAL AND MAY BE DECLINED
IMPORTANT: If you decline REP, or if you fail to pay the REP Fee, you will be responsible for all damage, repair(s) and replacement(s) of/to the Rented Item(s) at its/their full (new) replacement value. In addition, if REP is declined, Customer is required to provide a certificate of insurance to WSECO showing coverage on the equipment, including, without limitation, fire, theft, and liability coverage with such other insurance as necessary to protect Customer's and WSECO's respective interests in the equipment. WSECO must be named as an additional insured and must include stipulations that coverage will not be cancelled or diminished without at least fifteen (15) days written prior notice to WSECO. Accept _____ Decline _____

• This agreement will auto renew every month until terminated.

• Customer agrees to perform daily maintenance on the machine(s). WSECO will perform operator manual suggested preventative maintenance as needed.

• Any damage done to the machine(s) while on rent is the responsibility of the Customer. In the event that the damage results in WSECO being unable to rent the machine(s), the Customer will continue to pay the rental rate listed above until the machine(s) is repaired and deemed to be rent-ready by WSECO.

All Terms and Conditions continued on the following pages apply

X Initials _____

County: _____

RENTAL AGREEMENT:

1. RENTAL OF EQUIPMENT AND PAYMENT: This is a Rental of the equipment, vehicles, accessories and attachments described on the invoice (referred to generally as "equipment" or "goods") by Western States Equipment Company, an Idaho business corporation or its affiliates ("WSECO") to Customer under the terms and conditions specified herein. It is NOT a sale of the equipment to the Customer. Customer hereby agrees to pay the rental rate stated on page 1 of this agreement and as further provided in paragraph 6, plus all expenses associated with the operation of the equipment such as fuel, freight, tire and belt wear, commercial general liability and physical damage insurance, sales or use taxes for "Normal Use" (defined below) of the equipment during the Rental period provided in paragraph 4. Customer also agrees to pay an overtime charge as determined by WSECO for use of the equipment in excess of Normal Use. Normal use means: a day = 4 hours, a week = 22 hours, 4 weeks = 88 hours.

2. OWNERSHIP AND LEGAL STATUS OF EQUIPMENT: The equipment will be deemed to be personal property, regardless of the manner in which it may be attached to any other property. WSECO shall be deemed to have retained title to the equipment at all times. Customer shall immediately advise WSECO regarding any notice of any claim, levy, lien, or legal process filed or issued against the equipment. Customer authorizes WSECO to file financing statement(s) evidencing WSECO's rights, interests and priority in and to the equipment as that of a rental of equipment and not a sale.

3. COMPLETE NEGOTIATED RENTAL: Acceptance of this Rental agreement is limited to the express terms stated herein. Any proposal in Customer's acceptance for additional or different terms or any attempt by Customer to vary in any degree any of the terms is objected to and hereby rejected, but such proposals shall not operate as a rejection of this offer, unless such variances are in the terms of the description, quantity, price, delivery schedule, or payment schedule of the goods, but shall be deemed a material alteration of this Rental agreement and this Rental agreement shall be deemed accepted by WSECO without said additional or different terms. Once accepted, this Rental agreement shall constitute the entire agreement between WSECO and Customer. WSECO is not bound by any representation or agreements, express, or implied, oral or otherwise, which are not stated within this Rental agreement or contained in a separate writing supplementing this Rental agreement and signed by authorized agents of both WSECO and Customer. This Rental agreement will supersede all previous communications, agreements, and contracts with respect to the subject matter hereof and no understanding, agreement, term, condition, or trade custom at variance with this Rental will be binding on WSECO. No waiver or modification of the terms and conditions hereof will be effective unless in writing and signed by both Customer and WSECO.

4. RENTAL PERIOD: The Rental period will commence upon the earlier of: 1) the delivery date designated on page 1 of this agreement, or 2) upon delivery of the equipment to the site designated at the "ship to" location on the invoice. The Rental will terminate upon the later of: 1) the return date specified on page 1 of this agreement, or 2) upon the return of the equipment to the WSECO yard from which it was delivered. If the equipment is not returned on the return date, this Rental is automatically deemed to extend on a month-to-month basis. No allowance is made for Saturdays, Sundays, holidays, time in transit, downtime or any period the equipment is not in actual use.

5. GUARANTEED MINIMUM: If initiated at the end of this paragraph, Customer has received a lower, negotiated rate in exchange for its commitment to rent the equipment for a guaranteed minimum period. If Customer decides to return the equipment prior to the end of the guaranteed minimum term, Customer waives the discounted rate and agrees to pay WSECO's then current regular rental rates for the entire term of this Rental. Customer Acknowledgement/Initial Here: _____

6. RENTAL PAYMENT TERMS: Rental payments are due monthly and are past due if not paid within ten (10) days of the date of the invoice. A late charge of 1-1/2% per month is assessed against the delinquent unpaid balance of all Customers (except Montana) and a late charge of 1-1/4% per month is assessed against the delinquent unpaid balance of Montana Customers. Rental payments may not be placed on open account unless WSECO has preapproved credit. In the event WSECO, in its sole and absolute discretion, deems Customer's financial condition to be unsatisfactory, WSECO has the right to (a) limit the amount of credit extended to Customer for the Rental or purchase of the equipment; (b) delay manufacture or shipment to Customer of the equipment; (c) require full or partial payment in advance; (d) ship or deliver equipment C.O.D. or require payments to be secured by letters of credit; (e) require written guarantee(s) of payment satisfactory to WSECO; or (f) cancel, refuse to accept or terminate any rental, lease or other order from Customer then outstanding or thereafter placed.

7. TIRE WEAR, BELT WEAR: If the equipment has tires or belts, Customer acknowledges that in addition to the Rental rate, Customer will also pay a charge at the end of the Rental period for all wear or damage to rubber tires or belts. Tires and belts are in the conditions listed below on the date out. Tire or belt wear to be charged at \$ _____ per 1/32" wear per tire or belt. Left front _____/32", right front _____/32", left drive _____/32", right drive _____/32", left rear _____/32", right rear _____/32".

~~8. NO WARRANTY:~~ The equipment is rented "AS IS." WSECO makes no warranties, express or implied, as to the equipment rented. Customer assumes the responsibility for the condition of the equipment. WSECO DISCLAIMS ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

9. EQUIPMENT OPERATION: Customer understands that the operation of the equipment requires skill and experience and that failure to operate it safely may result in serious personal injury or death and/or property damage. Customer is responsible for ensuring that all persons in and around the equipment follow the manufacturer's operation, maintenance and safety instructions, and acknowledge that those instructions have been provided to Customer. Customer's operation and use of the equipment must comply with all laws, ordinances, and regulations relating to the possession, use, or maintenance of the equipment, including registration and/or licensing requirements, if any.

10. TIME OF DELIVERY and SHIPPING: Orders to rent equipment are processed in the order of their receipt. WSECO will use reasonable efforts to deliver the equipment to Customer on the scheduled date. However, shipping and delivery dates are estimates and dependent upon factors outside of WSECO's control, including but not limited to, the manufacturer's production schedule, equipment shortages, shipping delays, the equipment may not arrive on the scheduled date. WSECO is not liable for delays or damages caused by delays in delivery or shipment of the equipment. Unless expressly provided for otherwise, Customer is responsible for all freight, shipping, loading and unloading costs.

X Initials _____

11. **CUSTOMER'S RESPONSIBILITIES:** During the Rental period and any extension thereof, Customer shall have the following obligations and responsibilities:

a. **RENTAL EQUIPMENT PROTECTION (REP).**

Our Rental Equipment Protection ("REP") Program is OPTIONAL AND MAY BE DECLINED

IMPORTANT: If you decline REP, or if you fail to pay the REP Fee, you will be responsible for all damage, repair(s) and replacement(s) of/to the Rented Item(s) at its/their full (new) replacement value. In addition, if REP is declined, Customer is required to provide a certificate of insurance to WSECO showing coverage on the equipment, including, without limitation, fire, theft, and liability coverage with such other insurance as necessary to protect Customer's and WSECO's respective interests in the equipment. WSECO must be named as an additional insured and must include stipulations that coverage will not be cancelled or diminished without at least fifteen (15) days written prior notice to WSECO.

b. **DELIVERY INSPECTION.** Customer has or will promptly inspect the equipment and notify WSECO of any deficiencies.

c. **TOWING.** When transporting the equipment, Customer will have the proper towing device, hitches and materials for use with the towed and towing vehicles and the same will be in good, safe and operable condition. Customer is responsible for all damage caused to the equipment by Customer's towing, towing devices and vehicles, hitches and materials.

d. **DAILY INSPECTION, MAINTENANCE AND SAFEKEEPING.** Customer will conduct daily inspection and routine maintenance of the equipment consistent with the procedures in the manufacturer's operation and maintenance manuals provided with the equipment.

e. **RETURN THE EQUIPMENT.** Customer agrees to return the equipment in good working condition, reasonable wear and tear excepted. Customer further agrees to pay for repair/replacement of all or any portion of the equipment which becomes necessary because of damage caused by Customer, or its employees, agents and subcontractors.

f. **REPLACEMENT.** If the equipment is lost, stolen, destroyed or rendered unfit for use, Customer agrees to pay the full market value, as determined by WSECO, necessary repairs, or lost rent as the case may be, and monthly interest at the rates provided in paragraph 6 until all amounts due are paid in full.

g. **CLEANING FEE.** A cleaning fee may be assessed for equipment returned dirty.

h. **SALES TAX:** WSECO is required to collect Sales Tax for sales made in the following states: ID, WA, ND, and WY. Prices stated herein do not include any applicable state, county, city, or local sales taxes. This Agreement is accepted with the understanding that such taxes and charges shall be added, as required by law, at the time this contract is invoiced. Where applicable, WSECO will charge sales tax at the time of invoice unless the Customer has a valid sales tax exemption certificate on file. Valid sales tax exempt certificates can be emailed to SalesTax@wseco.com to ensure a copy is on file prior to invoicing. In states where WSECO is not required to collect and pay Sales Tax, the Customer is obligated to self-report and pay the Sales and/or Use Tax to the Customers appropriate state's and or local Department of Revenue.

12. **EQUIPMENT FAILURE/LIMITATION OF REMEDIES:** If, for any reason, during the time of this Rental the equipment does not perform satisfactorily, as judged by WSECO, WSECO may repair or replace the equipment or any part thereof, at its option, without affecting any of the terms of this Rental. Alternatively, WSECO may terminate this Rental and Customer will be billed only for the time the equipment was used by Customer. These remedies do not apply if the equipment has failed or performs less than satisfactorily due to Customer's improper use of the equipment, accident (including, damage during shipment), neglect, abuse, misuse or exposure of the equipment to conditions beyond capacity, power, environmental design limits or operation constraints, as specified by WSECO and/or the equipment manufacturer. ~~THE REMEDIES IN THIS PARAGRAPH ARE CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES AGAINST WSECO.~~ *J. Monette*

13. **LIMITATION OF LIABILITY:** Notwithstanding trade customs or prior course of dealing to the contrary, in no event will WSECO, its subsidiaries, affiliates, agents or employees be liable for any incidental, indirect, special, or consequential damages in connection with or arising out of this Rental or furnishing of any goods, services or other items or any third party's ownership, maintenance, or use of any goods, services or other items furnished under this Rental, including, but not limited to, lost profits or revenues, loss of use of the equipment or any associated goods, damage to associated goods, costs of capital, cost of substitute goods, or claims of Customer's clients for such damages. ~~Customer's sole remedy~~ *J. Monette* for any liability of WSECO of any kind, including but not limited to negligence, with respect to any equipment, service, or other item is limited to that set forth in the paragraph entitled "EQUIPMENT FAILURE/LIMITATION OF REMEDIES" of this Rental agreement. WSECO is not responsible for meeting any federal, state, local or municipal code or specification (whether statutory, regulatory or contractual), unless Customer specifies it in writing and WSECO agrees to it in writing.

14. **FORCE MAJEURE:** WSECO shall not be liable for any failure of or delay in the performance of this Rental agreement for the period that such failure or delay is due to causes beyond its reasonable control, including but not limited to acts of God, war, strikes or labor disputes, embargoes, government orders or any other force majeure event.

15. **ASSIGNMENTS:** Customer shall not assign, transfer, or sublet this Rental agreement, the equipment or any part thereof without obtaining the prior written consent of WSECO. WSECO may withhold its consent in its sole and absolute discretion.

16. **INDEMNITY:** You agree to indemnify and hold WSECO harmless from and against any and all claims, actions, suits, proceedings, costs, expenses, damages (including but not limited to consequential and incidental damages), liabilities, fees (including, but not limited to, attorney fees and court costs), and settlements, (including those brought or incurred by or in favor of Customer's employees, agents and subcontractors), arising out of or related to the selection, delivery, loading, unloading, towing, possession, use, operation, handling or transportation of the equipment. Customer agrees to defend, at its expense, any and all suits brought against WSECO either alone or in conjunction with others and additionally to satisfy, pay and discharge any and all judgments and fines against WSECO in any such suits or actions, whether based in negligence or otherwise. *To the extent permitted by law*
But only to the extent of customer's negligent acts or omissions

X Initials _____

17. DEFAULT BY LESSEE: An event of default shall occur if (a) Customer fails to pay when due any Rental payments; (b) Customer fails to perform or observe any covenant, condition, or agreement to be performed by Customer; (c) Customer ceases doing business as a going concern, makes an assignment for creditors, admits in writing an inability to pay debts as they become due, files a petition in bankruptcy, or if owners or shareholders of Customer's business organization take actions towards dissolution or liquidation; (d) Customer attempts to sell, transfer, or encumber, sublease or convey the equipment or any part thereof; or (e) WSECO, in good faith, believes that the equipment is being subjected to improper use. Upon the occurrence of any event of default, WSECO may, at its option, declare all sums due and to become due immediately due and payable, proceed to enforce performance by Customer and recover damages for breach of this Rental agreement, demand return of the equipment immediately and, in addition to the foregoing, recover unpaid rental payments prior to the event of default and through the unexpired term of the Rental. These remedies are cumulative and in addition to any other remedies WSECO may have under the law or in equity.

18. JURISDICTION, VENUE AND CHOICE OF LAW: At the sole and exclusive election of WSECO, jurisdiction and venue for any action or dispute arising under this Rental shall be in the Fourth Judicial District of the State of Idaho, in and for Ada County, which is WSECO's corporate headquarters and principal place of business, wherein the parties acknowledge having done business sufficient to establish minimum contacts under the Idaho long arm statute, and which is a mutually convenient forum. In addition, Customer waives any and all rights to jurisdiction and/or venue in any other forum, including waiver of any and all rights to remove the action from any court originally acquiring jurisdiction. This Rental is controlled by the laws of the State of Idaho.

19. ATTORNEY'S FEES: Customer agrees to pay all costs incurred by WSECO in enforcing this Rental or any of its provisions, including without limitation reasonable attorney's fees and costs and all costs of reclaiming the goods, whether or not legal action is commenced.

20. WAIVER: Waiver by WSECO of any breach or any provision contained herein does not constitute and is not deemed to be a waiver of any other breach or of any other provision.

21. EQUIPMENT DATA: The equipment may be equipped with a wireless data communication system, such as Product Link. In such case, Customer understands data reflecting the equipment performance, condition and operation is being transmitted to Caterpillar/WSECO to better serve Customer and to improve upon Caterpillar products and services. This data may include, but is not limited to: fault codes, emissions data, fuel usage, service meter hours, software and hardware version numbers and installed attachments. Neither Caterpillar nor WSECO sell, rent or share collected information to any other third party, and will exercise reasonable efforts to keep the information secure. Caterpillar Inc. and WSECO recognize and will respect customer privacy. Customer agrees to allow this data to be accessed by Caterpillar and WSECO within normal, accepted business practices.

The undersigned represents and warrants that he/she is authorized by the Customer identified below to bind the Customer to the obligations and duties expressed herein and does so commit Customer by signing below.



LESSEE: _____

By: _____

Print Name: _____

Title: _____

Date: _____

WESTERN STATES EQUIPMENT COMPANY

By: Linda Monette

Print Name: Linda Monette

Title: SRC

Date: 10-1-19