

RURAL MUNICIPALITY OF MORRIS

BY-LAW NO. 1409/91

BEING a by-law of the Rural Municipality of Morris to make an agreement with Powell Equipment Ltd to Lease and Purchase a Caterpillar D6H Crawler.

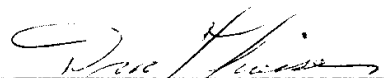
WHEREAS Section 204(2) of the Municipal Act provides as follows:
" 204(2) A Municipality shall not enter into a lease of personal property that includes an option to purchase or a right to purchase or that provides for the transfer of property at the end of the term of the lease, or enter into an agreement to purchase personal property over a period of years, where the total consideration payable by the municipality under the lease, option or agreement, or any of them, exceeds \$5,000.00 unless a by-law authorizing the lease or agreement has been approved by the minister in writing."

AND WHEREAS it is deemed expedient and in the best interest of the Rural Municipality of Morris to make an agreement with Powell Equipment Ltd. to lease and purchase a 1991 Caterpillar D6H Crawler;

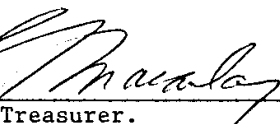
THEREFORE BE IT RESOLVED that the Council of the Rural Municipality of Morris enacts as follows:

1. That the Rural Municipality of Morris is hereby authorized to make an agreement with Powell Equipment Ltd. to lease a 1991 Caterpillar D6H Crawler for the amount of \$3,500.00 per month plus taxes, for the period from June, 1991 to January, 1992 as per schedule "A" hereto attached.
2. That the Rural Municipality of Morris is hereby authorized to purchase the above mentioned 1991 Caterpillar D6H Crawler for the amount of \$132,000.00 plus taxes, less the total amount of lease payments made.
3. That the payments made for the lease and purchase for the above aforementioned equipment shall be funded by the Machinery Replacement Reserve Fund.
4. That this By-law shall come into force and effect upon the approval of the Minister of Rural Development.

DONE AND PASSED in open Council of the Rural Municipality of Morris assembled this 7th day of November, 1991.




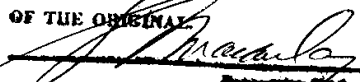
Reeve



Secretary-Treasurer.

Read a first time on the 7th day of November, 1991.
Read a second time on the 7th day of November, 1991.
Read a thrid time on the 7th day of November, 1991.

APPROVED.....
Advisory and Financial Services
DEC 06 1991

CERTIFIED A TRUE AND CORRECT COPY
OF THE ORIGINAL


Secretary-Treasurer

SCHEDULE A

EQUIPMENT LEASE

POWELL EQUIPMENT LIMITED
1455 BUFFALO PLACE
WINNIPEG, MANITOBA
R3T 1L8

Dated June 17/91

BETWEEN RURAL MUNICIPALITY OF MORRIS (hereinafter called the "Lessor")
P O BOX 518
AND MORRIS, MANITOBA (hereinafter called the "Lessee")
R0G 1K0

Witnesseth that in consideration of the mutual covenants and agreements herein contained and in consideration of the rentals hereby agreed to be paid by the Lessee to the Lessor, the parties hereby covenant and agree as follows:
Lessor hereby leases to Lessee and Lessee hereby hires and takes from Lessor the following described personal property (hereinafter with all replacement parts, additions, repairs and accessories incorporated therein and/or affixed thereto, referred to as "equipment").
Lessor is hereby defined as: "Powell Equipment Limited acting on its own behalf respecting the lease of new and used construction machinery and acting as agent for and on behalf of Powell Equipment (Manitoba) Ltd. respecting the lease of used machinery for non-construction applications and used generator sets and lift trucks.

DESCRIPTION

ONE NEW CATERPILLAR MODEL D6H TRACTOR
SERIAL NO 3ZF04323

ALL USED EQUIPMENT IS LEASED AS IS, WHERE IS AND NO WARRANTY IS OFFERED OR IMPLIED EXCEPT AS SPECIFIED IN THIS SPACE.

and Lessor agrees within TEN DAYS from the date hereof to cause said equipment to be delivered to Lessee
at MORRIS

TERM: JANUARY 6 term of 92 months, beginning JUNE 17 19 91 and ending _____

RENTALS: Lessee shall pay to Lessor as rental the clear sum of \$ _____ of which \$ _____ is herewith paid in advance and the balance of such rental is payable in _____ equal, successive monthly rental payments of \$ _____ each, of which the first is due _____ 19 _____ and the remaining payments on the same date of each consecutive month thereafter, until fully paid, (or as follows):

RENTAL RATE OF \$3,500.00 PER MONTH PLUS GST AND PST

FIRST PAYMENT DUE ON OR BEFORE JUNE 17, 1991

SUBSEQUENT PAYMENTS DUE ON OR BEFORE THE 17TH OF EACH MONTH THEREAFTER

EXTRA HOURS: Hours in excess of _____ as registered on hour meter to be charged at \$ _____ per hour.

TIRES: _____

Rental payments shall be made at the office of the Lessor or at such place as Lessor's assigns shall notify Lessee in writing.

PLACE OF USE: Manitoba shall be kept at _____ District of _____
Province of _____ until Lessor in writing permits its removal, and shall be used in the conduct of Lessee's business only.

TERMS AND CONDITIONS

REPAIRS Lessee at its own cost and expense shall keep the equipment in good repair, condition and working order and shall furnish any and all parts, mechanisms and devices required to keep the equipment in good mechanical working order. Lessee shall not incur any cost or expense in respect of the equipment for repairs, maintenance or parts for the account of the Lessor unless Lessor shall first deliver to Lessee its written consent for same. Lessee will use only genuine Caterpillar parts and accessories and service with respect to the equipment.

OPERATORS Lessee shall cause the equipment to be operated by competent employees only, and shall pay all expenses of operation.

DAMAGE The Lessee shall be liable to the Lessor for all loss or damage to the equipment while it is in the possession of the Lessee. In the event of loss of the equipment or damage to the equipment which is not capable of repair, compensation to the Lessor shall be based on the then true and reasonable market value of the equipment, irrespective of rentals theretofore paid or agreed. In the event of damage to the equipment which is capable of repair, the Lessor shall have the option of making such repairs at Lessee's expense.

LIABILITY Lessee shall indemnify and save Lessor harmless against and from all loss, damage, expense or penalty arising from any claim or action on account of personal injury or damage to property occasioned by the operation, handling or transportation of the leased equipment during the rental period.

INSURANCE The Lessee shall at his own expense maintain public liability and property insurance to protect the Lessee and the Lessor against damage to property or persons from the operation, handling or transportation of the equipment during the rental period. Lessee at his expense shall keep the equipment insured for the full value thereof and for the terms hereof against fire, theft, collision and extended coverage and against such other risks and in such amounts as Lessor may specify with losses, if any, payable to Lessor. Lessee shall, on request of Lessor, deliver to Lessor the policies or evidence of insurance satisfactory to Lessor together with receipts for premiums paid thereunder. If Lessee fails to insure as aforesaid, then Lessor may place insurance as Lessor deems advisable and Lessee will be obligated to pay the premium on demand.

TAXES AND LAWS Lessee shall comply with and conform to all laws and regulations relating to the ownership, possession, use or maintenance of the equipment and save Lessor harmless against actual or asserted violations, and pay all costs and expenses of every character occasioned by or arising out of such use and pay promptly when due all taxes and other public charges against or upon the equipment, as additional rental therefor.

TITLE All equipment shall remain personal property, and title thereto shall remain in Lessor exclusively. Lessee shall keep the equipment free from any and all liens and claims, and shall do or permit no act or thing whereby Lessor's title or rights may be encumbered or impaired. Upon expiration or termination hereof, the equipment shall be returned unencumbered to Lessor by Lessee at Lessee's sole expense and in the same condition as when received by Lessee, reasonable wear and tear resulting from proper use thereof alone excepted. Lessee shall pay rent at the above rate until all said equipment arrives at Lessor's premises. In the event Lessee uses or intends to use the equipment or any part thereof in such manner that it shall become affixed to any building or other improvement upon land, Lessee covenants to obtain the consent in writing of Lessor prior to such equipment becoming so affixed and Lessor shall have the right to withhold such consent to deliver such consent upon such terms and conditions as Lessor shall in its sole discretion determine.

INSPECTION Unless Lessee notifies Lessor within 48 hours after delivery of the equipment, stating details of any defects, Lessee shall be conclusively presumed to have inspected and accepted it. Lessee shall, whenever requested, advise Lessor of the exact location of the equipment and shall give Lessor immediate notice of any attachment or other judicial process affecting the equipment, and indemnify and save Lessor harmless from any loss or damage caused thereby. Lessor may for the purpose of inspection, at all reasonable times, enter upon any job, building or place where the equipment is located, and may remove the equipment forthwith, without notice to Lessee, if the equipment is, in the opinion of the Lessor, being used beyond its capacities or in any manner improperly cared for or abused.

FORCE MAJEURE Time is of the essence. Lessor's failure at any time to require strict performance by Lessee of any of the provisions hereof shall not waive or diminish Lessor's right thereafter to demand strict compliance therewith or with any other provision. Waiver of any default shall not waive any other default.

ENTIRE AGREEMENT There are no representations, warranties or conditions, express or implied, statutory or otherwise, other than those herein contained. No oral agreement, guaranty, promise, condition, representation or warranty shall be binding, all prior conversations, agreements, or representations related hereto and/or said equipment are integrated herein. No modification hereof shall be binding unless in writing signed by Lessor.

POSSESSION Lessor covenants to and with Lessee that Lessor is the lawful owner of said equipment free from all encumbrances and that, conditioned upon Lessee's performing the conditions hereof, Lessee shall peaceably and quietly hold, possess and use the equipment during said term without let or hindrance.

REPOSSESSION In the event of Lessee's default hereunder or becoming insolvent or if Lessee ceases doing business as a going concern or if a petition is filed by or against Lessee under the Bankruptcy Act, or if Lessee shall make an assignment under the Bankruptcy Act, Winding-up Act, or Companies Creditors Arrangement Act is requested by Lessee, or if Lessee attempts to remove or sell or transfer or encumber or sublet or part with the possession of said equipment, or if Lessor deems itself insecure, (a) all sums due and to become due hereunder shall, at the option of Lessor or any assignee of Lessor, become payable forthwith to Lessor and/or its agents may without notice or liability or legal process enter into any premises of or under control or jurisdiction of Lessee or any agent of Lessee where said equipment may be or by Lessor is believed to be, and repossess the equipment, disconnecting and separating all thereof from any other property and using all force necessary or permitted by applicable law so to do. Lessee hereby expressly waiving all further rights to possession of the equipment and all claims for injury suffered through or loss caused by such repossession, and (c) Lessor may sell the equipment or may re-lease the equipment for a term and a rental which may be equal to, greater than, or less than the rental and term herein provided. Any proceeds of such sale, or any rental payments received under a new lease for the period prior to the expiration of this lease, less Lessor's expenses of taking possession, storage, re-conditioning and sale or re-leasing, shall be applied on Lessee's obligations hereunder, and Lessee shall remain liable for the balance of the unpaid aggregate rental set forth above. Lessee will pay all costs, charges and expenses incurred in re-taking possession of the equipment hereby leased and Lessor's legal fees and disbursements on a solicitor and client basis both in respect of the re-taking and re-lease or re-leasing of the equipment and in respect of the collection of any balance payable hereunder after the crediting of the proceeds of such sale or re-leasing.

ASSIGNMENTS Neither this lease nor Lessee's rights hereunder shall be assignable except with Lessor's written consent, the conditions hereof shall bind any permitted successors and assigns of Lessee. If Lessor assigns the rents reserved herein or all or any of Lessor's other rights hereunder, assignee's rights shall be independent of any claim, defense or offset of Lessee against Lessor. Lessee on receiving notice of any such assignment shall abide thereby and make payments as may therein be directed. Following such assignment the term "Lessor" shall be deemed to include or refer to Lessor's assignee.

MISCELLANEOUS Lessee will not change or remove any insignia or lettering on the equipment and shall conspicuously identify each item of the leased equipment by suitable lettering thereon to indicate Lessor's ownership. This lease is irrevocable for the full term hereof and for the aggregate rentals herein reserved and the rent shall not abate by reason of termination of Lessee's right of possession and/or the taking of possession by Lessor or for any other reason, and delinquent instalments of rental shall bear interest at the rate of 1-1/2% per month. All notices relating hereto shall be mailed, registered to Lessor or Lessee at its respective addresses above shown or at any later address last known to the sender. Lessee waives all rights under all exemption laws. Lessee admits the receipt of a true copy of this Equipment Lease. Lessor's rights hereunder are cumulative and not alternative.

PURCHASE OPTION: JULY 17 19 91. If Lessee be not then in default hereunder, Lessee shall have the option to purchase said equipment upon giving written notice not less than 30 days prior to expiration of the original term hereof. The purchase price shall be:

\$149,000.00 NOT INCLUDING PST OR GST. 100% OF RENTALS TO BE APPLIED TO PURCHASE PRICE AT TIME OF CONVERSION.

RETURN OF EQUIPMENT: If the equipment when returned to the Lessor is not in good condition and repair, the Lessor may make all repairs and replacements necessary to place it in as good condition as it was at the date of commencement of the term hereof, reasonable wear excepted, and the Lessee shall pay the cost of such repairs and replacements upon demand as so much additional rental. All additions or improvements of whatever kind or nature made by the Lessee to the equipment shall belong to and become the property of the Lessor upon the expiration of the term of this lease or sooner determination thereof.

"The equipment is leased subject to the warranty or warranties described by the Lessor's Warranty Acknowledgement of Receipt Form No. 611 signed by the Lessee. Lessor hereby assigns said warranty or warranties to the Lessee for and during the term of this lease and hereby authorizes the Lessee during the term of this lease to obtain the customary services furnished in connection therewith provided that the costs of such services, if any, shall be paid by the Lessee."

The provisions of this lease shall enure to the benefit of and be binding upon the respective heirs, executors, administrators, successors and assigns of the parties hereto, except as herein otherwise provided.

If Lessee is a corporation, this lease is executed by authority of its Board of Directors.

RURAL MUNICIPALITY OF MORRIS

(Lessee)

By [Signature] Clerk

By **RURAL MUNICIPALITY OF MORRIS**

(Witnesses as to signature of Lessee)

ACCEPTED: **POWELL EQUIPMENT LIMITED**

(Lessor)

By X [Signature]

Its _____

X [Signature]

GUARANTY

In consideration of Lessor entering into the transaction set forth above each of us, as a primary obligor, jointly and severally guarantee to Lessor and any assignee of Lessor (hereinafter called "holder") the payment promptly when due of every rental payment thereof, and the payment or demand of the unpaid aggregate rental if Lessee defaults in the payment of any rental payment at its due date or in any other manner, without first requiring holder to proceed against Lessee or to liquidate the equipment leased or any security, and agrees to be bound by and on demand to pay any deficiency established under the lease with or without notice to us. Each of us waives the benefit of discussion, notice or acceptance hereof and of any defaults and consents that holder may, without affecting our liability, compromise or release, by operation of law or otherwise, any rights against and grant extensions of time of payment to Lessee or other obligors or guarantors. This guaranty shall not be discharged or affected by death of any of the undersigned and shall bind our respective heirs, executors, administrators, successors and assigns.

Witness our hands and seal this _____ day of _____ 19 _____

Witness

Individual Guarantors

Corporate Guarantor

(Name of Corporation)

By _____

Title _____

Seal