

ORDINANCE NO. 335

PASSED 5-0

VILLAGE OF BELLEVUE, ILLINOIS

AN ORDINANCE AUTHORIZING AN AGREEMENT
FOR THE PURCHASE OF CERTAIN EQUIPMENT

WHEREAS, it is deemed advisable and necessary for the welfare of the residents of the Village of Bellevue, Peoria County, Illinois to provide for the lease and purchase of a new J.I. Case Model 580K Loader/Backhoe to be used for the public purposes of the Village; and

WHEREAS, pursuant to the provisions of Section 61-3 of Article 11 of the Illinois Municipal Code, the Village is authorized to lease and purchase real and personal property for public purposes pursuant to contracts which provide for the consideration for such transactions to be paid in annual installments during a period not exceeding 10 years; and

WHEREAS, Eighmy Machinery, Inc. (the "Seller") has agreed to lease the above described equipment to the Village for the following consideration: (1) trade-in of the J.I. Case tractor currently owned by the Village, (2) a downpayment in the amount of \$5,000.00 and (3) the payment of forty-eight monthly rental payments of \$596.36, which include interest at the rate of nine percent (9%). Said agreement contains a purchase option for no additional consideration other than that stated above, resulting in a total of payments of principal and interest of \$33,625.28; and

WHEREAS, pursuant to the provisions of Section 8-9-1 of the Illinois Municipal Code, a municipality need not solicit

competitive bids for the purchase of public property if two-thirds of the trustees of said municipality so vote, and, in the judgment of the Board of Trustees of the Village of Bellevue, competitive bids are not necessary or desirable in this case;

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE VILLAGE OF BELLEVUE, PEORIA COUNTY, ILLINOIS, AS FOLLOWS:

Section One: It is hereby determined that it is advisable, necessary and in the public interest that the Village lease and purchase for public purposes a new J.I. Case Model 580 Loader/Backhoe, serial no. JJG0013726, pursuant to an agreement between the Village and the Seller providing for the lease and purchase of said equipment for trade-in of the tractor currently owned by the Village, a downpayment of \$5,000.00 and forty-eight (48) equal monthly lease payments of \$596.36, for a total of payments by the Village of \$33,625.28.

Section Two: Said agreement shall be substantially in the form of the agreement attached hereto and made a part hereof.

Section Three: From and after the effective date of this ordinance, the President and Clerk of the Village are hereby authorized and directed to execute the said agreement herein provided for, and to do all things necessary and essential, including the execution of any documents and certificates necessary to carry out the provisions of said agreement.

Section Four: It is hereby determined that the competitive bidding process is not necessary or desirable for the lease and purchase of said equipment, and, pursuant to Section

8-9-1 of the Illinois Municipal Code, the Board of Trustees hereby votes to waive such requirement.

PASSED AND APPROVED THIS 26th DAY OF JUNE, 1989.

_____ AYES

_____ NAYS

(Corporate Seal)

Larry N. Howard, President

Attest:

Carol S. Howard, Clerk

789-618.A

AGREEMENT by and between Eighty Machinery Peoria, Inc.
 located at Rts 24 & 116 P.O. Box 2437, City of East Peoria
 State/Province of Illinois, its successors, assigns, and/or nominees (hereinafter called "LESSOR")
 and the undersigned Municipality (hereinafter called the "LESSEE").

DESCRIPTION OF EQUIPMENT.

LESSOR has purchased the equipment described below (hereinafter referred to as "Equipment") from the manufacturer and simultaneously LESSEE hereby leases the Equipment from the LESSOR subject to the terms and conditions set forth below:

One Case model 580K Loader/Backhoe with Cab, Extendahoe
Serial No. JJK0013726

2. TERM OF AGREEMENT.

The term of this Agreement shall be 48 months, beginning on July 1,, 19 89, and ending on July 1, 19 93.

3. PAYMENT.

a. LESSEE agrees to pay to LESSOR a total of payments of \$ 28,625.28 consisting of a principal amount of \$ 24,145.00, plus Interest applied to the principal at the rate of 9 % per annum which results in a finance charge of \$ 4,480.28 according to the following schedule:

1. An advance payment in the sum of \$ 5,000 & trade to be applied to the first rental period.
2. The balance of the total of payments to be payable in 48 payments of \$ 596.36 each due at the beginning of each one month portion beginning the 1st day of August, 19 89.

b. LESSEE hereby agrees to pay interest on each payment past due more than ten (10) days at the highest contract rate allowed by law.

4. MUNICIPALITY'S OPTION TO PURCHASE.

LESSOR hereby grants to LESSEE (municipality) the option to purchase the Equipment, provided that LESSEE gives notice to LESSOR, in writing, of his intention to exercise the option at least 30 days prior to the expiration of this Agreement, and provided further that LESSEE'S right to so purchase the Equipment is conditioned on LESSEE'S complete performance of all the terms and provisions of this Agreement on its part to be performed, including full compliance with the payment as specified herein.

a. Should LESSEE exercise the option to purchase, 100 % of the portion of each payment applied to principal paid hereunder shall be applied to the purchase price of the Equipment. On receipt of the balance of the purchase price by LESSOR, together with a sum equal to any new or applicable unpaid sales and use taxes, LESSOR will transfer title of the Equipment to LESSEE, and will deliver, on written request, written evidence of the transfer of such title.

b. The Purchase Price of the Equipment applicable to this option to purchase is the sum of \$ 28,625.28.

LOCATION OF EQUIPMENT.

a. The Equipment shall be located at Village of Bellevue during the entire term of this Agreement. LESSEE shall not, without the prior written consent of LESSOR, permit the Equipment to be removed from this location.

b. At the request of LESSOR, LESSEE will join LESSOR in executing one or more Financing Statements, pursuant to the Uniform Commercial Code or other registration law applicable to the location of the Equipment and/or the LESSEE, in form satisfactory to LESSOR; LESSEE will pay the cost of filing the Financing Statement(s) in all public offices wherever filing is deemed by LESSOR to be necessary or desirable.

6. WARRANTY.

LESSOR makes no representations or warranties with respect to the Equipment set forth herein. Any warranties provided by LESSOR on the Equipment set forth herein shall be given to LESSEE under separate agreement provided by the manufacturer of the Equipment, the receipt whereof is hereby acknowledged by LESSEE.

7. MUNICIPALITY RESPONSIBILITIES.

a. LESSEE assumes and will pay all costs and expenses of any character, arising from the use, possession, or maintenance of said Equipment.

b. LESSEE shall keep the Equipment free of all liens, taxes, encumbrances and seizure or levy; shall not use same illegally, shall not damage, abuse, misuse, abandon or lose said Equipment; shall not part with possession thereof, whether voluntarily or involuntarily or transfer any interest therein.

c. LESSEE at its own cost and expense shall maintain property damage insurance against "all-risk of physical damage" in such amounts as LESSOR may reasonably require. Such insurance shall be in a form and with companies as LESSOR shall approve, which approval shall not be unreasonably withheld, shall name LESSOR as an additional insured and shall provide that such insurance may not be cancelled or altered as to LESSOR without at least ten (10) days prior written notice to LESSOR. LESSEE shall delivery to LESSOR on or before the date on which the Equipment is delivered evidence satisfactory to LESSOR os such insurance.

~~d. Upon execution of this Agreement, LESSEE shall provide LESSOR with an OPINION OF COUNSEL substantially in the form annexed hereto as Exhibit A.~~

8. LESSOR RIGHT OF INSPECTION.

LESSOR shall have the right at any time to enter the premises occupied by the Equipment and shall be given free access thereto and afforded necessary facilities for the purpose of inspection.

9. NON-APPROPRIATION.

If funds are not allotted by the LESSEE for the next fiscal period sufficient to continue making the payments set forth in Section "3" hereof, LESSEE may terminate this Agreement upon the expiration of the then current fiscal year. LESSEE agrees to provide LESSOR immediate notice of its intention to terminate.

10. NON-SUBSTITUTION.

The Lessee agrees that in the event the Lessee exercises its right to terminate this lease in accordance with the non-appropriation provisions contained herein, the Lessee will not purchase, lease, or rent other equipment for the purpose of performing the functions and projects which were to be performed by the leased equipment for a period of ninety (90) days from the date of termination of this Lease.

11. EXPIRATION OF AGREEMENT.

a. At the expiration of the term of this Agreement as set forth in Section "2", and if LESSEE has elected not to exercise an option to purchase described in Section "4", LESSEE shall be responsible for the delivery of the Equipment to a place designated by LESSOR.

b. At its option, LESSOR may enter the premises of LESSEE for the purpose of effecting the removal of the Equipment to the location designated by LESSOR. If LESSOR exercises this option, LESSEE shall be responsible for the costs associated with the removal of the Equipment to the location designated by LESSOR.

12. **EVENTS CONSTITUTING LESSEE DEFAULT.**
 LESSOR may terminate this Agreement immediately upon the occurrence of any of the following events:
- LESSEE fails to pay when due any of the payments, or to perform, or rectify breach, of, any obligation assumed by LESSEE in this Agreement.
 - LESSEE makes an assignment for benefit of creditors, or is subject to any receivership, insolvency or bankruptcy proceedings.
 - Any other event which causes LESSOR, in good faith, to deem itself insecure.
13. **RIGHTS AND REMEDIES OF LESSOR UPON DEFAULT.**
 Upon the occurrence of any of the events of default described in Section "12", and at any time thereafter, LESSOR may, in its discretion, exercise any one, or all, of the following rights or remedies:
- To accelerate all the payments described herein and declare them immediately due and payable.
 - LESSEE shall be liable to LESSOR for an amount equal to the sum of the payments accelerated pursuant to Subsection "a" immediately above; said sum to be immediately due and payable as liquidated damages and not as a penalty.
 - To require LESSEE to assemble Equipment at LESSEE'S expense, and make it available to LESSOR at a place to be designated by LESSOR. LESSOR may enter the premises of LESSEE for the purpose of peacefully exercising the rights of LESSOR set forth in this subsection.
14. **WAIVER.**
 Failure of LESSOR to exercise any right or remedy, including but not limited to, the acceptance of parties or delinquent payments, shall not be a waiver of any obligation of LESSEE or right of LESSOR or constitute a waiver of any other similar default subsequently occurring.
15. **ASSIGNMENT.**
- BY LESSOR:** LESSOR may assign this Agreement and in the event of such assignment, LESSEE shall perform all promises herein to such Assignee as the owner hereof. After LESSEE receives notice of assignment hereof, LESSEE shall make all payments hereunder direct to the holder hereof and LESSOR shall not be the agent of the holder for transmission of payments or otherwise.
 - BY LESSEE:** LESSEE may not assign, transfer or delegate its rights or obligations under this Agreement without the consent of LESSOR in writing.
16. **ENTIRE AGREEMENT.**
 This Agreement is and shall be deemed the complete and final expression of the agreement between the Parties as to matters herein contained and relative thereto, and supersedes all previous agreements between the Parties pertaining to such matters. It is clearly understood that no promise or representation not contained herein was an inducement to either Party or was relied upon by either Party in entering into this Agreement.
17. **MODIFICATION.**
 No letter, or other form of communication, passing between the Parties hereto, covering any matter during the effective period of this Agreement, shall be deemed a part of this Agreement, nor shall it have the effect of amending or modifying this Agreement, unless said communication distinctly states that said communication is to constitute a part of this Agreement and is to be attached as a rider to this Agreement and is signed by the Parties hereto.
18. **CAPTIONS.**
 Captions contained in this Agreement are inserted only as a matter of convenience and in no way define, limit or extend the scope or intent of this Agreement or any provision thereof.
19. **NOTICE.**
 This deposit of written notice in the mails in an envelope certified or registered with postage prepaid and addressed to the LESSEE, at the address shown below, or to LESSOR at the address shown below, shall constitute notice pursuant to this Agreement.
20. **AUTHORITY TO CONTRACT.**
 The execution and delivery of this Agreement will not violate or constitute a breach of any agreement or restriction to which LESSEE is a party or is subject.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed on the _____ day of _____, 19_____.

LESSOR:
Eighty Machinery Peoria, Inc.
 By _____
 Its President
 Date _____
 LESSOR'S address for notices under this Agreement:
 Street P.O. Box 2437
 City East Peoria
 State/Province Illinois 61611
Zip/Postal Code

LESSEE/MUNICIPALITY:
Village of Bellevue
 By _____
 Its _____
 Date _____
 LESSEE'S address for notices under this Agreement:
 Street 320 Main St.
 City Bellevue
 State/Province Illinois 61604
Zip/Postal Code

ASSIGNMENT (With Full Recourse)

The within Agreement, together with the indebtedness and all rights therein described, is hereby assigned with full recourse, transferred, conveyed and set over unto J I CASE CREDIT CORPORATION for its successors or assigns, for its or their own use forever, with full power and authority with regard thereto subject nevertheless to the conditions therein contained and to the rights therein granted according to law and subject to the provisions of the current Retail Financing Agreement between Assignor and Assignee, and each assignor represents and warrants there are no set-offs or counterclaims against the same. Payment of the within Agreement according to its terms is hereby guaranteed by the undersigned.

Lessor: _____
 By: _____ (Assignor)
 Title: _____