



## EQUIPMENT LEASE AGREEMENT

**BETWEEN:**

**EDMONTON HEAVY EQUIPMENT RENTALS LTD.**

(herein called the "**Lessor**")

- and -

**SPRAGUE-ROSSER CONTRACTING CO. LTD.**

(herein called the "**Lessee**")

### **RECITALS:**

- A. As the Lessor has agreed to lease to the Lessee the Equipment subject to the terms and conditions herein contained.

**THIS AGREEMENT WITNESSETH** that in consideration of the covenants and agreements herein contained, the Parties agree as follows:

### **ARTICLE 1 DEFINITIONS**

1.1 In this Agreement:

- (a) "**Agreement**" shall mean this Equipment Lease Agreement and all renewals, amendments, adoptions or substitutions therefor, and the expressions "**herein**", "**hereof**", "**hereto**", "**above**", "**below**" and similar expressions refer and relate to the whole of this Agreement and not to an Article, Section, subsection or clause only, unless otherwise provided;
- (b) "**Effective Date**" shall mean December 13<sup>th</sup>, 2013;
- (c) "**Equipment**" shall mean all of the equipment and chattels set forth and described in Schedule "A" attached hereto;
- (d) "**Operating Expenses**" shall include operating, maintaining, and proper repair of the Equipment, and without restricting the generality of the foregoing it shall include costs and expenses for supplies of all fuel, oil and lubricants necessary to operate the Equipment.
- (e) "**Permitted Assignee**" means North America Construction (1993) Ltd.;
- (f) "**Rent**" means the rent and any other rates, costs, charges and expenses in respect of the Equipment set out in Schedule "A" attached hereto; and
- (g) "**Term**" shall mean in respect of any Equipment the period of time the Equipment is leased pursuant to Section 3.1.

## ARTICLE 2 AGREEMENT

- 2.1 Subject to the terms and conditions herein contained, the Lessor agrees to lease the Equipment to the Lessee and the Lessee agrees to lease the Equipment from the Lessor.

## ARTICLE 3 EFFECTIVE DATE AND TERM

- 3.1 Notwithstanding the actual date of execution of this Agreement, this Agreement shall be effective as and from the Effective Date. The term of this Agreement shall be for a term of two (2) years and eighteen (18) days commencing on the 13<sup>th</sup> day of December, 2013 and up to and ending on the 31<sup>st</sup> day of December, 2015 unless sooner terminated pursuant to this Agreement including without limitation such termination arising as a result of the sale or disposition of the Equipment by the Lessor in its sole and absolute discretion or the extinguishment and discharge of any interest of the Lessee in the Equipment at the option of the Lessor in its sole and absolute discretion.

## ARTICLE 4 TERM AND CONDITION AS TO SUITABILITY

- 4.1 The Lessee agrees to lease the Equipment from the Lessor for the Term on an "as is" basis.
- 4.2 The Lessee acknowledges and agrees that the Equipment or any part thereof is of a size, design, capacity and manufacture selected by the Lessee, that the Lessee is satisfied that the same is suitable for its purposes, that the Lessor has not made, and does not hereby make any representation or warranty or covenant with respect to the merchantability, condition, quality, durability or suitability of the Equipment or any part thereof in any respect or in any connection with or for the purposes and use of the Lessee, or any other representation or warranty or covenant of any kind or character, expressed or implied, with respect hereto. There are no representations, warranties, or conditions, express or implied, statutory or otherwise, other than those herein contained.

## ARTICLE 5 RENTAL AND PAYMENT THEREOF

- 5.1 The Lessee agrees to pay Rent for the Equipment in accordance with Schedule "A" to the Lessor at its address as herein provided for notice in Article 16 hereof or as otherwise directed by the Lessor in writing. The Lessor shall, on a monthly basis, render to the Lessee an invoice setting forth the Rent (the "**Rent Invoice**") due and payable for that month. The Rent Invoice shall be due and payable to the Lessor on the last day of each and every month (the "**Monthly Payment Date**") during the term commencing on the Effective Date.
- 5.2 Except for Equipment that is charged out on an hourly basis, in the event that the Lessee accepts delivery of any equipment which shall form part of the Equipment other than on the first day of the month, then it shall for that month pay the Rent on the last day of the month in respect of such equipment forming part of the Equipment at the time of delivery on a per diem basis which shall be the quotient of the number of days remaining in the month divided by the number of days in the month and multiplied by the Rent per month and thereafter the Rent for such equipment forming part of the Equipment shall be paid in accordance with Section 5.1 on the last day of each and every month.
- 5.3 Except as otherwise specifically provided herein the Lessee's obligation to pay the Rent in respect of the Equipment shall be absolute and unconditional under all circumstances regardless of any claims, demands, set offs, actions, suits or proceedings that the Lessee may have or

assert for any reason whatsoever against the manufacturer of the Equipment or the Lessor, or any interruption in or cessation of the Lessee's use or possession of the Equipment or any part thereof for any reason whatsoever.

- 5.4 If any portion of the Rent shall remain unpaid for a period of more than five days after written notice by the Lessor, the Lessee shall pay interest on such arrears at the rate set forth in Section 13.1 hereof from the date of default in such payment until the Rent is paid.

## **ARTICLE 6 TITLE, RISK AND INSURANCE**

- 6.1 The Equipment shall at all times be and remain solely and exclusively the property of the Lessor subject only to the rights of the Lessee to use the Equipment in accordance with the terms and conditions hereof. It is expressly understood and agreed that this is a contract of lease only and that nothing herein contained shall be construed as conveying to the Lessee any right, title or property interest in or to the Equipment other than a right of temporary possession of the Equipment subject to the terms of this Agreement. The Lessor may require plates, logos or markings to be affixed to or placed upon the Equipment indicating the Lessor is the owner. The Lessor and the Lessee confirm their intent that the Equipment shall always remain and be deemed personal or movable property even though the Equipment may have been attached or affixed to realty and regardless of the manner in which it may become affixed or attached. The Lessee shall be responsible for any damage done to any property, building or structure by either the installation or removal of the Equipment.
- 6.2 The Equipment shall be at the sole risk of the Lessee and the Lessee assumes the risk of liability, notwithstanding that title to the Equipment remains with the Lessor throughout the term.
- 6.3 The Lessee hereby agrees to keep the Equipment free and clear of any and all claims, liens, charges and encumbrances whatsoever. In the event that the Lessee wishes to contest any such claims, liens, charges and encumbrances, the Lessee shall obtain the prior written approval of the Lessor and the Lessor may at its option require the Lessee to provide security in an amount and in such manner satisfactory to the Lessor to indemnify to the Lessor in respect of any loss, cost or damage which might be sustained or incurred by the Lessor or for which the Lessor might become liable for as a result of or by reason of any such claims, liens, charges and encumbrances whatsoever, or the dispute thereof by the Lessee.
- 6.4 The Lessee shall, at its sole expense, place and maintain adequate insurance in respect of its business consistent with good business practice, including without limitation loss or damage by fire, loss, damages or injury to property or persons from the operation of its business and such additional perils and casualties as are now or may hereafter be included in the usual insurance policy.
- 6.5 The Lessee shall forthwith supply the Lessor with certified copies of insurance policies if the Lessor so requires by notice in writing to the Lessee.

## **ARTICLE 7 MAINTENANCE AND INSPECTION**

- 7.1 The Lessee shall operate in a good and proper manner the Equipment so as to prevent any loss or damage to the Equipment and so that the Equipment remains in good operating condition and repair (ordinary wear and tear excepted) and complies in all respects with all recommendations or requirements of the manufacturers and suppliers of the Equipment which may be necessary to preserve any warranties made by the manufacturer or supplier.

- 7.2 All such replacement components or parts of whatever kind or nature placed in or upon or attached to the Equipment shall belong to and become the property of the Lessor and shall be subject to the terms and conditions hereof.
- 7.3 The Lessor and its representatives shall have the right at any time during normal business hours to inspect the Equipment and the Lessee shall provide all reasonable facilities required by such representatives for the purpose of their inspection.
- 7.4 Any misuse, improper operation or installation, want of maintenance or repair of the Equipment which shall be disclosed by such inspection shall within seven (7) days from the delivery of the notice indicating such by the Lessor, be discontinued, made good, serviced or repaired as the case may be. Failure by the Lessee to take such action as required by the Lessor shall entitle the Lessor to remove the Equipment and to charge the Lessee for all expenses connected with such removal and subsequent relocation chosen by the Lessor and the Lessor at its option may terminate this Agreement or the application of this Agreement to such Equipment.
- 7.5 The Lessor, its agents or employees shall have the right at any time to make any repairs to the Equipment and for that purpose to have access to the place where the Equipment then is and the Lessee shall on the request of the Lessor furnish such supplemental information as may be reasonably necessary to determine whether or not the Lessee is performing the terms and conditions of this Agreement on its part to be observed and performed. The cost of any repairs made by the Lessor due to misuse or improper operation shall be payable by the Lessee on demand by the Lessor as so much additional rent. If the Equipment when returned to the Lessor is not in good condition and repair due to misuse or improper operation, 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 and tear only excepted, and the Lessee shall pay the cost of such repairs and replacements upon demand as so much additional rent.

#### **ARTICLE 8 TRANSPORTATION**

- 8.1 The Lessee shall be responsible for all expenses connected with the transportation of the Equipment to the location desired by the Lessee. At the end of the applicable Term for each item of property forming part of the Equipment, the Lessee shall be responsible for all expenses connected with the transportation and delivery of the Equipment to a location chosen by the Lessor and its subsequent relocation at such location.
- 8.2 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. The Lessee shall pay for travel time, transportation (travelling to and from the location of the machine), labour, charges and travel expenses such as meals and sleeping accommodation apart from the labour required to replace a defective part and shall be charged their regular rate.
- 8.3 The liability for injury, disability, and/or death of workman and other persons caused by the operation, handling or transportation of Equipment shall be that of the Lessee and he shall indemnify the Lessor against all such liability. The Lessee shall also indemnify and save harmless the Lessor against all Claims (as hereinafter defined) which may arise out of any action for damages to property or person or person occasioned by the operation, handling, transportation of the Equipment.

**ARTICLE 9  
LESSEE'S COVENANTS**

9.1 The Lessee agrees that it shall:

- (a) pay the Rent due and payable at the time and in the manner therein required;
- (b) in all respects care for, keep and use the Equipment in a careful and prudent manner so that it shall not be damaged and shall cause the Equipment to be operated by competent persons only and shall pay all Operating Expenses of operating the Equipment, and ensure that the Equipment is located at locations approved by the Lessor and will be kept and used only at such locations and will not be removed therefrom without the written consent of the Lessor;
- (c) not suffer any execution, attachment or other legal process to be levied upon or against the same;
- (d) whenever requested by the Lessor, advise the Lessor of the exact location of the Equipment and shall give the Lessor immediate notice of any attachment or other judicial process affecting it;
- (e) permit the Lessor to inspect the Equipment in accordance with the provisions contained in this Agreement and for that purpose shall permit the Lessor to enter upon the property of the Lessee; and
- (f) surrender the Equipment to the Lessor at the expiration of the Term in as good condition as when received, reasonable wear and tear excepted.

9.2 The Lessee shall not assign this Agreement or any interest therein, or mortgage or hypothecate this Agreement or any interest therein or the Equipment, or sublet, assign or transfer the Equipment or make any alterations of or additions or improvements to the Equipment, or permit the use thereof by any person other than the Lessee or the Lessee's Employees, without the written consent of the Lessor having, been first had and obtained.

9.3 Without the prior written consent of the Lessor, the Lessee will not assign any of its rights or sublet any Equipment or permit any Equipment to be in the possession of anyone but the Lessee and the Permitted Assigns. Notwithstanding the foregoing, the Lessor may assign any portion of its right, title and interest in and to the Equipment or this Lease to the Permitted Assignee. The Lessee consents to such assignment and/or grants and agrees to promptly execute and deliver such further acknowledgement, agreements and other instruments as may be reasonable requested by the Permitted Assignee to effect such assignments and/or grants, from time to time, and agrees to comply fully with the terms of any such assignment and/or grant and without restricting the generality of the foregoing such assignment and/or grant may involve the sale or disposition of any Equipment in the sole and absolute discretion of the Lessor and/or the extinguishment and discharge of any interest of the Lessee in such Equipment at the option of the Lessor in its sole and absolute discretion.

**ARTICLE 10  
DEFAULT AND REPUDIATION**

10.1 Any one of the following events shall constitute default of the terms hereof by the Lessee:

- (a) Failure to make payments of Rent or other payments provided for herein;

- (b) Failure to observe or perform any act or deed required by the terms hereof or any of the terms and conditions herein;
  - (c) If the Lessee makes an assignment for the benefit of creditors, or in the event of the Lessee's bankruptcy or act of bankruptcy within the meaning of the *Bankruptcy and Insolvency Act* (Canada), if any proposal is made or petition filed by the Lessee for the purpose of extension of time for payment, composition or compromise of the liabilities of the Lessee;
  - (d) If a petition or other application is made for a receiving order, or for the winding up of the Lessee unless, and for so long as, the Lessee shall be contesting such petition or other application in good faith, if any resolution is passed for, or judgment or order given by any court of competent jurisdiction ordering the winding up or other liquidation of the Lessee, or if the Lessee ceases or threatens to cease to carry on business or makes or proposes to make any sale of the whole or a substantial portion of its assets, or any sale of assets out of the usual course of its business;
  - (e) If any execution, sequestration or any other similar process of any court of competent jurisdiction becomes and remains enforceable against, or if a distress or similar process is levied upon the property of the Lessee or on any part thereof, save for any such process which is contested by the Lessee in good faith and the Lessee provides, at the option of the Lessor, a bond or other satisfactory indemnification in respect of any loss, cost or damage which may be sustained by the Lessor by reason of such execution, sequestration, or other similar process or the dispute thereof by the Lessee;
  - (f) If the Equipment is seized under legal process, confiscated, sequestered or attached or if distress is levied thereon or if the Lessee parts with possession of the Equipment; or
  - (g) If any insurance placed or maintained pursuant to the terms of this Agreement shall lapse or be cancelled and shall not have been replaced by another policy or policy satisfactory to the Lessor.
- 10.2 If the Lessee shall fail to make any rental payment or other payment required when due and such failure shall continue unremedied for a period of five days after written notice by the Lessor, or the Lessee disposes of, abandons, cancels or encumbers, or attempts or purports to dispose of, conceal or encumber, any item of Equipment, it shall be conclusively presumed and deemed that the Lessee has repudiated this Lease. The Lessee may, at its option, choose to accept or ignore such repudiation or any other repudiation by the Lessee.
- 10.3 Upon the happening of an Event of Default or in response to any repudiation, whether deemed or otherwise, the Lessor may at its sole option:
- (a) enter upon the premises where such Equipment is located and take immediate possession thereof, whether it is affixed to realty or not, and remove the same, without order of the court and without liability to the Lessor for or by reason of such entry and taking of possession, whether for damage to property or otherwise, and sell, lease or otherwise dispose of the same for such consideration and upon such terms and conditions as the Lessor may reasonably deem fit;
  - (b) in the name of and as the irrevocably appointed agent and attorney for the Lessee and without terminating or being deemed to have terminated this Lease take possession of the Equipment and proceed to lease the Equipment to any other person, firm or corporation on such terms and conditions, for such rental and for such period of time as the Lessor may deem fit and receive such rental and hold the same and apply the same against any monies expressed to be payable from time to time by the Lessee;

(c) terminate the Lease and, by written notice to the Lessee specifying a payment date not earlier than five days from the date of such notice, require the Lessee to pay to the Lessor on the date specified in such notice:

- (i) arrears of periodic rental payments as of the date of Lease termination,
- (ii) the amount of any residual interest which the Lessor may have in the Equipment, and
- (iii) the interest charges provided for in Section 13.1 hereof.

10.4 All rights and remedies provided are cumulative and are not intended to be exclusive and in addition to any other right or remedy previously referred to or otherwise available to the Lessor at law or in equity, and any one or more of the Lessor's rights and remedies may from time to time be exercised independently or in combination and without prejudice to any other right or remedy the Lessor may have or may have exercised. The Lessee also expressly agrees that the remedies contained in this Lease are commercially reasonable in the circumstances. The amount received by the Lessor on any sale, lease or other disposition of the Equipment will be applied:

- (a) first, against interest accrued on sums past due;
- (b) second, against arrears of periodic rental payments and/or other payments which arose prior to the date of Lease termination, applied in the order in which such arrears arose; and
- (c) third, the balance, if any, shall belong absolutely to the Lessor.

#### **ARTICLE 11 INDEMNIFICATION**

11.1 The Lessee will indemnify the Lessor and save it harmless from and against all losses, costs, charges, expenses, liabilities, claims, demands, penalties and damages of every nature and kind whatsoever directly or indirectly (all of the foregoing collectively the "**Claims**") sustained or suffered by the Lessor, or for which the Lessor may be or become liable and which result from, or are in any way connected with any breach of this Agreement by the Lessee or the transportation, delivery, use, operation or possession of the Equipment by the Lessee.

11.2 Without restricting the generality of Section 11.1 hereof, the Lessee agrees to indemnify and save harmless the Lessor of and from any damage to or loss of the Equipment during the term, howsoever occasioned. The Lessee agrees with the Lessor that the Lessor shall not be liable to the Lessee for any Claims in respect of the Equipment or any part thereof or any inadequacy thereof for any purpose, or deficiency or defect therein, or the use or maintenance thereof, or any repairs, maintenance or servicing effected by the Lessee, or any delay in providing or failing to provide the same or any interruption or loss of service or use thereof, or any loss of business, or damage whatsoever and howsoever caused.

#### **ARTICLE 12 ENFORCEMENT OF WARRANTIES**

12.1 The Lessor hereby assigns expressly to the Lessee any warranties entered into with the manufacturer or supplier of the Equipment and hereby appoints the Lessee, or the person designated by the Lessee, for and in the Lessor's own name and on his behalf to make and enforce from time to time, at the Lessee's sole cost and expense, whatever claim or claims the Lessor may have against any manufacturer or supplier of the Equipment under any warranties, express or implied, given respecting the Equipment. If the Lessor agrees to join the Lessee in any



such claim, action, suitor proceeding, the Lessee shall indemnify and save harmless the Lessor from any and all loss, costs, damages or expenses arising therefrom.

### **ARTICLE 13 INTEREST ON OVERDUE PAYMENTS**

- 13.1 For purpose of this Agreement "Prime Rate" means the rate of interest per annum established from time to time by the Royal Bank of Canada as its prime lending rate, being a reference rate of interest for determining the interest rates chargeable by the Royal Bank of Canada on certain Canadian dollar loans made in Canada to customers of varying degrees of creditworthiness; a statement in writing by the Vice President or any Manager of the Royal Bank of Canada as to its prime lending rate at any time shall be final and conclusive as to such rate at that time and shall not be open to dispute or challenge by any party hereto. In the event that the Lessee shall fail to pay any part of the Rent provided for or any other sum required to be paid by the Lessor to the Lessee on the due date, the Lessee shall pay to the Lessor, interest at an interest rate (the "Interest Rate") which shall be a floating annual rate equal to 2% above the Prime Rate in effect from time to time, and then from and after the due date interest shall be payable at a rate per annum equal to the Interest Rate, calculated daily and if not paid, compounded monthly on the last day of each month in respect of any such Rent and other sums required to be paid to the Lessor by the Lessee. It is agreed that if the Prime Rate changes and so often as the same occurs during the currency of the Loans, the Interest Rate shall change on the same day and in the same amount as the Prime Rate changed.
- 13.2 All interest on becoming overdue shall be forthwith treated (as to the payment of interest thereon) as principal and shall bear compound interest at the Interest Rate from time to time after default and before and after maturity and the obtaining of any judgment by the Lessor against the Lessee and all interest on becoming overdue from time to time shall be treated, as to the payment of further interest, as principal and shall bear compound interest at the Interest Rate.

### **ARTICLE 14 FORBEARANCE**

- 14.1 Forbearance or indulgence by either of the parties hereto in any instance of default or breach of any of the terms of this Agreement by the other party shall not constitute a general waiver of any of the terms or conditions of this Agreement.

### **ARTICLE 15 RIGHT TO TERMINATE**

- 15.1 With the prior written consent of the Permitted Assignee, this Agreement may be terminated by mutual written assent of each of the Lessor and the Lessee.

### **ARTICLE 16 NOTICE**

- 16.1 All notices, requests, demands or other communications by the terms hereof required or permitted to be given by one party to the other shall be given in writing and delivered to the address provided herein. The address of the parties for the purpose hereof shall respectively be:

(a) To the Lessor:

c/o 201, 1259 – 91 Street SW  
Edmonton, AB T6X 1E9

(b) To the Lessee:

c/o 201, 1259 – 91 Street SW  
Edmonton, AB T6X 1E9

or to such other address in Canada as to which either party may from time to time notify the other.

#### **ARTICLE 17 TIME**

17.1 Time shall be of the essence of this agreement.

#### **ARTICLE 18 FURTHER ACTS AND ASSURANCES**

18.1 Each of the parties shall, upon the reasonable request of the other party, make, do, execute or cause to be made, done or executed, all such further and other lawful acts, deeds, things, documents and assurances of whatsoever nature and kind for the better or more perfect or absolute performance of the terms and conditions of this Agreement.

#### **ARTICLE 19 INTERPRETATION**

- 19.1 All recital paragraphs to this Agreement, together with all schedules annexed hereto are expressly incorporated herein and form a part of this Agreement
- 19.2 This Agreement shall be deemed to be made in the Province of Alberta and shall be construed in accordance with and governed by the laws of such province exclusively.
- 19.3 The word "herein" and "hereof" wherever used in any Article, section, paragraph or subparagraph in this agreement relates to the whole agreement and not to that Article, section, paragraph or subparagraph only.
- 19.4 The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.
- 19.5 In this Agreement, where the context requires it, the neuter shall include the masculine, feminine or plural, and vice versa, as appropriate. Where there is more than one Lessee, the covenants of the Lessee hereunder shall be joint and several.

#### **ARTICLE 20 ENTIRE AGREEMENT**

20.1 This Agreement, including all recital paragraphs and all schedules annexed hereto, constitutes and contains the entire agreement between the parties and contains all of the representations and warranties of the parties and supersedes any prior agreements, whether written or verbal. The Lessee and Lessor hereby agree that no representation, statement or agreement, other than those set forth herein, shall be binding upon the parties hereto, unless expressed in writing, signed by each and purporting to be expressed in modification of this agreement. Should any provision of this agreement be held invalid, such provision shall be deemed to be eliminated in so far as it is declared invalid and the balance of the Lease shall in no way be affected hereby.

#### **ARTICLE 21 ENUREMENT**

- 21.1 This Agreement shall enure to the benefit of and be binding upon the parties hereto and their successors and assigns, always providing that nothing in this paragraph contained shall, impair any of the provisions hereinbefore set forth prohibiting assignment by the Lessee without the written consent of the Lessor.

**ARTICLE 22  
EXECUTION**

- 22.1 This Agreement may be executed in any number of counterparts (including counterparts by facsimile), each of which will be deemed to be an original and all of which taken together will be deemed to constitute one and the same instrument. Delivery by facsimile or by electronic transmission of an executed counterpart of this Agreement is as effective as delivery of an originally executed counterpart of this Agreement.

**[THE REST OF THIS PAGE HAS BEEN LEFT INTENTIONALLY BLANK]**

IN WITNESS WHEREOF the parties have properly executed this Agreement this 13<sup>th</sup> day of December, 2013.

EDMONTON HEAVY EQUIPMENT RENTALS  
LTD.

Per: \_\_\_\_\_

SPRAGUE/ROSSER CONTRACTING CO. LTD.

Per: \_\_\_\_\_

## SCHEDULE "A"

### EQUIPMENT:

Unit	Description	Make	Model	Year	Location
H103	Crawler 8500 Boom Crane 85 Ton	Manitowoc	8500	2008	
H103A	Vertical Travel Lead System	Birmingham	L-15	2012	
H402	Hydraulic Drill Rig	Bauer	BG24H	2008	
H403	Hydraulic Drill Rig c/w Vibro	Bauer	RG19T	2006	
H1330	Diesel Hammer	Pileco	D19-42	2008	
H1330A	Hammer Sled	Fambo	HR5000	2008	
H1331	Hy-RAM Hydraulic Hammer, 2750 KG	Fambo	HR2750	2007	

### RENT:

Monthly rental payment of \$33,333.34, exclusive of GST/HST, along with single payments on the first and second anniversaries of the Term in the amount of \$21,000.00.