

SAMPLE LEASE AGREEMENT

ADDITIONAL TERMS AND CONDITIONS

_____, an _____
_____ (“Lessor”), hereby rents to CITY OF ANN ARBOR, MICHIGAN, a Michigan municipal corporation (“Lessee”), and Lessee hereby accepts the Vehicles described on Inventory Checklist *[this terminology may change in the final document – this tied to Premier’s terminology in its lease document]* (“Vehicles”) subject to all terms, conditions and provisions of this Agreement as set forth below. These terms and conditions, together with the terms and conditions on the first page constitute the Lease Agreement (“Agreement”) between Lessor and Lessee. In the event of an inconsistency between any terms in this Supplemental Terms and Conditions and terms on the terms of the Lessor’s standard agreement, the terms in the Supplemental Terms and Conditions prevail.

1. DELIVERY OF THE EQUIPMENT – Lessor will deliver the Vehicles to Lessee’s premises at 4251 Stone School Road, Ann Arbor, Michigan 48108 (“Site”).

2. TRANSFER OF RISK – The time and point of transfer of risk for the Vehicles from Lessor to Lessee shall be when the Vehicles have been delivered by Lessor to Lessee’s Site and Lessor and Lessee have completed the Inventory Checklist. The time and point of transfer of risk for the Vehicles back to Lessor from Lessee shall be when the Vehicles have been delivered back to Lessor at Lessee’s Site.

3. CONDITION AND RETURN OF THE VEHICLES – All Vehicles shall be model year 2007 or newer. All Vehicles shall be _____chassis with _____ brand packer units. The Vehicles are the property of Lessor and are represented by Lessor as being in new condition. Lessor and Lessee agree to complete an “Inventory Checklist” at the time the Vehicles are delivered to Lessee at Lessee’s Site by Lessor. Except as otherwise provided in the Inventory Checklist or herein, Lessee shall return the Vehicles in the same condition as received, ordinary wear and tear excepted, to Lessor at Lessee’s Site on the date specified or sooner if demanded by Lessor. The Vehicles shall be returned in a clean condition. Vehicles that have normal dust, dirt and similar substances, from being driven and used for refuse pick up are not considered dirty. If Vehicles are returned in a dirty condition, there will be a charge of One Hundred Fifty Dollars (\$150.00) for each dirty Vehicle. Lessee will return the Vehicles with fuel at the same level as when the Vehicles were delivered to Lessee at Lessee’s Site.

4. CHARGES – Lessee shall be liable for and shall promptly pay when due at the Lessor’s office designated herein, all rental and other charges

set forth herein, including but not limited to time, service, delivery, pick-up and other charges (including cost of fuel supplied by Lessor) in accordance with this Agreement or, if not stated herein, in effect at the location at which the lease is made; and, shall pay and/or reimburse Lessor for amounts equal to any sales tax, use tax, personal property tax, licenses, registration or fees levied or based upon the lease of the Vehicles or the use or the operation thereof. Lessor agrees to provide Lessee with an itemized statement of any charges assessed by the lease location, if applicable, and a copy of the current schedule of charges in effect at the lease location prior to any charge becoming due and payable. Lessee shall have same right to dispute any charge so assessed as any other lessee. Lessor acknowledges that Lessee is a governmental entity and that Lessee has provided Lessor with a copy of its tax exemption documentation. Lessee agrees that the Vehicles will be used only for municipal purposes during the term of this lease. Lessor shall invoice Lessee for rental and related fees. Balance payable within thirty (30) days of receipt. The monthly rental fee of _____ per Vehicle shall be calculated starting on the date of delivery to Lessee's Site. If the rental continues for part of a month, the monthly rental fee for that period of time will be pro rated, based on a five day week.

5. USE OF THE VEHICLES – The Vehicles shall be used solely in Lessee's business and kept only at its Site (except that the Vehicles may be moved in the normal course of Lessee's business), and shall not be removed without prior written consent of Lessor. Lessee shall notify Lessor, prior to moving the Vehicles from its Site, of the location and project to which the Vehicles are relocated and the date(s) each Vehicle is removed or placed on any job site other than Lessee's Site. Lessee shall promptly respond to all requests by Lessor concerning the location of all Vehicles and any information requested by Lessor concerning the job site (including but not limited to, the identity of the property owner, general contractor, surety, if any, and legal description of the premises). Lessee agrees that Lessor may inspect the equipment at reasonable times whether at Lessee's place of business or a job site. For purposes of this lease, "reasonable times" shall be defined as the hours of operation of the City of Ann Arbor Public Services Area, Field Operations Unit, being 6:00 a.m. – 4:00 p.m. E.T. Each Vehicle shall be used only with its rated capacity by qualified personnel. For purposes of this lease, "qualified personnel" shall be defined as assigned City employees with CDL Group B or Group A licenses to operate the Vehicles under the laws of the State of Michigan. Lessee shall notify Lessor immediately of any accident or occurrence, disablement or failure involving the Vehicles, and promptly furnish Lessor in writing all information required in connection therewith. The Vehicles shall not be used, operated, or driven (A) to carry persons other than the driver or helpers; (B) to transport property for hire, unless all permits and licenses have been obtained by Lessee which are the sole and exclusive responsibility of Lessee; (C) in violation of any law or ordinance; (D) by any person in violation of law as to age; (E) in any race, test or competitive event; and (F) by any person other than (1) qualified employee of Lessee in the

ordinary course of such employee's regular employment, or (2) a qualified licensed driver and provided Lessee's permission be first obtained. If the Vehicles are used in violation of this Paragraph, or are obtained from Lessor by fraud or misrepresentation or is used in furtherance of any illegal purpose, all use of the Vehicles is and shall be deemed used without Lessor's permission.

6. SERVICE – Lessee shall perform and pay for all normal, periodic and other basic service, adjustments and lubrication of the Vehicles, including but not limited to checking of the Vehicles, before each shift and supplying fuel, oil and water, and checking cooling system (engines only) and checking tire pressures and battery fluid and charge levels at least weekly.

7. RESPONSIBILITY FOR LOSS OR DAMAGE - Lessee is responsible to Lessor for any loss or damage to the Vehicles beyond the condition in which received, except for ordinary wear and tear. Such responsibility is limited to the full value of a Vehicle at the time it is lost or damaged, less its salvage value, plus an administrative fee and Lessor's related expenses, including loss of use, appraisal fees, recovery costs and reasonable attorney's fee. In the event a Vehicle is damaged in a manner for which the Lessee is responsible, such Vehicle may be repaired by Lessor or a repairer of Lessor's at the then prevailing hourly rate for labor posted at the Lessor's branch where the Vehicle is being repaired, or the repairer's hourly rate for labor charged by repairer for such repairs, as the case may be. Parts will be charged at Lessor's list price.

8. SUBROGATION - In the event of any loss or damage to the Vehicles, Lessor will subrogate with respect to any right of the Lessee to recover against any person, firm or corporation. Lessee will execute and deliver whatever instruments and papers are required and do whatever else is necessary to secure such rights. Lessee will cooperate fully with Lessor and/or its insurers in the prosecution of those rights and will neither take nor permit nor suffer any action to prejudice Lessor's right with respect thereto.

9. INSURANCE – Lessee shall, at Lessee's expense, during the term hereof, maintain in force self-insurance or insurance coverage the following: a policy of public liability and property damage insurance with bodily injury and death liability limits of at least \$1,000,000 for each person in each accident and property damage liability limits of at least \$1,000,000 on a primary and not excess or contributory basis against its liability for damages sustained by any person or person including but not limited to employees of Lessee, as a result of the maintenance, use, operation, storage, erection, dismantling, servicing or transportation of such Vehicles. Lessee shall, on demand, furnish Lessor a certificate of self-insurance and/or insurance, which may not be canceled or materially modified except on thirty (30) days prior written notice to Lessor. Lessee shall at Lessee's expense, during the term hereof, maintain in force a insurance covering any and all physical damage to the Vehicles in the amount stated herein. Further, Lessee shall ensure that any certificate of insurance

referenced herein shall name Lessor as an additional named insured on such certificate of insurance. Lessee agrees to abide by the provisions of said policy and to make a written report to Lessor and the insurer within 2 business days of Lessee's knowledge of any accident or occurrence involving such Vehicles. Lessee's agents and employees shall cooperate fully with Lessor and Lessee's insurer in the investigation, prosecution and/or defense of any claim or suit and shall do nothing to impair or invalidate any applicable insurance coverage.

10. INDEMNITY – To the extent permitted by law, Lessee shall defend, indemnify, and hold harmless Lessor, its subsidiaries and affiliated companies, their officers, agents, and employees against all loss, liability and expense, including reasonable attorney's fees by reason of bodily injury including death, and property damage, sustained by any person or persons including but not limited to the officers, agents and employees of Lessee as a result of the maintenance, use, operation, storage, erections, dismantling, servicing, transportation, defect in or failure of the Vehicles, whether such bodily injury, death or property damage is due or claimed to be due in whole or in part, to any neglect, default, defect, fault, failure, act or omission by or on behalf of Lessor, its officers, agents, and employees or any other person including but not limited to any claims of strict liability in tort, breach of warranty and/or negligence. Further, Lessee shall to the extent permitted by law defend, indemnify and hold harmless Lessor, its subsidiaries and affiliated companies, their officers, agents and employees against all loss, liability and equipment, including reasonable attorneys' fees by reason of any damage sustained by any person or persons, including but not limited to the officers, agents, and employees of Lessee as a result of any pollution liability claims or environmental impairment claim made as a result of Lessee generating, storing, disposing of any hazardous substances, hazardous material, toxic substances, or any additional substances, or materials commonly described as hazardous substances. This paragraph is not intended, and shall not be construed, to waive or limit any immunity defense which Lessee may have including but not limited to governmental immunity.

11. COMPLIANCE WITH LAW – Lessee shall, at its expense, comply with all state, federal and local laws and regulations affecting the Vehicles and their use, erection, design and transportation, including licensing and building code requirements and shall defend, indemnify and hold Lessor harmless for all loss, liability and expense resulting from actual or asserted violations of any such laws including Lessor's reasonable attorney fees.

12. VENUE AND CHOICE OF LAW – The validity, construction, interpretation and administration of this Agreement shall be governed by the substantive laws of the State Michigan without regard to principles or conflicts of law. Any actions or proceedings that arise from, relate to, or concern any term, condition, covenant or element of this Agreement, the obligations, duties and rights thereunder or related thereto and the Vehicles which are the subject thereof, including all actions maintained by or on behalf of Lessee, and any third

party, cross-claim or counterclaim asserted against Lessor, shall be brought and maintained exclusively in a court of competent jurisdiction in Washtenaw County, Michigan.

13. LEASE – This Agreement is an agreement of lease only and Lessee shall not be deemed an agent or employee of Lessor for any purpose. Lessee shall not suffer any liens or encumbrances to attach to the Vehicles and shall defend, indemnify, and hold Lessor harmless from all loss, liability and expense by reason thereof, including reasonable attorney's fees incurred by Lessor. Lessee shall not sub-let the Vehicles or assign this Agreement. The use of the Vehicles by others than Lessee or its employees shall be at Lessee's sole risk and subject to this Agreement. Lessor shall not be liable for any loss of or damage to any property left, stored, moved by or transported by Lessee or any other person in or upon the Vehicles either before or after the return thereof to Lessor whether or not caused by Lessor, and Lessee agrees to hold Lessor harmless from any such loss or damage including Lessor's reasonable attorney's fees. Lessee hereby assumes all risk of such loss or damage and waives all claims against Lessor by reason thereof and agrees to indemnify and hold harmless Lessor, its subsidiaries and affiliated companies, and all of its agents, officers and employees from and against all loss, liability, claim, action or expense including reasonable attorney's fees arising out of such loss or damage.

14. LIABILITY – The liability of Lessor for delay or failure to pick up the Vehicles or for failure of the Vehicles to perform shall not exceed the rental charges herein provided to Lessee shall be responsible for making arrangements for return of the Vehicles. This Agreement does not terminate until the Vehicles are picked up by Lessor at Lessee's Site and all obligations under this agreement have been satisfied except as may otherwise be provided herein.

15. DEFAULT – All delinquent installments of rent shall bear interest at one percent (1%) per month if not prohibited by law or at the highest lawful rate. In the event of default or breach of this Agreement by Lessee, or if Lessor for any reason deems itself insure, Lessor may enter premises where the Vehicles are located and render inoperative or remove Vehicles with or without process of law and without notice or liability to Lessee, and may terminate this Agreement without prejudice to any remedies or claims which Lessor might otherwise have for arrears of rent, expense of retaking, court costs and reasonable attorney's fee, and in addition, a sum equal to the balance of the rent and other payments called for hereunder for the remainder of the original or extended term of this Agreement as the case may be as liquidated damages and not as a penalty. Lessee shall remain liable for the full value of the Vehicles or for any loss or damage to the Vehicles, notwithstanding any termination of this Agreement. Upon the occurrence of any event of default, Lessee agrees to pay all costs and expenses which may be incurred by Lessor, including a reasonable attorney's fee, to enforce any right provided herein or collect any sums due, including any appeal or bankruptcy proceeding.

16. **DISCLAIMER OF WARRANTIES AND LIMITATION OF LIABILITY**

- A Vehicle that is still subject to warranties from the manufacturer thereof is leased subject to such warranties as are made in writing by the manufacturer. Lessor will cooperate with Lessee in obtaining adjustment from manufacturer for breach of any such manufacturer's warranty; any expense to be for Lessee's account. In the event it is found that there are defective parts within such period as the appropriate manufacturer's agreement to replace defective parts is applicable, Lessor will furnish at Lessor's repair facilities during regular working hours, such labor as is required for replacement or repair of defective parts covered by manufacturer's warranty. Cost of necessary transportation to and/or from Lessor's repair facility shall be borne solely and exclusively by Lessee. **EXCEPT FOR THIS AGREED OBLIGATION TO FURNISH LABOR TO MAKE REPLACEMENT OR REPAIR OF DEFECTIVE PARTS COVERED BY MANUFACTURER'S WARRANTY WITHIN THE MANUFACTURER'S WARRANTY PERIOD, LESSOR SHALL NOT BE LIABLE FOR DEFECTS IN OR FOR ANY DAMAGES OR LOSS TO THE EQUIPMENT LEASED NOR CAUSED BY THE EQUIPMENT LEASE, AND UNDER NO CIRCUMSTANCES SHALL LESSOR OR MANUFACTURER BE LIABLE AND HEREBY SPECIFICALLY DISCLAIMS RESPONSIBILITY FOR ANY INDIRECT SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES TO THE LESSEE OR TO ANY THIRD PARTY. THE FOREGOING UNDERTAKING WITH RESPECT TO EQUIPMENT STILL UNDER WARRANTY IS IN LIEU OF ANY OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE; FURTHER LESSOR MAKES NO WARRANTIES WHATSOEVER, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO USED EQUIPMENT AND LESSEE TAKES AND RENTS ANY USED EQUIPMENT "AS IS" AND WITH ALL FAULTS OR DEFECTS UNLESS A MODIFICATION IS ENDORSED HEREIN OR CONTAINED IN A SEPARATE WRITING SIGNED BY AN OFFICER OF LESSOR.**

17. **TITLES, HEADINGS AND CAPTIONS** - All titles, headings and captions used in this Agreement have been intended for administrative convenience only and do not constitute matters to be construed in interpreting this Agreement.

18. **ENTIRE AGREEMENT** - This Agreement expresses the entire agreement between the Lessor and Lessee. No change, modification or alteration of the terms, conditions and provisions herein will be effective against Lessor unless the same are in writing and signed by a duly authorized officer of Lessor. Lessee's execution of this Agreement and/or acceptance of delivery of any Vehicle to be furnished hereunder shall constitute Lessee's acceptance of the terms, conditions and provisions of this Agreement and the exclusion of any terms, conditions and provisions otherwise stated by Lessee or contained in

Lessee's purchase documents which conflict with or limit the terms, conditions and provisions contained herein. Lessor's execution of this Agreement and/or delivery of any Vehicle to be furnished hereunder shall constitute Lessor's acceptance of the terms, conditions and provisions of this Agreement and the exclusion of any terms, conditions and provisions otherwise stated by Lessor or contained in Lessor's rental documents that conflict with or limit the terms, conditions and provisions contained herein.

19. NONDISCRIMINATION – Lessor agrees to comply with the nondiscrimination provision of Chapter 112, Section 9:161 of the Ann Arbor City Code and to take affirmative action to assure that applicants are employed and that employees are treated during employment in a manner that provides equal employment opportunity and tends to eliminate inequality based on race, national origin or sex.

Dated this ____ day of _____, 2006.

FOR _____

FOR CITY OF ANN ARBOR

By _____

By _____
John Hieftje, Mayor

Its _____

By _____
Jacqueline Beaudry, City Clerk

Approved as to Substance:

Roger W. Fraser, City Administrator

Sue F. McCormick
Public Services Area Administrator

Approved as to form:

Stephen K. Postema, City Attorney