

CONTRACT

THIS AGREEMENT is made on the 1st day of October, 2015, between the CITY OF ANN ARBOR, a Michigan Municipal Corporation, 301 E. Huron Street, Ann Arbor, Michigan 48104 (“City”) and Bell Equipment Company (“Contractor”) A Corporation incorporated in the State of Michigan 78 Northpointe Drive, Lake Orion, Michigan 48359 (An individual/partnership/corporation, include state of incorporation) (Address)

Based upon the mutual promises below, the Contractor and the City agree as follows:

ARTICLE I - Scope of Work

- A. The Contractor agrees to provide services as described in “RENTAL OF REFUSE TRUCKS ITB No. 4401”, which is incorporated here by reference.
- B. The City retains the right to make changes to the quantities of service within the general scope of the agreement at any time by a written order. If the changes add to or deduct from the extent of the services, the contract sum shall be adjusted accordingly. All such changes shall be executed under the conditions of the original agreement
- C. The Contractor’s standard of service under this agreement shall be of the level of quality performed by professionals regularly rendering this type of service. Determination of acceptable quality shall be made solely by the Contract Administrator
- D. The contractor shall perform its Services for the Project in compliance with all applicable laws, ordinances, and regulations. In accordance with the requirements and provisions of the following documents, including all written modifications incorporated into any of the documents, which are incorporated as part of this Contract:

Human Rights Division Contract
Compliance Forms
Living Wage Declaration of
Compliance Forms
(if applicable)
Vendor Conflict of Interest Disclosure
Form
Bid Forms

Contract and Exhibits
General Conditions
Standard Specifications
Detailed Specifications
Addenda

ARTICLE II - Definitions

Administering Service Area/Unit means Public Services Area/Fleet & Facilities Services Unit

Supervising Professional means Fleet & Facilities Unit Manager or other persons acting under the authorization of the Administrator/Manager of the Administering Service Area/Unit.

Project means Rental of Refuse Trucks, Bid No. ITB 4401

ARTICLE III - Duration

The term of this agreement shall be 2 years and 9 month commencing on October 5, 2015, and terminating on June 30, 2018, unless terminated breach or as provided for in this agreement.

The parties agree that this contract may be renewed, at the sole option of the City, for up to three additional one-year periods under the same terms and conditions for the amount specified in Article IV, Compensation. Should the City elect to exercise its option to renew this Agreement, the City Administrator, acting personally or through the Contract Administrator, will provide notice of its intent to renew in the following manner: 1) no less than sixty (60) days prior to the termination date of the original term of the Agreement, for the first one-year renewal period and 2) no less than sixty (60) days prior to the termination date of the first renewal term of the Agreement, for the second one-year renewal period.

ARTICLE IV - Compensation

- A. Payment shall be made monthly following receipt of invoices submitted by Contractor and approved by the Contract Administrator.
- B. Contractor's compensation shall be based on Bid Proposal Forms included in the bid "Rental of Refuse Trucks" ITB No 4401 which are attached as Exhibit A. It is understood and agreed between the parties that the compensation stated in Exhibit A is inclusive of any and all remuneration to which the Contractor may be entitled.
- C. Contractor shall keep complete records of rental service provided under this contract so that the Administering Service Area/Unit may verify invoices submitted by the Contractor. Records shall be made available to the City upon request.

ARTICLE V - Assignment

This Contract may not be assigned or subcontracted without the written consent of the City.

ARTICLE VI - Choice of Law

This Contract shall be construed, governed, and enforced in accordance with the laws of the State of Michigan. By executing this agreement, the Contractor and the City agree to venue in a court of appropriate jurisdiction sitting within Washtenaw County for purposes of any action arising under this Contract. The parties stipulate that the venue referenced in this Contract is for convenience and waive any claim of non-convenience.

Whenever possible, each provision of the contract will be interpreted in a manner as to be effective and valid under applicable law. The prohibition or invalidity, under applicable law, of any provision will not invalidate the remainder of the contract.

ARTICLE VII - Relationship of the Parties

The parties of the Contract agree that it is not a contract of employment but is a contract to accomplish a specific result. Contractor is an independent contractor performing services for the City. Nothing contained in this Contract shall be deemed to constitute any other relationship

between the City and the Contractor.

Contractor certifies that it has no personal or financial interest in the project other than the compensation it is to receive under the Contract. Contractor certifies that it is not, and shall not become, overdue or in default to the City for any contract, debt, or any other obligation to the City including real or personal property taxes. City shall have the right to set off any such debt against compensation awarded for services under this agreement.

ARTICLE VIII - Notice

All notices given under this contract shall be in writing, and shall be by personal delivery or by certified mail with return receipt requested to the parties at their respective addresses as specified in the contract documents or other address the Contractor may specify in writing...

ARTICLE IX - Indemnification

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.

ARTICLE X - Entire Agreement

This Contract represents the entire understanding between the City and the Contractor and it supersedes all prior representations or agreements whether written or oral. Neither party has relied on any prior representations in entering into this Contract. This Contract may be altered, amended or modified only by written amendment signed by the City and the Contractor.

FOR CONTRACTOR

By _____

Its: _____

FOR THE CITY OF ANN ARBOR

By _____
Christopher Taylor, Mayor

By _____
Jacqueline Beaudry, City Clerk

Approved as to substance

By _____
Steven D. Powers, City Administrator

By _____
Craig Hupy, Public Service Area
Administrator

Approved as to form and content

Stephen K. Postema, City Attorney

GENERAL CONDITIONS

Section 1 - Execution, Correlation and Intent of Documents

The contract documents shall be signed in 2 copies by the City and the Contractor.

The contract documents are complementary and what is called for by any one shall be binding. The intention of the documents is to include all labor and materials, equipment and transportation necessary for the proper execution of the work. Materials or work described in words which so applied have a well-known technical or trade meaning have the meaning of those recognized standards.

In case of a conflict among the contract documents listed below in any requirement(s), the requirement(s) of the document listed first shall prevail over any conflicting requirement(s) of a document listed later.

(1) Addenda in reverse chronological order; (2) Detailed Specifications; (3) Standard Specifications; (4) Plans; (5) General Conditions; (6) Contract; (7) Bid Forms; (8) Bond Forms; (9) Bid.

Section 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.

Section 3 – Condition and Return of Rented Trucks

All Vehicles shall be model year 2010 or newer. All Vehicles shall be of the same chassis manufacture with the same brand of packer units. The Vehicles are the property of Lessor and is represented by Lessor as being in good repair and mechanical 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, meaning that it will be cleaned of leaves from the leaf pick up. Vehicles that have normal dust, dirt and similar substances, other than leaves, from being driven and used for leaf pick up are not considered dirty. If Vehicles are returned in a dirty condition, there will be a minimum 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. Lessee will return the Vehicles without any tax-exempt fuel in the tanks.

Section 4 – 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 Operation Unit, Street Maintenance Group, 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

Section 5 – Vehicle 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. If the Vehicles fails to operate properly or needs repair, Lessee shall immediately cease using and notify Lessor forthwith.

Section 6 – 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.

Section 7 – 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.

Section 8 – Vehicle 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.

Section 9 – Rental

This Agreement is an agreement of rental 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.

Section 10 – 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.

Section 11 – 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.**

Section 12 – 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.

Section 13 - Non-Discrimination

The Contractor agrees to comply, and to require its subcontractor(s) to comply, with the nondiscrimination provisions of MCL 37.2209. The Contractor further agrees to comply with the provisions of Section 9:158 of Chapter 112 of the Ann Arbor City Code and to assure that applicants are employed and that employees are treated during employment in a manner which provides equal employment opportunity.

Section 14 - The City's Right to Terminate Contract

This agreement may be terminated by either party without further notice in the case of a breach of this agreement by the other party, if the breaching party has not corrected the breach within 15 days after notice of the breach.

Either party shall have the privilege, with or without cause, to cancel and annul this agreement at any time on sixty (60) days written notice to the other party in accordance with the notice provisions of Article XII. It is agreed by the parties that the actual date of termination shall be determined by mutual agreement. If services are terminated for reasons other than the breach of the agreement by the Contractor, the Contractor shall be compensated only for reasonable time spent prior to date of termination.

Contractor acknowledges that, if this Agreement extends for several fiscal years, continuation of this Agreement is subject to appropriation of funds for this Project. If funds to enable the City to effect continued payment under this Agreement are not appropriated or otherwise made available, the City shall have the right to terminate this Agreement without penalty at the end of the last period for which funds have been appropriated or otherwise made available by giving written notice of termination to the Contractor. The Contract Administrator shall give the Contractor written notice of such non-appropriation within thirty (30) days after it receives notice of such non-appropriation.

The remedies provided in this Agreement will be cumulative, and the assertion by a party of any right or remedy will not preclude the assertion by such party of any other rights or the seeking of any other remedies.

Section 15 - Damage Claims

The Contractor shall be held responsible for all damages to property of the City or others, caused by or resulting from the negligence of the Contractor, its employees, or agents during the progress of or connected with the prosecution of the work, whether within the limits of the work or elsewhere. The Contractor must restore all property injured including sidewalks, curbing, sodding, pipes, conduit, sewers or other public or private property to not less than its original condition with new work.

Section 16 - Refusal to Obey Instructions

If the Contractor refuses to obey the instructions of the Supervising Professional, the Supervising Professional shall withdraw inspection from the work, and no payments will be made for work performed thereafter nor may work be performed thereafter until the Supervising Professional shall have again authorized the work to proceed.

Section 17 - Assignment

Neither party to the Contract shall assign the Contract without the written consent of the other. The Contractor may assign any monies due to it to a third party acceptable to the City.

Section 18 - Supervising Professional's Status

The Supervising Professional has the right to inspect any or all work. The Supervising Professional has authority to stop the work whenever stoppage may be appropriate to insure the proper execution of the Contract. The Supervising Professional has the authority to reject all work and materials which do not conform to the Contract and to decide questions which arise in the execution of the work.

Section 19 - Supervising Professional's Decisions

The Supervising Professional shall, within a reasonable time after their presentation to the Supervising Professional, make decisions in writing on all claims of the City or the Contractor and on all other matters relating to the execution and progress of the work or the interpretation of the contract documents.

Section 20 - Storing Materials and Supplies

Materials and supplies may be stored at the site of the work at locations agreeable to the City unless specific exception is listed elsewhere in these documents.

Exhibit A

BID FORM

Company: Bell Equipment Company

PRICING OPTIONS: If you do not check one of the following your bid will be considered FIRM for the entire contract including renewals. (See item B)

- A. () Pricing is not subject to increase, but will be subject to reduction. (This will be considered only in case of identical prices offered.)
- B. () The price is firm for entire contract period (including renewals).
- C. () The price is firm until June 30, 2016 and is then subject to adjustment with maximum allowable increase of 3% each year of the contract including the three (3) one year renewal periods.
- D. () The price is firm until June 30, 2018 and is then subject to adjustment with maximum allowable increase of _____% for each of the three (3) one year renewal periods.

NOTE: Percentage figure must be shown to obtain consideration under Paragraph C or D above.

A) Rental of 25 yard or larger, rear loading refuse trucks.

Weekly cost \$1,850.00 monthly cost \$6,250.00

Fall 2015 monthly rental rate including freight \$9,400 per truck
The City requires a minimum of 8 trucks from mid-October to mid-December yearly
(minimum of 8 weeks)

NOTE: Units for this fall are 20 cubic yard capacity
Can you meet this requirement yearly? Yes _____ No

NOTE: Currently have 6 units available, working on two more.

B) Rental of 28 yard or larger front loading refuse truck

Weekly cost \$2,500.00 monthly cost \$6,750.00

C) Rental of 25 yard or larger side loading refuse truck with automated arm

Weekly cost \$3,000.00 monthly cost \$7,800.00

D) Delivery and pick up of rental trucks

Deliver and pick up cost \$500.00 per trucks

All trucks being rented shall be delivered to and pick up from the Wheeler Service Center at 4251 Stone School Rd. Ann Arbor, MI 48108

Signature of Authorized Representative of Bidder


