

MOTOR VEHICLE LEASE AGREEMENT
BY AND BETWEEN THE NARRAGANSETT BAY COMMISSION
AND THE CITY OF CENTRAL FALLS

THIS LEASE AGREEMENT is made and entered into this 9th day of May, 2016 by and between the Narragansett Bay Commission (hereinafter “NBC” or “Lessor”) having a principal place of business at One Service Road, Providence, RI 02905 and the City of Central Falls (hereinafter “Central Falls” or “Lessee”), having a principal office location at 580 Broad Street, Central Falls, RI 02863 (hereinafter NBC and Central Falls may collectively be referred to as the “Parties” and each individually as a “Party”).

WHEREAS, NBC owns a 1996 Ford F800 Flusher Truck with a VIN of 1FDXF80C8TVA18643 (hereinafter the “Flusher Truck”);

WHEREAS, Central Falls requests use of this certain Flusher Truck for its municipal endeavors;

WHEREAS, NBC is desirous of leasing and Central Falls has agreed to lease the aforesaid Flusher Truck for a fixed term upon the terms and conditions contained herein (hereinafter the “Lease”);

WHEREAS, Central Falls accepts the terms of the Lease as detailed in this Agreement;

NOW THEREFORE, in consideration of the mutual promises hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

Waiver of R.I.G.L § 31-5-33

This Agreement is conditioned upon Lessor obtaining a waiver from the Rhode Island Division of Motor Vehicles Rhode Island Dealer’s License and Regulations Office (hereinafter the “DMV”) relative to the license requirements mandated by R.I.G.L § 31-5-33. Lessee agrees to make all efforts to assist Lessor with the waiver process. Failure of Lessor to obtain a waiver from the DMV despite best efforts by Lessee voids this Agreement. Lessor agrees to engage in negotiations for a new mutually acceptable agreement should this Agreement become void due to the failure to obtain a waiver from the DMV. Lessor will not be obligated to present Lessee with a new mutually acceptable agreement despite any negotiation between the Parties.

Lease Term

Lessor will grant the Lessee exclusive use and possession of the Flusher Truck during the term of this Agreement unless an event of default occurs. Lessor agrees to lease the Flusher Truck to Lessee for a term of three (3) years commencing on _____. Any property of the Lessee will be deemed abandoned if such property remains in the Flusher Truck beyond the Lease Term, any event of default, unilateral or bilateral termination of this Agreement, and/or the voiding of this Agreement pursuant to law or the conditions contained herein.

Payment By Lessee

Lessee agrees to pay Lessor one dollar (\$1.00) per year for its use of the Flusher Truck (hereinafter the "Payment Amount"). Lessee may, at its option, pay three dollars (\$3.00) to satisfy the Payment Amount for the entire term of the Lease at the commencement of the Lease.

Registration

Legal title to the Flusher Truck will be in Lessor's name. The Flusher Truck will be registered as Lessor directs. Lessee will pay the appropriate registration and titling fees. Lessee will obtain and pay for Rhode Island license plates from the Rhode Island Department of Motor Vehicles and place them on the Flusher Truck. Lessee will obtain a Rhode Island inspection certificate for the Flusher Truck during the Lease Term. If Lessee is unable to obtain a Rhode Island inspection certificate due to the condition of the Flusher Truck, then Lessee agrees to bring the Flusher Truck into compliance in order to obtain the inspection sticker. Lessee will not operate the Flusher Truck without an inspection sticker except for travel to and from an inspection station.

Maintenance

Lessor is leasing the Flusher Truck to Lessee "as-is". Lessor does not make any express warranties, implied warranties, warranties of merchantability, or representations of any kind relative to the Flusher Truck or its fitness for any particular use. Lessee will be responsible for all maintenance, general or otherwise, to the Flusher Truck during the Lease Term. Lessee must maintain the Flusher Truck pursuant to the instructions and specifications in the Lessee Handbook attached hereto as Attachment A. Lessee agrees to keep the Flusher Truck in good working order and condition during the Lease Term. Lessee will ensure that no alterations are made to the Flusher Truck or any component removed unless it is immediately replaced by the same component or by one of the same like, make and model or an improved or advanced version. Lessee will return the Flusher Truck to the Lessor in good mechanical condition except for normal wear and tear upon the expiration of this Agreement. Lessee agrees to keep the Flusher Truck free from liens or encumbrances that are not caused or created by Lessor. Prior to returning the Flusher Truck to Lessor, Lessee agrees to discharge any taxes, liens, encumbrances, fees, or costs accrued relative to the Flusher Truck during the Lease Term. Lessee agrees to allow Lessor to inspect the Flusher Truck upon request.

Default

Failure by Lessee to pay the Payment Amount under the terms specified in this Agreement and in an invoice issued to it from Lessor or the failure to satisfy any other term of this Agreement will constitute an event of default. Lessee will have thirty (30) days to cure the default. If Lessee does not cure the default within the thirty (30) day cure period Lessor may immediately retake and reclaim the Flusher Truck and terminate this Agreement without sending written notice to Lessee. Lessee will be obligated to pay or otherwise cure any taxes, liens, encumbrances, costs, or other conditions accrued on or against the Flusher Truck despite any termination of this Agreement due to default.

Termination

Either Party may terminate this agreement upon written notice sent at least seven (7) calendar days prior to the intended termination date to the addresses listed in this Agreement. This Agreement cannot be assigned, subleased, or transferred by Lessee and any attempt to assign, sublease, or transfer this Agreement will result in automatic termination. Lessor may retake the Flusher Truck and terminate this Agreement at any time and for any reason. Prior to returning the Flusher Truck to Lessor, Lessee agrees to discharge any taxes, liens, encumbrances, fees, or costs accrued relative to the Flusher Truck during the Lease Term.

Operation of the Flusher Truck

Upon execution of the Lease, the Lessee will coordinate the Initial Training with C.N. Wood Co., Inc. or an entity that meets the approval of the Lessor. Lessor may assist Lessee with obtaining the Initial Training, but Lessor is not obligated to provide any training to Lessee. Lessee agrees to hold Lessor harmless for any training provided by Lessor, its agents, affiliates, or third-parties engaged or approved by Lessor for the purposes of providing training.

Lessor ensures that the Flusher Truck will be used in a skillful and proper manner and only driven by persons that hold a valid CDL Class B license. Lessee is obligated to ensure that neither Lessee nor anyone else will: (a) use the Flusher Truck for any illegal purpose or in any way which is illegal, (b) use the Flusher Truck in any way which would cause cancellation or suspension of the required insurance, (c) use the Flusher Truck for any unintended use, or (d) remove the Flusher Truck from the State of Rhode Island without Lessor's prior written consent. Lessee may, at its option, seek written consent to remove the Flusher Truck from the State of Rhode Island by sending an e-mail containing such a request to Lessor to the proper e-mail address detailed below.

Lessee will be responsible for costs relating to fuel as well as any costs of parking fines and towing expenses for violation of traffic laws.

Lessee is responsible for risk of loss relative to the Flusher Truck during the Lease Term. In the event of damage or loss to the Flusher Truck, Lessee will report such damage or loss to Lessor within forty-eight (48) hours. Lessee agrees to file the appropriate claim

with its insurer and comply with all conditions from Lessee's insurer. The Flusher Truck will not be used by any person or entity, in any manner or for any purpose that would cause any insurance herein specified to be suspended, canceled, or rendered inapplicable. Lessor will not be responsible for any damage or loss to the Flusher Truck or any damage or loss to third-parties relative to Lessee's use of the Flusher Truck. If the Flusher Truck is totaled or deemed not to be usable due to damage or loss, this Agreement will automatically terminate and Lessor will have no obligation to provide a similar vehicle for use by Lessee. In the event of damage or loss, Lessee authorizes Lessor to: (a) receive or collect any money paid under Lessee's insurance, (b) direct any insurer to pay all insurance proceeds directly to Lessor, (c) endorse checks or drafts relating to the insurance payments on Lessee's behalf, and (d) settle or release any claim with respect to the insurance.

Storage of the Flusher Truck

Lessee agrees to garage the Flusher Truck when it is not in operation. Lessee will make all efforts to avoid damage to the Flusher Truck due to weather conditions.

Insurance:

Lessee will maintain the following insurance coverage with the type and limits of insurance as outlined in this section. Lessee's insurance carrier(s) must be licensed to do business in the State of Rhode Island and have an A.M. Best's "A-" rating or better with a financial size VIII or larger.

The Flusher Truck must be scheduled under the Lessee's Commercial Auto policy as a leased vehicle and include both physical damage and auto liability coverage. Lessor must be included as the Loss Payee and Additional Insured. Any auto liability or physical damage deductibles will be the responsibility of Lessee. Additional insurance requirements are as follows:

- A. *Commercial General Liability* (hereinafter "CGL") with limits of Insurance of not less than \$1,000,000.00 each occurrence and \$2,000,000.00 Annual Aggregate.
 - a. CGL coverage will be written on the Insurance Services Office (hereinafter "ISO") occurrence form CG 00 01 or a substitute form providing equivalent coverage and will cover liability arising from premises, operations, independent contractors, products-completed operations, personal and advertising injury and extending coverage to include bodily injury and property damage coverage from the back up of sewer or drains. Any pollution event arising out of the operations of the Flusher Truck will not be excluded under Lessee's CGL coverage.
 - b. Lessor must be included as additional insured utilizing the ISO CG 2010 (11-85) form or its equivalent for both ongoing and completed

operations. The additional insured status provided by Lessee will be on a primary and non-contributing basis before any other insurance, maintained by, or provided to Lessor.

B. *Commercial Automobile Liability:*

- a. Auto Liability with limits of at least \$1,000,000.00 each accident and include Hired and Non-Owned Autos. Additional insured status must also be provided to Lessor. This additional insured status must be on a primary and non-contributing basis.

C. *Workers Compensation and Employers Liability:*

- a. Workers Compensation with Employers Liability Insurance must be maintained with an insurance carrier licensed in the State of Rhode Island.

D. *Umbrella Liability:*

- a. Umbrella Liability must be maintained with a minimum limit of \$1,000,000.00 per Occurrence with a \$1,000,000.00 General Aggregate. Lessor must be included as an additional insured on a primary and non-contributing basis.

E. *Waiver of Subrogation:* Lessee waives all subrogation rights against Lessor, its officers, directors and employees for recovery of damages to the extent these damages are covered by their CGL, Commercial Umbrella Liability, Commercial Auto Liability, Pollution Liability (to the extent Lessee has or is required to have such coverage), or Workers Compensation and Employers Liability insurance maintained per requirements stated above.

F. *Certificates of Insurance:* Lessee must provide to Lessor a certificate of insurance evidencing the above stated coverage prior to the commencement of use of the Flusher Truck. Upon expiration of insurance under its own terms or amendment to any of the above-stated coverage, Lessee will provide an updated certificate of insurance evidencing the above stated coverage prior to continued use of the Flusher Truck.

Extent of Agreement

Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public body which may be a party hereto, nor shall it be construed as giving any rights or benefits hereunder to anyone other than Lessor and Lessee. The failure of Lessor to demand from Lessee performance of any act under the Agreement shall not be construed as a

waiver of Lessor's right to demand, at any subsequent time, such performance. Words and phrases herein, including any acknowledgment hereof, will be construed as in the singular or plural number, and as masculine, feminine or neutral gender according to the context.

Captions

Captions and section headings are for reference only and shall not limit or otherwise affect the meaning of the sections.

Remedies

Claims, counter-claims, disputes, and other matters in question between Lessor and Lessee arising out of, or relating to, this Agreement or the breach of it will be decided by arbitration if the parties mutually agree, or by a court of competent jurisdiction.

Indemnification

Lessee agrees to forever defend, indemnify, and hold harmless Lessor, and their agents, successors, assigns, servants, contractors, and employees, from and against any and all claims, complaints, demands, causes of action, actions and liabilities arising out of, or in any way connected with this Agreement including but not limited to those claims, complaints, demands, causes of action, actions and liabilities in any way connected with the Flusher Truck, howsoever caused, except to the extent that such claims, complaints, demands, causes of action, actions or liabilities are the proximate result of the sole negligence or willful misconduct of Lessor.

Integration

The Agreement represents the entire understanding of Lessor and Lessee to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Agreement may not be modified or altered except in writing and signed by both parties.

Severability

If any provision of this Agreement or the application thereof is held invalid by a court, arbitrator or government agency of competent jurisdiction, this Agreement will automatically terminate notwithstanding an obligation by Lessee to indemnify Lessor.

Jurisdiction

This Agreement shall be administered and interpreted under the laws of the State of Rhode Island. Jurisdiction of litigation arising from this Agreement shall be in the State of Rhode Island. If any part of this Agreement is found to be in conflict with applicable laws, such part shall be inoperative, null and void insofar as it is in conflict with said law, but the remainder of this Agreement shall be in full force and effect.

Tax Implications

Lessee agrees that if it is later determined by the Internal Revenue Service or any other taxing body that taxes of any type should have been paid in connection with any benefit they receive pursuant to this Agreement, they will be solely responsible for paying such taxes. Lessor makes no representations or warranties regarding the legal effect or tax consequences of this Agreement, or of any such filing or reporting by Lessor. Lessee further expressly acknowledges that they neither received nor relied upon any tax advice from Lessor or their representatives and attorneys.

Advice of Counsel

Each Party to this Agreement acknowledges that it has had the benefit of advice of competent legal counsel or the opportunity to retain such counsel with respect to its decision to enter into this Agreement. The individuals whose signatures are affixed to this Agreement in a personal or representative capacity represent that they are competent to enter into this Agreement and are doing so freely and without coercion by any other Party or non-party hereto.

Notice

Any notice required to be given to Lessor under the terms of this Agreement is sufficient if sent to the below individual:

Margaret Goulet
IM Manager
Narragansett Bay Commission
One Service Road
Providence, RI 02905
(401) 461-8848
Margaret.Goulet@narrabay.com

Any notice required to be given to Lessor under the terms of this Agreement is sufficient if sent to the below individual:

City Solicitor
City of Central Falls
580 Broad St.
Central Falls, RI 02863
401-616-2435
MJerzyk@CentralFallsRI.us

IN WITNESS WHEREOF, the parties hereto have executed or caused to be executed by their duly authorized representatives, the Agreement in two counterparts each of which shall be deemed an original on the date first below written.

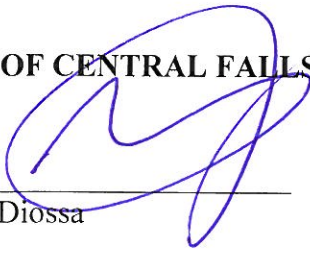
The Narragansett Bay Commission:

Raymond J. Marshall, P.E.
Executive Director

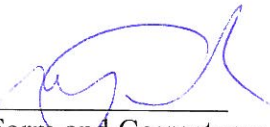
Date

CITY OF CENTRAL FALLS:

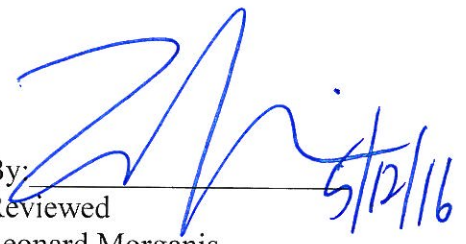
By: _____
James Diossa
Mayor



By: _____
As to Form and Correctness
Matthew Jerzyk
City Solicitor



By: _____
Reviewed
Leonard Morganis
*Administrative and Finance
Officer*


5/12/16