*23

AGREEMENT FOR NON-EXCLUSIVE COLLECTION, TRANSPORTATION, AND RECYCLING OR DISPOSAL OF NON-PUTRESCIBLE SOLID WASTE AND/OR CONSTRUCTION AND DEMOLITION DEBRIS IN THE CITY OF MILPITAS

This Agreement is made and entered into this 2nd of August, 2011, to be effective by and between the CITY OF MILPITAS, a municipal corporation of the State of California (hereinafter "City"), and Lam Hauling (hereinafter "Collector").

WITNESSETH:

WHEREAS, pursuant to and in accordance with the provisions of Title V, Chapter 200 of the Milpitas Municipal Code (hereinafter "MMC V-200"), the Collector has applied for an agreement authorizing said Collector to engage in the business of collecting and disposing of Non-putrescible Solid Waste and/or Construction and Demolition Debris produced, kept, or accumulated within the city limits of Milpitas; and

WHEREAS, the City Council has found that the public health, safety, and general welfare of the City and the efficient collection and removal of Solid Waste and/or Construction and Demolition Debris will be preserved and promoted by the execution of this Agreement; and

WHEREAS, performance by Collector of the terms and conditions of this Agreement shall be in strict compliance with the MMC V-200 and within the exceptions to the exclusivity of authority granted to the City's franchised hauler as set out in the agreement entered into between the City and Browning-Ferris Industries of California, Inc. dated September 2, 1986, and as amended thereafter.

WHEREAS, Browning-Ferris Industries of California, Inc. is now operating as Allied Waste Services of North America, LLC, DBA Allied Waste Services of Santa Clara County, successor in interest to BFI Waste Systems of North America, a Delaware Corporation, both subsidiary corporations of Allied Waste Industries, Inc., a Delaware Corporation.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the parties hereto agree as follows:

1. Authority for Agreement: This Agreement is entered into pursuant to MMC V-200 and amendments thereto. The scope of services of this agreement is excepted from the exclusivity of authority granted to Allied Waste Services (Allied), City's franchised hauler, as described in Section Five of the Agreement between City and Allied.

2. Definitions: The terms "City," "Debris Box," "Person," "Premises," "Recyclables," "Recycling," "Solid Waste" and "Yard Trimmings" shall have the same meaning as in the MMC V-200. "Construction and Demolition Debris" shall mean debris generated from the construction, demolition, or clearing of any Premises which shall include, but is not limited to concrete, asphalt, metal, lumber, and/or any other wood or inert material. All other words shall have their common English language meaning.

3. Authority Granted: City hereby grants Collector limited and non-exclusive authority and franchise to engage, as a Collector in the business of collecting, removing, transporting and disposing of Non-putrescible Solid Waste and/or Construction and Demolition Debris

produced, kept or accumulated in the City subject to and in accordance with the provisions of this Agreement and the BFI-Waste Systems of North America Franchise as follows:

On a non-exclusive basis, to service only those commercial establishments or residential customers who elect to use Collector and who can provide written certification, under penalty of perjury, that said establishment or customer uses the following:

(a) Commercial temporary Debris Boxes at construction sites for collection of Construction and Demolition Debris from commencement to completion of construction including new construction and/or remodeling, renovating, rehabilitating, or demolition of existing structures and contents (see Section Five of BFI agreement).

(b) Residential temporary Debris Boxes that shall not be located thereon for more than thirty (30) days within any sixty (60) day period and shall not be located on a public right-of-way, unless and until the owner or occupant of the Premises secures written consent from the City (see Section Five of BFI agreement).

(c) Non-containerized hauling services, including but not limited to landscapers, tree services, and bulky item haulers.

(d) Collection of recyclables from commercial premises, so long as (i) the transaction does not result in a payment or other consideration to the hauler of the recyclable materials, and if (ii) the customer subscribes to solid waste service for the balance of its solid waste pursuant to the City and BFI's agreement and the Milpitas Municipal Code (MMC) V-200.

(e) Collection of tallow and restaurant grease.

(f) Collection of Yard Trimmings for Recycling from multi-family, mobile home parks, and non-residential sites.

(g) Collection of cardboard, mixed paper, scrap metal, polystyrene, clean wood, wood pallets and circuit boards, so long as the customer subscribes to solid waste service for the balance of its solid waste pursuant to the Allied agreement and MMC V-200; the recyclables listed above are separated and stored for collection by material type; the recyclables contain no residual materials; the recyclables are processed for beneficial reuse and are not disposed of in a landfill; and, the recycler maintains required City permits and licenses.

4. Disposal Obligation: Unless City shall expressly authorize otherwise, Collector shall not accumulate, dump, bury, burn, or otherwise dispose of any Solid Waste and/or Construction and Demolition Debris anywhere in the City.

Collector shall make all reasonable efforts to avoid landfill disposal of any Construction and Demolition Debris, which efforts shall include, but shall not be limited to, recycling or reuse of Construction and Demolition Debris where commercially reasonable.

Collector shall make every effort to accurately identify city of origin of materials when disposing at landfill.

5. Container Condition Obligation
   i. Leak-Proof Containers: Containers shall be leak-proof. Collector shall take corrective action and exchange containers within one (1) business day upon verification of reported container(s) leakage.

   ii. Graffiti: Container shall display only business-related information (name of company and phone number). Collector shall take corrective action and exchange/abate containers within 10 business days upon verification of reported graffiti on container(s).

6. Compensation to City: Collector shall pay to City as compensation for the authority herein granted, a sum equal to twelve (12%) percent of the total gross receipts actually collected or received by any of its subcontractors for the collection, removal, transportation, or disposal of Solid Waste and/or Construction and Demolition Debris produced, kept or accumulated within City. City shall have the right to adjust the above franchise fees at any time, upon written notification to Collector.

6.5. Verification: In order that City may verify that compensation amounts paid are in accord with this Agreement, City shall have the right to inspect all relevant documents and records of Collector at Collector's place of business upon 24 hours advance notice. By such right of inspection, said documents and records shall not become Public Records or be subject to greater inspection rights by the public or third parties than would otherwise exist.

7. Timing of Payments: Payments to City of said compensation shall be made by Collector in accordance with MMC V-200-5.30.

8. Prohibited Interest: No member, officer, or employee of City shall have any interest, direct or indirect, in this Agreement or in the proceeds thereof.

9. Equal Employment Opportunity: Collector shall not discriminate against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, sexual orientation, age, physical or mental disability, medical condition, marital status, or denial of family care leave.

10. Compliance with Laws: Collector shall comply with all current federal, state and city laws, statutes, ordinances, rules and regulations and the orders and decrees of any court or administrative body or tribunal in any manner affecting the performance of this Agreement.

11. Indemnity: Collector agrees to indemnify, save and hold harmless City, its officers, agents, volunteers and employees, from any and all costs, expenses, claims, liabilities, or damages to persons or property arising out of or in any way connected with the intentional or negligent act, performance or omission of the Collector, its officers, employees, agents, contractors, subcontractors, or any officer, agent, or employee thereof related to this Agreement.

12. Insurance

12.1 Commercial Liability Insurance. Collector agrees to maintain and pay for a commercial liability policy naming City, its officers, officials, agents, and employees as an additional insured and insuring them against liability or financial loss resulting from injuries

occurring to persons or property in or about or in connection with said work to be performed under this Agreement. Each policy of insurance shall provide primary coverage on an occurrence basis in a company satisfactory to City in the following minimal amounts: personal injury, $1,000,000 for each person and $1,000,000 per occurrence; property damage, $1,000,000 per occurrence. Each policy shall provide that it shall not be canceled or reduced in coverage without 30 days prior written notice to City. The commercial liability policy shall provide (a) if City, its officers, officials, agents, or employees have other insurance against loss covered by said policy, said other insurance shall be excess insurance only, and (b) that City, its officers, officials, agents, and employees are not precluded from claim under said policy against other insured parties.

Collector shall file Certificates of Insurance with City in a form satisfactory to the City Attorney upon execution of this Agreement, evidencing said coverage and the requirements of this paragraph.

12.2 Automobile Liability Insurance: Collector, at its own cost and expense, shall maintain automobile liability insurance for the term of this Agreement in an amount not less than ONE MILLION DOLLARS ($1,000,000.00) per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a Commercial Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

12.3 Minimum scope of coverage: Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (ed. 11/88) or Insurance Services Office form number GL 0002 (ed. 1/73) covering comprehensive General Liability and Insurance Services Office form number GL 0404 covering Broad Form Comprehensive General Liability. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001 (ed. 12/90) Code 1 (“any auto”). No endorsement shall be attached limiting the coverage.

12.4 Additional requirements: Each of the following shall be included in the insurance coverage or added as an endorsement to the policy:

a. City and its officers, officials, agents, and employees shall be covered as insureds with respect to each of the following: liability arising out of activities performed by or on behalf of Collector, including the insured’s general supervision of Collector; products and completed operations of Collector; premises owned, occupied, or used by Collector; and automobiles owned, leased, or used by the Collector. The coverage shall contain no special limitations on the scope of protection afforded to City or its officers, officials, agents, and employees.

b. The insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.

c. An endorsement must state that coverage is the primary insurance with respect to the City and its officers, officials, agents, and employees, and that no insurance or self-insurance maintained by the City shall be called upon to contribute to a loss under the coverage.

d. Any failure of Collector to comply with reporting provisions of the policy shall not affect coverage provided to City and its officers, officials, agents, and employees.

e. An endorsement shall state that coverage shall not be suspended, voided, or canceled by either party, reduced in coverage or in limits, except after thirty (30) days prior to written notice by certified mail, return receipt requested, has been given to the City.

13. Insurance: Worker's Compensation: Collector agrees to comply with all State requirements relating to Worker's Compensation Insurance and to provide the same for its employees.

14. City Representative: The City Manager, or his/her designee, shall represent City in all matters pertaining to the services to be rendered under this Agreement. All requirements of City pertaining to the services and materials to be rendered under this Agreement shall be coordinated through said City Representative.

15. Collector Representative: Collector shall designate a representative to serve as the authorized contact to the City in all matters pertaining to the service and materials to be rendered under this Agreement. All requirements of Collector pertaining to the services or materials to be rendered under this Agreement shall be coordinated through the Collector Representative.

16. Reports and Records: Books and records shall be kept and maintained by Collector and statements and reports shall be given and made by Collector to City as required by the following schedule:

QUARTER	DEADLINE
January 1 – March 31	April 25
April 1 – June 30	July 25
July 1 – September 30	October 25
October 1 – December 31	January 25

The report shall include the total gross billing during that month to all customers and the total of Solid Waste and/or Construction and Demolition Debris collected, by weight and volume, and by customer type (i.e., commercial and residential customers) and by disposal facility where said material was disposed or recycled. City Manager and his/her designee shall approve the format and detail of Collector's reporting system, which approval shall not be unreasonably withheld.

City shall have the right at all times during the term of this Agreement and any extension thereof, with reasonable notice, to inspect any and all of Collector's records, including individual billings for individual customers, which pertain to the duties of the Collector under the terms of this Agreement.

17. Term of Agreement: This Agreement shall be valid and in effect for a base term of three (3) years from its effective date until its termination date of August 1, 2014. The City shall have the option to extend this Agreement upon written notice and mutual consent of the parties for two (2) additional three (3) year periods for a total possible extension time of six (6) years.

The decision as to whether to exercise an option to extend this Agreement shall lie within the discretion of the City Manager or his or her designee. Each written notice and option to extend shall specify the new termination date of this Agreement.

18. Manner of Collection, Hours of Collection: In collecting or removing any Non-putrescible Solid Waste and/or Construction and Demolition Debris from any Premises, Collector shall exercise reasonable care to refrain from dropping or spilling any Non-putrescible Solid Waste and/or Construction and Demolition Debris upon any Premises or upon any public property or place; and the Collector shall without delay, pick up and remove from any Premises or public property or place any Non-putrescible Solid Waste and/or Construction and Demolition Debris dropped or spilled by it upon any such Premises, property or place. The Collector shall refrain from making unnecessary noise. For the protection of City streets, Collector shall limit the weight of each vehicle including its contents, to 20,000 pounds per axle.

    No material of any kind shall be collected or removed from any Premises in the City except between the hours of 7:00 a.m. and 7:00 p.m.

19. Termination of Services: Without limitation to such rights or remedies as City shall otherwise have by law, City shall also have the right to terminate this Agreement for any reason upon written notice to Collector.

20. Notices: Unless otherwise provided herein, all notices required hereunder shall be given by certified mail, postage prepaid and addressed to the party at the address indicated below, however, that in lieu of thereof, notice may be given by personal delivery to the party at said address.

    To the Collector: Lam Hauling
    2647 Senter Rd #160
    San Jose, CA 95111
    Attn: Tinh Lam, Owner

    To the City: City of Milpitas
    455 E. Calaveras Blvd
    Milpitas, CA 95035
    Attn: Elizabeth Koo, Utility Engineering

21. Liquidated Damages: City may assess Liquidated Damages for the following material breaches, and for the following amounts, where the material breach by Collector occurs without reasonable cause:

    (1) For each failure to submit the monthly reports, fifty dollars ($50.00) for each business day the report is late;

    (2) For each failure (in excess of five (5) times per calendar year) to clean up materials spilled from containers or trucks within two (2) business days after notification by City or Customer -- one hundred dollars ($100.00).

    For the purposes of this subsection, "reasonable cause" shall include, but is not limited to Collector's inability to perform its obligations due to circumstances beyond its reasonable control, including (i) vehicle or collection equipment breakdown which occurs despite regular maintenance, (ii) data processing equipment or software breakdown if backup

systems are not reasonably available, (iii) inability to obtain necessary information for report filing beyond its reasonable control.

Upon making a determination to impose Liquidated Damages, City shall notify Collector of its determination in writing.

22. Entire Agreement: Amendment: This writing constitutes the entire Agreement between the Parties. No modification hereof shall be effective unless such modification is in writing and signed by all parties to this Agreement.

23. Miscellaneous: All covenants herein shall be conditions. Time shall be of the essence. Failure on the part of either party to enforce any provision of this Agreement shall not be construed as a waiver of the right to compel enforcement of such provision or any other provision. The singular number shall include the plural, and the masculine gender shall include the feminine and neutral genders whenever the context of this Agreement permits.

24. Applicable Law: The interpretation and enforcement of this Agreement shall be governed by the laws of the State of California.

25. Assignment: Neither party shall assign nor sublet any portion of this Agreement without the written consent of the other party.

CITY OF MILPITAS

BY:_____
Thomas C. Williams, City Manager

APPROVED AS TO FORM:

BY:_____
Michael J. Ogaz, City Attorney

APPROVED AS TO CONTENT:

BY:_____
Greg Armendariz,
Public Works Director/City Engineer

ATTEST:

BY:_____
Mary Lavelle, City Clerk

COLLECTOR

BY:_____
Tinh Lam, Owner