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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 9th day of JUNE, 2005, to be effective _____, by and between the CITY OF MILPITAS, a municipal corporation of the State of California (hereinafter "City"), and VALLEY RECYCLING 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 of the City of Milpitas has found that the public health, safety, and general welfare of the City of Milpitas 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 set out in the agreement entered into between the City and Browning-Ferris Industries of California, Inc. ("BFI-CAL") dated September 2, 1986, and as amended thereafter, granting to BFI-Waste Systems of North America an exclusive franchise for the collection of Solid Waste within the City.

NOW, THEREFORE, in consideration of their mutual covenants and conditions experienced here, the parties hereto agree as follows:

1. Authority for Agreement
   This Agreement is entered into pursuant to the MMC V-200 and amendments thereto, and the exclusive franchise between the City of Milpitas and BFI-Waste Systems of North America.

2. Definitions.
   The terms "City," "Debris Box," "Person," "Premises," and "Solid Waste" 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.

3. Authority Granted.

City hereby grants to Collector a 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 is using:

(a) Commercial temporary Debris Boxes at construction sites for collection of Construction and Demolition Debris from the commencement to completion of construction including new construction and/or remodeling, renovating, rehabilitating, or demolition of existing structures. (Found in section 5 of BFI agreement)

(b) Residential temporary Debris Boxes. The Debris Boxes 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. (Found in section 5 of BFI agreement).

(c) Commercial temporary Debris Boxes for collection of toilets for recycling from multi-family dwelling units or commercial establishments. Collector will provide collection, transport, dismantling and recycling of toilets removed due to participation in water conservation or wastewater flow reduction program.

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

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

8. 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.

9. 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.

10. Indemnity. Collector agrees to indemnify and hold harmless City, its officers and employees, from 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 or omission of the Collector, its officers, employees, agents, contractors, subcontractors, or any officer, agent, or employee thereof.

11. Insurance: Public Liability. Collector agrees to maintain and pay for a public liability policy naming City, its officers, 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, $500,000 for each person and $500,000 per occurrence; property damage, $50,000 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 public liability policy shall provide (a) if City, its officers 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 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. 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.

13. City Representative.
The City Engineer, or his or 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.

14. Collector Representative.
VALLEY RECYCLING shall represent Collector 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.

15. 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 MMC V-200 and Exhibit "A" of this Agreement.

16. Term of Agreement.
This Agreement shall be valid and in effect for a period of three years from its effective date of _____ until its termination date of _____.
Upon mutual written consent of Collector and City, the term of this Agreement may be extended, for periods of three years each, up to and including six (6) years. Such written notice shall specify the new termination date of this Agreement.

17. 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 Non-putrescible Solid Waste and/or Construction and Demolition Debris of any kind shall be collected or removed from any Premises in the City except between the hours of 7:00 o'clock a.m. and 7:00 o'clock p.m.

18. 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.

19. 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 in the opening

paragraph of this Agreement provided, however, that in lieu of thereof, notice may be given by personal delivery to the party at said address.

To the Collector: Valley Recycling
1615 B. S. Seventh St., S.J. CA 95112
Attn: Mary Ann Harmon

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

20. 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 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.

For the purposes of this subsection, "reasonable cause" shall include, among other things, 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.

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

22. 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 gender and neuter gender whenever the context of this Agreement permits.

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

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

IN WITNESS WHEREOF, the parties have hereunto set their hands the day and year first above written.

CITY OF MILPITAS

BY: _____
City Engineer

APPROVED AS TO FORM:

BY: _____
City Attorney

COLLECTOR
Valley Recycling

BY: Maryann Harmon

TITLE: Office Mgr

EXHIBIT "A"
REPORTING

Collector agrees to furnish to the City Engineering Division a monthly report on or before the twenty-fifth (25th) day following the end of each calendar month which will contain 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 Solid Waste and/or Construction and Demolition Debris was disposed or recycled. Said report shall also include the amount, by weight and volume, of Solid Waste and/or Construction and Demolition Debris recycled, and the facility where said Solid Waste and/or Construction and Demolition Debris was 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.

DATE:_____, 20

COLLECTOR	CITY OF MILPITAS
Valley Recycling	
By: Maureen Thomson	By:_____
	City Manager