

**COMMERCIAL SOLID WASTE SERVICES AGREEMENT**

**BETWEEN**

**VILLAGE OF LIBERTYVILLE**

**AND**

**GROOT INDUSTRIES, INC.**

**DATED:** October 22, 2013

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This Solid Waste & Recycling Services Agreement ("Agreement") is made and entered into as of the 22nd day of October, 2013 by and between Groot Industries, Inc., (the "Contractor") and the Village of Libertyville, Illinois (the "Village").

## **PREAMBLE**

WHEREAS, the Village, in order to protect the public health and welfare of its residents and commercial, industrial, and institutional entities, has deemed it necessary to collect, transport and dispose of Commercial Materials; and

WHEREAS, the Village is authorized pursuant to the provisions of Section 11-19-1 of the Illinois Municipal Code (65 ILCS 5/11-19-1) to provide for the method or methods of collection, transportation and disposal of municipal waste located within its boundaries and to provide that the method chosen may be the exclusive method to be used within its boundaries; and

WHEREAS, the Village desires to provide municipal waste collection, transportation and disposal services to its commercial, industrial, and institutional entities, and to impose on its commercial, industrial and institutional entities rates and charges relating to such services; and

WHEREAS, the Village has determined that it is in the best interests of its commercial, industrial, and institutional entities to contract with a single waste hauler to collect, transport and dispose of (or sell) Commercial Materials; and

WHEREAS, the Contractor, pursuant to the terms of this Agreement, is willing to collect, transport and dispose of (or sell) Commercial Materials;

NOW, THEREFORE, in consideration of the mutual promises, covenants and conditions herein contained:

## **ARTICLE I DEFINITIONS**

### **Section 1.1 Definitions**

Whenever used in this Agreement, the following terms shall have the following meanings unless a different meaning is required by the context:

- a) "Breach" means a breach of this Agreement by either the Village or the Contractor, in a manner described in Sections 10.1 or 10.2 of this Agreement.
- b) "Village" means the Village of Libertyville, Illinois.
- c) "Village Code" means "The Village of Libertyville Municipal Code," as amended.
- d) "Commercial Service" has the meaning set forth in Section 2.1 of this Agreement.
- e) "Commercial Materials" means Municipal Waste, Recyclable Materials, Organic Material, and any other similar materials.
- f) "Contractor" means Groot Industries, Inc., a Delaware corporation, and its successors and assignees.

- g) "Customer" means an individual commercial, industrial, or institutional entity that is not otherwise receiving garbage, recycling, organic, and/or landscape hauling services through a Village franchise agreement and that is authorized by law to receive such franchise services from the Village.
- h) "Event of Default" means a declaration of default by either the Village or the Contractor, as described in greater detail in Article 10 of this Agreement.
- i) "Landscape Waste" means all accumulations of grass or shrubbery cuttings, leaves, tree limbs aquatic weeds, and other material accumulated as the result of the care of lawns, shrubbery, vines and trees, and as otherwise described at 415 ILCS 5/3.270.
- j) "Municipal Waste" means garbage, refuse, industrial, lunchroom or other waste, and other material described at 415 ILCS 5/3.290 resulting from operation of residential, municipal, commercial or institutional establishments and from community activities; provided, however, that "Municipal Waste" shall not include Recyclable Materials or Organic Material.
- k) "Organic Material" means food scraps as described at 415 ILCS 5/3.197, and Landscape Waste as defined herein.
- l) "Prior Rate" shall mean either: (i) the rate paid by a Customer in the calendar month prior to the date on which the Contractor commenced the provision of Commercial Services to that Customer, for services similar to the Commercial Services; or (ii) for a Customer who utilizes Contractor's services as of the date of this Agreement, the rate paid by such Customer on the date of this Agreement.
- m) "Private Service" means the collection of refuse and waste by the Contractor from Customers, pursuant to separate agreements or arrangements between a Customer and the Contractor.
- n) "Recyclable Materials" means aluminum cans, tin, steel and bi-metal cans; clear, green and brown glass bottles and jars; newspapers, magazines, and mixed papers (junk mail, chipboard, white and colored paper, brown Kraft paper bags); corrugated cardboard, #1 PETE plastic containers and #2 HPDE plastic containers, #3-#5 plastic containers and bags, aseptic beverage containers, six-pack rings and twelve-pack bands, Organic Material, and any other material or materials which the Village and Contractor mutually identify as a "Recyclable Material" subsequent to the execution of this Agreement, pursuant to Section 8.1(c) of this Agreement.
- o) "State" means the State of Illinois.
- p) "SWALCO" means the Solid Waste Agency of Lake County.

**Section 1.2 Rules of Construction**

- a) Grammatical Usage and Construction. In construing this Agreement, feminine or neuter pronouns shall be substituted for those masculine in form and vice versa, and plural terms

shall be substituted for singular and singular for plural, in any place in which the context so requires.

- b) Defined Terms. All capitalized words and phrases throughout this Agreement shall have the meanings set forth in Section 1.1 and the other provisions of this Agreement.
- c) Headings. The headings, titles, and captions in this Agreement have been inserted only for convenience and in no way define, limit, extend, or describe the scope or intent of this Agreement.
- d) Calendar Days. Unless otherwise provided in this Agreement, any reference in this Agreement to "day" or "days" shall mean calendar days and not business days. If the date for giving of any notice required to be given, or the performance of any obligation, under this Agreement falls on a Saturday, Sunday, or federal holiday, then the notice or obligation may be given or performed on the next business day after that Saturday, Sunday, or federal holiday. Where used in this Agreement, a "business day" is any day other than a Saturday, Sunday, or federal holiday.

## ARTICLE II SCOPE OF SERVICES

### **Section 2.1 Commercial Services**

The Contractor shall provide, pursuant to this Agreement, complete service for designated collection from commercial, industrial, or institutional entities, and, transportation and disposal (or sale) of, Commercial Materials from Customers (collectively, the "Commercial Services"). The Contractor shall be the sole and exclusive provider of Commercial Services under this Agreement.

### **Section 2.2 Private Services**

The Contractor shall, on its own behalf (and not on behalf of the Village), provide for the collection, transportation and disposal of all Private Service waste in accordance with the provisions of Section 4.2 of this Agreement.

### **Section 2.3 Revenue Collection**

The Contractor shall, pursuant to the agreement, provide revenue collection services in accordance with Article VI for all Commercial Services provided under this Agreement.

### **Section 2.4 Excluded Services**

Notwithstanding any provision of this Agreement to the contrary, the following services are not included within this Agreement:

- a) Solid waste collection, transportation and disposal from all single-family, multi-family and townhome dwellings within the Village;
- b) Temporary roll-off services;
- c) Construction/demolition debris collection and disposal services;

d) Commercial Services to any multi-family residential dwelling units located in the Village that utilize "Individual Refuse Collection," as that term is defined in the Village Code, except upon prior express written authorization by the Village; and

e) Commercial Services otherwise exempt from this Agreement by the Village Code, as it may be amended from time to time.

**Section 2.5 Exempted Services**

Solid waste collection, transportation and disposal from any Customer not included within this Agreement if the Village approves the exemption of any such services under the terms of the applicable provisions of the Village Code.

**Section 2.6 Modification of Required Services**

The Village reserves the right to adjust or expand the scope of the Commercial Services required under this Agreement, upon thirty (30) days prior written notice to the Contractor, to accommodate changes in the definition of Commercial Materials or changes in the scope of services provided by SWALCO. The Village and the Contractor agree to negotiate an equitable adjustment to the Contractor's compensation under this Agreement required as a result of any adjustment or expansion of the scope of the Commercial Services.

**Section 2.7 Integration of RFP**

The terms of the Request for Proposals issued on April 30, 2013 ("RFP") are hereby incorporated as if fully set forth herein. Should any terms of the RFP directly conflict with the terms of this Agreement, the terms of this Agreement shall control.

**ARTICLE III  
TERM OF SOLID WASTE & RECYCLING SERVICES AGREEMENT**

**Section 3.1 Term of Agreement**

The initial term of this Agreement shall commence on February 1, 2015 ("Commencement Date"), and end on January 31, 2020. Upon the mutual written consent of both parties, this Agreement can be extended for one-year periods for up to five (5) additional calendar years. In accordance with the Illinois Municipal Code (65 ILCS 5/22-19-1) the Commencement Date for services under this Agreement shall not begin until 15 months after the date the Village approves this Agreement, which is accounted for in the Commencement Date established in this section.

At the end of any contract term the Village reserves the right to extend this Agreement for a period of up to ninety (90) days for the purpose of arranging to place a new contract in effect.

**Section 3.2 Assignment**

This rights and obligations under this Agreement may not be assigned or transferred by the Contractor to any other party, without the written consent of the Village, which shall not be unreasonably withheld. Any assignee or transferee must demonstrate to the Village's satisfaction that: (i) it is capable of providing the Commercial Service identified herein and otherwise abiding by the terms of this Agreement, and (ii) such assignee or transferee has the financial wherewithal to comply with the obligations and terms set forth herein.

**ARTICLE IV  
SOLID WASTE COLLECTION AND DISPOSAL**

**Section 4.1 Commercial Service**

- a) Commercial Materials shall be collected by the Contractor in accordance with the schedule provided in Section 4.3 of this Agreement, and transported in accordance with Section 4.4 of this Agreement.
- b) Beginning on the Commencement Date, the Contractor shall provide Commercial Services to all Customers within the Village which have not been approved for an exemption in accordance with Section 2.5 of this Agreement.

**Section 4.2 Private Service**

- a) In addition to the Commercial Services provided by the Contractor under Section 4.1 of this Agreement, the Contractor may also make available, to all Customers, Private Service for all types of solid waste not otherwise covered by this Agreement, including, but not limited to, Hazardous Waste as defined by the Resource Conservation and Recovery Act, 42 U.S.C. §§6901-6992k.
- b) For services provided pursuant to this Section 4.2, the Contractor agrees to keep available tractor loaders, trailers, and other necessary equipment. Upon the request of a Customer, the Contractor shall furnish an estimate for the cost of removal of any materials in connection with Private Services to be provided by the Contractor.
- c) Nothing in this Agreement provides for exclusive rights of the Contractor to provide Private Service in the Village.

**Section 4.3 Schedule and Location of Collection**

- a) Commercial Materials shall be collected in compliance with all applicable provisions of the Village Code, including, without limitation, Chapter 20 of the Village Code. The Contractor acknowledges that the Village may amend certain provisions of the Village Code in conjunction with the Village's consideration of the award of this Agreement, and agrees to comply with the applicable provisions of the Village Code, as may be amended.
- b) Private Service waste shall be collected in accordance with the provisions of Section 4.2 of this Agreement on days to be mutually agreed upon by the respective Customer and the Contractor.
- c) The Village agrees to cooperate in providing information, if any, relating to property vacancies or any other information that will assist the Contractor in the performance of its obligations under this Agreement.

**Section 4.4 Disposal**

- a) Municipal Waste.

- 1) Municipal Waste shall be removed from the Village at the close of each day of collection, and shall be disposed of in a lawful manner at the Contractor's sole cost and expense.
  - 2) Not less than 60 days prior to the date on which the Contractor commences disposal of Municipal Waste at a particular location, the Contractor shall notify the Village in writing of the designation of such location. Notwithstanding the foregoing, the Village reserves the right to reject any proposed location, or to direct the location of disposal to an alternate facility that, as mutually agreed by both parties, is more cost effective than the facility previously being used by the Contractor under this Agreement.
- b) Recyclable Materials.
- 1) All Recyclable Materials shall be collected, separated and otherwise treated so as to facilitate the sale of Recyclable Materials to end-use markets or to Recyclable Material brokers. All collected Recyclable Materials shall be recycled regardless of the income received or the cost to the Contractor resulting from the sale of the Recyclable Materials.
  - 2) No Recyclable Materials may be deposited in a landfill or waste incinerator.
- c) Organic Material.
- 1) All Organic Material shall be disposed of in a lawful manner at the Contractor's sole cost and expense.
  - 2) Not less than 60 days prior to the date on which the Contractor commences disposal of Organic Material at a particular location, the Contractor shall notify the Village in writing of the designation of such location. Notwithstanding the foregoing, the Village reserves the right to reject any proposed location, or to direct the location of disposal to an alternate Organic Material facility that, in the sole opinion of the Village, is more cost effective than the facility previously being used by the Contractor under this Agreement.
  - 3) No Organic Material may be disposed of at a landfill or solid waste incinerator, unless otherwise authorized by the Illinois Environmental Protection Act (415 ILCS 5/1 et seq.) and approved in advance and in writing by the Village.
- d) In the event that the Village directs the disposal of any Commercial Materials to any alternate facility pursuant to this Section 4.4, the Village and the Contractor agree to establish an equitable adjustment to the Contractor's compensation under this Agreement as a result of an increase or decrease in realized costs.

#### **Section 4.5 Solid Waste Collection Data**

- a) The Contractor shall provide to the Village, on a quarterly basis, a report on: (i) the quantity (in tons) of all commercial solid waste collected within the Village; (ii) recycling diversion data, including the quantity (in tons) of commercial recyclables and Organic Material recycled and composted, and the number of business accounts that have recycling containers; and (iii) a breakdown of the number of Customers.

- b) The Contractor shall prepare and deliver to the Village, at least once every 12 calendar months, a service matrix, which shall include, without limitation: the name, service address, billing address (if different), contact person, telephone number and fax number of each Customer; the type and quantities of containers located on each Customer's site; the frequency of collections from each site; and an itemization of the days of collections and the current service rate applicable to each Customer.
- c) The Contractor acknowledges and agrees that program data and other public information will be provided by the Village to each Customer upon request.

## ARTICLE V COMPENSATION

### Section 5.1 Commercial Service

- a) For providing for, pursuant to this Agreement, the collection, transportation and disposal (or sale) of commercial refuse and recyclables, and for providing revenue collection services, the Contractor shall receive as compensation from each Customer the rates set forth in Exhibit A attached to this Agreement, except as provided in Section 5.1(b) of this Agreement, and as adjusted pursuant to Section 5.1(c) of this Agreement.
- b) Notwithstanding the rates set forth in Exhibit A to this Agreement, if a Customer's Prior Rate is lower than the applicable rate set forth in Exhibit A, that Customer shall not be charged more than its Prior Rate for the Commercial Services during the period through and including January 31, 2016. Beginning on February 1, 2016, all Customers shall pay the applicable rate set forth in Exhibit A, as adjusted pursuant to Section 5.1(c) of this Agreement.
- c) The rates identified in Exhibit A will adjust annually based on the change in the 12 previous months (January through December) Consumer Price Index (CPI-U) for Chicago-Kenosha-Gary - All Items, each February, beginning in 2016; provided, however, that the adjustment made pursuant to this Section 5.1(c) shall not be less than 2%, nor more than 3.5%. The Contractor shall notify the Village and any Customer within the Village in writing at least sixty (60) days prior to the effective date of any proposed increase in charges and such increase in charges shall not be effective until approved by the Village in writing as complying with the terms of this Agreement.

In the event there is a change of any nature (by Modification, addition or deletion of any provisions) in any federal, state or local law, ordinance or regulation that increases or imposes taxes or surcharges, and such event causes, or will cause, an increase in the Contractor's future cost of performing its obligations under this Agreement relating specifically to the Commercial Service or similar activities (not including private host agreements), the parties agree to negotiate a price adjustment if warranted. The Contractor shall notify the Village of such a change in law and shall submit documentation of the cost increases and the resulting impact on rates in Exhibit A. The parties will have sixty (60) days to mutually agree on a price adjustment for future services pursuant to this Agreement.

- d) The Contractor acknowledges and agrees that pursuant to Exhibit A of this Agreement, there shall be no charge for the weekly collection of Recyclable Materials from any individual Customer using one 96-gallon toter container, 1.0 cubic yard container, or a

1.5 cubic yard container. All other collections of Recyclable Materials shall be charged at the rates set forth in Exhibit A of this Agreement, including, without limitation, collections from Customers using multiple 96-gallon totes, 1.0 cubic yard containers, or a 1.5 cubic yard containers.

- e) The Contractor is responsible for determining if each Customer is receiving sufficient service in terms of frequency of collection and on-site containers, as required under Chapter 8.24 of the Village Code. If the Contractor deems that the capacity of on-site storage at the site of a Customer is exceeded regularly, it shall recommend to the Customer an increase in collection frequency or an upgrade of the container size.
- f) In the event that a Customer is unable to utilize any of the containers identified in Exhibit A of this Agreement, the Contractor shall charge that Customer pro-rated rates for the provisions of the Commercial Services, based upon the size and type of containers utilized by that Customer.

### **Section 5.2 Administrative Fee**

The Contractor shall remit to the Village an administrative fee of \$10,000 per year, in four equal quarterly payments. The administrative fee shall be included in the rates listed in Exhibit A of this Agreement and shall not be separately listed on the monthly bills to the Customers. The administrative fee shall be adjusted annually based on the change in the 12 previous months (January through December) Consumer Price Index (CPI-U) for the Chicago-Kenosha-Gary – All Items, each February, beginning in 2016; provided, however, that the adjustment made pursuant to this Section 5.2 shall not be less than 2% nor more than 3.5%.

## **ARTICLE VI**

### **REVENUE COLLECTION**

#### **Section 6.1 Billing of Accounts**

Commercial Services provided under Section 4.1 of this Agreement are provided by the Contractor, pursuant to this Agreement. The Contractor shall perform, on a monthly basis in advance of services provided and pursuant to this Agreement, the billing and collection of Customers of all rates and charges relating to such Commercial Services. The Contractor shall not impose any late fees on accounts with a past due balance but shall, however, have the right to suspend service on accounts that reach a past due balance of 60 days. The Contractor shall notify the Village of all delinquent accounts where service may ultimately be affected or suspended due to a past due balance before any suspension of service. Prior to the suspension of service to any account covered under this agreement, and after 60 days of a past due balance, the Contractor agrees to make an effort to contact delinquent account and make a final attempt to collect on the past due balance prior to suspension of service. This effort may include the use of a letter and or phone call informing the account of the balance due allowing said account to make payment in order to avoid a potential suspension of service.

#### **Section 6.2 Commercial Service**

The Contractor shall, on a monthly basis, bill each Customer, an amount payable for the collection, transportation and disposal (or sale) of Commercial Service waste and recycling for the following month. Each bill shall be payable by the Customer within thirty (30) days.

**Section 6.3 Private Service**

The Contractor may, but is not required to, include as an item on each Customer's bill an amount payable to the Contractor for the collection, transportation, and disposal of Private Service waste. The Contractor shall retain all amounts collected from each commercial entity pursuant to this Section 6.3. Alternatively, the Contractor may bill Customer separately for Private Service.

**ARTICLE VII  
TITLE TO COMMERCIAL MATERIALS**

**Section 7.1 Title to Commercial Materials**

The Contractor shall retain title to all Commercial Materials collected pursuant to this Agreement.

**ARTICLE VIII  
RECYCLABLE MATERIALS**

**Section 8.1 Recyclable Materials Collection Service**

- a) Commercial Recycling Service. The Contractor shall collect and manage Recyclable Materials in accordance with Article IV of this Agreement.
- b) Recyclable Materials Collection Data. The Contractor shall provide to the Village and SWALCO a quarterly report on the weight (in tons) of all Recyclable Materials collected from Customers under this Agreement. The report shall also contain accurate data regarding the number of Customers from which Recyclable Materials have been collected, in order to determine participation and diversion rates.
- c) The Village shall have the right to add materials to the list of Recyclable Materials listed in Section 1.1(n) of this Agreement, pending the availability of disposal or resale markets for the added materials and the prior approval of the Contractor.
- d) The Contractor, pursuant to this Agreement, shall ensure that all Recyclable Materials collected are properly processed and marketed. No collected Recyclable Materials shall be landfilled or incinerated, unless advance authorization to do so is given by the corporate authorities of the Village.
- e) The Contractor shall sell all Recyclable Materials, other than Organic Material, that are collected under this Agreement. If changes in the market for the sale of any particular Recyclable Material makes continued collection of such Recyclable Material not economically feasible, the Contractor shall consult with the Village regarding the market changes of the affected Recyclable Material. The Village may, in its discretion, agree to remove from the list of Recyclable Materials any economically infeasible item upon such market change.
- f) The Contractor agrees to meet periodically with representatives from the Village and the Libertyville business community to: (1) review the provision of commercial recycling pursuant to this Agreement; and (2) discuss the implementation of alternative approaches, programs and partnerships to improve the quality, quantity, and efficiency of commercial recycling and other sustainability initiatives within the Village.

- g) The Contractor shall provide document destruction services on two (2) service days each calendar year, which services shall be available for both commercial businesses and residents of the Village. Each service day shall be defined as the provision of document destruction services at a location within the corporate limits of the Village for a period of three (3) consecutive hours. The specific days, time periods, and location for each such service day shall be mutually agreed to by both parties. Unless otherwise agreed by the parties, service days shall occur on a Saturday, and the times of such service days shall not commence before 9:00 AM or conclude after 3:00 PM on any given service day. Material accepted shall include standard office paper and file folders. All material shall be free of binders and binder clips or any other materials that could compromise the integrity of the Contractor's equipment. Materials not accepted shall be determined solely by the Contractor. Each participating business or resident shall be limited to ten (10) boxes each.
- h) The Contractor agrees to submit to the Village an annual donation in the sum of \$2,500 per contract year intended for recycling education amongst the business community within the Village. The Village shall use this annual donation in a matter in which it deems appropriate.

## **Section 8.2 Recycling Marketing and Education**

The Contractor shall make reasonable efforts to encourage all Customers to participate in the weekly collection of Recyclable Materials. Such reasonable efforts shall include without limitation meeting personally with representatives of each eligible Customer to provide each such Customer with information regarding recycling services under this Agreement. It is expected that: (a) by January 31, 2016 and at the end of each service year thereafter, at least 50% of all Customers will be receiving services from Contractor for the weekly collection of Recyclable Materials, and (b) by January 31, 2018, at least 75% of all Customers will be receiving services from Contractor for the weekly collection of Recyclable Materials. In the event that the Customer participation rate in the service providing weekly collection of Recyclable Materials does not average at least 75% [as reflected in the quarterly reports to be provided pursuant to Section 8.1(b)], then Contractor shall meet with the Village on a semi-annual basis to review recycling participation among Customers and identify additional steps and programs that Contractor could reasonably undertake to enhance participation among Customers in the collection of Recyclable Materials.

## **ARTICLE IX CUSTOMER SERVICE STANDARDS**

### **Section 9.1 Service Options; Changes in Service**

The Contractor at its expense, shall be required to develop, print and distribute to all existing Customers, prior to the Commencement Date, and to all new Customers establishing regular service during the term of this Agreement, a brochure approved by the Village explaining the solid waste and recycling programs provided under this Agreement and the procedures for the Customers to modify or cancel the services provided by the Contractor. The brochure shall be updated and distributed whenever there is a change in the service or programs provided, or as directed by the Village.

### **Section 9.2 Office and Telephone**

The Contractor shall maintain an office and telephone, toll free, for receipt of service calls or complaints, and shall be available for such calls on all business days from 7:00 a.m. to 5:00 p.m. The

Contractor shall retain the services of at least one temporary full-time customer service representative to handle the addition of Customers to the Contractor's service base during the first ninety days of the term of this Agreement. Additional customer service representatives shall be added as necessary to meet the minimum customer service standards set forth in Section 9.3 of this Agreement.

### **Section 9.3 Minimum Customer Service Standards**

- a) **Complaints Generally.** The Contractor shall cooperate with the Village in minimizing complaints from the Customers. A consistent pattern of failure to address complaints, or violations of Sections 9.3(a) through 9.3(g) of this Agreement, shall entitle the Village to exercise the remedies provided to it pursuant to Article X of this Agreement.
- b) **Initial Response.** The Contractor shall give prompt and courteous attention to all Customer complaints that it may receive. The Contractor shall respond personally to every Customer from whom a complaint is received within twenty-four (24) hours or the next business day after receipt of such complaint; except that if the Contractor receives a complaint about a missed scheduled collection, then the Contractor shall immediately investigate such complaint and, if such scheduled collection was not made in accordance with the terms of this Agreement, then the Contractor shall cause such collection to be made within twenty-four (24) hours or the next business day after receipt of such complaint.

Where any dispute arises between a Customer and the Contractor as to the manner of placing waste or the nature of the contents or the like, the Contractor shall, and does hereby agree in the specific instance to, remove the waste even though, in its opinion, it is improperly placed or contained. Thereafter, the Contractor may seek resolution of any dispute through court, mediation, or arbitration proceedings, at its election.

- c) **Answering Calls.** During normal business hours and under normal operating conditions, a customer service representative employed by the Contractor shall answer the telephone access line. Ninety percent (90%) of the calls made to the customer service center shall be answered within thirty (30) seconds. The thirty (30) second maximum includes wait time or time spent 'holding' for a customer service representative.
- d) **Busy Signals.** Customers placing calls to the customer service center shall receive a busy signal no more than five percent (5%) of the time.
- e) **Transferring Calls.** During normal business hours, if after initially addressing a Customer's concern, the customer service representative determines that the call should be transferred to another representative of the Contractor, the Customer shall be connected with a customer service representative within thirty (30) seconds thereof.
- f) **Hang-ups.** Incoming telephone calls from Customers shall not exceed an abandonment rate of five percent (5%).
- g) **Compliance Rate.** During normal business hours, the minimum standards set forth in this Section 9.3 shall be met no less than ninety percent (90%) of the time, measured on a monthly basis. Reports shall be provided to the Village on a monthly basis providing a log of inquiries received and action taken to address each complaint and call. The Contractor shall also distribute to the Village a log providing data which tracks the customer service representatives' adherence to the standards set forth in Section 9.3(a)

through 9.3(g) of this Agreement, as the Village may request in its discretion, on a monthly basis. If the records indicate a clear failure of the Contractor to comply with the minimum standards set forth in Sections 9.3(a) through 9.3(g) of this Agreement, then the Village reserves the right to require the Contractor to implement modifications to its customer service center to bring it into compliance with the requirements of this Section 9.3.

**Section 9.4 Customer Service Survey**

The Contractor will, every other calendar year, conduct a Customer service survey to assess the Contractor's service performance under the Agreement, in a form and content, administered in a manner to be approved in advance by the Village.

**Section 9.5 Liaison**

The Contractor shall designate in writing an individual to serve as agent for the Contractor and liaison between the Contractor and the Village who will be primarily responsible for responding to any matters related to the services set forth in this Contract in an expeditious and responsive manner.

**ARTICLE X**  
**BREACH; EVENTS OF DEFAULT AND REMEDIES**

**Section 10.1 Breach by Contractor**

Each of the following shall constitute a Breach on the part of the Contractor:

- a) Repeated failure of the Contractor to respond timely to and address Customer complaints in keeping with the customer service standards in Article IX.
- b) Repeated failure of the Contractor to comply with Section 9.3(g) of this Agreement;
- c) Failure of the Contractor to perform in a timely fashion any obligation under this Agreement not referenced within Sections 10.1(a) or 10.1(b) of this Agreement, except that such failure shall constitute a Breach only if such failure remains uncured for seven (7) business days after notice to the Contractor from the Village of such failure; provided however, that this seven (7) business day notice with opportunity to cure shall not be required in the event of persistent and repeated failure to perform; or
- d) Any of the following: (1) The Contractor's being or becoming insolvent or bankrupt or ceasing to pay its debts as they mature or making an arrangement with or for the benefit of its creditors or consenting to or acquiescing in the appointment of a receiver, trustee or liquidator for a substantial part of its property, (2) a bankruptcy, reorganization, insolvency, arrangement or similar proceeding being instituted by the Contractor under the laws of any jurisdiction, (3) a bankruptcy, reorganization, insolvency, arrangement or similar proceeding being instituted against the Contractor under the laws of any jurisdiction, which proceeding has not been dismissed within one hundred twenty (120) days, (4) any action or answer by the Contractor approving of, consenting to or acquiescing in any such proceeding, or (5) the levy of any distress, execution or attachment upon the property of the Contractor which shall (or which reasonably might be expected to) substantially interfere with its performance under this Agreement.

**Section 10.2 Events of Default and Remedies of Village**

- a) If a Breach occurs under Section 10.1 of this Agreement, the Village may declare an Event of Default or Breach and may thereafter exercise any one or more of the following remedies:
  - 1) The Village may terminate this Agreement immediately, upon notice to the Contractor. Subject to the provisions of subparagraph (5) below, upon such termination, the Contractor shall cease providing all services under this Agreement.
  - 2) The Village may seek and recover from the Contractor any unpaid amounts due the Village along with all of its substantiated costs for the failure of the Contractor to perform any obligation under this Agreement, and all damages, whether based upon contract, work stoppage, strike, Contractor negligence (including tort), warranty, delay or otherwise, arising out of the performance or non-performance by the Contractor of its obligations under this Agreement, and whether incidental, consequential, indirect or punitive, resulting from the Breach.

- 3) The Village may (A) call upon the sureties to perform their obligations under the performance bond, or (B) in the alternative, after releasing the sureties from their obligations under the performance bond, take over and perform the required services by its own devices, or may enter into a new agreement for the required services, or any portion thereof, or may use such other methods as shall be required in the opinion of the Village for the performance of the required services.
  - 4) The Village shall have the power to proceed with any right or remedy granted by federal laws and laws of the State as it may deem best, including any suit, action or special proceeding in equity or at law for the specific performance of any covenant or agreement contained herein or for the enforcement of any proper legal or equitable remedy as the Village shall deem most effectual to protect the rights aforesaid, insofar as such may be authorized by law.
  - 5) Upon any such termination of this Agreement, the Contractor shall, for a period to be determined by the Village in its sole and absolute discretion, but not longer than six (6) months, continue to perform the contractual services during which period the businesses shall pay the Contractor its scheduled compensation.
- b) No remedy by the terms of this Agreement conferred upon or reserved to the Village is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy given to the Village. No delay or omission to exercise any right or power accruing upon any Event of Default or Breach shall impair any such right or power or shall be construed to be a waiver of any such Event of Default or Breach or acquiescence therein, and every such right and power may be exercised from time to time and as often as may be deemed expedient. No waiver of any Event of Default or Breach shall extend to or shall affect any subsequent default or Event of Default or Breach or shall impair any rights or remedies consequent thereto.
  - c) If the Contractor misses a collection under the Commercial Service, the collection must be corrected within 24 hours of the reported missed collection, or a charge of \$10 per missed collection will be charged to the Contractor; provided, however, that the Contractor shall not be charged under this Section 10.2(c) for collections missed due to a labor dispute involving the Contractor's labor force if the missed collection is rectified within seven (7) days after the missed collection. All charges levied against the Contractor under this Section 10.2(c) shall be credited to the affected Customer's account within 30 days after receipt of an invoice therefore.
  - d) In the event of a strike or other labor stoppage, Contractor shall notify the Village within 24 hours after commencement of the strike or labor stoppage. If such strike or labor stoppage does not end within seven (7) business days of such notification, the Contractor will provide the Village with refuse collection dumpsters located in at least four (4) geographic locations for commercial customer drop-offs, which locations shall be mutually acceptable to the parties. In the event of a strike, that does not end within 14 days of notification, the Contractor will agree to meet with the Village and negotiate the potential provision of a credit for commercial customers under the agreement due to non-collection; provided however that any credit given, if any, shall be mutually agreed to by both parties.
  - e) This Section 10.2 shall survive the termination of this Agreement.

### **Section 10.3 Force Majeure**

Neither the Contractor nor Village shall be liable for failure to perform their duties or for any resulting damage or loss if such failure is caused by a catastrophe, terrorism, riot, war, fire, accident, act of God, or other similar contingency that is beyond the reasonable control of the Contractor or the Village including without limitation: extraordinary inclement weather; explosion; widespread lack of adequate fuel, power, raw materials, labor or transportation facilities; material changes in governmental laws, regulations, requirements, orders, or actions, the impact of which is unrelated to Contractor, the Village, or Contractor's or the Village's performance, or failure to perform; national defense requirements; injunctions or restraining orders; and labor trouble and strike. In the event the Contractor asserts a right to suspend performance under this Section, the Contractor shall (i) within twenty-four (24) hours after it has knowledge of the effective cause, notify the Village of the cause for suspension, the performance suspended and the anticipated duration of suspension and (ii) advise the Village when the suspending event has ended and when performance will be resumed. Once the suspending event ends, the Contractor shall promptly resume performance.

## **ARTICLE XI INSURANCE AND INDEMNIFICATION**

### **Section 11.1 Insurance**

- a) The Contractor shall maintain for the duration of this Agreement and any extensions thereof, insurance issued by a company or companies qualified to do business in the State of Illinois and that meet the requirements set forth in Exhibit B. The Contractor shall provide the Village with a certificate of insurance indicating that such insurance coverage meets the requirements contained in Exhibit B.
- b) Insurance premiums shall be paid by the Contractor and shall be without cost to the Village.

### **Section 11.2 Indemnification**

- a) The Contractor agrees to indemnify, defend and hold harmless the Village, its officials, employees, agents, representatives and attorneys, in both their official and individual capacities, from and against any and all injuries, deaths, claims, losses, damages, suits, demands, actions and causes of actions, expenses, fees, including attorneys' fees, and costs which may accrue against the Village in consequence of entering into or performance or breach of this Agreement or which may result from or arise out of any action or omission of the Contractor, its officers, employees, agents or subcontractors, including, without limitation, any action or omission related to the disposal of any Commercial Materials in a landfill.
- b) In the event that the Contractor does not undertake to defend or indemnify the Village unconditionally from and against any and all injuries, deaths, claims, losses, damages, suits, demands, actions and causes of actions, expenses, fees, including attorneys' fees, and costs which may accrue against the Village in consequence of entering into this Agreement (or in the event that the Contractor does not deliver written confirmation to the Village of such unconditional undertaking within 15 days after written request from the Village), the Village shall have the right to terminate this Agreement; provided,

however, that the Contractor's obligations under Section 11.2(a) shall survive any such termination.

## **ARTICLE XII MISCELLANEOUS**

### **Section 12.1 Non-Assignability**

The Contractor shall not assign this Agreement or any part thereof without the prior written consent of the Village, which approval shall not be unreasonably withheld. Approval, if any, for such assignment shall be made by the corporate authorities of the Village. The Contractor shall not assign or subcontract this Agreement or the work hereunder, or any part thereof, to any other person, firm, or corporation without prior written consent of the Village, but the Contractor may perform its obligations hereunder through its subsidiaries or divisions. Such assignment shall not relieve the Contractor from its obligations or change the terms of Agreement.

### **Section 12.2 Equal Employment Opportunity**

- a) In the event of the Contractor's noncompliance with the provisions of this Section 12.2, the Illinois Human Rights Act or the Illinois Department of Human Rights Rules and Regulations, the Contractor may be declared ineligible for future contracts or subcontracts with the State or any of its political subdivisions or municipal corporations, and this Agreement may be canceled or voided in whole or in part, and such other sanctions or penalties may be imposed or remedies invoked as provided by statute or regulation.
- b) During the performance of this Agreement, the Contractor agrees as follows:
  - 1) That it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, ancestry, age, order of protection status, marital status, physical or mental disability, military status, sexual orientation, or unfavorable discharge from military service; and further, that it will examine all job classifications to determine if minority persons or women are underutilized and will take appropriate affirmative action to rectify any such under-utilization.
  - 2) That, if it hires additional employees in order to perform this Agreement or any portion hereof, it will determine the availability (in accordance with the Illinois Department of Human Rights Rules and Regulations) of minorities and women in the area(s) from which it may reasonably recruit and it will hire for each job classification for which employees are hired in such a way that minorities and women are not under-utilized.
  - 3) That, in all solicitations or advertisements for employees placed by the Contractor or on the Contractor's behalf, the Contractor will state that all applicants will be afforded equal opportunity without discrimination because of race, color, religion, sex, national origin, ancestry, age, order of protection status, marital status, physical or mental disability, military status, sexual orientation, or unfavorable discharge from military service.

- 4) That the Contractor will send to each labor organization or representative thereof with which it is bound by a collective bargaining or other agreement or understanding, a notice advising such labor organization or representative of the Contractor's obligations under the Illinois Human Rights Act and the Illinois Department of Human Rights Rules and Regulations. If any such labor organization or representative fails or refuses to cooperate with the Contractor in its efforts to comply with such Act and Rules and Regulations, the Contractor will promptly notify the Illinois Department of Human Rights and the Village, and will recruit employees from other sources when necessary to fulfill the Contractor's obligations thereunder.
  - 5) That the Contractor shall submit reports as required by the Illinois Department of Human Rights Rules and Regulations, furnish all relevant information as may from time to time be requested by the Illinois Department of Human Rights or the Village, and in all respects comply with the Illinois Human Rights Act and the Illinois Department of Human Rights Rules and Regulations.
  - 6) That the Contractor shall permit access to all relevant books, records, accounts and work sites by personnel of the Village and the Illinois Department of Human Rights for purposes of investigation to ascertain compliance with the Illinois Human Rights Act and the Illinois Department of Human Rights Rules and Regulations.
  - 7) That the Contractor shall include, verbatim or by reference, the provisions of this Section 12.2 in every subcontract it awards under which any portion of the Agreement obligations are undertaken or assumed, so that such provisions will be binding upon each subcontractor. The Contractor will promptly notify the Village and the Illinois Department of Human Rights in the event any subcontractor fails or refuses to comply therewith. In addition, the Contractor will not utilize any subcontractor ineligible for contracts or subcontracts with the State or any of its political subdivisions or municipal corporations.
- c) During the term of this Agreement, the Contractor shall comply in all respects with the Equal Employment Opportunity Act. The Contractor shall have a written equal employment opportunity policy statement declaring that it does not discriminate on the basis of race, color, religion, sex, national origin, ancestry, age, order of protection status, marital status, physical or mental disability, military status, sexual orientation, or unfavorable discharge from military service. Findings of non-compliance with applicable State or federal equal employment opportunity laws and regulations may be sufficient reason for revocation or cancellation of this Agreement.

### **Section 12.3 Prevailing Wages**

- a) To the extent the Prevailing Wage Act or similar laws apply, not less than the prevailing rate of wages, as determined by the Village or the Illinois Department of Labor, or determined by a court on review, shall be paid to all laborers, workers and mechanics performing work under this Agreement. The Contractor and each subcontractor shall keep an accurate record showing the names and occupations of all laborers, workers, and mechanics employed by them on this Agreement and showing the actual hourly wages paid to each such person.

- b) To the extent applicable, the Contractor shall comply with all applicable provisions of the Illinois Prevailing Wage Act, 820 ILCS 130/0.01 et seq. In addition, the Contractor and each subcontractor shall preserve their weekly payroll records for a period of three (3) years after the date of termination of this Agreement.

#### **Section 12.4 Performance Bond**

The Contractor shall furnish a performance bond for the faithful performance of this Agreement, in substantially in the form attached to this Agreement as Exhibit C, to be executed by a responsible surety company and to be in the penal sum of \$200,000. Such performance bond shall be furnished annually by the Contractor for the following contract year, and shall indemnify the Village against any loss resulting from any failure of performance by the Contractor. The initial bond shall be posted on or before the Commencement Date, and each successive bond shall be posted not later than January 1 of each successive calendar year.

#### **Section 12.5 Equipment to be Used by Contractor**

- a) The Contractor agrees to collect all materials described in Section 4.1 of this Agreement in fully enclosed, leak proof, modern trucks. All vehicles and collection equipment will be kept in safe, operable and good condition and in a manner that does not result in any non-permissible discharges. Any equipment that is used by the Contractor, that is determined to be unsafe, or in an overall poor condition by the Village, shall be replaced at the request of the Village.
- b) Contractor shall provide collection containers to all Customers. Containers used in connection with the provision of Commercial Services by the Contractor pursuant to this Agreement shall be operable, safe and free of graffiti. Any container in disrepair of this sort shall be replaced within three (3) days of notification by the Village. Containers with plastic lids that are ill-fitted or warping shall be replaced within three (3) days of notification by the Village, in order to maintain a tight fitting seal to prevent access by pests. All containers will be adequately demarcated with the Contractor's logo. Each container will have an inventory control number demarcated on each container that is cross-referenced to the service matrix.
- c) All equipment used by Contractor for the provision of Commercial Services and Private Services pursuant to this Agreement shall be properly licensed by the State and shall conform to all federal and State equipment safety standards.
- d) Unless otherwise agreed to by the Village, (1) all primary collection trucks used by the Contractor for the provision of Commercial Services shall operate on Compressed Natural Gas ("CNG"); and (2) all vehicles used by supervisors of the Contractor in connection with the Commercial Services shall either be hybrid gasoline/electric vehicles or shall operate on CNG.

#### **Section 12.6 Compliance with Laws**

- a) Notwithstanding any other provisions in this Agreement, the Contractor shall comply at all times with all applicable federal, State and municipal laws, ordinances and regulations at any time applicable to the Contractor's operations under this Agreement, with no increase to the Contractor's compensation as set forth in this Agreement.

- b) The Contractor shall obtain, at its own expense, all permits and licenses required by law or ordinance and maintain the same in full force and effect.

**Section 12.7 Care and Performance**

- a) The Contractor shall undertake to perform all services rendered hereunder in a neat, thorough and competent manner, without supervision by the Village, and to use care and diligence in the performance of all specified services and to provide neat, orderly, uniformed and courteous employees and personnel on its crews.
- b) The Contractor shall be liable to the Village for damage to Village rights-of-way caused in connection with the provision of the Commercial Services or Private Services, ordinary wear and tear excepted.
- c) To the extent that the Contractor or its employees or agents violate any provisions on the Village Code, the Contractor shall be liable for fines due under the Village Code arising in the course of its provision of services under this Agreement.
- d) The Contractor acknowledges, and the Parties agree that, with respect to the Commercial Services to be provided to Customers under this Agreement, the Customers are third-party beneficiaries of this Agreement.

**Section 12.8 No Alcohol or Drugs**

The Contractor shall prohibit and use its best efforts to enforce the prohibition of any drinking of alcoholic beverages or use of illegal drugs by its drivers and employees while on duty or in the course of performing their duties under this Agreement.

**Section 12.9 Governing Law**

This Agreement and the rights of the Village and the Contractor under this Agreement shall be interpreted according to the internal laws, but not the conflict of laws rules, of the State of Illinois.

**Section 12.10 Severability**

The provisions of this Agreement shall be interpreted when possible to sustain their legality and enforceability as a whole. In the event any provision of this Agreement shall be held invalid, illegal, or unenforceable by a court of competent jurisdiction, in whole or in part, neither the validity of the remaining part of such provision, nor the validity of any other provisions of this Agreement, shall be in any way affected thereby. The unenforceability of any provision of this Agreement in a specific situation shall not affect the enforceability of that provision in any other situation.

**Section 12.11 Entire Agreement**

This Agreement sets forth the entire agreement of the Village and the Contractor with respect to the provision of the Commercial Services and compensation therefore, and there are no other understandings or agreements, oral or written, between the Village and the Contractor with respect to the Commercial Services and the compensation therefore, nor was the making and execution of this Agreement induced by any representation, statement, warranty, agreement, or action other than those expressed or explicitly referenced herein.

## **Section 12.12 Notices**

All notices required or permitted to be given under this Agreement shall be in writing and shall be delivered (i) personally, (ii) by a reputable overnight courier or (iii) by certified mail, return receipt requested, and deposited in the U.S. mail, postage prepaid. Unless otherwise expressly provided in this Agreement, notices shall be deemed received upon the earlier of (a) actual receipt; (b) one business day after deposit with an overnight courier as evidenced by a receipt of deposit; or (c) three business days following deposit in the U.S. mail, as evidenced by a return receipt. By notice complying with the requirements of this Section, each party shall have the right to change the address or addressee, or both, for all future notices and communications to the other party but no notice of a change of address or addressee shall be effective until actually received.

Notices and communications to the Village shall be addressed to, and delivered at, the following address:

Village of Libertyville  
118 W. Cook Ave.  
Libertyville, IL 60048  
Attention: Assistant Village Administrator

Notices and communications to the Contractor shall be addressed to, and delivered at, the following address:

Groot Industries, Inc.  
2500 Landmeier Road  
Elk Grove IL 60007  
Attention: Mr. Josh Molnar

## **Section 12.13 Publicity**

The Village's name or insignia, photographs of the Village, or any other publicity pertaining to the provision of the Commercial Services shall not be used in any magazine, trade paper, newspaper, or other medium without the express written consent of the Village.

## **Section 12.14 No Interpretation against Drafter**

This Agreement has been negotiated by all Parties and shall not be construed against any Party as the drafter of this Agreement.

## **Section 12.15 Independent Contractor**

Contractor acknowledges and agrees that the relationship of the parties hereunder shall be that of independent contractor and that neither Contractor nor its employees shall be deemed to be an employee of the Village for any reason whatsoever. Neither Contractor nor Contractor's employees shall be entitled to any Village employment rights or benefits whatsoever. Contractor is only authorized to operate pursuant to this Agreement, and shall not be deemed an Agent of the Village when engaging in the activities authorized hereunder.

*[Signature page to follow]*

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives, all on the day and year first above written.

**CONTRACTOR**

By: 

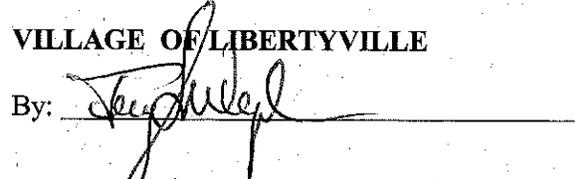
Its: Pres.

ATTEST

By: 

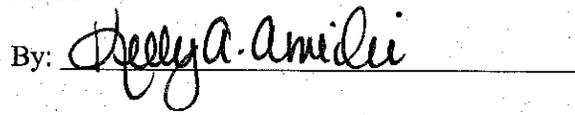
Its: CEO

**VILLAGE OF LIBERTYVILLE**

By: 

Its: Village President

ATTEST:

By: 

Its: Asst. Village Administrator

**EXHIBIT A**  
**PRICING SHEETS**

**APPENDIX A-1**

**COST PROPOSAL**

**COMMERCIAL SOLID WASTE HAULING & DISPOSAL SERVICES**

**(FIVE-YEAR AGREEMENT, PRICING EFFECTIVE February 1, 2015)**

<u>Container Size</u>	<u>Frequency of Service</u>						
	<u>1 x Wk</u>	<u>2 x Wk</u>	<u>3 x Wk</u>	<u>4 x Wk</u>	<u>5 x Wk</u>	<u>6 x Wk</u>	<u>7 x Wk</u>
65 gallon carts	\$ <u>28.00</u>	<u>35.00</u>	<u>40.00</u>	<u>45.00</u>	<u>50.00</u>	<u>55.00</u>	n/a
95 gallon carts	\$ <u>28.00</u>	<u>35.00</u>	<u>40.00</u>	<u>45.00</u>	<u>50.00</u>	<u>55.00</u>	n/a
1 cubic yard	\$ <u>38.00</u>	<u>71.00</u>	<u>80.00</u>	<u>87.00</u>	<u>94.00</u>	<u>101.00</u>	n/a
*1 cy compacted	\$ <u>38.00</u>	<u>71.00</u>	<u>80.00</u>	<u>87.00</u>	<u>94.00</u>	<u>101.00</u>	n/a
1.5 cubic yards	\$ <u>39.00</u>	<u>75.00</u>	<u>85.00</u>	<u>93.00</u>	<u>101.00</u>	<u>109.00</u>	n/a
*1.5 cy compacted	\$ <u>39.00</u>	<u>75.00</u>	<u>85.00</u>	<u>93.00</u>	<u>101.00</u>	<u>109.00</u>	n/a
2 cubic yards	\$ <u>40.00</u>	<u>80.00</u>	<u>120.00</u>	<u>160.00</u>	<u>175.00</u>	<u>200.00</u>	n/a
*2 cy compacted	\$ <u>65.00</u>	<u>120.00</u>	<u>170.00</u>	<u>220.00</u>	<u>270.00</u>	<u>320.00</u>	n/a
4 cubic yards	\$ <u>60.00</u>	<u>120.00</u>	<u>180.00</u>	<u>220.00</u>	<u>270.00</u>	<u>320.00</u>	n/a
6 cubic yards	\$ <u>90.00</u>	<u>180.00</u>	<u>270.00</u>	<u>330.00</u>	<u>390.00</u>	<u>430.00</u>	n/a
*6 cy compacted	\$ <u>150.00</u>	<u>290.00</u>	<u>430.00</u>	<u>540.00</u>	<u>650.00</u>	<u>760.00</u>	n/a
8 cubic yards	\$ <u>115.00</u>	<u>230.00</u>	<u>345.00</u>	<u>460.00</u>	<u>540.00</u>	<u>600.00</u>	n/a
10 cubic yards	\$ <u>140.00</u>	<u>280.00</u>	<u>420.00</u>	<u>560.00</u>	<u>640.00</u>	<u>700.00</u>	n/a

	<u>Collection Only</u>	<u>Leased Service</u>
20 yard compaction equipment	\$ <u>198.00</u> per haul \$49/ton	\$ <u>250.00</u> per month
25 yard compaction equipment	\$ <u>198.00</u> per haul \$49/ton	\$ <u>250.00</u> per month
30 yard compaction equipment	\$ <u>198.00</u> per haul \$49/ton	\$ <u>250.00</u> per month
40 yard receiver box	\$ <u>170.00</u> per haul \$49/ton	\$ <u>50.00</u> per month
2 yard stationary compactor rental only		\$ <u>150.00</u> per month
6 yard compactor rental only		\$ <u>150.00</u> per month

\*Rental/Lease/Purchase of Apartment style compactor and receiver boxes will be the responsibility of the individual customer, and not the responsibility of the Villages.

15 Month Adjustment Factor: 0 %

(This adjustment factor will be applied to the prices provided in the matrix above to determine the prices that will be in effect when the franchise is implemented 15 months after the awarding of the contract.)

**APPENDIX A-2**  
**COST PROPOSALS**  
**COMMERCIAL RECYCLING SERVICES**  
(FIVE-YEAR AGREEMENT, PRICING EFFECTIVE February 1, 2015)

<u>Container Size</u>	<u>Frequency of Service</u>						
	<u>1 x Wk</u>	<u>2 x Wk</u>	<u>3 x Wk</u>	<u>4 x Wk</u>	<u>5 x Wk</u>	<u>6 x Wk</u>	<u>7 x Wk</u>
65 gallon "toter" (additional)	\$ <u>25.00</u>	<u>35.00</u>	<u>45.00</u>	<u>55.00</u>	<u>65.00</u>	<u>75.00</u>	<u>n/a</u>
95 gallon "toter" (additional)	\$ <u>25.00</u>	<u>35.00</u>	<u>45.00</u>	<u>55.00</u>	<u>65.00</u>	<u>75.00</u>	<u>n/a</u>
1 cubic yard (additional)	\$ <u>25.00</u>	<u>35.00</u>	<u>45.00</u>	<u>55.00</u>	<u>65.00</u>	<u>75.00</u>	<u>n/a</u>
1.5 cubic yards (additional)	\$ <u>25.00</u>	<u>35.00</u>	<u>45.00</u>	<u>55.00</u>	<u>65.00</u>	<u>75.00</u>	<u>n/a</u>
2 cubic yards	\$ <u>20.00</u>	<u>35.00</u>	<u>50.00</u>	<u>60.00</u>	<u>70.00</u>	<u>80.00</u>	<u>n/a</u>
4 cubic yards	\$ <u>37.00</u>	<u>57.00</u>	<u>72.00</u>	<u>82.00</u>	<u>92.00</u>	<u>102.00</u>	<u>n/a</u>
6 cubic yards	\$ <u>45.00</u>	<u>74.00</u>	<u>103.00</u>	<u>113.00</u>	<u>123.00</u>	<u>133.00</u>	<u>n/a</u>
8 cubic yards	\$ <u>55.00</u>	<u>84.00</u>	<u>113.00</u>	<u>123.00</u>	<u>133.00</u>	<u>143.00</u>	<u>n/a</u>
10 cubic yards	\$ <u>68.00</u>	<u>97.00</u>	<u>126.00</u>	<u>136.00</u>	<u>146.00</u>	<u>156.00</u>	<u>n/a</u>

Please list all items included for recycling pick-up:

Please see section IX, 'Recycling Capabilities', under  
the 'Operational Approach' tab located within this proposal.

15 Month Adjustment Factor: 0 %

(This adjustment factor will be applied to the prices provided in the matrix above to determine the prices that will be in effect when the franchise is implemented 15 months after the awarding of the contract.)

**APPENDIX A-3**  
**COST PROPOSALS**  
**ORGANIC MATERIAL SERVICES**

(FIVE-YEAR AGREEMENT, PRICING EFFECTIVE February 1, 2015)

**Note:** If an organic material services proposal is accepted, additional terms may be added to the Contract.

**Description of Service:** Organic material container service on an "As-Needed" or "Per Pull" Basis. Organic material includes food scraps and landscape waste as defined in Illinois Environmental Protection Act.

<u>Container Size</u>	<u>Cost "Per Pull"</u>
65 gallon cart	\$ <u>41.00/month*</u> organics only
95 gallon cart	\$ <u>30.00</u> landscape only
1 cubic yard	\$ <u>30.00</u> landscape only
1.5 cubic yards	\$ <u>30.00</u> landscape only

If any of the above pricing on a per pull basis would be lowered based on volume (i.e., one location having a need for multiple containers) please explain:

Landscape waste collection rates above will be charged on an  
"on call" basis. For scheduled once per week collection of  
a 95 gallon cart, 1yd and 1.5yd container, we would propose  
a rate of \$60.00 per month.

**15 Month Adjustment Factor:** 0 %

(This adjustment factor will be applied to the prices provided in the matrix above to determine the prices that will be in effect when the franchise is implemented 15 months after the awarding of the contract.)

\*Organics collection will be charged \$41.00 per month for weekly collection of 1-65 gallon cart.

**EXHIBIT B**

**INSURANCE PROVISIONS**

A. Insurance Requirements

The Contractor shall procure and maintain the following insurance during the entire term of the agreement described in Section 3.1:

<u>Type of Insurance</u>	<u>Required Minimum Coverage</u>
1. Workers' Compensation	Statutory
2. Employers' Liability	\$1,000,000 per accident \$1,000,000 disease (policy limit) \$1,000,000 disease (each employee)
3. Commercial General Liability, including "occurrence" coverage for: premises and operations, independent Contractors protective, contractual liability, broad form property damage and XCU hazards, products and completed operations (including broad form property damage), personal injury liability, and owner's protective liability.	\$3,000,000 per person per occurrence for bodily injury \$5,000,000 per occurrence for bodily injury \$1,000,000 per occurrence for property damage.
4. Business Auto liability (including owned, non-owned and hired vehicles and coverage for environmental liability)	\$3,000,000 per person \$5,000,000 per accident for bodily injury \$1,000,000 per accident for property damage
5. Umbrella/Excess liability (to apply as excess over 2, 3 and 4 above)	\$5,000,000 per occurrence \$5,000,000 annual aggregate

B. Miscellaneous Provisions

1. The insurance policies set forth in Sections A3 and A5 of this Exhibit B shall continue to be maintained for a period of two (2) years following the termination of the Agreement.
2. Equivalent insurance must be maintained by each subcontractor of the Contractor.
3. All insurance companies must be reasonably acceptable to the Village and may include self-insurance obtained by the Contractor. Minimum insurance carrier requirements include a current rating from A.M. Best Co., Inc. (or any successor publication of comparable standing within the industry) of "A VIII" and a license to do business in the State of Illinois.
4. All liability coverages shall be written on an occurrence basis.

5. Prior to commencing Services under the agreements, the Contractor shall deliver, or cause to be delivered, to the Village certificates of insurance (and other evidence of insurance requested by the Village) which the Contractor is required to purchase and maintain pursuant to this Schedule. The Contractor shall deliver certificates of renewal or replacement policies or coverage no less than ten (10) days prior to the effective date of each renewal or replacement policy or coverage.
6. All insurance coverage required to be purchased and maintained shall contain a provision or endorsement providing that the coverage afforded will not be cancelled, materially reduced or altered or renewal refused until at least thirty (30) days' prior written notice has been given to the Village by certified mail.
7. The Contractor shall be responsible for promptly reporting all claims to the appropriate insurer on behalf of itself, the Village and the additional insured's set forth below.
8. The insurance policies set forth in Sections A3, A4, and A5 of this Exhibit B shall be endorsed to include the Village, the directors, officers, employees, agents and members of the Village, SWALCO and the directors, officers, employees, agents and members of SWALCO as additional named insured's for all activities of the Contractor in the performance of the Agreement. Such insurance is to be primary and non-contributory with any insurance secured and maintained by such additional named insureds and shall apply as primary insurance with respect to any other insurance or self-insurance afforded the Village.

**NOTE:  
EXHIBIT C TO BE EXECUTED AT TIME OF CONTRACT  
SERVICE START/ COMMENCEMENT DATE  
FEBRUARY 1, 2015**

**EXHIBIT C**

**FORM OF PERFORMANCE BOND**

KNOW ALL MEN BY THESE PRESENTS: that

[insert full name and address of proposer here:] \_\_\_\_\_

as Principal (hereinafter called the "Contractor"),

and [insert full name and address of surety here:] \_\_\_\_\_

(hereinafter called the "Surety"),

as Surety, a corporation organized and existing under the laws of the State of \_\_\_\_\_, hereinafter called Surety, are held and firmly bound unto the Village of Libertyville, IL as Obligee, hereinafter called the Village, in the full and just sum of **TWO HUNDRED THOUSAND DOLLARS (\$200,000)**, for the payment of which sum of money well and truly to be made, the CONTRACTOR and Surety bind themselves, and their heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents, said amount to include payment of actual costs and damages and for attorneys' fees, engineering fees, accounting fees, consulting fees, court costs, interest, and any other fees and expenses resulting from or incurred by reason of the CONTRACTOR's failure to promptly and faithfully perform its contract with the Village, said contract being more fully described below, and to include attorneys' fees, court costs, and other expenses necessarily paid or incurred in successfully enforcing performance of the obligation of Surety under this bond.

WHEREAS, the CONTRACTOR has entered into a written agreement dated October 22, \_\_\_\_\_, 2013, with the Village entitled "COMMERCIAL SOLID WASTE COLLECTION SERVICES AGREEMENT" (the "Contract"), the terms and conditions of which are by this reference incorporated herein as though fully set forth herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH THAT if the CONTRACTOR shall well, truly, and promptly perform all the undertakings, covenants, terms, conditions, and agreements of the said CONTRACTOR under the Contract, including, but not limited to, the CONTRACTOR's obligations under the Contract: (1) to provide and perform, in the manner specified in the Contract, all necessary work, labor, services, transportation, materials, equipment, apparatus, machinery, tools, fuels, information, data, and other means and items necessary for the collection of all municipal waste, Organic Material, and recyclable materials from all Customers, as provided in the Contract; (2) to procure and furnish all permits, licenses, and other governmental authorizations necessary in connection therewith and to comply with the laws of the State of Illinois and ordinances and regulations of the Village in connection therewith; (3) to procure and furnish the Performance Bond and all certificates and policies of insurance specified in the Contract; (4) to pay all applicable federal, state, and local taxes; (5) to indemnify the Village against any loss resulting from any breach or failure of performance by the CONTRACTOR under the Contract; (6) to do all other things required of the CONTRACTOR by the Contract; and (7) to provide, perform, and complete all of the foregoing in a proper and workmanlike manner and in full accordance and compliance with, and as required by, the Contract; all of which is herein referred to as the "Work," then this obligation shall be null and void; otherwise it shall remain in full force and effect.

For purpose of this bond, a claimant is defined as one having a direct contract with CONTRACTOR or with a subcontractor of Contractor to provide, perform, or complete any part of the Work.

CONTRACTOR and Surety hereby jointly and severally agree that every claimant who has not had all just claims for the furnishing of any part of the Work paid in full, including, without limitation, all claims for amounts due for materials, lubricants, oil, gasoline, rentals of or service or repairs on machinery, equipment, and tools consumed or used in connection with the furnishing of any part of the Work, may sue on this bond for the use of such claimant, may prosecute the suit to final judgment for such sum or sums as may be justly due such claimant, and may have execution therein; provided, however, that Village shall not be liable for the payment of any costs or expenses of any such suit. To the extent applicable, the provisions of 30 ILCS 550/1 and 30 ILCS 550/2 shall be deemed inserted herein, including the time limits within which notices of claim must be filed and actions brought under this bond.

CONTRACTOR and Surety hereby jointly agree that Village may sue on this bond if Village is held liable to, or voluntarily agrees to pay, any claimant directly, but nothing in this bond shall create any duty on the part of Village to pay any claimant.

Surety, for value received, hereby stipulates and agrees that no changes, modifications, alterations, omissions, deletions, additions, extensions of time, or forbearance on the part of either the Village or the CONTRACTOR to the other in or to the terms of said Contract; in or to the schedules, plans, drawings, or specifications; in or to the method or manner of performance of the Work; or in or to the mode or manner of payment therefore shall in any way release the CONTRACTOR and Surety or either or any of them, or any of their heirs, executors, administrators, successors, or assigns, or affect the obligations of Surety on this bond, all notice of any and all of the foregoing changes, modifications, alterations, omissions, deletions, additions, extensions of time, or forbearance, and notice of any and all defaults by the CONTRACTOR or of the Village's termination of the CONTRACTOR, being hereby waived by Surety.

Notwithstanding anything to the contrary in the foregoing paragraph, in no event shall the obligations of Surety under this bond in the event of the CONTRACTOR's default be greater than the obligations of the CONTRACTOR under the Contract in the absence of such CONTRACTOR default.

In the event of a default or defaults by the CONTRACTOR, the Village shall have the right to reimburse itself from the proceeds of this bond for any and all costs, expenses, losses, damages, liquidated damages, liabilities, suits, judgments, awards, attorneys' fees, and administrative expenses incurred, suffered, or sustained by the Village and/or chargeable to the CONTRACTOR under the Contract or this bond. In addition, the Village shall have the right to take over and complete the Contract upon 30 calendar days' written notice to Surety, in which event Surety shall pay the Village all costs incurred by the Village in taking over and completing the Contract or, at its option, the Village may instead request that Surety take over and complete the Contract, in which event Surety shall take reasonable steps to proceed promptly with completion no later than 30 calendar days from the date on which the Village notifies Surety that the Village wants Surety to take over and complete the Contract.

The Village shall have no obligation to actually incur any expense or correct any deficient performance of the CONTRACTOR in order to be entitled to receive the proceeds of this bond.

No right of action shall accrue on this bond to or for the use of any person or corporation other than the Village or the heirs, executors, administrators, or successors of the Village.

Signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

Exhibit C

Attest/Witness:

By: *[Handwritten Signature]*

Title: *CEO*

\_\_\_\_\_  
**CONTRACTOR**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Attest/Witness:

By: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_  
**SURETY**

By: \_\_\_\_\_

Title: \_\_\_\_\_