

PURCHASE AGREEMENT

This PURCHASE AGREEMENT ("Agreement") is made as of November 18, 2011 (the "Effective Date") by and between the City of Fresno ("City" or "Seller"), a charter city and municipal corporation, and Mid-Valley Disposal ("Buyer"), a California corporation (collectively, the "Parties").

RECITALS

- A. Seller desires to convey to Buyer, and Buyer desires to acquire from Seller, certain City-owned collection trucks ("Trucks") and containers ("Containers") used to collect solid waste, recyclable materials and organic materials within the City as more particularly described in Exhibit A (Bill of Sale for Trucks) and Exhibit B (Bill of Sale for Containers), respectively, attached hereto and incorporated herein by reference.
- B. Buyer and Seller have entered into that certain Franchise Agreement dated November 1, 2011 ("Franchise Agreement") pursuant to which Buyer will provide solid waste, recyclable materials, and organic materials collection services in a designated service area within the City.
- C. Sections 8.3.1 and 8.4 of the Franchise Agreement contemplate that Buyer will acquire ownership and possession of the Trucks and Containers at the Commencement Date (as defined in the Franchise Agreement), and permit the use of the Trucks and Containers in the provision of solid waste, recyclable materials, and organic materials collection services by Buyer pursuant to the Franchise Agreement.
- D. In mutual acknowledgement of their rights and obligations with respect to the Trucks and Containers under the Franchise Agreement, Buyer has offered to purchase, and Seller desires to sell, the Trucks and Containers pursuant to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, the Parties agree as follows:

1. Purchase of Trucks and Containers. Seller hereby agrees to convey to Buyer, and Buyer agrees to purchase and accept from Seller, the Trucks and Containers described in Exhibits A and B for the total purchase price set forth in Section 2.
2. Purchase Price.
 - a. Buyer, upon final inspection and acceptance of the Trucks and Containers as set forth in Section 6, agrees to pay Seller the total purchase price of Two Million One Hundred Ninety Two Thousand Three Hundred Thirty One Dollars and Forty-One cents (\$2,192,331.41). Buyer shall pay the full amount of the purchase price prior to the Commencement Date, and prior

to taking possession of the Trucks and Containers, by submitting to the City's Finance Department a certified or cashier's check in such amount payable to the City of Fresno, or by wire transfer.

- b. Buyer and Seller mutually acknowledge the difficulty in arriving at a precise number of Containers to be transferred under this Agreement because nearly all of those Containers are at service locations. The Parties have each reviewed the invoice attached to Exhibit B and are reasonably satisfied the number of Containers described therein is accurate. In the event that either party identifies an error in the number of Containers described in Exhibit B, and that error exceeds twenty five thousand dollars (\$25,000) in value, the identifying party shall report such finding to the other party. The finding may be reasonably investigated by the other party to verify the accuracy of the reported finding. All investigations to identify such errors shall be concluded, with findings reported to the other party, within 90 days after the Commencement Date. In the event that the Parties concur that an error exists and that the error exceeds twenty five thousand dollars (\$25,000) in value, and such error resulted in an overpayment by the Buyer to the Seller, Seller shall refund Buyer the amount of the error, within ten (10) business days of the Parties reaching concurrence on the existence and value of the error. In the event that the Parties concur that an error exists and that the error exceeds twenty five thousand dollars (\$25,000) in value, and such error resulted in an underpayment by the Buyer to the Seller, Buyer shall make an additional payment to the Seller in the amount of the error, within ten (10) business days of the Parties reaching concurrence on the existence and value of the error. Any finding of such an error after the above-mentioned 90 day period shall not be eligible for refund or additional payment.
3. Special Provision for Trucks. Pursuant to Section 8.3.1 of the Franchise Agreement, Seller shall ensure that each Truck is in such a condition that it would pass California Highway Patrol "BIT" inspection criteria, prior to Buyer taking possession of the Truck. Further, Seller shall ensure that each Truck has a full tank of fuel (less any normal evaporation) prior to Buyer taking possession of the Truck.
4. "As-is" Condition. Seller hereby conveys the Trucks and Containers in an "as-is" condition and disclaims any and all warranties as to the condition of the Trucks and Containers. Buyer warrants and represents to Seller that it has inspected the Trucks and Containers, consulted with persons knowledgeable in proper operating conditions of the Trucks and Containers, and is fully apprised of the condition of the Trucks and Containers. Buyer accepts the conveyance of the Trucks and Containers in their "as-is" condition.

In accepting the Trucks and Containers in their "as-is" condition, the Buyer, on behalf of itself and its successors and assigns, does fully and forever remise,

release and discharge the City, its elected and appointed officials, employees and agents, from any and all causes of action, damages, claims, demands, torts, actions, suits, obligations, losses and liabilities of whatever kind or nature, in law, equity, or otherwise, whether known or unknown, for any and all damages arising from the Trucks and Containers as well as the use or condition of the Trucks and Containers.

5. Indemnification. Buyer shall defend, indemnify and hold harmless the City, its elected and appointed officials, employees and agents, from any and all causes of action, damages, claims, demands, torts, actions, suits, obligations, losses and liabilities of whatever kind or nature, including, without limitation, attorney fees and costs, in law, equity or otherwise, for any and all damages arising from the Trucks and Containers and the use or condition of the Trucks and Containers.
6. Date of Possession. Subject to Section 16 of this Agreement, Buyer shall take possession of the Trucks and Containers no later than December 4, 2011 upon payment of the total purchase price to Seller as set forth in Section 2 above. Buyer shall take possession of the Trucks, and any Containers in the possession of the City that are not placed at customer service locations, at the City's Municipal Service Center. Buyer shall conduct a final inspection of the Trucks and Containers at the time Buyer takes possession. Such inspection may include reasonable tests and use of the Trucks and Containers by Buyer.
7. Conveyance of Title. Seller shall convey title of the Trucks and Containers to Buyer at the time that Buyer takes possession of the Trucks and Containers, by executing the Bills of Sale in the form attached hereto as Exhibits A and B. Seller agrees and covenants to execute any documents reasonably requested by Buyer that are required by the California Department of Motor Vehicles (DMV) to finalize the transfer of registration of the Trucks from Seller to Buyer. Buyer agrees to expeditiously process the transfer of registration of the Trucks with DMV, and to include in the documents filed with the DMV an acknowledgement of the option to purchase set forth in Section 10.b of this Agreement.
8. Delivery of Documents. At the time of delivery of possession pursuant to Section 6 of this Agreement, Seller shall deliver to Buyer copies of all factory and aftermarket manuals, policies, procedures, guidelines and records pertaining to the Trucks and Containers that are in the possession of the City's Public Utilities Department.
9. Buyer's Authority and Consent. Buyer represents and warrants it has the right, power, legal capacity, and authority to enter into and perform its obligations under this Agreement. No approvals or consents of any persons are necessary in connection with Buyer's execution, delivery, and performance of this Agreement, except for such as have been obtained on or prior to the Effective Date hereof. The execution, delivery, and performance of this Agreement by Buyer have been duly authorized by all necessary action on the part of Buyer and constitute the legal, valid, and binding obligations of Buyer, enforceable against Buyer in accordance with their respective terms. The person or persons executing this Agreement on

behalf of Buyer warrants and represents that he or she has the authority to bind Buyer to the performance of its obligations hereunder.

10. Option to Repurchase or Lease Trucks and Containers.

- a. The Parties acknowledge that upon expiration or early termination of the Franchise Agreement, Seller has the right to purchase the Containers from Seller pursuant to the terms set forth in Section 8.4.D of the Franchise Agreement. The Parties further acknowledge that pursuant to Section 13.3 of the Franchise Agreement, Seller has the sole option to purchase the Trucks and Containers from Buyer at their net book value in the event of termination of the Franchise Agreement for default or for Buyer's failure to provide Article XIII Indemnification as set forth in Section 12.2 of the Franchise Agreement.
- b. Buyer hereby grants to Seller the option to repurchase or lease the Trucks and Containers from Buyer, in the event of a restraining order or injunction preventing the provision of services by Buyer pursuant to the Franchise Agreement. If purchased, Seller shall pay an amount equivalent to the purchase price paid by Buyer. If leased, Seller shall pay the reasonable rental value for such property, not to exceed fifty dollars (\$50) per day for each Truck, less any costs incurred by City to maintain such Trucks and Containers. This option to repurchase or lease shall expire upon the date that is 270 days after the date of this Agreement.

11. Entire Agreement. This Agreement contains the entire understanding between the parties relating to the obligations of the parties described in this Agreement. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged into this Agreement and shall be of no further force or effect. This Agreement may be amended only by a written instrument signed by both Buyer and Seller.

12. Severability. Wherever possible, each provision of this Agreement shall be interpreted in such a manner as to be valid under applicable law. If any provision of this Agreement is determined by a court to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force and effect.

13. Governing Law. Buyer and Seller understand and agree that the laws of the State of California, without regard to conflict of law doctrines, principles or provisions, shall govern the rights, obligations, duties and liabilities of the parties to this Agreement and also govern the interpretation of this Agreement. Any litigation concerning this Agreement shall take place in the superior or federal district court with geographic jurisdiction over the City.

14. Headings and Captions. The headings and captions used in this Agreement are for convenience only and shall in no way define, limit or describe the scope or intent of this Agreement or any part of it.

15. Notices. All notices, bills, invoices required by this Agreement shall be deemed given: (i) on the day of delivery if delivered by hand during regular business hours; or (ii) on the third business day following deposit in the United States Mail, if given by certified or registered mail, postage prepaid, return receipt requested, addressed to the party at the addresses set forth below:

City: City of Fresno
2600 Fresno Street
Fresno, California 93721
Attention: Solid Waste Manager

Buyer: Mid Valley Disposal
15300 W. Jensen Ave.
Kerman, California 93630
Attention: General Manager

16. Conditions to Performance. The obligations of Seller to convey the Trucks and Containers to Buyer, and the obligation of Buyer to pay the purchase price and acquire the Trucks and Containers, shall be subject to the satisfaction (or waiver by Seller) of all conditions listed in Section 3.2 of the Franchise Agreement, and to the Franchise Agreement being in full force and effect, with no restraining order or injunction preventing the provision of services by Buyer pursuant to the Franchise Agreement, and no default by Buyer under the Franchise Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date stated in the introductory clause.

SELLER:

CITY OF FRESNO, a municipal corporation



Mark Scott
City Manager

Attest:



Rebecca Kusch
City Clerk

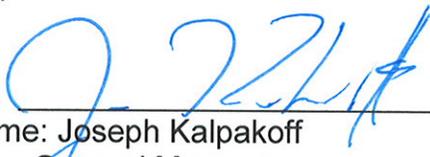
Approved as to form:



City Attorney

BUYER:

Mid-Valley Disposal, a California corporation

By: 

Name: Joseph Kalpakoff
Title: General Manager

**EXHIBIT A
BILL OF SALE FOR TRUCKS**

For good and valuable consideration, the receipt of which is hereby acknowledged, THE CITY OF FRESNO ("Seller"), a charter city and municipal corporation, does hereby sell, transfer and convey to MID-VALLEY DISPOSAL, a California corporation ("Buyer"), without recourse or warranty, all personal property owned by Seller and described in Attachment A attached hereto.

This Bill of Sale is entered into pursuant to that certain Purchase Agreement between Seller and Buyer dated November 18, 2011, which agreement contains an option to repurchase or lease the personal property in certain specified circumstances.

This Bill of Sale shall be governed by and construed in accordance with the laws of the State of California.

IN WITNESS WHEREOF, Seller has executed this Bill of Sale as of this eighteenth day of November, 2011.

SELLER:

CITY OF FRESNO, a municipal corporation



Attest:



City Clerk

Approved as to form:



City Attorney

ATTACHMENT A TO BILL OF SALE FOR TRUCKS

Description of Personal Property



INVOICE

1325 El Dorado St.
 Fresno, Ca. 93706
 Phone 559.621.1452 Fax 559.266.1009

November 11, 2011
 1
 Sale of Refuse
 Trucks

Bill To:
 Joseph Kalpakoff
 Mid Valley Disposal
 15300 W. Jensen Ave.
 Kerman, Ca., 93630
 Phone 559.843.2467

DESCRIPTION	AMOUNT
370016 - 2004 AUTOCAR WXLL64 Body:STS VIN# 5VCHC6FE74H200139	\$ 62,587.00
370022 - 2004 AUTOCAR WXLL64 Body:STS VIN# 5VCHC6FEX4H200135	\$ 62,587.00
370027 - 2004 AUTOCAR WXLL64 Body:STS VIN# 5VCHC6FE94H200191	\$ 62,587.00
370028 - 2004 AUTOCAR WXLL64 Body:STS VIN# 5VCHC6FE24H200145	\$ 62,587.00
370029 - 2004 AUTOCAR WXLL64 Body:STS VIN# 5VCHC6FE84H200134	\$ 62,587.00
370032 - 2005 AUTOCAR WXLL64 Body:STS VIN# 5VCHC6FEX5H201447	\$ 62,587.00
370033 - 2005 AUTOCAR WXLL64 Body:STS VIN# 5VCHC6FE15H201448	\$ 62,587.00
370034 - 2005 AUTOCAR WXLL64 Body:STS VIN# 5VCHC6FE35H201449	\$ 62,587.00
370038 - 2005 AUTOCAR WXLL64 Body:STS VIN# 5VCHC6FE35H201452	\$ 62,587.00
370039 - 2005 AUTOCAR WXLL64 Body:STS VIN# 5VCHC6FE55H201453	\$ 62,587.00
370041 - 2006 AUTOCAR WXLL64 Body:Mammoth VIN# 5VCHC6FE66H203391	\$ 62,587.00
370043 - 2006 AUTOCAR WXLL64 Body:Mammoth VIN# 5VCHC6FEX6H203393	\$ 62,587.00
370046 - 2007 AUTOCAR WXLL64 Body:Mammoth VIN# 5VCHC6FE47H204105	\$ 62,587.00
370047 - 2007 AUTOCAR WXLL64 Body:Mammoth VIN# 5VCHC6FE87H204107	\$ 62,587.00
370049 - 2009 AUTOCAR WXLL64 Body:AMREP VIN# 5VCHC6LE69H209006	\$ 62,587.00
370050 - 2009 AUTOCAR WXLL64 Body:AMREP VIN# 5VCHC6LE89H209007	\$ 62,587.00
370051 - 2009 AUTOCAR WXLL64 Body:AMREP VIN# 5VCHC6LE69H209008	\$ 62,587.00
370054 - 2009 AUTOCAR WXLL64 Body:AMREP VIN# 5VCHC6LE69H209011	\$ 62,587.00
370057 - 2011 AUTOCAR WXLL64 Body:AMREP VIN# 5VCACLE6AH211617	\$ 62,587.00
370058 - 2011 AUTOCAR WXLL64 Body:AMREP VIN# 5VCACLE6AH211619	\$ 62,587.00
260118 - 2008 FORD F350 BIN DELIVERY TRUCK VIN#1FDWF36R38ED75679	\$ 8,571.00
280005 - 2001 BIN TRUCK W/ CRANE VIN#1HTSCABN61H403226	\$ 1.00
Total	\$ 1,260,312.00
Sales Tax @ 7.875%	\$ 99,249.57
Grand Total	\$ 1,359,561.57

Make all checks payable to **City of Fresno, SWMD**
 If you have any questions concerning this invoice,
 Jerry Schuber Sr., (559) 621-1801 Jerry.Schuber@Fresno.Gov

THANK YOU FOR YOUR BUSINESS!

EXHIBIT B
BILL OF SALE FOR CONTAINERS

For good and valuable consideration, the receipt of which is hereby acknowledged, THE CITY OF FRESNO ("Seller"), a charter city and municipal corporation, does hereby sell, transfer and convey to MID-VALLEY DISPOSAL, a California corporation ("Buyer"), without recourse or warranty, all personal property owned by Seller and described in Attachment A attached hereto.

This Bill of Sale is entered into pursuant to that certain Purchase Agreement between Seller and Buyer dated November 18, 2001, which agreement contains an option to repurchase or lease the personal property in certain specified circumstances.

This Bill of Sale shall be governed by and construed in accordance with the laws of the State of California.

IN WITNESS WHEREOF, Seller has executed this Bill of Sale as of this eighteenth day of November, 2011.

SELLER:

CITY OF FRESNO, a municipal corporation



Attest:



City Clerk

Approved as to form:



City Attorney

ATTACHMENT A TO BILL OF SALE FOR CONTAINERS

Description of Personal Property



INVOICE

1325 El Dorado St.
 Fresno, Ca. 93706
 Phone 559.621.1452 Fax 559.266.1009

November 17, 2011

1

*Sale of Refuse
 Containers*

Bill To:

Joseph Kalpakoff
 Mid Valley Disposal
 15300 W. Jensen Ave.
 Kerman, Ca., 93630
 Phone 559.843.2467

DESCRIPTION	UNITS	PRICE EA.	AMOUNT
1 Cubic Yard Bins - Solid Waste	2,086	\$ 54.86	\$ 114,437.96
2 Cubic Yard Bins - Solid Waste	1,434	\$ 66.11	\$ 94,801.74
3 Cubic Yard Bins - Solid Waste	1,112	\$ 75.10	\$ 83,511.20
4 Cubic Yard Bins - Solid Waste	1,048	\$ 86.34	\$ 90,484.32
5 Cubic Yard Bins - Solid Waste	14	\$ 99.39	\$ 1,391.46
6 Cubic Yard Bins - Solid Waste	125	\$ 112.88	\$ 14,110.00
1 Cubic Yard Bins - Recycling	924	\$ 54.86	\$ 50,690.64
2 Cubic Yard Bins - Recycling	1,028	\$ 66.11	\$ 67,961.08
3 Cubic Yard Bins - Recycling	385	\$ 75.10	\$ 28,913.50
4 Cubic Yard Bins - Recycling	835	\$ 86.34	\$ 72,093.90
5 Cubic Yard Bins - Recycling	-	\$ 99.39	\$ -
6 Cubic Yard Bins - Recycling	101	\$ 112.88	\$ 11,400.88
35 Gallon Solid Waste Carts	-	\$ 20.00	\$ -
64 Gallon Solid Waste Carts	1,571	\$ 20.00	\$ 31,420.00
96 Gallon Solid Waste Carts	1,933	\$ 20.00	\$ 38,660.00
96 Gallon Recycling Carts	2,517	\$ 20.00	\$ 50,340.00
96 Gallon Organics Carts	1,088	\$ 20.00	\$ 21,760.00
Total			\$ 771,976.68
Sales Tax @ 7.875%			\$ 60,793.16
Grand Total			\$ 832,769.84

Make all checks payable to **City of Fresno, SWMD**
 If you have any questions concerning this invoice,
 Jerry Schuber Sr., (559) 621-1801 Jerry.Schuber@Fresno.Gov

THANK YOU FOR YOUR BUSINESS!

