

AGREEMENT

Between

Village of Niles

And

Groot Industries, Inc.

Dated: July 22, 2014

This Agreement is made and entered into as of the 22nd day of July, 2014 by and between Groot Industries, Inc., an Illinois corporation (the "Contractor") and the Village of Niles, Illinois (the "Village"); collectively (the "Parties").

WHEREAS, the Village, in order to protect the public health and welfare of its residents, has deemed it necessary to collect, transport and dispose of SWANCC Waste and Non-SWANCC Waste (as defined below) as Village Services (as defined below); and

WHEREAS, the Village is authorized pursuant to the provisions of the Illinois Municipal Code (65 ILCS 5/11-19-1) to provide for the method or methods of collection, transportation and disposal of Village 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 has determined to provide Village waste collection, transportation and disposal services to its residents and impose on its residents rates and charges relating to such services; and

WHEREAS, the Village has determined that it is in the best interests of its residents to contract with a single waste hauler to collect and transport all SWANCC Waste to SWANCC's Wheeling Township Transfer Station (the "WTTS") or such other SWANCC or Non-SWANCC facility designated by the Village; and

WHEREAS, the Village has determined that it is in the best interests of its residents to contract with a single waste hauler collect, transport and dispose of (or sell) Non-SWANCC Waste at a facility or facilities mutually agreed upon by the Village and the Contractor; and

WHEREAS, the Contractor, pursuant to the terms of this Agreement and on behalf of the Village, is willing to collect and transport all SWANCC Waste to the WTTS or such other SWANCC or Non-SWANCC facility designated by the Village, and collect, transport and dispose of (or sell) Non-SWANCC Waste at a facility or facilities mutually agreed upon by the Village and the Contractor;

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

ARTICLE I - DEFINITIONS

"Breach" means one of the items described in Sections 10.1 or 10.2.

"Bundled Brush" means – Any material allowed under the definition of landscape waste such as limbs, branches, or other loose items which do not exceed four (4) feet in length, two (2) feet in diameter and 45 pounds in weight. Said bundle is required to be tied in a biodegradable string.

"Bulk Items" means items which are too large and bulky to be bagged or containerized, but which can safely be handled by one person including, but not limited to, beds, box springs, mattresses, sofas, furniture, furnishings, fixtures. Bulk Items are considered SWANCC Waste under this agreement.

"Contractor" means Groot Industries, Inc., an Illinois corporation; and its successors and assigns.

"Condominiums" means multi-unit housing structures containing individually owned units and has been designated by the Village as a 'Condominium'.

"Electronic Waste" as defined by Illinois law and banned from Illinois landfills means items including, but not limited to, Televisions, Monitors, Printers, Computers (laptop, notebook, netbook, tablet, desktop), Electronic Keyboards, Facsimile Machines, Videocassette Recorders, Portable Digital Music Players, Digital Video Disc, Players, Video Game Consoles, Small Scale Servers, Scanners, Electronic Mice, Digital Converter Boxes, Cable Receivers, Satellite Receivers, Digital Video Disc Recorders, Cell Phones, Portable Digital Assistant (PDA), Computer Cable, Zip Drive.

"Event of Default" has the meaning specified in Sections 10.3 and 10.4.

"Landscape Waste" means items including, but not limited to, grass clippings, shrubbery cuttings, leaves, tree limbs less than 3 inches in diameter and other materials accumulated as a result of the care of lawns, shrubbery, vines and trees.

"Multi-Family Dwellings" means structures owned by a single individual or entity containing four (4) or more attached single-family dwelling units, which are rented individually.

"Municipal Service" means the service provided by the Contractor, on behalf of the Village, pursuant to Section 4.1.

"Village" means the Village of Niles.

"Non-SWANCC Waste" means residential Landscape Waste, Condominium waste, residential White Goods, Electronic Waste and certain residential Recyclable Materials as described in Article IX, and any other materials designated by the Village and Contractor for collection, provided that such materials are not SWANCC Waste.

"Private Service" means the service provided by the Contractor pursuant to Section 4.2.

"Project Use Agreement" means the Project Use Agreement, dated March 25, 1992, between SWANCC and the Village, as amended from time to time.

"Recyclable Materials" means items including, but not limited to, aluminum, tin, steel and bi-metal cans; clear, green and brown glass bottles and jars; newspapers, magazines, phonebooks, catalogs, mixed papers (junk mail, chipboard, white and colored paper, brown Kraft paper bags), corrugated cardboard, #1 PETE plastic containers, #2 HPDE plastic containers, #3 V plastic containers, #4 LDPE plastic containers, #5 & #7 plastic containers, aseptic beverage containers, and all other items that the Village and the Contractor agree to recycle in the future.

"Regular Collection Day" means one or more days of the week on which all residential SWANCC waste and non-SWANCC waste shall be collected from residential units. The regular collection day shall not be less than once per week and shall be established upon mutual agreement of both parties.

"Residential" means all Village residential dwelling units including condominium, multi-family apartments, and single, two, and three family homes or structures including townhouses in accordance with Village Ordinance No. 1992-10, attached as Exhibit A. For the purposes of this contract, the number of single-family residential units used for the calculation of all applicable rates and charges shall be 7,450.

"State" means the State of Illinois.

"SWANCC" means the Solid Waste Agency of Northern Cook County.

"SWANCC Waste" shall have the meaning ascribed to it in the Village's Ordinance No. 1992-10, attached hereto as Exhibit A.

"Agreement" means this Agreement, dated July 22, 2014, by and between the Village and the Contractor, as amended from time to time.

"White Goods" means items including, but not limited to, stoves, ovens, washing machines, dryers, air conditioners, refrigerators, freezers, dehumidifiers, water softeners, water heaters, trash compactors, and dishwashers. White Good items are considered non-SWANCC waste under this agreement.

"WTTS" means the Wheeling Township Transfer Station constructed by SWANCC and located northeast of the intersection of Central Road and Des Plaines River Road in Glenview, Illinois.

ARTICLE II- SCOPE OF SERVICES

2.1 Village Services

The Contractor shall provide, on behalf of the Village, complete service for (a) the collection and transportation of all SWANCC Waste to the WTTS or such other SWANCC or Non-SWANCC facility designated by the Village and (b) the collection; transportation and disposal or sale of all Non-SWANCC Waste at the facility or facilities or as otherwise mutually agreed upon by the Village and the Contractor. The Contractor may specify that multi-family dwellings be provided with larger containers or dumpsters. The quantity and size of the container or containers specified will establish the base level of service. Contractor will maintain ownership of all containers, dumpsters and carts. The Contractor shall be the agent of the Village to provide the above referenced Village Services.

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.

2.3 Excluded Services

Waste collection, transportation and disposal from commercial and industrial establishments within the Village are not included within this Agreement in accordance with the Village's Ordinance No. 1992-10, attached as Exhibit A.

2.4 Modification of Required Services

The Village reserves the right to adjust or expand the scope of Village Services required under this Agreement, with the prior written consent of the contractor, upon one hundred and eighty (180) days prior written notice to the Contractor, to accommodate changes in the definition of SWANCC Waste or changes in the scope of services provided by SWANCC. The Village and the Contractor agree to negotiate in good faith an equitable adjustment to the Contractor's compensation under this Agreement required as a result of any adjustment or expansion of Village Services.

ARTICLE III- TERM OF WASTE AGREEMENT

The term for refuse and recycling collections shall be seven (7) years commencing on May 1, 2015, and end on April 30, 2022, unless terminated at an earlier date pursuant to the terms of this Agreement.

The Village reserves the right to request a renewal of this Agreement for an additional five (5) year period under the same terms and conditions, subject to acceptable performance by the Contractor. Any renewal must be agreed upon by the Village and the Contractor in writing prior to the expiration of the original Agreement term or any extension that follows.

ARTICLE IV - WASTE COLLECTION AND DISPOSAL

4.1 Municipal Service

- a) SWANCC Waste Materials to be collected by the Contractor in accordance with the schedule provided in Section 4.3 and transported to the WTTS or such other SWANCC or Non-SWANCC facility designated by the Village shall include all items defined as "System Waste" in the Village's Ordinance No. 1992-10, attached as Exhibit A.
- b) Non-SWANCC Waste Materials to be collected by the Contractor in accordance with the schedule provided in Section 4.3 and transported to a facility mutually agreed upon by the Village and the Contractor shall include the following:
 - i. White Good Items.
 - ii. Landscape Waste as provided in Article VIII.
 - iii. Recyclable Materials as provided in Article IX.

c) **Holiday Collection Schedule**

The following holidays may effect the collection schedule for refuse, recycling and yard waste single family collection service. New Year's Day, Memorial Day, July 4th, Labor Day, Thanksgiving Day, Christmas Day. If one of the above mentioned holidays falls on a weekday, on or before the scheduled collection day, service will be delayed by one day for the remainder of the week. Any said holiday which falls on a Sunday will be observed on the following Monday and the collection for the remaining week will be delayed by one (1) day. There will be no change in the single family collection schedule for holidays which fall on a Saturday.

d) **Refuse and Recycling Carts**

Contractor will purchase, own and maintain 95 gallon refuse carts and 65 gallon recycling carts for each single family dwelling unit in the Village. Residents are required to use carts and additional containers not exceeding 32 gallons in size may be used for overflow of materials only. After 60 days of delivery of the refuse and recycling cart, residents may request to increase or decrease the size of their refuse and/or recycling cart to a 35 gallon, 65 gallon or 95 gallon cart. Residents who request the smaller 35 gallon cart will be limited to the service of said carts on a weekly basis. Residents currently renting refuse and/or recycling carts will continue utilizing their existing carts and Contractor will refund remaining annual rental fee for September, October, November and December of 2014 only.

4.2 Private Service

In addition to the Village Services provided by the Contractor on behalf of the Village under Section 4:1, the Contractor shall also make available to the residents of the Village Private Service for all types of waste not otherwise covered by this Agreement including, but not limited to, earth, sod, rocks, concrete, rubble and waste from remodeling, construction and demolition of buildings, excavations and other materials at an additional cost to the resident; provided, however, that the Contractor shall not be required to provide for the collection and disposal of poisonous or toxic materials and large quantities of liquid requiring tank truck disposal equipment. "Provision of private service under this section 4.2 is not an exclusive right of the contractor as the Village may at its sole discretion grant the same right to any scavenger license by the Village."

Notwithstanding anything herein to the contrary, the Contractor shall not be required to enter private homes for the purpose of collection and disposal of waste.

4.3 Schedule and Location of Collection

Municipal Waste Service

- i. SWANCC Waste, landscape waste, and recyclables shall be collected once per week between the hours of 6 a.m. and 5 p.m. on the regular collection day as established by mutual agreement of the Contractor and the Village. No collection shall occur on Sundays or national holidays.
 - A. Bulk Items shall be collected in accordance with the provisions of Article VII on the regular collection day between the hours of 6 a.m. and 5 p.m.
 - B. Landscape Waste shall be collected in accordance with the provisions of Article VIII.
 - C. Recyclable Materials shall be collected in accordance with the provisions of Article IX.
- ii. SWANCC Waste shall be collected twice per week for the residents of the Nordica Avenue Town homes between the hours of 6 a.m. and 5 p.m. on the regular collection days established by mutual agreement of the Contractor and the Village. No collection shall occur on Sundays or on national holidays.
- iii. The Contractor shall provide weekly collection of refuse and recyclable materials, at all Village buildings at no additional charge, and shall furnish approved containers for all Village owned buildings. Additional containers and pickup of

refuse from those containers will be provided by the Contractor as required by the Village at no additional cost during the term of this Agreement.

- iv. No collection shall occur on Sundays or national holidays.

The Village currently requires service at the following locations:

<u>Location</u>	<u>Address</u>
Administration Building	1000 Civic Center Drive
Public Services	6849 Touhy Avenue
Fire Station #2	8360 Dempster Street
Maintenance Building	7104 Touhy Avenue
Fire Station #3	6611 Jarvis Avenue
Senior/Fitness	999 Civic Center Drive
Police Department	7200 Milwaukee Avenue
Niles Teen Center	373 Golf Mill Center
Historical Building	8970 N Milwaukee Avenue

With prior written approval from the Contractor, the above list may be modified from time to time following thirty (30) days' notice from the Village .

Private Service Waste

Private Service waste shall be collected in accordance with the provisions of Section 4.2 on a day mutually agreed to by the Contractor and a resident or property owner between the hours of 6 a.m. and 5 p.m.

4.4 Disposal of Waste

- a) SWANCC Waste

The Contractor shall transport for processing all SWANCC Waste collected pursuant to this Agreement to the WTTS or such other SWANCC or Non-SWANCC facility designated by the Village Hall in accordance with the laws of the State, any United States governmental agencies, and as directed by the Village. At the discretion of the Contractor, a Modification to the location and delivery of SWANCC waste which results in an increase in cost may be subject to a request to negotiate rates pursuant to Section 2.4 of agreement. Such SWANCC Waste shall not be commingled with any other waste.

- (b). Non-SWANCC Waste

- i. Recyclable Materials collected shall be transported for sale with an intermediate diversion for processing.
- ii. Landscape Waste collected shall be transported to permitted sites.

- iii. White Goods shall be transported to permitted sites for disposal or recycling in accordance with applicable laws.

4.5 Waste Collection and Customer Service Data

The Contractor shall provide to the Village, at least once per month, a report of waste no later than the 15th day of each month. The Waste Collection Data report will detail the volume of collections of SWANCC System Waste, Landscape Waste and Recyclable Materials.

Reporting format shall be approved in advance by the Village.

4.6 Public Education

The Contractor shall provide to the Village, information for the residents regarding refuse and recycling carts, recycling regulations and special collection services.

The Contractor shall provide an electronic and paper survey for all residents in Niles during the second year of the contract regarding service levels and satisfaction level.

ARTICLE V - COMPENSATION

5.1 Village Service:

- a) SWANCC Waste: For providing for, on behalf of the Village, the collection and transportation of SWANCC Waste to the WTTS or such other SWANCC or Non-SWANCC permitted facility designated by the Contractor. The Contractor shall receive, as compensation, the rates set forth below:

Effective Date Single Family Collections 7,450 units	Refuse, Recycling Collection & Carts	Yard Waste & Brush Collection	Total
May 1, 2015 - April 30, 2016	\$12.74	\$2.38	\$15.12
May 1, 2016 - April 30, 2017	\$13.03	\$2.43	\$15.46
May 1, 2017 - April 30, 2018	\$13.32	\$2.49	\$15.81
May 1, 2018 - April 30, 2019	\$13.62	\$2.55	\$16.17
May 1, 2019 - April 30, 2020	\$13.93	\$2.61	\$16.54
May 1, 2020 – April 30, 2021	\$14.24	\$2.67	\$16.91
May 1, 2021 – April 30, 2022	\$14.56	\$2.73	\$17.29

Single Family collection rates, brush collection rates and yard waste collection rates frozen first year; no rate increase until May 1, 2016; increased 2.25% annually beginning May 1, 2016. Landscape Waste: Contractor will invoice the Village per unit, currently at 7,450 units,

monthly over a 12 month period and the monthly rate will increase 2.25% each May 1, beginning in 2016.

Multi-Family Dwellings (Apartments)		
Container	Frequency	Monthly Rate
1.0 yard	1x per week	\$75.28
1.0 yard	2x per week	\$139.00
1.5 yard	1x per week	\$80.71
1.5 yard	2x per week	\$149.84
2.0 yard	1x per week	\$92.93
2.0 yard	2x per week	\$174.26

Multi-family collection rates frozen first two years; no rate increase until May 1, 2017; increased 2.25% annually, beginning May 1, 2017.

Condominiums							
Effective Date	May 1, 2015	May 1, 2016	May 1, 2017	May 1, 2018	May 1, 2019	May 1, 2020	May 1, 2021
Refuse	\$6.19	\$6.33	\$6.47	\$6.62	\$6.77	\$6.92	\$7.08
Recycling	\$2.24	\$2.29	\$2.34	\$2.39	\$2.44	\$2.50	\$2.56

Condominium collection rates frozen the first year; no rate increase until May 1, 2016; increased 2.25% annually beginning May 1, 2016.

The Contractor shall receive compensation for providing the collection, transportation and disposal of condominium and multi-family dwellings (apartments) waste. The Contractor will invoice the Village per unit per month for Condominium service, as well as the property owners in relation to the rates indicated in the “Multi-family Dwellings (Apartments)” table above. Condominium rates are subject to annual increases of 2.25% as noted above years two (2) through seven (7) of the agreement.

- b) Non-SWANCC Waste: The Contractor shall receive the following compensation for providing for the collection, transportation and disposal of non-SWANCC Waste at a facility mutually agreed upon by the Village and the Contractor:
 - i. Recyclables: Recyclable Materials shall be collected during the term of this Agreement on the same day as the SWANCC System Waste and Landscape Waste is collected from the household. Recyclable Materials do not need to be segregated.

The Contractor shall deliver all Recyclable Materials to Groot's recycling facility in Elk Grove Village, IL and the Village shall be entitled to revenue from the SWANCC Recycling Incentive Program. In addition, the Contractor shall not be liable for any tipping fee or cost of processing Recyclable Materials collected under this Section.

Upon the mutual agreement of the Contractor and the Village, additional materials may be added to the list of Recyclable Materials set forth in Article I.

The Contractor, as agent for the Village, shall have a contractual obligation to ensure that all Recyclable Materials collected are properly processed and marketed. No collected Recyclable Materials shall be land-filled or incinerated, unless advance authorization to do so is given in writing by the corporate authorities of the Village.

The Contractor shall be required to implement a sticker system for any materials placed in recycling containers that are not collected. The sticker should identify why such materials were not collected as Recyclable Materials.

The Contractor shall provide once per week collection of Recyclable Materials at all Municipal Facilities.

- ii. Bulk items: No additional compensation shall be paid for the collection and disposal of bulk items, "including white goods".
 - iii. Condominium Dwellings: Contractor shall collect and dispose of all waste required under this Agreement for Condominium dwellings, between 1 to 4 times per week, as stipulated in Attachment 1, Condominium Spreadsheet. Attached.
- c) Payment Terms: Contractor shall invoice the Village for all services rendered under this contract on a monthly basis during the term of the contract. Payment by the Village to the Contractor shall be made within 30 days after receipt of said invoice.

5.2 Private Service

For providing Private Services to residents and property owners the Contractor is permitted to bill and collect from residents and/or property owners.

ARTICLE VI- TITLE TO WASTE

The Contractor shall, as agent for the Village, transfer all SWANCC Waste to the WTTS or such other SWANCC or Non-SWANCC facility designated by the Village. The Contractor shall also transfer, as agent for the Village, all Non-SWANCC Waste to a facility or facilities mutually agreed upon by the Village and the Contractor. Legal title to SWANCC Waste and Non-SWANCC Waste shall remain with the Village until such waste is accepted for delivery at the designated site. The Village will not, at any time, take legal title to Private Service waste.

ARTICLE VII

Bulk Items Collection Service: The Contractor shall furnish a Bulk Items collection service to collect and dispose of all discarded materials which are too large and bulky to be handled safely by one collector. All Bulk Items shall be placed at curbside by a resident for collection on the regular collection day. Such collection shall be made within 24 hours following the regular collection day and without additional charge.

White Good Collection: Residents placing White Goods for collection must call the Contractor to schedule a special collection at no additional cost. White goods must be placed in a separate collection vehicle and unlike Bulk Items may not be placed in vehicles designated for SWANCC waste materials.

ARTICLE VIII- LANDSCAPE WASTE

8.1 Landscape Waste Collection Service

- a) Landscape Waste shall be collected from single-family units only from April 1st through December 1st of each year, in accordance with the schedule provided in Section 4.3. Christmas trees shall be collected by the Contractor from all residential units located within the Village of Niles as refuse.
- b) Any brown Kraft bag or 32 gallon (standard size) garbage can with one prepaid Niles sticker attached may qualify for collection. No plastic bags or boxes of any kind shall be allowed.
- c) The Contractor shall collect all properly stickered Landscape Waste that has been placed in Kraft paper bags or containers meeting the above specifications, providing the bags or containers do not exceed a weight of fifty (50) pounds per bag or container. The Contractor shall not be required to collect Landscape Waste containers that exceed the weight limit, that contain items other than Landscape Waste, or that are not accepted at the compost site used by the Contractor.
- d) The Contractor shall accept and collect all bundles of brush or limbs, providing the bundles do not exceed a weight of fifty (50) pounds per bundle, are not more than four (4) feet long, or more than two (2) feet in diameter, and do not contain any limbs greater than

three (3) inches in diameter as well as being tied with a material that is accepted at the compost site used by the Contractor: The Contractor is not required to collect branches or logs exceeding three (3) inches in diameter.

- e) Contractor will provide weekly collections of properly bundled brush as defined in section 8.1.(d) of Agreement. Brush will not require a pre-paid Village sticker and Contractor will provide unlimited collections from April 1 through December 1 annually. Collection of bundled brush will begin within a reasonable time after approval of agreement, scheduled for August 1, 2014. There will be no additional charge for bundled brush collections in 2014.
- f) There shall be no limit to the quantity of stickered Landscape Waste that residents may set out for collection. All Landscape Waste materials set out for collection shall be picked up at one time on the same day as refuse pickup.
- g) If a resident fails to properly prepare Landscape Waste as described above, the Contractor shall mark the material with a violation notice describing why the material was not collected. All violation notices and written information are subject to approval of the Village Manager.
- h) A reduction in the price of the Village yard waste sticker which results in a material increase in the cost of collection and/or disposal of yard waste will result in a modification of service as outlined in Section 2.4 of agreement.

ARTICLE IX - RECYCLABLE MATERIALS

9.1 Recyclable Materials Collection Service

- (a) Residential curbside recycling service.
 - i. Recyclable Materials shall be collected during the term of this Agreement in accordance with the schedule provided in Section 4.3. Commingled Recyclable Materials will be placed by each resident at curbside in the recycling containers provided by the Village or specified by the Village as acceptable. All uncontaminated Recyclable Materials placed in or next to the recycling containers shall be collected by the Contractor. Recyclable Materials do not need to be segregated within the containers.
 - ii. The Village, with prior written consent of the Contractor, shall have the right to request the addition of materials to the list of Recyclable Materials stated in Article I, pending the availability of markets for materials to be added.

- iii. The Contractor, as agent for the Village, shall have a contractual obligation to ensure that all Recyclable Materials collected are properly processed and marketed. No collected Recyclable Materials shall be land-filled or incinerated, unless advance authorization to do so is given by the Village Manager.
- iv. The Contractor shall provide a monthly accounting statement to the Village detailing the amount of Recyclable Materials collected. The format of the Contractor's monthly accounting statement shall be subject to the approval of the corporate authorities of the Village. Such statement shall be delivered to the Village Manager or their designee by the fifteenth (15) day of the month following the end of the previous month.
- v. The Contractor shall sell all Recyclable Materials it collects 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.
- vi. There shall be no limit to the number of recycling containers, outside of the recycling cart, a resident may place at curbside for collection by the Contractor. Residents will be required to use the designated cart provided.
- vii. The Contractor shall be required to implement a violation notice system for Recyclable Materials that are not collected. The violation notice should identify why the Recyclable Materials were not collected. The Contractor shall provide an example of the sticker that will be used to the Village for advance approval.

b) The Contractor shall provide weekly Recyclable Materials collection at all Village-owned or affiliated facilities. The Village currently requires service at the following locations:

<u>Location</u>	<u>Address</u>
Administration Building	1000 Civic Center Drive
Public Services	6849 Touhy Avenue
Fire Station #2	8360 Dempster Street
Maintenance Building	7104 Touhy Avenue
Fire Station #3	6611 Jarvis Avenue
Senior/Fitness	999 Civic Center Drive
Police Department	7200 Milwaukee Avenue
Niles Teen Center	373 Golf Mill Center

Historical Building	8970 N Milwaukee Avenue
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The above list may be modified from time to time by mutual agreement between the Contractor and the Village.

The Contractor shall establish a high-grade paper recycling program at all Village-owned or affiliated buildings with all necessary collection equipment required for use by the Contractor and the Village to be furnished at no cost to the Village by the Contractor. Collection shall be done weekly.

- c) The Contractor shall provide specially marked containers for Recyclable Materials in condominium buildings. Containers shall generally be of the following sizes, subject to mutual agreement of the Contractor and the Municipality: sixty-five (65) or ninety-five (95) gallon totes, one (1) cubic yard, one and one-half (1-1/2) cubic yards or two (2) cubic yards.
- d) The Contractor shall provide containers designated for recyclable material only at Public Services, 6849 Touhy Avenue, for the drop-off of recyclable materials by residents during the term of the contract. Weekly collection of designated recycling containers shall be provided for no additional charge to the Village.

9.2 Electronic Waste Collection

a) “E-Cycle Drop Off Day” – Contractor will agree to pay for the cost of a designated electronic waste drop off day. The annual event will occur on a date mutually agreed upon from both parties. The drop off location will be designated by the Village and must occur on a Saturday from 9:00 a.m. through 12:00 pm on agreed upon day.

B) Electronic waste fly dumping services – Electronic waste illegally disposed of through “fly dumping” and collected by employees of the Public Works department will be stored in Gaylord containers supplied by the Village. Contractor will service a minimum of six (6) Gaylord’s at a time for no additional charge to the Village. This service does not allow residents to bring electronic waste to the Public Works department and is limited to only illegal fly dumping of said waste.

9.3 Pilot Composting Program – Contractor agrees to provide at no cost one (1) pilot composting program to a local school or organization as directed by the Village and mutually agreed upon by the Contractor. At the end of agreed upon time of the pilot program, Both the Village and the Contractor will agree to continue or suspend such program. Any expansion or continuance of the compost collection program will adhere to terms found in Section 2.4 of agreement.

ARTICLE X - BREACH: EVENTS OF DEFAULT AND REMEDIES

10.1 Breach by Contractor

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

- a) failure of the Contractor to perform timely any obligation under this Agreement not included within subparagraph (i) above, except that such failure shall constitute a Breach only if such failure remains uncured for ten (10) business days after notice to the Contractor from the Village of such failure; provided however that this ten (10) day notice with opportunity to cure shall not be required in the event of persistent and repeated failure to perform; or
- b) 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; a bankruptcy, winding up, reorganization, insolvency, arrangement or similar proceeding being instituted by the Contractor under the law of any jurisdiction; a bankruptcy, winding up, 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; any action or answer by the Contractor approving of, consenting to or acquiescing in any such proceeding, or 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.

The obligations of the Contractor shall be suspended in the event the collection, transportation or disposal of waste is prevented by a cause or causes beyond the reasonable control of the Contractor. Such causes shall include, but not be limited to acts of nature, acts of war, riot, fire, work stoppage or labor strike, flood or sabotage, and acts of terrorism. In the event any of the foregoing occurs, the Contractor asserts a right to suspend performance. The Contractor shall (i) within a reasonable time after it has knowledge of the effective cause, notify the Village of the cause for suspension and (ii) advise the Village when the suspending event has ended and when performance will be resumed, which in no event shall be longer than ten (10) business days. Once the suspending event ends, the Contractor will promptly resume performance.

10.2 Breach by Village

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

- a) failure of the Village to pay, within thirty (30) days after notice from the Contractor of such nonpayment, amounts which are undisputed or which are determined to be due to the Contractor under this Agreement;
- b) failure of the Village to perform timely any obligation under this Agreement not covered by subsection (a), above, within fifteen (15) days after notice to the Village from the Contractor of such failure;
- c) the Village'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;
- d) a bankruptcy, winding up, reorganization, insolvency, arrangement or similar proceeding being instituted by the Village under the laws of any jurisdiction;
- e) a bankruptcy, winding up, reorganization, insolvency, arrangement or similar proceeding being instituted by the Village under the laws of any jurisdiction, which proceeding has not been dismissed within one hundred twenty (120) days;
- f) any action or answer by the Village approving of, consenting to or acquiescing in any such proceeding, or;
- g) the levy of any distress, execution or attachment upon the property of the Village which shall (or which reasonably might be expected to) substantially interfere with the Village's performance hereunder.

10.3 Events of Default and Remedies of Village

- a) If a Breach occurs under Section 10.1, the Village may exercise any one or more of the following remedies:
 - i. the Village may declare an Event of Default and may then terminate this Agreement immediately, upon notice to the Contractor and, upon such termination, the Contractor shall cease providing services under this Agreement. Notwithstanding the foregoing, upon any such termination of this Agreement, the Contractor shall for a period requested by the Village, but not longer than six (6) months, continue to perform the contractual services during which period the Village shall continue to pay the Contractor its scheduled compensation;

- ii. the Village may seek and recover from the Contractor any unpaid amounts due the Village, all its substantiated costs attributable to the Breach and all damages, whether based upon contract, negligence (including tort, warranty, delay) or otherwise, arising out of the Breach by the Contractor of its obligations under this Agreement. The Contractor, however, shall not be liable to the Village for incidental, consequential, indirect or punitive damages resulting from the Breach;
 - iii. the Village may (a) call upon the sureties to perform their obligations under any 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 contract 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;
 - iv. 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;
- b) This Section 10.3 shall survive the termination of this Agreement.

10.4 Events of Default and Remedies of Contractor

- a) If a Breach occurs under Section 10.2, the Contractor may declare an Event of Default and terminate this Agreement immediately, upon notice to the Village. In such event, the Contractor's sole remedy shall be to seek and recover from the Village any unpaid amounts due the Contractor for services rendered and capital cost for refuse and recycling carts. The Contractor shall not be entitled to specific performance or any other equitable remedies.
- b) This Section 10.4 shall survive termination of this Agreement.

ARTICLE XI - INSURANCE AND INDEMNIFICATION

11.1 Insurance

- a) The Contractor shall secure and maintain insurance for general liability up to \$1,000,000 per occurrence for bodily injury, and property damage. The Contractor shall provide the

Village with a certificate of insurance indicating such insurance coverage and naming the Village as an additional insured.

- b) The Contractor shall secure and maintain insurance for automobile liability in an amount not less than \$1,000,000 combined single limit per occurrence.
- c) The Contractor shall secure and maintain Worker's Compensation Insurance for the statutory amount for the Contractor's employees. The Contractor shall provide the Village with a certificate of insurance indicating such insurance coverage.
- d) The Contractor agrees to include the Village as an additional named insured on both general liability insurance policies, and any excess or umbrella policy.
- e) Insurance premiums shall be paid by the Contractor and shall be without cost to the Village.
- f) The Contractor shall secure and maintain general liability coverage for pollution exposure. Contractor shall be responsible for all cost resulting from but not limited to accidents, spills, or any deviations from this contract.
- g) any subcontractors shall be required to provide all of the above insurance requirements or be named as insured for all Contractors' policies.

11.2 Indemnification

- a) The contractor shall, at its sole cost and expense, indemnify, defend, keep and save harmless the Village, its officials, employees, agents and consultants and SWANCC and its officials, employees, agents and consultants, and their successors, heirs, and assignees (individually, an "Indemnified Party" and collectively, the "Indemnified Parties") against all injuries, death, loss damages, claims, patent claims, suits, liabilities, judgments, costs and expenses, which may in any way accrue against any such Indemnified Party by reason of a claim of a third party (collectively referred to as the "Loss") in consequence of the Contractor's Breach of this Agreement or which may in any way result from the intentional misconduct or negligence of the Contractor or any agent, employee or any Subcontractor or their respective employees. The Contractor shall, at its sole cost and expense, appear, defend and pay all charges of attorneys and all costs and other expenses arising there from or incurred in connection therewith. If any judgment shall be rendered against such Indemnified Party in any such action by reason of the Contractor's Breach or the intentional misconduct or negligence of the Contractor or any agent, employee or any Subcontractor or their respective employees, the

Contractor shall, at its sole cost and expense, satisfy and discharge the same. The Contractor expressly understands and agrees that the Performance Bond and insurance required by this Agreement or otherwise provided by the Contractor or such Indemnified Party shall in no way limit the responsibility of the Contractor to indemnify, keep and save harmless and defend the Indemnified Parties as herein provided.

- b) The indemnification obligations set forth in this Section 11.2 cover indemnification for Losses resulting from claims made by third parties against any Indemnified Party. The provisions of this Section shall not apply to a Loss or portion thereof which arises, in whole or in part, out of intentional misconduct on the part of the Indemnified Party seeking indemnification, or to a Loss or portion thereof, which arises, in whole or in part, out of negligence or intentional misconduct on the part of such Indemnified Party, but only to the extent that such Indemnified Party's intentional misconduct or negligence contributed to the Loss, or that the Loss is attributable to such Indemnified Party's negligence or intentional misconduct.
- c) Until such time as it has been (i) determined by a court of competent jurisdiction that any Indemnified Party is liable in whole or in part for a Loss caused by said Indemnified Party's own negligent acts or omissions or intentional misconduct, or (ii) mutually agreed between the Contractor and any Indemnified Party regarding allocation of liability for any Loss, the Contractor shall defend such Indemnified Party from such Loss at the Contractor's sole cost and expense. Each Indemnified Party shall furnish such information as may be reasonably required by the Contractor or defense counsel to provide an adequate defense and each such Indemnified Party shall cooperate fully in the defense of the claim giving rise to the Loss. If it is determined that such Indemnified Party is liable in whole or in part for said Loss caused by such Indemnified party's own intentional misconduct or negligence, to the extent indicated in the prior paragraph, the Indemnified Party shall be responsible for the payment of that portion of the reasonable attorneys' fees and related expenses incurred in the defense of the claim giving rise to the Loss equal to the Indemnified Party's adjudicated or agreed to share of liability for the Loss.
- d) Nothing in this Section 11.2 shall apply to suits or actions which are barred by the applicable statute of limitations.
- e) This Section 11.2 shall survive the termination of this Agreement.

ARTICLE XII- MISCELLANEOUS

12.1 Non-Assignability

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 Municipality, whose approval shall not be unreasonably withheld, but the Contractor may perform its obligations hereunder through its subsidiaries or divisions. Approval, if any, for an assignment shall be made by the Municipality. Such assignment shall not relieve the Contractor from its obligations or change the terms of this Agreement. If the Contractor subcontracts all or any portion of its obligations under this Agreement, it shall not be relieved of its obligations under this Agreement.

12.2 Equal Employment Opportunity

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, disability, or age. 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.

12.3 Prevailing Wage Rates

Not less than the prevailing rate of wages, as found 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 of this Agreement and showing the actual hourly wages paid to each such person.

The submission by the Contractor and each subcontractor of payrolls, or copies thereof, is not required. However, the Contractor and each subcontractor shall preserve their weekly payroll records for a period of three (3) years from the date of completion of this Agreement.

If the Illinois Department of Labor revises the prevailing rate of hourly wages to be paid by the Village, the revised rate, shall apply to this Agreement.

12.4 Provision for Telephone Calls

The Contractor shall maintain an office and a (1-800) telephone number, for the receipt of service, and complaint calls, and shall be available for such calls on all working days from 8 a.m. to 4:30 p.m. Any complaints must be given prompt and courteous attention, and in case of missed scheduled collections, the Contractor shall investigate; and if verified, shall arrange for collection of such waste, within 24 hours

after the complaint is received. In addition, the Contractor shall check daily with the Public Services Director to receive any service calls or complaints received at that office. The Contractor will provide the Village with a monthly report as to complaints and requests for service from residents and the Village, indicating the type of complaint or request for service and action taken.

12.5 Equipment to be Used by Contractor

The Contractor agrees to collect all materials described in Section 4.1 in fully enclosed, leakproof, modern trucks. For the collection of Recyclable Materials, the Contractor shall use trucks specifically designed for recycling service.

The Contractor shall provide an adequate number of vehicles for regular collection and recyclable materials collection services. All vehicles shall be kept in good repair, appearance, and maintained in a sanitary condition at all times. Each vehicle shall have clearly visible on each side the name, a vehicle identification number, and local phone number of the Contractor. Vehicles shall not leak fluids, oil, hydraulic fluids, etc. If found to do so, they shall be repaired by the Contractor within ten (10) business days of reported incident or of knowledge by the Contractor.

A listing of vehicles to be utilized in carrying out this Agreement shall be provided to the Village Manager upon request throughout the term of the Agreement and he shall be advised of any changes made. Vehicles shall be capable of delivering material directly to a disposal site or processing center. In the event any listed vehicle is determined by the Village or otherwise not properly operable, the Contractor shall immediately provide a substitute complying with the terms outlined herein.

Equipment used for Private Service described in Section 4.3 may be open-body trucks, dump trucks, and similar type equipment. When open-body trucks reused, the Contractor shall take such action as is necessary to prevent littering.

12.6 Compliance with Laws: SWANCC Rules and Regulations

- a) The Contractor shall comply at all times with all applicable federal, State and Village 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. 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.
- b) The Contractor covenants and agrees that (i) it has read, understood and agrees to be bound by SWANCC Rules and Regulations relating to the WITS and (ii) all fines assessed to the Contractor pursuant to the Rules and Regulations are the sole responsibility of the Contractor.

12.7 Care and Performance

The Contractor shall undertake to perform all services rendered hereunder in a neat, thorough and workmanlike 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.

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 crew members while on duty or in the course of performing their duties under this Agreement.

12.9 Force Majeure

The obligations of the Contractor hereunder shall be suspended in the event the collection, transportation or disposal of waste is prevented by a cause or causes beyond the reasonable control of the Contractor. Such causes shall include acts of nature, acts of war, riot, fire flood or sabotage, acts of terrorism. In the event any of the foregoing occurs, the Contractor asserts a right to suspend performance. Under this Section, the Contractor shall (i) within five business days 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, which in no event shall be longer than ten (10) business days. Once the suspending event ends, the Contractor will promptly resume performance.

12.10 Books and Records

The Village reserves the right to require the Contractor to weigh its trucks prior to dumping the material collected and supply such weight information to the Village Manager. The Village Manager, or other person as he may designate, shall have the right to audit all books and records of the Contractor as the Manager shall deem reasonably necessary to verify the volume of solid waste, landscape waste, and recyclable materials being collected through actual field investigations which may include a rider on any or all of the Contractor's trucks for a period of time or a spot check done by following the trucks or in any other manner that the Manager shall determine.

Manager acknowledges that Contractor's financial statements are proprietary in nature and the books and records referred to above are deemed as any information at Contractor's disposal and used in Contractor's normal internal reporting procedures that have specific information regarding the Village of Niles contract.

12.11 Accident Notification

In the event of accidents of any kind which involve the general public and/or private or public property which relate to the fulfilling of this contract, the Contractor shall immediately notify the Village and shall provide a full accounting of all details of the accident. Contractor shall furnish the Village with copies of all reports of such accidents at the same time the reports are forwarded to any other interested parties.

12.12 Governing Law

This Agreement and any questions concerning its validity, construction or performance shall be governed by the laws of the State of Illinois.

12.13 Severability

The parties hereto agree that if any provision of this Agreement is judicially or administratively interpreted or construed as being in violation of any law, rules, regulations or decisions, then such sections, sentences, words, clauses or combinations thereof shall be inoperative, and the remainder of this Agreement shall remain binding upon the parties hereto.

12.14 Change in Law

The parties agree to enter into negotiations regarding a price adjustment for Contractor's performance of future services under this Agreement in the event that there is (i) a Change in Law or (ii) a force majeure event, and either such event will cause an increase in Contractor's future costs of performing its obligations under this Agreement, including, but not limited to, increased costs due to newly enacted taxes, fees, surcharges or impositions by local, state or federal governments, or establishes requirements which are materially more burdensome than or in addition to those applicable on the date of this Agreement. Upon the occurrence of such an event, the Contractor shall notify the Village in writing of its requires to negotiate a price adjustment, and shall submit documentation of the cost increases it anticipates as a result of such event. The parties shall have 60 days from the date the Contractor has delivered the notice to the Village in which to agree mutually on an adjustment to the rates and prices in this Agreement. During such period, the Contractor and the Village may request that the Executive Director of SWANCC assist the parties at arriving at a price adjustment. If parties can not agree than it has to go to arbitration. SWANCC works for the Village and is not a neutral party.

12.15 Disaster Language

The Contractor shall, upon receipt of notice from the Municipality, provide any home in the community a special emergency pick-up service for garbage, rubbish and miscellaneous waste materials, in circumstances requiring prompt disposition of the waste material and where a delay in pick-up until the next regularly scheduled pick-up day would or might be injurious or detrimental to the health and/or welfare of the community. Any such special emergency pick-up service shall be completed at the

direction of the Municipality and must receive prior written consent from the Contractor. This provision does not and is not intended to provide free garbage service to the Municipality and its residents in the event of a natural disaster, such as windstorm, tornado, flooding, ice storm or other similar force majeure occurrence. The Contractor shall be paid on per cubic yard basis for emergency pick-up Service. The Contractor shall invoice the Municipality separately for this service at a 2014 rate of \$18.00 per cubic yard with final disposal cost to the Village from the WTTS. The invoice shall state the date and location of the collections as well as the actual cubic yards collected and the location of disposal. If a final location of disposal is not the WTTS than Contractor will invoice an additional \$5.00 per cubic yard for final disposal costs.

12.16 Strike Clause

In the event that the Contractor is the subject of a strike, sympathy strike, slowdown, picketing, or other labor action that interferes with the performance of the collection, transportation and delivery of solid waste to SWANCC, or with the performance of any other work that is the subject of this contract, after seven (7) business days of no attempted cure or remedy, The Village of Niles shall have the option, at the Contractor's expense, to perform any and all work that is the subject of this contract, including but not limited to the collection, transportation and delivery of solid waste to SWANCC, by use of its own employees or the employees of any other vendor that the Village of Niles may select to perform said work. The determination as to whether the facts warrant the exercise of this option shall be within the sole discretion of the Village of Niles, and payment of the costs incurred by the Village of Niles as a result of the exercise of this option shall be accomplished, at the election of the Village of Niles, by means of an offset against past or future contract payments due to the Contractor by the Village of Niles or by means of an invoice for costs incurred to be paid by the Contractor within thirty (30) days of its submission to the Contractor for payment.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives:

Groot Industries, Inc.

By: _____ Date: _____

Its: President _____

ATTEST

By: _____ Date: _____

Its: Secretary _____

Village of Niles

By: _____ Date: _____

Its: Mayor

ATTEST

By: _____ Date: _____

Its: Village Clerk