

AGREEMENT FOR PURCHASE AND SALE OF 1912 W. PIERCE

THIS AGREEMENT, dated as of this _____ day of _____, 2005 (the "Effective Date"), is made and entered into by and between the City of Milwaukee ("City") and Miller Compressing Company, a Wisconsin corporation ("BUYER").

1. **Agreement to Buy and Sell.** BUYER agrees to buy from the City, and the City agrees to sell to BUYER, on the terms and conditions contained herein, the City's right, title, and interest in and to the property at 1912 West Pierce Street, Milwaukee, Wisconsin, Tax Key Number 426-0011-000-9 (more particularly described in **EXHIBIT A** attached hereto) (the "Property").
2. **Purchase Price.** The purchase price is \$180,000 and will be paid in good funds at Closing (defined below) via certified check pursuant to directions to be furnished by City to BUYER.
3. **Earnest Money.** Earnest money of \$15,000 in the form of a BUYER-corporate check shall be paid to City within one day of the Effective Date, failing which this Agreement shall be null and void. Earnest money shall be held by City in an account of City, and no interest shall accrue to BUYER.
4. **Closing.** The closing on this transaction ("Closing") shall take place at the offices of the City's Department of City Development, 809 N. Broadway, Milwaukee, at a mutually acceptable time and date that will be within **NINETY (90)** days of the Effective Date.
5. **Quit-Claim Deed of Property; AS-IS Sale.** City shall, at Closing and upon receipt of the Purchase Price, convey the Property to BUYER by quit-claim deed, in form and substance of that attached hereto as **EXHIBIT B** (the "Deed"), in "AS-IS, WHERE-IS" condition, with all faults and defects, known or unknown, physical or otherwise (including, but not limited to, environmental and geotechnical defects), and without representation or warranty, express or implied. BUYER shall not rely upon any oral or written statement or representation of City or any employee or agent or contractor of City. At Closing, and upon delivery of the Deed to BUYER, whatever occupancy rights City has in and to the Property will become BUYER's.
6. **BUYER Aware of Possible Environmental Issues.** Without changing the "AS-IS/no warranty or representation" nature of this transaction, BUYER is aware that the Property is or may be affected by adverse geotechnical and environmental issues. BUYER acknowledges receipt from the City of a Phase I Investigation Report, dated December 28, 2004.
7. **Title Insurance.** Also without changing the "AS-IS/no warranty or representation" nature of this transaction, City will obtain, within ten (10) days of the Effective Date and provide (or caused to be provided) to BUYER, a title insurance commitment for the Property from Chicago Title Insurance Company and copies of all title-exception documents. At Closing, City shall issue a check to Chicago Title to pay for title insurance in the amount of the Purchase Price, or there shall be a credit to BUYER so

BUYER can issue that check. While the City will pay for title insurance in the amount of the Purchase Price, any gap or other endorsement that BUYER may desire, BUYER must pay for on its own.

8. **Tax Proration – PILOT for Year 2005.** The Property is property-tax exempt for year 2005 due to City’s ownership as of January 1, 2005. Notwithstanding that, BUYER recognizes that if it were purchasing from a nonexempt entity, BUYER would have prorated-taxpaying duties for year 2005. At Closing, BUYER agrees to pay to City as a year 2005 PILOT (payment in lieu of taxes) the 2004 tax rate times \$180,000 times the fraction having a denominator of 365 and a numerator equal to the number of days remaining in year 2005 after the Closing.
9. **No Transfer Fee or Return.** There shall be no real-estate-transfer fee due as the Deed represents a conveyance from the City as a subdivision of the State under Wis. Stat. § 77.25(2). And, there shall be no real-estate-transfer return pursuant to the exemption from returns under Wis. Stat. § 77.255 (no return required for conveyances exempt under § 77.25 (2). City is not a lender in this transaction).
10. **Recording Deed.** The Deed shall, promptly after Closing, be recorded by the City (or at City’s option, per Ordinance § 304-49-13-b, by Chicago Title Insurance Company) with the cost of recording being paid by BUYER as required by Milwaukee Code of Ordinances § 304-49-13-b. At Closing, BUYER shall provide Chicago Title Insurance Company with a check, made payable to the Milwaukee County Register of Deeds, in the amount needed to record the Deed.
11. **Milw. Code of Ordinances §308-22-2-g.** This Agreement shall be deemed the “waiver” required by Milwaukee Code of Ordinances §308-22-2-g. BUYER shall, effective upon receipt of the Deed, release and hold the City (and its agents, employees, and contractors, and also the Redevelopment Authority of the City of Milwaukee, and its agents, employees and contractors) harmless from and against any loss, expense, damage, or claim (whether based in contract, tort, or otherwise), associated with any detected or undetected, known or unknown environmental, geotechnical, or other physical or nonphysical defect or hazard that may be present in or on, or that may affect, the Property.
12. **Buyer Contingencies.** BUYER’s obligation to Close on this transaction is contingent upon the following conditions.
 - A. **Title Review.** BUYER’s review and approval of status of title as shown by the Chicago Title title-insurance commitment to be provided by City to BUYER hereunder, the recorded documents referred to therein, and as shown by the survey to be obtained by BUYER at its expense.
 - B. **Survey Review.** BUYER’s review and approval of an ALTA survey of the Property, prepared by a Wisconsin Registered Land Surveyor, and to be obtained at BUYER’s expense.

- C. **Records Review.** BUYER's (and BUYER's attorney's and BUYER's environmental engineer's) review and approval, at BUYER's expense, of records of the Property maintained by the Wisconsin Department of Natural Resources and/or by the City of Milwaukee.
- D. **Geotechnical Inspection.** BUYER's review and approval of test results from a certified soils tester or other qualified expert, to be obtained at BUYER's expense, indicating that the soils and geotechnical conditions at the Property are free from conditions that would make development on the Property by BUYER impossible or materially more costly than otherwise reasonably anticipated by BUYER.
- E. **Environmental Inspection.** BUYER's review and approval of an environmental report from a certified environmental engineer, to be obtained at BUYER's expense, indicating that the environmental hazards at the Property are reasonably acceptable, and are such as to not significantly add more cost to BUYER's anticipated use and improvement of the Property than otherwise reasonably anticipated by BUYER.
- F. **General Feasibility.** BUYER determining, based on its reviews and inspections above, and other inquiry and analysis BUYER will have conducted regarding anticipated construction costs (including financing, labor and material costs), construction methods, market conditions (including availability of commercial tenants and users and market-rental rates) and applicable federal, state, and local laws, rules, and regulations regarding construction and improvement at the Property and anticipated costs to comply therewith, that BUYER's anticipated costs of owning, improving and developing the Property is economically feasible.
- G. **Zoning and Building Codes.** Buyer obtaining, at Buyer's expense, from the City of Milwaukee all zoning and other governmental approvals (including, without limitation, the addition to, and inclusion of, the Property in BUYER's existing Detailed Planned Development pursuant to an Amendment thereto), permits and consents necessary or appropriate to allow BUYER to use the Property for BUYER's intended use for the purchase of scrap materials from the general public including, without limitation, both outdoor and indoor (utilizing the existing buildings) storage of parts. City agrees to cooperate with Buyer concerning Buyer's efforts under this paragraph – providing, however that City's duty to cooperate shall not obligate City to pay any costs or expense associated therewith.
13. **BUYER Approvals.** Concerning BUYER's contingency rights, approvals by BUYER, and also BUYER's determination under para. 12.F. above, BUYER's approvals and determinations shall not be unreasonably withheld, BUYER having a duty of good faith.
14. **Waiver of Contingencies Unless BUYER Sends Timely Notice of Termination.** BUYER's contingency rights shall conclusively be deemed waived unless BUYER notifies City, in writing, within **SIXTY (60)** days of the Effective Date of this Agreement (the "Contingency Period") (**time is of the essence**), that all of the contingencies have not

been satisfied (such notice is hereby called the "Termination Notice"). Any Termination Notice sent by BUYER shall: be timely sent; be sent per the "Notice" paragraph in this Agreement; and provide detailed explanation as to why a particular contingency has not been satisfied. In the event of a proper Termination Notice, this Agreement shall be deemed terminated, null and void, and City shall promptly return BUYER's earnest money (without interest).

15. **BUYER's Pre-Closing Contingency-Period Access Rights.** City shall allow BUYER and its agents and representatives pre-Closing access to the Property in conjunction with BUYER's contingency rights above. Such access shall be on the following terms and conditions:
- A. Access is for the sole purpose of pursuing BUYER's contingency/inspection rights set forth above.
 - B. Prior to any entry by BUYER or anyone claiming by, through, or under BUYER, or on behalf or at the direction of BUYER, BUYER shall contact Elaine "Bunkie" Miller of the City's DCD at 414-286-5732 and inform her of the approximate time and the date of the desired entry, purpose of entry, and the estimated length of occupancy. Ms. Miller shall have discretion as to whether to allow such entry without City accompaniment or whether the City will require on-site accompaniment by a City employee, agent, or representative.
 - C. BUYER, and any surveyor performing survey work, and any person performing any testing or sampling at the Property, must – prior to entry - provide the City with an insurance certificate with minimum limits as set forth on **EXHIBIT C** attached hereto. The City of Milwaukee must be named as an additional insured.
 - D. Entry is at BUYER's own risk.
 - E. BUYER shall be required to obtain, and provide to City prior to entry, an executed sign-off in the form of **EXHIBIT D** attached hereto by anyone entering by, through, or under BUYER, or by anyone entering with, or on behalf or at the direction of BUYER, that entry is at such person's own risk and that the City will be indemnified and held harmless regarding any loss, claim, injury, liability, or expense that may befall such person, or that may be asserted against City, directly or indirectly, as a result of entry onto the Property.
 - F. With the exception of the ALTA survey to be obtained by BUYER, BUYER must first submit and obtain Ms. Miller's approval of a written plan for any testing, sampling, or investigation to be conducted at the Property by, or on behalf or at the direction of, BUYER. Such approval shall not be unreasonably withheld, conditioned or delayed and shall be deemed approved if no written objection is received by Buyer within five (5) business days after it has been submitted to Ms. Miller for approval.
 - G. BUYER must, at its expense, restore the Property to the condition that existed prior to entry or occupancy by BUYER or by anyone claiming by, through, or

under BUYER (or by anyone entering on behalf or at the direction of BUYER); provided, however, such obligation to restore shall not apply in the event BUYER closes the purchase of the Property.

- H. BUYER shall defend, indemnify and hold City harmless from any and all loss, cost, damage, claims, or expense, including, without limitation, reasonable attorney fees, that may result, directly or indirectly, from BUYER's (or anyone claiming by, through, or under BUYER, or by anyone entering on behalf or at the direction of BUYER) entry onto, occupancy of, or conduct or activities at, the Property (including, but not limited to, any failure by BUYER to restore as required by subparagraph G above); provided, however, that the foregoing indemnification and hold harmless shall not apply to (i) any legal obligation to make a report which may be imposed upon BUYER, or (ii) damage, claims, or expenses attributable to post-Effective Date negligent or willful misconduct of the City, its employees, agents and/or contractors.
- I. This right of entry shall expire upon the sooner of the termination of this Agreement or at the end of the Contingency Period. BUYER's obligations under subparagraph H above, however, shall survive any termination of this Agreement.
16. **Copies to City.** BUYER shall provide to City, promptly upon receipt, copies of any survey, report, findings, data, or results that BUYER obtains as a result of its contingency/inspection rights – including a copy of any geotechnical report or environmental report or findings or data that BUYER obtains. BUYER, however, does not verify or guaranty to the City or to any other party the veracity or accuracy of any material prepared or reported to BUYER by any third party.
17. **Pre-Closing Walk-Through.** After the Contingency Period and prior to Closing, BUYER shall have the right to enter the Property, from time to time, to visually inspect the same to satisfy itself that the Property's condition has not materially changed in any manner from the Effective Date to the date of Closing – except for any changes that BUYER may have, directly or indirectly, caused or created or allowed or consented to. BUYER does not have any right to test or sample or disturb the Property during this pre-Closing walk-through. The right of entry under this paragraph is subject to the same requirements as are in subparagraphs B, D, E, G, and H of paragraph 15 above, that are herein incorporated by reference as *de facto* subparagraphs B, D, E, G, and H of this paragraph 17.
18. **Successors and Assigns.** This Agreement binds and inures to the benefit of the parties hereto and their successors and assigns. Notwithstanding the foregoing, however, BUYER may only assign its rights and obligations under this Agreement if: BUYER also remains liable for all of BUYER's, and the permitted assignee's obligations and liabilities hereunder; the assignment is pursuant to a written assignment agreement a complete copy of which is provided to City; the assignee and its relationship to BUYER must be identified in writing to City; and the assignee agrees in the written assignment agreement (to which City shall be deemed a third-party beneficiary) that the assignee is responsible and liable for BUYER's duties and obligations hereunder.

19. **Facsimile and Counterparts.** This Agreement may be executed in one or more counterparts which, when taken together, shall constitute one and the same document. Facsimile signatures shall be accepted as originals.
20. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties and all prior statements, written or oral, are terminated and of no effect. This Agreement may only be amended by a written agreement signed by all the parties hereto.
21. **Severable.** The terms and provisions of this Agreement are deemed separable and severable such that the invalidity or unenforceability of any term or provision shall not affect or impair the validity or enforceability of the remaining terms and provisions.
22. **Authority to Sign.**
 - A. BUYER represents that its respective signatories have full authority to sign this Agreement.
 - B. City's Common Council has approved entry into and execution of this Agreement on behalf of the City by Common Council Resolution File Number 041216.
23. **Survival.** The terms, provisions, and agreements herein (including paragraphs 5, 11, 15.D. and H., 16, 17. D. and H., and 28) shall survive Closing and delivery and recording of the Deed. And, notwithstanding a termination of the Agreement, or anything to the contrary contained herein, BUYER's express agreements in paragraph 15 D., G., and H., in paragraph 16, and in subparagraphs 17 D., G., and H., shall survive termination of the Agreement.
24. **Notices.** All notices permitted or required hereunder shall be considered given **(i)** upon receipt if hand-delivered by commercial courier or otherwise personally delivered, **(ii)** if sent by facsimile, then the notice must be sent during business hours (i.e. 8:30 A.M to 4:30 P.M., Monday through Friday) on days that City's City Hall is open for business, and the notice shall be deemed given when sent as per the following and so long as the notice is successfully sent (i.e. the sender does not receive any error or "busy" or "inability to send" notification), and **(iii)** within two business days of depositing same in the U.S. mail, postage-paid, addressed by name and address to the party intended as follows:
 - A. If to City:

Elaine Miller
Dept. of City Development
809 North Broadway, 2d Floor
Milwaukee, WI 53202

Fax: 414-286-0395
Phone: 414-286-5732

With a further copy to:

James Purko
DPW – Deputy Commissioner
841 N. Broadway, Room 501
Milwaukee, WI 53202

Fax: 414-286-3953
Phone: 414-286-3302

With a further copy to:

Gregg Hagopian
City Attorney's Office
800 City Hall
200 East Wells Street
Milwaukee, WI 53202

Fax: 414-286-8550
Phone: 414-286-2620

B. If to BUYER:

Joseph R. Kovacich
Miller Compressing Company
1640 W. Bruce Street
Milwaukee, WI 53204

Fax: 414-671-4081
Phone: 414-290-6502

With a further copy to:

Ben Abrohams
Foley & Lardner LLP
777 E. Wisconsin Ave.
Milwaukee, WI 53202

Fax: 414-297-4900
Phone: 414-297-5703

25. **Headings**. The headings used herein are for convenience only.

26. **Remedies.** Except as otherwise provided herein, in the event of breach of this Agreement, the non-breaching party shall have all rights and remedies available at law and in equity against the breaching party. In the event of breach by BUYER, City may elect to retain the Earnest Money as liquidated damages or as partial offset against damages otherwise occasioned by the Buyer's breach which, in the latter case, City may bring suit for remaining damages.
27. **Milw. Code of Ordinances § 304-49-17.** This transaction, subject to the terms hereof, reflects an agreement with a designated entity for conveyance to that entity of real property. The Common Council's approval of this transaction reflects approval under Milwaukee Code of Ordinances § 304-49-17. The parties hereto recognize the monetary and nonmonetary aspects of this transaction and accept the same as adequate fair market consideration.

IN WITNESS WHEREOF, the parties caused this Agreement to be entered into and executed as of the Effective Date first written above.

CITY: City of Milwaukee

By: _____
Elaine M. Miller, Sp. Deputy Commissioner,
DCD, signed per Council File No. 041216

CITY ATTORNEY'S OFFICE
(Milwaukee Code of Ordinances § 304-21)

Approved by: _____
Gregg C. Hagopian
Assistant City Attorney

BUYER: MILLER COMPRESSING COMPANY

By: _____
Joseph R. Kovacich, Vice President

CAO doc no 92850 (5/9/05)

EXHIBIT A - LEGAL DESCRIPTION OF PROPERTY

Tax Key No. 426-0011-000-9

Address: 1912 W. Pierce Street, Milwaukee.

Legally described as follows:

EXHIBIT B – QUIT-CLAIM DEED

Document No.	QUIT CLAIM DEED
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THIS QUIT-CLAIM DEED is made as of this ____ day of _____, 2005, by the CITY OF MILWAUKEE, a Wisconsin municipal corporation, hereinafter called "CITY," as the Grantor, to MILLER COMPRESSING COMPANY, a Wisconsin corporation with an office at 1640 W. Bruce Street, Milwaukee, WI 53204, hereinafter called "BUYER," as the Grantee.

WITNESSETH:

1. **Conveyance of Property.** CITY hereby conveys and quit-claims to BUYER, on an "AS-IS, WHERE-IS" basis, with all faults and defects, known or unknown, physical or otherwise, and without representation or warranty, express or implied, all of CITY's right, title, and interest, in and to the real estate, in the City and County of Milwaukee, State of Wisconsin, described on **EXHIBIT A** attached hereto (the "Property").

2. **No Transfer Fee; No Transfer Return.** There is no real-estate-transfer fee due with respect to this Deed as it represents a conveyance from the CITY as a subdivision of the State under Wis. Stat. § 77.25(2). And, there is no real-estate-transfer return required with respect to this Deed pursuant to the exemption from returns under Wis. Stat. § 77.255 (no return required for conveyances exempt under § 77.25 (2) where the CITY is not a lender in the transaction, and the CITY is not a lender in this transaction).

IN WITNESS WHEREOF, the CITY, as Grantor, has caused this Deed to be executed by its duly authorized officers as of the ____ day of _____, 2005.

CITY: City of Milwaukee

By: _____
Elaine M. Miller, Sp. Deputy Commissioner,
DCD, signed per Council File No. 041216

COMPTROLLER COUNTERSIGNATURE
(Milwaukee City Charter § 3-18-2)

Recording Area

RETURN TO:

Ben Abrohams
Foley & Lardner LLP
777 E. Wisconsin Ave.
Milwaukee, WI 53202

Tax Key No. :
426-0011-000-9

By: _____
Name Printed: _____
Comptroller's Office

CITY ATTORNEY'S OFFICE
(Milwaukee Code of Ordinances § 304-21)

Approved by: _____
Gregg C. Hagopian
Assistant City Attorney

CITY NOTARIES

STATE OF WISCONSIN)
)ss.
MILWAUKEE COUNTY)

Personally came before me this _____ day of _____, 2005, Elaine M. Miller, Sp. Deputy Commissioner, of the City of Milwaukee, Department of City Development, who by the City's authority and on its behalf executed the foregoing instrument and acknowledged the same.

NOTARY PUBLIC, State of Wisconsin
My commission Expires: _____

STATE OF WISCONSIN)
)ss.
MILWAUKEE COUNTY)

Personally came before me this _____ day of _____, 2005, _____, of the City of Milwaukee Comptroller's Office, who by its authority and on its behalf executed the foregoing instrument and acknowledged the same.

NOTARY PUBLIC, State of Wisconsin
My commission Expires: _____

EXHIBIT C
INSURANCE REQUIREMENTS - RIGHT OF ENTRY

Insurance certificates must be sent for inspection and approval prior to entry to: Elaine "Bunkie" Miller by facsimile to 286-0395. AND THE CITY MUST BE NAMED AS AN ADDITIONAL INSURED.

TYPE OF INSURANCE

LIMITS

Workers' Compensation

Statutory limits

Employers Liability

Bodily Injury by Accident
 Bodily Injury by Disease

Each Accident \$100,000
 Each Employee \$100,000
 Policy Limit \$500,000

Public Liability

A Comprehensive General or Commercial General Insuring Agreement that provides:

Occurrence Coverage

Premises/Operations Protection
 Products Completed Operations Protection
 Independent Contractors (owners, contractors protective coverage)
 Contractual Liability for Risks Assumed to of by this Agreement

NOTE: If claims made coverage is provided, the policy must be amended so all protected occurrences are covered regardless of when the claim is made.

Bodily Injury/Property Damage

Each occurrence \$1,000,000
 General occurrence \$1,000,000
 Products/completed operation aggregate \$2,000,000

Automobile

Business Auto Policy that provides:

Liability coverage for all owned, non-owned and hired vehicles
 Sudden and Accidental Pollution Coverage
 Provide MCS-90 Endorsement when applicable in accordance with the Motor Carrier Act of 1980

Bodily Injury/Property Damage

Each accident \$1,000,000

Persons performing any testing or sampling work at the Property must also obtain the following coverages:

Professional Liability - should also be “occurrence” coverage Form to include coverage for all loss and expense that results from errors and omissions of the vendor

Each claim \$1,000,000
Aggregate \$1,000,000

Underground Storage Tank Insurance
or other coverage against accidental puncturing or disruption of tanks, pipelines or other installations.

“Occurrence” coverage to cover claims made at least 4 years after completion of job.

Each occurrence \$1,000,000
Aggregate \$2,000,000

EXHIBIT D
SIGN-OFF REQUIRED TO ENTER

_____ (herein called "Entrant"), with an address at _____, and a phone number of _____, wishes to enter 1912 W. Pierce Street, Milwaukee (the "Property") at the direction or on behalf of MILLER COMPRESSING COMPANY ("BUYER") to assist BUYER with respect to its contingency and inspection rights under that certain "Agreement for Purchase and Sale of 1912 W. Pierce Street" by and between the City of Milwaukee ("City") and BUYER (the "Agreement").

Particularly, Entrant wishes to enter onto the Property to: _____.

Entrant understands and agrees that:

1. Entry and access to the Property is for the sole purpose of pursuing BUYER's contingency/inspection rights.
2. The City may require that a City employee, agent, or representative accompany Entrant on the Property.
3. Any surveyor performing survey work, and any person performing any testing or sampling at the Property, must – prior to entry - provide the City with an insurance certificate with minimum limits as set forth on **Exhibit C** to the Agreement. The City of Milwaukee must be named as an additional insured.
4. Entry is at Entrant's own risk.
5. Entrant may not enter onto the Property unless this "sign-off" is executed by Entrant.
6. Entrant agrees to indemnify and hold City harmless regarding any loss, claim, injury, liability or expense that may befall such person, or that may be asserted against City, directly or indirectly, as a result of entry onto the Property.
7. BUYER must first submit to the City and obtain the City's approval of a written plan for any testing, sampling, or investigation to be conducted at the Property by, or on behalf of, or at the direction of, BUYER.
8. BUYER must, at its expense, restore the Property to the condition that existed prior to entry or occupancy by BUYER or by anyone claiming by, through, or under BUYER (or by anyone entering on behalf or at the direction of, BUYER).
9. BUYER must provide to City copies of any survey, report, findings, or results that BUYER obtains as a result of BUYER's contingency/inspection rights – including a copy of any geotechnical report or environmental report or findings or data that BUYER obtains.

Notwithstanding the above, in the event entry is after expiration of the Contingency Period in the Agreement, then: (a) entry and access shall be solely for the purposes of visually inspecting the Property to satisfy BUYER that the Property's condition has not materially changed in any manner from the Effective Date of the Agreement to the date of the Closing – except for any changes that BUYER may have, directly or indirectly, caused or created or allowed or consented

to; and **(b)** no entrant shall have the right to test or sample or disturb the Property during this pre-Closing walk-through.

Dated: _____

Entrant: _____

By: _____

Name Printed: _____

Title: _____