

THE STATE OF TEXAS

CITY OF LOS FRESNOS

COUNTY OF CAMERON

CONTRACT FOR SOLID WASTE COLLECTION AND DISPOSAL SERVICE

This Contract for Solid Waste Collection and Disposal Service for the City of Los Fresnos, Texas (the "Contract") is made on the 11th day of October 2011 between the City of Los Fresnos, Texas ("City") 200 N. Brazil Street, Los Fresnos, TX 78566, and BFI Waste Services of Texas, LP, a Delaware limited partnership d/b/a Allied Waste Services of Rio Grande Valley ("Contractor"), 9402 W. Expressway 83, Harlingen, Texas 78552.

1.00 DEFINITIONS

- 1.01 BIN** – Metal receptacle designed to be lifted and emptied mechanically for use only at commercial and industrial units.
- 1.02 BRUSH** – Tree trimmings, grass cuttings, dead trees or branches thereof, shrubs, chips shavings resulting from general yard maintenance of occupied residential lots.
- 1.03 BULKY WASTE** – Appliances such as washers, dryers, stoves, air conditioners and refrigerators (provided Freon has been removed by a licensed facility and is labeled as such), water tanks, furniture, and mattresses generated from occupied residential households...
- 1.04 CITY-** City of Los Fresnos, Texas.
- 1.05 COMMERCIAL AND INDUSTRIAL REFUSE** – All bulky waste, construction debris, garbage, and rubbish and stable matter generated by a producer or contractor at a commercial and industrial unit.
- 1.06 COMMERCIAL AND INDUSTRIAL UNIT** – All premises locations or entities, public or private requiring refuse collection within the corporation limits of City and not a residential unit.
- 1.07 CONSTRUCTION / DEMOLITION DEBRIS** – Waste building materials resulting from commercial, industrial, or residential construction, remodeling, repair or demolition operations.

- 1.08 *CONTAINERS –96 Gallon garbage carts for residential use, to be provided by Contractor, to be used in conjunction with a fully authorized pickup plan.*
- 1.09 *CONTRACT DOCUMENTS – Contractor's proposal, general specifications, this Contract and any addenda or changes to the foregoing documents agreed to by City and Contractor. Contract documents shall include the following documents, and this Contract does hereby expressly incorporate same herein as fully as is set forth verbatim in this Contract:*
- a. *RFP Bid Proposal;*
- 1.10 *CONTRACTOR – BFI Waste Services of Texas, LP, a Delaware limited partnership d/b/a Allied Waste Services of Rio Grande Valley, which is the corporation performing refuse collection and disposal under contract with City.*
- 1.11 *DEAD ANIMALS – Animals or portions thereof equal to or greater than 10 pounds in weight that have expired from any cause, except those slaughtered or killed for human use.*
- 1.12 *DISPOSAL SITE – A refuse depository including but not limited to sanitary landfills, transfer stations, incinerators, and waste processing/separation centers licensed, permitted or approved to receive for processing or final disposal of refuse and dead animals by all governmental bodies and agencies having jurisdiction and requiring such licenses, permits or approvals.*
- 1.13 *GARBAGE – Any and all dead animals of less than 10 pounds in weight, except those slaughtered for human consumption; every accumulation of waste (animal, vegetable and/or other matter) that results from the preparation, processing, consumption dealing in, handling, packing, canning, storage, transportation, decay or decomposition of meats, fish, fowl, birds, fruits, but not by way of limitation, used tin cans and other decomposable waste animal or vegetable matter which is likely to attract flies or rodents); except (in all cases) any matter included in the definition of bulky waste, construction debris, dead animals, hazardous waste, rubbish or stable matter.*
- 1.14 *HAZARDOUS WASTE – Waste, in any amount, which is defined, characterized or designated as hazardous by the United States Environmental Protection Agency or appropriate State Agency by or pursuant to Federal or State law, or waste, in any amount, which is regulated under Federal or State law. For purposes of this Contract, the term hazardous waste shall also include motor oil, gasoline, paint and paint cans.*
- 1.15 *LANDFILL – A lawfully permitted sanitary landfill of Contractor's selection.*

- 1.16 *PRODUCER – An occupant of a commercial, industrial, or residential unit who generates refuse.*
- 1.17 *REFUSE – Residential, commercial and industrial garbage, brush/bulky items, construction / demolition debris and stable matter generated by a producer or contractor, except (in all cases) any matter included in the definition of bulky waste, construction debris, dead animals, hazardous waste, rubbish or stable matter.*
- 1.18 *RESIDENTIAL REFUSE – All garbage and rubbish generated by a producer or contractor at a residential unit who generates refuse.*
- 1.19 *RESIDENTIAL UNIT – A dwelling within the corporate limits of the City occupied by a person or group of persons comprising not more than four families. A residential unit shall be deemed occupied when water services are being supplied thereto. A condominium dwelling, whether of single or multi-level construction, consisting of four or less contiguous or separate single-family dwelling within any such residential unit, or a small commercial unit with residential cart service, shall be treated as a residential unit, except that each single-family dwelling within any such residential unit.*
- 1.20 *RUBBISH – See BULKY WASTE.*
- 1.21 *STABLE MATTER – All manure and other waste matter normally accumulated in or about a stable, or any animal, livestock or poultry enclosure, and resulting from the keeping of animals, poultry or livestock.*

2.00 SCOPE OF WORK

The work under this Contract shall consist of commercial, industrial, construction, and residential refuse collection and disposal, including all the supervision, material, equipment, labor and all other items necessary to complete said work in accordance with the Contract Documents. It is the responsibility of the City to pay contractor for all work performed under this agreement.

3.00 COLLECTION OPERATIONS

3.01 SERVICE PROVIDED

- (a) *Contractor shall provide automated curbside collection service for the collection of residential and small business refuse to each residential unit and small business located within City limits with cart service one (1) time per week. Contractor shall provide an appropriate container to each residential unit and small business. Contractor shall pick up and remove all brush/bulky waste once each month from each residential unit and small business with cart service under a schedule with City. City shall require, by ordinance that containers and brush/bulky waste shall be placed at curbside by 7:00 a.m. on the designated collection day.*
- (b) *Contractor shall provide dumpster bin collection services for the collection of refuse to commercial units, industrial units, and multi-family residential complexes of four (4) or more dwellings located within the City limits according to individual agreement.*
- (c) *Contractor shall provide dumpster bin collection services for the collection of construction / demolition debris to commercial, industrial, residential, and multi-family residential complexes of four (4) or more dwellings located within the City limits according to individual agreement.*
- (d) *During the term of this Contract, Contractor shall make available or provide for the special collection from Residential Units Stable Matter upon terms and conditions as Contractor shall specify. Also, Contractor may from time to time provide for the special collection of Dead Animals and Hazardous Waste at Commercial and Industrial Units and Residential Units at its sole discretion and upon such terms and conditions as Contractor shall specify.*
- (e) *Contractor shall provide the following services to City owned or operated properties at no additional cost.*
 - *Three 4 cubic yard dumpsters serviced 2 times per week.*
 - *Two 8 cubic yard dumpsters serviced 2 times per week.*
 - *One 30 yard roll-off container serviced 1 time per month.*
 - *Main Street Brush Collection – Contractor shall provide weekly brush / bulky item services at the following locations:*
 - *Ocean Boulevard (Hwy 100)*
 - *Arroyo Boulevard (Paredes Line Road or FM 1847)*
 - *Old Port Road (FM 2480)*
 - *Henderson Road*
 - *Whipple Road*
- (f) *Contractor may from time to time provide for the special collection of dead animals (exceeding 10 lbs. in weight) and tires at its sole discretion and upon such terms as Contractor shall specify. In the event that the residents may desire pick-up of excessive or unusual items, or service not contemplated by ordinance, such*

residents should make independent arrangements with Contractor. Contractor shall have no obligation whatsoever to collect hazardous waste, infectious waste, or special waste. Debris from lot clearing and construction operations including but not limited to rock, brush, tree limbs, tree stumps, and concrete resulting from a general clean-up of vacant or improved property just prior to its occupancy, or resulting from sizable amounts of trees, brush, and debris cleared from property in preparation for construction, will not be removed by Contractor as a part of regular service but may be removed for the owner of the property on payment of an extra charge as agreed to between the owner and Contractor with such payments being made directly to Contractor.

- g) Recycling – Contractor shall provide a recycle trailer with attendant once per week from 7:00 am to 10:00 am for fees charged to each residence and small business.*
- h) Tire Service – Contractor shall provide two 30 yard roll-off containers per year for the disposal of rimless tires for fees charged to each residence and small business.*

3.02 LOCATION OF BINS, CONTAINERS, BRUSH/BULKY WASTE FOR COLLECTION

- (a) Containers and brush/bulky items shall be placed at curbside for collection as required by City ordinance. Curbside refers to that portion of right-of-way adjacent to paved or traveled City roadways. Containers, brush/bulky items shall be placed as close to the roadway as practicable without interfering with or endangering the movement of vehicles or pedestrians. When construction work is being performed in the right-of-way, containers, brush/bulky items shall be placed as close as practicable to an access point for the garbage truck. Contractor may decline to collect any residential refuse not properly placed in a Contractor issued container.*
- (b) Contractor shall provide bins for commercial and industrial units whenever customers request their use. Each bin shall be placed in an accessible, unobstructed location on a hard surface according to individual agreement, subject to city ordinance. Contractor may decline to collect refuse in bins not so placed to permit a garbage truck unobstructed access.*
- (c) Contractor shall not bear responsibility for repair of City or privately owned street, curbs, driveways or parking lots caused by normal wear and tear associated with providing services as described in this Contract.*

3.03 ITEMS NOT COLLECTED

Items not collected under the terms of this Contract include batteries, tires, liquids of any kind, hazardous waste, asbestos, junk vehicles, dirt, rocks, asphalt, asbestos shingles, items containing Freon, corrugated metal, or any materials

not included under the definitions of garbage, rubbish, commercial and industrial refuse, residential refuse, construction debris or brush/bulky waste.

4.00 COLLECTION OPERATIONS

4.01 HOURS OF OPERATION

- (a) Collection of residential refuse shall not start before 7:00 a.m. or continue after 8:00 p.m. on the same day unless by the mutual agreement of City and Contractor due to unusual circumstances.*
- (b) Collection of commercial and industrial refuse as well as construction debris shall take place according to an agreement between Contractor and its customers but such agreement shall conform to the terms of City ordinance.*

4.02 ROUTES OF COLLECTION

- (a) Residential unit and small business collection routes shall be established by Contractor. Contractor shall submit a map designating the residential unit collection routes to City for its approval, which approval shall not be unreasonably withheld. Contractor may from time to time propose changes in routes or schedule, which approval shall not be unreasonably withheld. Upon City's approval of the collection routes or any subsequent proposed changes, City shall promptly give written or published notice to the affected residential units.*
- (b) Commercial and industrial unit collection routes shall be established by Contractor. All routing must comply with City and State traffic laws. Contractor is not to use alleyways for traffic passage unless bins are located in the alleyway.*

4.03 HOLIDAYS.

The following shall be recognized holidays for the purpose of this Contract:

*New Year's Day
Memorial Day
Independence Day
Labor Day
Thanksgiving Day
Christmas Day*

Contractor may decide to observe any or all of the above mentioned holidays by suspension of collection services on the holiday, but such decision in no manner relieves Contractor of its obligation to provide collection services at residential units once per week and commercial, industrial, and construction customers as per agreement with customer. Contractor will furnish advance notice to City of

which holidays will be observed and what the alternate schedule will be. Alternate schedules will be subject to approval by City.

4.04 COMPLAINTS

All complaints from a producer, the public or City shall be made directly to Contractor and shall be given prompt and courteous attention. In the case of alleged missed scheduled collections, Contractor shall investigate, and if such allegations are verified, shall arrange for the collection of refuse not collected within 24 hours after the complaint is received.

4.05 COLLECTION EQUIPMENT

Contractor shall provide an adequate number of vehicles for regular collection services. All vehicles, bins and other equipment shall be kept in good repair, appearance, and in a sanitary condition at all times. Each vehicle shall have clearly visible, on each side, the identification and telephone number of Contractor. Contractor shall also provide reliable back up vehicles for regular collection service vehicles.

4.06 OFFICE

Contractor shall maintain an office or other facilities through which he can be contacted. It shall be equipped with sufficient telephones and a local telephone number or a toll free number, and shall have a responsible person in charge from 8:00 a.m. to 5:00 p.m. from Monday through Friday, except for holidays.

4.07 HAULING

All refuse hauled by Contractor shall be so contained or enclosed that leaking, spilling or blowing are prevented.

4.08 DISPOSAL

All refuse collected for disposal by Contractors shall be hauled to a State approved disposal site. The charge for disposal shall be included in the rates set forth in the proposal for each commercial, industrial, and residential unit serviced by Contractor.

4.09 NOTIFICATION

City shall notify all producers at commercial and residential units about complaint procedures, rates, regulations and days for scheduled refuse collection.

4.10 POINT OF CONTACT

All dealings, contracts, etc., between Contractor and City shall be directed by Contractor to the City Manager and by City to the Contractor's General Manager.

5.00 COMPLIANCE WITH LAW

Contractor shall conduct operations under this Contract in compliance with all applicable laws; provided, however, that the General Specifications shall govern the obligations of Contractor where there exists conflicting ordinances of City on the subject.

6.00 EFFECTIVE DATE

This Contract shall be effective upon the execution of the Contract and performance of such Contract shall begin on the date as jointly agreed upon by the parties involved which will ensure a smooth transition of responsibilities between the out-going and in-coming contractor and avoid the interruption of services to the customers. For the purposes of this Contract, the effective date shall be January 1, 2012.

7.00 NONDISCRPTION

Contractor shall not discriminate against any person because of race, sex, age, creed, color, religion or national origin.

8.00 INDEMNITY

Contractor will indemnify and save harmless City, its officers, agents, servants, and employees from and against any and all suits, actions, legal proceedings, claims, demands, damages, costs, expenses, and reasonable attorneys' fees arising out of a willful or negligent act or omission of Contractor, its officers, agents, servants, and employees; provided, however, that Contractor shall not be liable for any suits, actions, legal proceedings, claims, demands, damages, costs, expenses and attorney's fees arising out of the award of this Contract or a willful or negligent act or omission of City, its officers, agents, servants and employees.

9.00 LICENSES AND TAXES

Contractor shall obtain all licenses and permits (other than the license and permit granted by this Contract) and promptly pay all taxes required by the State.

10.00 TERM

This Contract shall be for a (4) year, (9) nine month period beginning upon the execution of Contract. The initial (4) year, (9) month term of this Contract shall automatically be extended for successive (5) five-year terms, unless either party notifies the other

party in writing not less than ninety (90) days prior to the expiration of the initial term or of any successive term, if its intention is to terminate this Contract. Any such written notice shall be served by certified or registered mail, return receipt requested.

11.00 INSURANCE

Contractor shall at all times during the Contract maintain in full force and effect Employer's Liability, Worker's compensation, Public Liability, and Property Damage insurance, including contractual liability coverage for the provision of Section VIII.

Before commencement of work hereunder, Contractor agrees to furnish to City certificate of insurance or other evidence satisfactory to City to the effect that such insurance has been procured and is in full force. The certificates shall contain the following obligations:

"This is to certify that the policies of insurance described herein have been issued to the insured for whom this certificate is executed and are in force at this time. In the event of cancellation or material change in a policy affecting the certificate holder, thirty (30) days prior written notice will be given the certificate holder"

For the purpose of this Contract, Contractor shall carry the following types of insurance in at least the limits specified below:

<u>Coverage:</u>	<u>Limits of Liability:</u>
Worker's Compensation	Statutory
Employer's Liability	\$500,000.00
Bodily Injury Liability Except Automobile	\$500,000.00 each occurrence \$1,000,000.00 aggregate
Property Damage Liability Except Automobile	\$500,000.00 each occurrence \$1,000,000.00 aggregate
Automobile Bodily Injury Liability	\$500,000.00 each occurrence \$1,000,000.00 aggregate
Automobile Property Damage Liability	\$500,000.00 each occurrence
Excess Umbrella Liability	\$500,000.00 each occurrence
Owner's & Contractor's Protective Liability (OCP)	\$5,000,000.00

13.00 BASIS AND METHOD OF PAYMENT

13.01 COLLECTION

- (a) *For collection service required to be performed pursuant to Section 3.01 (a), (b), (g), and (h) the charges shall not exceed the rates as fixed by the Contract Documents as adjusted in accordance with Section 13.02.*
- (b) *For collection provided by Contractor pursuant to Section 3.01 (d) and (f), the charges are to be negotiated between Contractor and the producer prior to collection.*
- (c) *Invoices sent to City by Contractor should reflect the rates shown on the Rate Schedule.*
- (d) *City shall make payment to Contractor no later than the 30 days following receipt of invoice.*

13.02 MODIFICATION TO RATES

- (a) *Effective October 1, 2012 fees will be increased 3% as per Contractor proposal package. The fees which may be charged by Contractor effective October 1, 2013 and each subsequent twelve month period thereafter shall be adjusted upward to reflect changes in the cost of operations, as reflected by fluctuations in the Consumer Price Index for All Urban Consumers Water and Sewer and Trash Collection Services index as published by the U.S. Department of Labor, and the Gulf Coast Weekly Retail On-Highway Diesel Prices Index as published by the Department of Energy. As of October 1, 2013 and every twelve (12) month period thereafter (the "Rate Modification Date"), fees shall be increased the ensuing twelve-month period in a percentage amount equal to ninety percent (90%) of the net percentage change of the Water and Sewer and Trash Collection Services index, plus ten percent (10%) of the net percentage change of the Diesel Prices Index. All percentage changes are to be computed as the twelve month average, year over year difference between the index values as of the month of June. Annually modified rates shall not be lower than preceding year's rates.*
- (b) *As soon as possible before a Rate Modification Date, Contractor shall send to City a comparative statement setting out for both the Water and Sewer and Trash Collection Services index and the Diesel Prices Index: (i) the twelve month average index values as of the month of June from the current and previous year; (ii) the net percentage change; (iii) the composite percentage change equal to ninety percent (90%) of the net percentage in the Water and Sewer and Trash Collection Services index, plus ten percent (10%) of the net percentage change in the Diesel Prices*

Index; and (iv) the increase in the fees which may be charged by Contractor. Increases enacted under this section shall not exceed 4% per contract year.

(c) In addition, to the adjustment described in 13.02(a) and 13.02(b), Contractor may from time-to-time petition City for unit price adjustments on the basis of increased disposal costs, change in disposal site, additional duties and responsibilities imposed upon Contractor by changes or additions to laws, ordinances, rules or regulations currently in effect or additional duties and responsibilities imposed by new laws, ordinances, rules and regulations not in effect on the effective date of this Contract.

13.03 CITY TO ACT AS COLLECTOR

City shall submit statements to and collect from all customers for services provided by Contractor pursuant to Section 3.01 (a), (b), (g), and (h) including those accounts that are delinquent. House counts that pertain to this billing shall be conducted twice per year. Changes in business services shall be submitted to the City by Contractor as communicated by business owners.

13.04 DELINQUENT AND CLOSED ACCOUNTS

Contractor shall discontinue refuse collection services to all producers as set forth in a written notice sent to it by City. Upon further notification by City, Contractor shall resume refuse collection on the next regularly scheduled collection day to the extent allowed by State or Federal law. City shall indemnify and hold Contractor harmless from any claims, suits, damages, liabilities or expenses (including, but not limited to expenses of investigation and reasonable attorneys' fees) resulting from Contractor's discontinuing service at any location at the direction of City.

13.05 CONTRACTOR BILLINGS TO CITY

Contractor shall bill City for services rendered to all residential and business units as stated in section 3.01 (a), (b), (g), and (h).

If City fails to pay Contractor within thirty (30) days of date due, services may be suspended by Contractor until past due amounts are paid in full. A late fee of 1.5% will be applied to any outstanding balance. In the event services are suspended for any period of time, and in the event Contractor resumes services, City will not be allowed a credit for any period of suspension.

Subsequent to said billing, Contractor shall be entitled to payment for services rendered to all residential units irrespective of whether or not City collects from the producer for such services.

13.06 CONTRACTOR TO ACT AS COLLECTOR

Contractor shall submit statements to and collect from all customers for services provided by Contractor pursuant to Section 3.01 (c), (d), and (f).

13.07 FRANCHISE FEES

City shall receive ten percent (10%) of all services issued for residential and commercial services as a franchise fee which shall be paid to City on a monthly basis.

13.08 PERFORMANCE BOND

Contractor will be required to furnish a corporate surety bond as security for the performance of the contract in the amount of \$50,000 for the term of the contract.

14.00 TRANSFERABILITY OF CONTRACT

Other than by operation of law and assignment to affiliates of Contractor, no assignment of the Contract or any right accruing under this Contract shall be made in whole or in part by Contractor without the express written consent of City. In the event of any assignment, the assignees shall assume the liability of Contractor.

15.00 EXCLUSIVE CONTRACT

Contractor shall have the sole and exclusive franchise, license, and privilege to provide residential, commercial, and industrial refuse (including construction/demolition debris) collection and disposal services within the corporate limits of City. Contractor shall at all times have the right of first refusal to the collection of dead animals, tires, special waste, and hazardous waste from residential, commercial, and industrial units.

16.00 OWNERSHIP

Title to refuse or any dead animals shall pass to Contractor when placed in Contractor's collection vehicle, removed by Contractor from a bin or Container, or removed by Contractor from the customer's premises, whichever last occurs. Title to and liability for Hazardous Waste shall at no time pass to Contractor.

17.00 RECORDS AVAILABLE FOR INSPECTION

All records maintained by Contractor regarding performance of this Contract shall be available for inspection, audit or photocopying by City during regular business hours upon reasonable advance notice.

18.00 JURISDICTION

Any disputes arising under this Contract shall be decided pursuant to the laws of the State of Texas and venue shall rest in Cameron County, Texas.

19.00 TERMINATION

- (a) *Notice of Breach – In the event of a significant material breach of any term of this Contract, the City Commission shall by resolution adopted at a City Commission meeting give Contractor formal notice of the material breach of the Contract, and Contractor's failure to cure such stated cause within (30) days. A copy of the resolution shall be promptly delivered to Contractor at the address provided herein through certified or registered mail, return receipt requested. Contractor shall have no more than (30) calendar days from the receipt of the resolution to correct or relieve the material breach of the Contract and notify the City Manager in writing of the action for remediation taken by Contractor to correct or relieve the material breach the Contract. Should the City Commission at its reasonable discretion determine that Contractor failed to correct or relieve the material breach of the Contract, the City Commission, by resolution may terminate this Contract. Such termination shall be effective at the reasonable discretion of the City Commission in the best interest of the community and to protect the health and safety of the residents.*

20.00 DISASTER / EMERGENCY CLEAN UP

In the event of a natural disaster for which the City is declared an emergency or disaster area by the State or Federal Government, it shall be City's responsibility to dispose of all items, including brush and bulky waste, caused by such disaster; and will attempt in good faith to use Contractor's services and facilities if they can be used at a competitive cost as other methods available to City.

21.00 ENTIRE AGREEMENT

This Contract together with any attachments hereto represents the entire agreement between the parties hereto and any other representatives or inducements which may have been made between the parties and which are not included herein are void.

22.00 CONDITIONS OF CONTRACT

This Contract is entered into subject to the following conditions:

- (a) Neither Contractor nor City shall be liable for the failure to perform their duties if such failure is caused by a catastrophe, riot, war, governmental order or regulation, strike, fire, accident, act of God, inclement weather, or other similar or different contingency beyond the reasonable control of Contractor or City.*
- (b) In the event that any provision or portion thereof of any Contract Document shall be found to be invalid or unenforceable, then such provision or portion thereof shall be reformed in accordance with the applicable laws. The invalidity or unenforceability of any provision or portion of any Contract Document shall not affect the validity or enforceability of any other provision or portion of the Contract Documents.*
- (c) The provisions of this Contract shall be strictly complied with and conformed to by the Contractor and the City, and no amendment to this Contract shall be made except upon the written consent of the City and the Contractor. No amendment to this Contract shall be construed to release either party from any obligation of this Contract except as especially provided for in such amendment.*

IN WITNESS WHEREOF, WE, the contracting parties, by our duly authorized agents, hereto affix our signatures and seals at City of Los Fresnos, Texas, as of the 0 11th day of October, 2011.

CITY:

CITY OF LOS FRESNOS, TEXAS
A Municipal Corporation of
Cameron County, Texas



By: Mark W. Minton

Title: City Manager

SEAL of the City of Los Fresnos, Texas and

Pam Denny
City Secretary

CONTRACTOR:

ATTEST:

[Signature]

BFI Waste Services of Texas, LP d/b/a
Allied Waste Services of Rio Grande Valley

By: Jon M. Deila

Name: Jon M. Deila

Title: GENERAL MANAGER

