

THE STATE OF TEXAS	§	CONTRACT FOR SOLID WASTE
	§	COLLECTION AND DISPOSAL
COUNTY OF HIDALGO	§	SERVICE BETWEEN THE CITY
	§	OF WESLACO AND BFI WASTE
CITY OF WESLACO	§	SERVICES

This Contract for Solid Waste Collection and Disposal Service for the City of Weslaco, Texas (hereinafter referred to as the "Contract") is made on the _____ 1st day of August, 2006, between the City of Weslaco, Texas (hereinafter referred to as "City") 255 South Kansas, Weslaco, Texas 78596, and BFI Waste Services of Texas, LP. ("Contractor"), 9402 W. Expressway 83, Harlingen, Texas 78552.

TERM

The term of the contract with the City of Weslaco and the Contractor will be effective August 1, 2006 through July 31, 2011.

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.

The Contractor shall not be liable for the failure to perform its duties, in whole or in part, if such failure is caused by catastrophe, riot, war, governmental order or regulation, strike, fire, act of God, inclement weather, changes to city, county, state, or federal regulations impacting the Contractor, non-payment or any similar or different contingencies beyond the reasonable control of the Contractor.

In the event that any provision or portion of this Contract shall be found invalid, unconstitutional, or unenforceable, by a court of competent jurisdiction, its invalidity, unconstitutionality, or unenforceability shall not affect remaining provisions of this Contract and the remaining provisions shall continue in full force and effect as if such invalidity, unconstitutionality or unenforceability never existed.

1.00 DEFINITIONS

- 1.01 BRUSH – Tree trimmings, grass cuttings, dead trees or branches thereof, shrubs, chips shavings.
- 1.02 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.

- 1.03 CITY- City of Weslaco, Texas.
- 1.04 CONSTRUCTION DEBRIS – Waste building materials resulting from commercial, industrial, or residential construction, remodeling, repair or demolition operations.
- 1.05 CONTRACT DOCUMENTS – Contractor's proposal, general specifications, the contract and any addenda or changes to the foregoing documents agreed to by the City of Weslaco and the 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. The Contractor's Rate Quotations;
 - b. The resolution of the City of Weslaco ordering or authorizing the work and services contemplated herein;
 - c. This instrument; and,
 - d. Any addenda or change to the foregoing documents agreed to by the parties hereto.
- 1.06 CONTRACTOR – BFI Waste Services of Texas, LP, which is the corporation performing refuse collection and disposal under contract with the City.
- 1.07 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.
- 1.08 DISPOSAL SITE – A refuse depository, physically located in the City or in close proximity thereto 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.
- 1.09 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.

- 1.10 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.
- 1.11 LANDFILL – A lawfully permitted sanitary landfill of the Contractor's selection.
- 1.12 PRODUCER – An occupant of a commercial and industrial unit or a residential unit who generates refuse.
- 1.13 REFUSE – Residential refuse, commercial and industrial refuse, brush/bulky items, construction debris and stable matter generated by a producer or contractor.
- 1.14 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.
- 1.15 RUBBISH – See BULKY WASTE.
- 1.16 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 brush and bulky item 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.

3.00 COLLECTION OPERATIONS

3.01 SERVICE PROVIDED

- (a) Contractor shall pick up and remove all brush/bulky waste twice per month from each residential unit under a schedule with the City. City shall require, by ordinance brush/bulky waste shall be placed at curbside by 7:00 a.m. no later than the first day of the designated collection period.

- (b) Contractor may from time to time provide for the special collection of dead animals (exceeding 10 lbs. in weight), tires and construction debris 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 the Contractor. Contractor shall have no obligation whatsoever to collect hazardous waste, infectious waste, or special waste. Debris from lot clearing and construction operations, rock, brush, tree limbs, waste, scrap, building materials, or other trash resulting from construction or major remodeling, resulting from a general clean-up or 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, or unusually large piles of brush or bulky waste (in excess of 15 cubic yards) from occupied lots, will not be removed by the 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 the Contractor with such payments being made directly to the Contractor.

3.02 LOCATION OF BRUSH/BULKY WASTE FOR COLLECTION

Brush shall be cut in lengths of eight feet or less. Brush/bulky items shall be placed at curbside (or alley if necessary) for collection as required by City ordinance. Curbside refers to that portion of right-of-way adjacent to paved or traveled City roadways. If curbside collection is not practicable due to space limitations, brush/bulky materials shall be placed in the nearest accessible alley for collection. Brush/bulky materials placed on top of gas meters, water meters, under low wires, blocked by cars, or otherwise obstructed by any means will not be collected. 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 collection vehicle.

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, 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**

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.

4.02 ROUTES OF COLLECTION

Residential brush/bulky waste collection schedules shall be established by the Contractor. Contractor shall submit a map designating the collection schedule to the City for its approval, which approval shall not be unreasonably withheld. The Contractor may from time to time propose changes in schedule, which approval shall not be unreasonably withheld. Upon City's approval of the collection schedule, or any subsequent proposed changes, City shall promptly give written or published notice to the affected residential units.

4.03 HOLIDAYS.

The following shall be 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 as scheduled. 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 the City.

4.04 COMPLAINTS

All complaints from a producer, the public or the City shall be made directly to the Contractor and shall be given prompt and courteous attention. In the case of alleged missed scheduled collections, the 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.

COLLECTION EQUIPMENT

The Contractor shall provide an adequate number of vehicles for regular collection services. All vehicles 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 the Contractor. The Contractor shall also provide reliable back up vehicles for regular collection service vehicles.

4.05 OFFICE

The 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.

4.06 HAULING

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

4.08 DISPOSAL

All refuse collected for disposal by the 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 and industrial unit and residential unit serviced by the contractor.

4.09 NOTIFICATION

The City shall notify all producers at residential units about complaint procedures, rates, regulations and days for scheduled brush/bulky waste collection.

4.10 POINT OF CONTACT

All dealings, contracts, etc., between the Contractor and the City shall be directed by the Contractor to the City Manager and by the City to the appropriate person to be designated by the Contractor.

5.00 COMPLIANCE WITH LAW

The Contractor shall conduct operations under this Contract in compliance with all applicable laws; provided, however, that the General Specifications shall govern the obligations of the Contractor where there exists conflicting ordinances of the 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. For the purposes of this agreement the effective date shall be August 1, 2006.

7.00 NONDISCRPTION

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

8.00 INDEMNITY

The Contractor will indemnify and save harmless the City, its officers, agents, servants, and employees from and against any and all suits, actions, legal proceedings, claims, demands, damages, costs, expenses, and attorneys' fees arising out of a willful or negligent act or omission of the Contractor, its officers, agents, servants, and employees; provided, however, that the 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 the City, its officers, agents, servants and employees.

9.00 LICENSES AND TAXES

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

10.00 TERM

The Contract shall be for a (5) five-year period beginning upon August 1, 2006. The initial (5) five-year term of this Contract shall automatically be extended for successive additional (5) five-year terms unless either party notifies the other party in writing not less than one-hundred eighty (180) 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

The 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, the Contractor agrees to furnish to the City certificate of insurance or other evidence satisfactory

to the City to the affect 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, the 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

Item IV. (u)

12.00 BASIS AND METHOD OF PAYMENT**12.01 COLLECTION**

- (a) For collection service required to be performed pursuant to Section 3.01 (a)-(b), the charges shall not exceed the rates as fixed by the contract documents as adjusted in accordance with Section 12.02.
- (b) For special collection provided by the Contractor pursuant to Section 3.01 (e), the charges are to be negotiated between the Contractor and the producer prior to collection.
- (c) Invoices sent to City by Contractor should reflect the rates shown on the attached Exhibit "A." See Contractor's quote attached.

12.02 MODIFICATION TO RATES

- (a) The fees which may be charged by the Contractor for the second and subsequent years of the term hereof shall be adjusted upward to reflect changes in the cost of operations, as reflected by fluctuations in the Consumer Price Index for Urban Wage Earners and Clerical Workers (All Items) and the Consumer Price Index for Urban Wage Earners and Clerical Workers, Expenditure Category "Gasoline" both as published by the U.S. Department of Labor, Bureau of Labor Statistics. As of the last month of the first year of the Contract and every twelve (12) months thereafter (the "Rate Modification Date"), the 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 All Items Index plus ten percent (10%) of the net percentage change of the Gasoline Index. All percentage changes are to be computed as the difference between the index value for the first full month prior to the commencement of this Contract and the index value for the Rate Modification Date divided by the index value for the first full month prior to the commencement of this Contract.
- (b) As soon as possible after a Rate Modification Date, the Contractor shall send to the City a comparative statement setting out for both the All Items Index and the Gasoline Index: (i) the index value on the first full month prior to the commencement of this Contract; (ii) the index value on the Rate Modification Date preceding the date of the statement; (iii) the net percentage change; (iv) the composite percentage change equal to ninety percent (90%) of the net percentage in the All Items Index plus ten percent (10%) of the next percentage change in the Gasoline Index; and (v) the increase in the fees which may be charged by the Contractor. On the next billing date after the receipt of the comparative statement, the City shall pay to the Contractor or the Contractor shall credit to the City, as the case may be, a lump sum equal to any increase

applicable to that portion of the current period which elapsed and, thereafter, the fees charged by the Contractor shall be modified to reflect any change until a different comparative statement is received by the City.

- (c) In addition, to the adjustment described in 12.02(a) and 12.02(b), the Contractor may from time-to-time petition the City for unit price adjustments on the basis of increased disposal costs, additional transportation costs due to change of disposal site location, 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.

12.03 CITY TO ACT AS COLLECTOR

The City shall submit statements to and collect from all customers for residential and small business receiving brush/bulky waste collection services provided by the Contractor pursuant to Section 3.01 (a), including those accounts that are delinquent.

12.04 CONTRACTOR BILLINGS TO CITY

The Contractor shall bill the City for services rendered to residential units and small business units receiving brush/bulky waste service as stated in section 12.01 within five (5) days following the end of the month, and the City shall pay the Contractor on or before the twentieth (20th) day following the end of such month. Such billing and payments shall be based on the price rates and schedules set forth in the contract documents. Subsequent to said billing, the Contractor shall be entitled to payment for services rendered to all residential units and small commercial units irrespective of whether or not the City collects from the producer for such services.

13.00 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 the Contractor without the express written consent of the City. In the event of any assignment, the assignees shall assume the liability of the Contractor.

14.00 EXCLUSIVE CONTRACT

The Contractor shall have the sole and exclusive franchise, license, and privilege to provide residential and small commercial brush / bulky waste collection and disposal services within the corporate limits of the City. The Contractor shall at all

times have the right of first refusal to the collection of dead animals and hazardous waste from residential units and from commercial and industrial units.

15.00 OWNERSHIP

Title to refuse of any dead animals shall pass to the Contractor when placed in Contractor's collection vehicle, removed by the Contractor from a bin or Container, or removed by Contractor from the customer's premises, whichever last occurs.

16.00 RECORDS AVAILABLE FOR INSPECTION

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

17.00 JURISDICTION

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

18.00 TERMINATION

Notice of Breach – In the event of a significant material breach of any term of this agreement, the City Commission shall by resolution adopted at a City Commission meeting give contractor formal notice of the material breach of the agreement, 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. The Contractor shall have no more than (30) calendar days from the adoption of the resolution to correct or relieve the material breach of the agreement and notify the City Manager, in writing of the action for remediation taken by Contractor to correct or relieve the material breach the agreement. Should the City Commission at its reasonable discretion determine that the Contractor failed to correct or relieve the material breach of the agreement, the City Commission, by resolution terminate this agreement. 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.

19.00 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.

20.00 CLEAN-UPS

In the event of a natural disaster for which the City is declared a disaster area by the State or Federal Government, it shall be the City's responsibility to dispose of brush and bulky waste caused by such disaster and will attempt in good faith to use Contractor's facilities if they can be used at the same or lower cost than other methods available to the City. This provision shall not apply to the disposal of any brush and bulky waste not caused by the natural disaster.

21.00 CONDITIONS OF CONTRACT

This Contract is entered into subject to the following conditions:

- (a) Neither the Contractor nor the 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 the 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) City reserves the right to reduce service to a once per month collection frequency if done so no later than January 31, 2007. If City decides to exercise this option, Contractor agrees to reduce rate to \$6.95 per residence per month. All other terms and conditions of this agreement will remain unchanged.

IN WITNESS WHEREOF, WE, the contracting parties, by our duly authorized agents, hereto affix our signatures and seals at Weslaco, Texas, as of the day of July, 2006.

CITY:

CITY OF WESLACO, TEXAS,
A Texas Home-Ruled Municipal
Corporation

By: Joe V. Sanchez
Joe V. Sanchez, Mayor

ATTEST:

Amanda C. Elizondo
Amanda C. Elizondo, City Secretary

CONTRACTOR:

BFI Waste Services of Texas, LP

By: Jon M. Hill

Name: Jon M. Hill

Title: General Manager

ATTEST:

Rita L. Mitchell



Item IV. (U)

Rate Quotation – City of Weslaco

- Once per month brush / bulky waste collection:
\$6.95 per unit per month.
- Twice per month brush / bulky waste collection:
\$8.57 per unit per month.

*file
8/18/06*

City of Weslaco

"The City on the Grow"



JOE V. SÁNCHEZ, Mayor
JOHN F. CUELLAR, Mayor Pro-Tem
HECTOR "BUDDY" DE LA ROSA, Commissioner
SOYLA R. GONZALEZ, Commissioner
ADRIAN GONZALEZ, Commissioner

ANTHONY COVACEVICH, City Manager

August 8, 2006

Mr. Jon M. Dick
General Manager
B.F.I. Waste Services of Texas, L.P.
9402 W. Expressway 83
Harlingen, Texas 78552

Dear Mr. Dick:

Enclosed please find a copy of the contract between the City of Weslaco and B.F.I., Inc. to provide two (2) brush pick-ups per month executed and initialed by Mayor Joe V. Sanchez. We have retained an original copy for the city's files.

Should you have any questions or concerns, do not hesitate to contact my office at (956) 968-3181, Ext. 3102.

Sincerely,

Amanda C. Elizondo
City Secretary

ACE: mv

Enclosures:

cc: Mr. Jim Hiebert, Finance Director
Mr. Juan P. Flores, Public Works Director

City of Weslaco

"The City on the Grow"



JOE V. SÁNCHEZ, Mayor
JOHN F. CUELLAR, Mayor Pro-Tem
HECTOR "BUDDY" DE LA ROSA, Commissioner
SOYLA R. GONZÁLEZ, Commissioner
ADRIAN GONZÁLEZ, Commissioner

ANTHONY COVACEVICH, City Manager

July 20, 2006

Mr. Jon M. Dick
General Manager
BFI Waste Services of Texas, L. P.
9402 W. Expressway 83
Harlingen, Texas 78552

Dear Mr. Dick:

At their regular meeting of July 18, 2006, the Weslaco City Commission approved the agreement between the City of Weslaco and B.F. I., Inc. to provide two (2) brush pick-ups per month and authorized the Mayor to execute the agreement. Please execute the enclosed agreement and forward an original copy to my office for the city's file.

Should you have any questions, please do not hesitate to contact my office at (956) 968-3181, Ext. 3102.

Sincerely,

Amanda C. Elizondo
City Secretary

ACE: dmj

Enclosure:

cc: Jim Hiebert, Finance Director
Juan P. Flores, Public Works Director

AUG 24 2006