ESTADO LIBRE ASOCIADO DE PR
GOBIERNO MUNICIPAL AUTÓNOMO DE PONCE
Legislatura Municipal
APARTADO 331709
PONCE PR 00733-1709

ORDENANZA NÚMERO 12
SERIE DE 2004-2005

PROYECTO DE ADMINISTRACIÓN:

"ORDENANZA DE LA LEGISLATURA MUNICIPAL DE PONCE AUTORIZANDO EL CONTRATO PARA EL ARRENDAMIENTO, ADMINISTRACIÓN Y OPERACIÓN DEL RELLENO SANITARIO MUNICIPAL PARA LA ENTREGA Y DISPOSICIÓN DE DESPERDICIOS Y PARA OTROS FINES"

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POR CUANTO: Mediante las Ordenanzas Núm. 68, Serie 1991-92; Núm. 140, Serie 1992-93; Núm. 1999, Serie 1992-93; Núm. 37, Serie 1993-94; Núm. 136, Serie 1996-97; Núm. 25, Serie 1999-2000 y Núm. 56, Serie 2003-2004, de fechas 27 de diciembre de 1991, 1ro de febrero de 1993, 24 de junio de 1993, 13 de diciembre de 1993, 27 de mayo de 1997, 30 de septiembre de 1999 y 13 de mayo de 2004, respectivamente, esta Legislatura Municipal ha reconocido reiterada e ininterrumpidamente, la gran importancia que representa para el Municipio Autónomo de Ponce (El Municipio) la disposición de los desperdicios sólidos no peligrosos que por su naturaleza resulta ser, al igual que el recogido de desperdicios, una de las tareas más difíciles y complejas con que se enfrentan las autoridades municipales en Puerto Rico en la actualidad;

POR CUANTO: El Municipio es dueño de terrenos localizados en el Barrio La Cotorra de Ponce, Puerto Rico cuyo uso ha estado y está destinado a facilidades para la operación de un relleno sanitario propiedad del Municipio para la disposición de desperdicios sólidos no peligrosos incluyendo las estructuras y mejoras efectuadas en dichas facilidades cuyo arrendamiento, administración y operación se habrá de llevar a cabo bajo los términos, cláusulas y condiciones que se disponen en el contrato presentado para la consideración de esta Legislatura Municipal;

POR CUANTO: La administración y operación del relleno sanitario municipal que se identifica precedentemente y, el fiel y estricto cumplimiento de normas y requerimientos de las agencias con jurisdicción y competencia sobre esta actividad, así como también el estricto cumplimiento con las leyes y reglamentos aplicables que se exigen por el Municipio, requiere que la administración y operación del relleno sanitario se lleve a cabo por personas o entidades de reconocida competencia y especializadas en esa gestión;

POR CUANTO: Esta Legislatura Municipal previamente ha reconocido que la contratación de entidades privadas para llevar a cabo la administración y operación del relleno sanitario es la forma más apropiada en que el Municipio puede garantizar y darle continuidad y máxima eficiencia a la prestación de tan vital e importante servicio y sus actividades relacionadas,

POR CUANTO: La Ley Núm 81 de 30 de agosto de 1991, según enmendada, Ley de Municipios Autónomos del Estado Libre Asociado de Puerto Rico, en su Artículo 2.006(k), (l) y (m) dispone que los contratos para la prestación de servicios relacionados con facilidades para la disposición de desperdicios sólidos, así como también los contratos de arrendamientos de propiedad municipal incidentales a estos contratos, están exentos del requerimiento de subasta pública y pueden ser otorgados por cualquier término de duración,

POR CUANTO: En la actualidad la administración y operación de las facilidades del relleno sanitario municipal para la disposición de desperdicios sólidos no peligroso, se realiza por BFI de Ponce, Inc (BFI) un contratista privado independiente, mediante contrato suscrito con el Municipio en 30 de enero de 1992, según enmendado, cuyos términos fueron aprobados por esta Legislatura Municipal mediante la Ordenanza Núm. 68, Serie 1991-92, de 27 de diciembre de 1991,

POR CUANTO: El Municipio Autónomo de Ponce nombró un Comité de Negociación compuesto por consultores técnicos, administrativos, económicos y jurídicos, para llevar a cabo un proceso de evaluación encaminado a establecer las mejores y más satisfactorias opciones para el Municipio conducentes al otorgamiento de un nuevo contrato para el arrendamiento, administración y operación de las facilidades del relleno sanitario municipal. Esta encomienda, incluyó entre otros, hacer un análisis crítico de los términos y condiciones del contrato actual y examinar contratos similares en vigor entre otros municipios y empresas que operan facilidades de relleno sanitario o prestan servicios similares, así como también la posible expansión del relleno sanitario para extender su vida útil, incorporar mejores y más satisfactorias condiciones económicas para el Municipio y otros factores que ahora están considerados y forman parte del contrato sometido ante esta Legislatura Municipal;

POR CUANTO: Luego de haber realizado todas las evaluaciones necesarias, tanto de índole técnica como administrativas, económicas y jurídicas para poder formular una recomendación al Municipio producto de su análisis, el Comité de Negociación entiende y así lo ha recomendado al Municipio que BFI, actual arrendatario y operador de las facilidades de relleno sanitario, continúa siendo la opción identificada como la más beneficiosa para el Municipio y el interés público para continuar operando dichas facilidades;

POR CUANTO: Considerando el análisis y las recomendaciones que ha presentado el Comité de Negociación, éste fue autorizado para, en representación del Municipio, negociar con BFI los términos de un nuevo convenio para el arrendamiento, administración y operación de las facilidades de relleno sanitario. Las negociaciones han culminado en el convenio que se ha presentado para la consideración y aprobación de esta Legislatura Municipal con un periodo de vigencia hasta el 30 de junio de 2034. Entre otros, el convenio negociado establece la obligación del contratista sujeto a los términos del convenio ante nuestra consideración y los permisos que sean requeridos, llevar a cabo la ampliación y expansión de las facilidades de relleno sanitario existentes de manera que se incrementen por el periodo de la contratación la vida útil de esas facilidades que a su vez habrán de permitir un sistema efectivo para disponer de desperdicios sólidos no peligrosos a largo plazo según se desarrolla la actividad económica municipal y estatal; se aumenta, además, significativamente el por ciento sobre los ingresos del relleno sanitario que se reciben por el Municipio en concepto de regalía hasta un 25% en un plazo de seis años; se garantiza el pago al Municipio de una cantidad en concepto de regalías que no depende del volumen de desperdicios que se reciban en el relleno sanitario; se garantiza la facultad del Municipio para entregar en el relleno sanitario, bien por conducto del contratista BFI o por conducto de cualquier otro contratista, los desperdicios municipales libres de costo y cargo al Municipio, así como también se transfiere a BFI, en los términos contratados, la responsabilidad del elevado costo económico que representa el cierre de las facilidades en su día, incluyendo su mantenimiento ulterior quedando liberadas de esta forma y para beneficio del Municipio aquellas cantidades que el Municipio venía obligado a reservar bajo el anterior contrato para garantizar el costo del cierre del relleno sanitario y su mantenimiento;

POR CUANTO: Se ha sometido ante la consideración de esta Legislatura Municipal el convenio descrito en el POR CUANTO anterior;

POR CUANTO: Esta Legislatura Municipal ha estudiado y considerado detenidamente el convenio ante su consideración y los beneficios evidentes que el mismo representa para el Municipio y el interés público.

POR TANTO: **ORDÉNESE POR LA LEGISLATURA MUNICIPAL DE PONCE, PUERTO RICO**

SECCIÓN PRIMERA: Se autoriza a la Honorable Alcaldesa de Ponce, en representación del Municipio Autónomo de Ponce a contratar con BFI de Ponce, Inc., el convenio que ha sido sometido ante la consideración de esta Legislatura Municipal para el arrendamiento, administración y operación del relleno sanitario municipal, todo ello en conformidad con las leyes y reglamentos estatales y federales, las normas, requisitos y reglamentos de la Junta de Calidad Ambiental de Puerto Rico, así como de aquellas agencias gubernamentales, estatales y federales, con jurisdicción y competencia sobre la actividad que es objeto de la contratación aquí autorizada.

SECCIÓN SEGUNDA: Al perfeccionar y formalizar el convenio aquí autorizado, el Contratista tendrá todos los derechos, deberes y responsabilidades resultantes de su condición como contratista independiente.

SECCIÓN TERCERA: BFI deberá proveer todos los servicios contratados y que sean requeridos para la administración y operación de las facilidades del relleno sanitario, incluyendo la aceptación, depósito, tratamiento y disposición de desperdicios sólidos no peligrosos, todo ello en estricto cumplimiento con las leyes y reglamentos aplicables o requerimientos de agencias gubernamentales, estatales o federales, sobre la actividad objeto del convenio.

SECCIÓN CUARTA: El arrendamiento de las facilidades de relleno sanitario es incidental a su operación y administración por BFI. Como tal, el contrato de arrendamiento no se podrá extender más allá del término del convenio aquí autorizado del cual es incidental. Si por alguna razón de las contenidas en el convenio aquí autorizado éste termina o expira, BFI deberá reconocer que no disfruta de ningún derecho a retener las facilidades del relleno sanitario y tiene la obligación de abandonar las facilidades objeto de arrendamiento el día en que termine o expire el convenio aquí autorizado.

SECCIÓN QUINTA: Nada de lo contenido en el convenio a que se hace referencia precedentemente autoriza o creará relación contractual alguna entre el Municipio y aquellos subcontratistas que BFI contrate en relación con la actividad a que se refiere el convenio. La subcontratación de cualquier porción del ámbito de trabajo y las actividades contempladas en el convenio no relevará de manera alguna a BFI como contratista de toda responsabilidad u obligación acordada bajo el convenio ante nuestra consideración y BFI será responsable de los actos de cualquier subcontratista, sus agentes, representantes o empleados como si se tratara de sus propios actos.

SECCIÓN SEXTA: El Convenio que habrá de suscribirse entre el Municipio y el contratista BFI formará parte de esta ordenanza.

SECCIÓN SÉPTIMA: Ante la urgente necesidad que existe de viabilizar los propósitos contemplados en la contratación que se ha presentado y aprobado por esta Legislatura Municipal relacionada con el arrendamiento, administración y operación de las facilidades del relleno sanitario propiedad del Municipio y considerando, entre otros, los beneficios económicos que representa para el Municipio este convenio, la vigencia de esta ordenanza es de carácter inmediato a su aprobación por la Legislatura Municipal y la firma de la Honorable Alcaldesa de Ponce.

SECCIÓN OCTAVA: Copia de esta ordenanza será remitida a la Junta de Calidad Ambiental a la Autoridad de Desperdicios Sólidos y a la Secretaria de Finanzas y a la Oficina de Ordenación Territorial del Municipio Autónomo de Ponce.

APROBADA ESTA ORDENANZA POR LA LEGISLATURA MUNICIPAL DE PONCE, PUERTO RICO A LOS 27 DÍAS DEL MES DE AGOSTO DE 2004.

GUILLERMO JIMÉNEZ MONROIG
SECRETARIO LEGISLATURA MUNICIPAL

LUIS A (WITO) MORALES
PRESIDENTE LEGISLATURA MUNICIPAL

SOMETIDA ESTA ORDENANZA A MI CONSIDERACIÓN A LOS 30 DÍAS DEL MES DE AGOSTO DE 2004 Y FIRMADA Y APROBADA POR MÍ A LOS 31 DÍAS DEL MES DE AGOSTO DE 2004.

DELIS CASTILLO DE SANTIAGO
ALCALDESA

DCS/dar

Revisado por: BGV

ORD 12 CONTRATO DE SEP 1ª AGO04

CERTIFICACIÓN

YO: GUILLERMO JIMÉNEZ MONROIG, SECRETARIO DE LA LEGISLATURA MUNICIPAL DE PONCE, PUERTO RICO:

CERTIFICO: Que la presente ***Ordenanza Núm. 12, Serie de 2004-2005,*** Proyecto de Administración, *Ordenanza*, "**ORDENANZA DE LA LEGISLATURA MUNICIPAL DE PONCE AUTORIZANDO EL CONTRATO PARA EL ARRENDAMIENTO, ADMINISTRACIÓN Y OPERACIÓN DEL RELLENO SANITARIO MUNICIPAL PARA LA ENTREGA Y DISPOSICIÓN DE DESPERDICIOS Y PARA OTROS FINES**", fue aprobada por la Legislatura Municipal en la ***Sesión Extraordinaria del día viernes, 27 de agosto de 2004*** y con los votos afirmativos de los siguientes Legisladores a saber:

Hon. Enrique Amy	**Hon. Elioscar Pérez**
Hon. Ruth García	**Hon. Simona Santiago**
Hon. René Garrastazú	**Hon. Santos Silva**
Hon. Nilda González	**Hon. Daisy Silvagnoli**
Hon. Luis A. (Wito) Morales	**Hon. Waldemar Vélez**
Hon. Pedro Pacheco	**Hon. Enrique Vicéns**

Los Honorables Freddie Martínez, Juan H. Cintrón y María C. Martínez estuvieron ausentes excusados.

Esta Ordenanza fue firmada por el Presidente y el Secretario de la Legislatura, el día ***viernes, 27 de agosto de 2004***, debidamente certificada a la Alcaldesa el día ***lunes, 30 de agosto de 2004***, y ésta la firmó el día ***martes, 31 de agosto de 2004***.

CERTIFICO: Además, que de acuerdo con las Actas bajo mi custodia, aparece que todos los Legisladores fueron debidamente citados para la referida de ***Sesión Ordinaria*** en la forma que determina la Ley.

Y PARA QUE ASÍ CONSTE, y a los fines procedentes, expido la presente con mi firma y el Sello Oficial del Municipio Autónomo de Ponce, hoy día ***jueves, 2 de septiembre de 2004.***

GUILLERMO JIMÉNEZ MONROIG
SECRETARIO LEGISLATURA MUNICIPAL

SELLO OFICIAL

cgs

AGREEMENT FOR DISPOSAL SERVICES AND THE LEASE, MANAGEMENT AND OPERATION OF THE PONCE MUNICIPAL LANDFILL

In the Municipality of Ponce, Puerto Rico, this ___ day of _____, 2004.

APPEAR

BFI OF PONCE, INC., a corporation organized under the laws of the Commonwealth of Puerto Rico, with principal offices in Ponce, Puerto Rico; hereinafter referred to as "Contractor", represented by Raquel Cortes, of legal age, single, and a resident of Guaynabo, Puerto Rico, in her capacity as Vice President of Contractor, who credits her authority to appear herein. Exhibit A, Corporate Resolution and;

THE AUTONOMOUS MUNICIPALITY OF PONCE, PUERTO RICO, represented by the Honorable Delis Castillo de Santiago, of legal age, married, and a resident of Ponce, Puerto Rico, in her capacity as Mayor of the Autonomous Municipality of Ponce, Puerto Rico, hereinafter referred to as the "Municipality", who is duly authorized to appear at this act. Exhibit B, Municipal Ordinance, and

LEGISLATURA MUNICIPAL DE PONCE
APROBADO
SESION DEL:
AUG 2 7 2004

WITNESSETH:

WHEREAS, Law num. 81 of August 30, 1991 in its article 2.006(k), (l) and (m), as amended, authorizes municipalities to enter into agreements with private entities for the operation of landfill facilities, for the rendering of solid waste disposal services and for the lease of municipal property incidental to the operation of landfill facilities or the rendering of solid waste disposal services under those conditions, rents and terms of duration which may benefit the public interest and excludes such agreements from the municipal bidding process requirements; and

WHEREAS, Contractor has certified full compliance with all applicable laws, regulations and municipal ordinances governing a corporation doing business with

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a municipality and providing the scope of work and services contemplated in this Agreement; and

WHEREAS, the Municipality and Contractor desire to enter into this Agreement for Disposal Services and the Lease, Management and Operation of the Ponce Municipal Landfill upon the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the promises and the mutual agreements contained herein, the Municipality and Contractor, each intending to be legally bound, hereby agree as follows:

1.00 DEFINITIONS

1.01 AGREEMENT – This Agreement for Disposal Services and the Lease, Management and Operation of the Ponce Municipal Landfill.

1.02 BULKY WASTE – Stoves, refrigerators, water tanks, washing machines, furniture and other waste materials, other than Construction Debris, dead animals, Hazardous Waste or Stable Matter, with weights or volumes greater than those allowed for Bags or Containers.

1.03 COMMERCIAL AND INDUSTRIAL UNIT – All premises, locations or entities, public or private, not a Residential Unit, requiring Refuse collection within the geographic limits of the Municipality.

1.04 COMMERCIAL AND INDUSTRIAL REFUSE - All Bulky Waste, Construction Debris, Garbage, Rubbish and Stable Matter generated by a Producer at a Commercial or Industrial Unit.

1.05 COMMONWEALTH - The Commonwealth of Puerto Rico.

1.06 CONSTRUCTION DEBRIS - Waste building materials resulting from construction, remodeling, repair or demolition operations not included in the definition of Hazardous Waste.

1.07 CONTRACTOR - BFI of Ponce, Inc., a corporation organized under the laws of the Commonwealth of Puerto Rico.

1.08 **Contractor Indemnified Parties** – Has the meaning specified in Paragraph 17.02.

1.09 DISPOSAL - All waste management activities occurring at the Landfill

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related to the treatment and/or discharge, deposit, dumping, or placing of any Non-Hazardous Waste in the Landfill.

1.10 EQB – Has the meaning specified in Paragraph 5.04(a).

1.11 GARBAGE - Any and all dead animals of less than 60 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, grains or other animal or vegetable matter (including, but not by way of limitation, used tin cans and other food containers; and all putrescible or easily decomposable waste animal or vegetable matter which is likely to attract flies or rodents or other pests) except (in all cases) any matter included in the definition of Bulky Waste, Construction Debris, dead animals, Hazardous Waste, Rubbish or Stable Matter.

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1.12 GOVERNMENT ASSESSMENT - Has the meaning specified in Paragraph 14.01.

1.13 HAZARDOUS WASTE - Any chemical, compound, mixture, substance, material or article which is designated by any appropriate federal or Commonwealth agency to be "hazardous waste" and any regulated PCB waste. For purposes of this Agreement, the term "hazardous waste" includes motor oil, gasoline, and paints, except for those quantities that can be accepted as solid waste according to the regulations of the Environmental Quality Board and any other local or federal agency having jurisdiction.

1.14 LANDFILL - The real property (land and appurtenances) owned by the Municipality as more particularly described in Exhibit C attached hereto in which Contractor is authorized to operate a facility for the disposal of Non-Hazardous Waste by the landfill method under the terms of this Agreement.

1.15 MUNICIPAL WASTE - All Refuse generated within the Municipality to be disposed of at the Landfill under the terms of this Agreement.

1.16 MUNICIPALITY - The Autonomous Municipality of Ponce, Puerto Rico.

1.17 Municipality Indemnified Parties – Has the meaning specified in Paragraph 17.01.

1.18 NON-HAZARDOUS SOLID WASTE OR NON-HAZARDOUS WASTE - Any waste material permitted to be disposed of at the Landfill pursuant to the Landfill permits and any applicable federal or Commonwealth law, rule or regulation including, without limitation,

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Bulky Waste, Construction Debris, Garbage, Refuse, Rubbish and Stable Matter. This definition specifically excludes Hazardous Waste.



1.19 PERMISSIBLE WASTE - All Non-Hazardous Solid Waste generated within the Commonwealth as well as all other waste generated within the Commonwealth in amounts that do not constitute a violation or threatened or potential violation of any environmental law or require any reporting or disclosure under any environmental law.

1.20 PERMITTED USES - means use as a municipal solid waste landfill and other waste-related uses, including garbage truck and trailer parking, container or other equipment storage, office operations, shop operations and infrastructure.

1.21 PRODUCER - An occupant of a Commercial or Industrial Unit or a Residential Unit which generates Refuse.

1.22 RCRA Permit – Has the meaning specified in Paragraph 8.01.

1.23 REFUSE - This term shall refer to Residential Refuse and Bulky Waste, Construction Debris and Stable Matter generated at a Residential Unit, unless the context otherwise requires, and Commercial and Industrial Refuse.

1.24 RESIDENTIAL REFUSE - All Garbage and Rubbish generated by a Producer at a Residential Unit.

1.25 RESIDENTIAL UNIT - A dwelling within the geographic limits of the Municipality occupied by a person or group of persons comprising not more than four families. A Residential Unit shall be deemed occupied when either water or domestic light and power 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 units, shall be treated as a residential Unit, except that each single-family dwelling within any such Resident Unit shall be counted separately as a Residential Unit.

1.26 RUBBISH - All waste wood, wood products, tree trimmings, grass cuttings, plants, weeds, leaves, trees or branches thereof, chips, shavings, sawdust, printed matter, paper, pasteboard, rags, straw, used and discarded mattresses, used and discarded clothing, used and discarded shoes and boots, combustible waste pulp and other products such as are used for packaging, or wrapping crockery and glass, ashes, cinders, floor sweepings, glass, mineral or metallic substances, and any and all other waste materials not included in the definition of Bulky Waste, Construction Debris, dead animals, Garbage, Hazardous Waste or Stable Matter.

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1.27 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.

1.28 Vertical Expansion – The future vertical expansion of the Landfill in addition to all existing permits and approved Landfill design plans with final elevations in effect as of the date of the execution of this Agreement (i.e., beyond 150.85 meters).

2.00 TERM OF AGREEMENT

The term of this Agreement commences on the date of the execution of the Agreement and continues until the earlier of (a) June 30, 2034, (b) the date on which the Landfill (including any expansions) is completely filled and rendered unusable, or (c) such date as the Agreement is earlier terminated pursuant to the provisions of this Agreement.

3.00 SCOPE OF WORK AND RELATED COSTS

The work under this Agreement shall consist of all activities and resources, including the management, supervision, materials, equipment, labor and all other activities necessary or appropriate for the operation of the Landfill in accordance with this Agreement and in accordance with all applicable laws and regulations. Contractor shall assume all costs related to all the activities and resources to adequately manage and operate the Landfill, including the Disposal services, except as otherwise provided in this Agreement. Contractor shall provide Disposal services at the Landfill for the Disposal of Non-Hazardous Waste as further set forth in this Agreement. Contractor shall operate the Landfill for Disposal services according to generally accepted standards, laws, rules and regulations regarding the operation of a landfill and in accordance with the Landfill's permits.

4.00 LEASE OF THE LANDFILL

4.01 LEASE OF THE LANDFILL

(a) The Municipality hereby leases to the Contractor, for the rent and upon the terms set forth herein, the Landfill, including

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those appurtenances described on Exhibit D of this Agreement. The Lease shall be in effect for the term of this Agreement unless otherwise terminated pursuant to the provisions of this Agreement. During such time, Contractor shall have the exclusive use and enjoyment of the Landfill (including the exclusive right of access to and occupancy of the Landfill and the exclusive right to any landfill gas and to sell or otherwise dispose of any landfill gas) for the Permitted Uses. The Municipality reserves the right of way to any adjacent real properties provided it does not interfere with Contractor's operation of the Landfill.

(b) For the lease of the Landfill and commencing on the date of the execution of the Agreement and continuing during the term of this Agreement, Contractor shall pay to the Municipality a monthly rent in the amount of $16,666.67, with each payment due on the first day of each month during the term of this Agreement. Notwithstanding the foregoing, however, Contractor shall have the right to withhold from any monthly rent payment the amount of principal and interest due to Contractor for unpaid invoices due from the Municipality under this Agreement or under the Residential Collection Contract that are past due 60 days or more, with any such withheld monthly rent payment to be made by Contractor to the Municipality simultaneously with the payment of such unpaid invoice by the Municipality to Contractor.

(c) The Contractor shall pay all taxes imposed on any property of the Contractor located within the Landfill or attributable to the Contractor's business operations at the Landfill. The Contractor shall supply the Municipality with evidence of the

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SECRETARIAT
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payment of any such taxes within 10 days after the Contractor receives a written notification that the Municipality desires such evidence of payment.

4.02 LIMITATION TO THE LEASE - This lease of the Landfill is incidental to the operation of the Landfill by Contractor. As such, this lease shall not extend beyond the term of the services agreed upon to which it is incidental. Contractor acknowledges that its rights to the Landfill are limited to those set forth in this Agreement. Contractor shall not possess any right of retention of the Landfill and Contractor agrees that it shall vacate the Landfill no later than midnight on the expiration or early termination date of this Agreement.

5.00 OPERATION OF LANDFILL

5.01 AUTHORIZATION FOR OPERATION OF THE LANDFILL - Municipality exclusively authorizes Contractor to operate the Landfill for the Permitted uses in accordance with the terms and conditions of this Agreement. The following undertakings by are, and without being an exhaustive enumeration thereof, part of the considerations which the Municipality has considered in granting this authorization:

(a) Contractor shall provide, free of charge, Disposal services of Municipality Residential Refuse pursuant to Paragraph 5.03.

(b) Contractor will assume costs related to the operation and administration of the Landfill as provided in Paragraph 3.00.

(c) Contractor will pay the Municipality royalty fees as set forth in Paragraphs 14.01, 14.02 and 14.03.

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(d) Contractor will bear costs related to the RCRA Permit as described in Paragraphs 8.01, 8.02, 8.03 and 8.04.

(e) Contractor will design, obtain the necessary permits and construct a Vertical Expansion of the existing Municipal Landfill at its own cost and expense as described in Paragraph 6.00.

(f) Contractor will deed approximately 25.7 acres of land to the Municipality for a lateral expansion as described in Paragraph 6.02.

(g) Contractor will fund capital improvements that are required by law and applicable regulations as described in Paragraph 7.00.

(h) Contractor will be responsible for costs related to the closure and post closure of the Municipal Landfill, including the Vertical Expansion, and providing for and maintaining the final cover thereof, as described in Paragraph 9.00.

5.02 MATERIALS TO BE ACCEPTED FOR DISPOSAL - In addition to the disposal of Refuse free of charge to Municipality pursuant to Paragraph 5.01(a) and 5.03 of this Agreement, the Contractor may accept for disposal, and charge a fee for the disposal of, all Non-Hazardous Waste brought to the Landfill according to generally accepted standards for the operation of a sanitary landfill. The Contractor shall have the exclusive authorization to operate the Landfill and shall have complete control over the Landfill, subject, however, to the continuous supervision by federal and Commonwealth agencies having jurisdiction thereof and the terms

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and conditions established in this Agreement. All Non-Hazardous Waste which is accepted for Disposal at the Landfill by the Contractor shall be only generated within the Commonwealth and accepted only in compliance with the waste acceptance procedures set forth in Exhibit E attached hereto. Except as otherwise set forth in Exhibit E, Contractor will assume all costs in complying with the waste acceptance procedures. On or before July 1 of each year, commencing July 1, 2005, Contractor shall certify in writing to the Municipality, through a duly authorized officer, that all such waste was accepted in compliance with the procedures set forth in Exhibit E and in accordance with all applicable laws, rules and regulations.

5.03 DISPOSAL FEES - Contractor shall have the right to establish and adjust fees for the Disposal of Non-Hazardous Waste and other fees at the Landfill as it deems appropriate. However, no fee shall be assessed for the Disposal of Municipality Residential Refuse collected by Contractor pursuant to any hauling agreement between the Municipality and Contractor. Further, after Contractor no longer has the hauling agreement with the Municipality, Contractor shall continue to accept Municipality Residential Refuse for no fee; provided, however, that Contractor shall have no obligation to provide such free Disposal for any Municipality Residential Refuse in excess of the average daily volume (expressed in cubic yards per day) for the one-year period ending on the date that the hauling agreement is terminated or expires, with such average daily volume to be increased or decreased on each annual anniversary of such termination or expiration by the same percentage as the percentage increase or decrease in the number of Residential Units in the Municipality during the prior year. Thus, by way of example only, if the average daily volume for the one-year period ending on the date the hauling agreement is terminated or expires is 100 cubic yards

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per day and if the number of Residential Units increases from 50,000 at such date to 55,000 one year thereafter and to 60,500 two years thereafter (i.e., a 10% increase each year), then the average daily volume that Contractor must Dispose of free would by 100 cubic yards per day during the first year after termination or expiration, 110 cubic yards per day (i.e., 100 plus the 10% increase in the number of Residential Units during the first year) during the second year, 121 cubic yards per day (i.e., 110 plus the 10% increase in the number of Residential Units during the second year) during the third year, and so forth for future years.

5.04 HEALTH AND SAFETY

(a) The Landfill shall be operated according to a written plan of operation prepared by Contractor, endorsed by the Municipality, and submitted to and approved by the Puerto Rico Environmental Quality Board ("EQB"), or any other federal or Commonwealth agency having jurisdiction thereof. Such plan of operation may be amended from time to time subject to the foregoing. This plan of operation shall be prepared in accordance with EQB regulations and in accordance with any other guidelines which the EQB may adopt and with all other applicable laws and regulations. The plan of operation shall also provide, among other things, for emergency procedures designed to avoid accidents or interruptions as well as reacting to them so as to avoid damage to human health or the environment. At a minimum, the emergency procedures shall comply with regulations established by the EQB and any other federal or Commonwealth agency having jurisdiction thereof. The emergency procedures shall also include the names, addresses, and telephone numbers of all persons designated

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to act as emergency coordinators, a listing of the physical description of the conditions and capabilities of the emergency equipment, and evacuation plans and an outline for the emergency training program to be offered to Contractor's employees at the Landfill. A copy of the emergency procedures contained in the plan of operation shall be submitted to Municipality, EQB, the regional office of the Department of Health, the local police, the civil defense, the local fire department, and the regional or local hospital.

(b) The Contractor shall continuously take such reasonable measures as may be necessary to control fire, smoke, odor, rodents, flies, scavengers, pests and any other menace to public health and the welfare of the community. The Landfill shall be continuously operated by the Contractor to prevent the introduction of Hazardous Waste (except for amounts that do not constitute a violation or threatened or potential violation of any environmental law or require any reporting or disclosure under any environmental law) and to prevent fire and the scattering of papers and trash and shall be kept reasonably neat at all times. The "active face" of the Landfill shall be covered at the end of each day's operation, and maintained as per the approved operating permits.

(c) Contractor hereby recognizes that the owner and permit holder of the Landfill is and will continue to be the Municipality. The Contractor shall be responsible for obtaining on behalf of the Municipality all necessary licenses, permits and approvals of governmental authorities to operate the Landfill pursuant to the requirements imposed by Commonwealth and federal laws and the terms and

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conditions of this Agreement. Contractor shall notify the Municipality of said applications no later than ten days from the date submitted. The Municipality will provide such cooperation as Contractor may reasonably request in connection with obtaining any such licenses, permits and approvals. Contractor will provide Municipality with a copy of each of such licenses, permits and approvals as obtained no later than ten days from the date of receipt.

5.05 INSPECTIONS, REPORTS AND MONITORING

(a) Any Commonwealth or federal agency which has lawful jurisdiction over the Landfill or the operations at the Landfill, including the Municipality, its authorized representatives, or any entity authorized by the Municipality, may conduct daily inspections of the Landfill at any time that the Landfill is open for business; provided, however, that such inspections shall be conducted only by authorized personnel of such authorities or of Municipality, or any entity authorized by Municipality. Such inspections shall not interfere with the orderly operations at the Landfill by Contractor. If the Municipality receives a communication from any Municipality agent, or representative, concerning the Landfill, the Municipality shall notify the Contractor of the same within 10 days and shall provide a copy of any written communication to the Contractor within 10 days after the Municipality receives such written communication. If the Municipality receives a communication from any regulatory agency concerning the Landfill, the Municipality shall notify the Contractor of the same within 1 business day and shall provide a copy of any written communication to the Contractor within 1 business day after the Municipality receives such written communication.

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(b) Contractor will be responsible for providing on a timely basis all reports, applications or petitions prepared for and submitted to any federal or Commonwealth agency-and shall provide a copy of any license, permit or order of any federal or Commonwealth agency within ten days of receipt of said documents. Further, Contractor will report to Municipality any and all occurrences and difficulties encountered in the administration and operation of the Landfill which, under applicable law, Contractor is required to report to any federal or Commonwealth agency within ten days of any such occurrence. If the Contractor receives a communication from any regulatory agency concerning the Landfill, the Contractor shall notify the Municipality of the same within 1 business day and shall provide a copy of any written communication to the Municipality within 1 business day after the Contractor receives such written communication.

(c) Except as otherwise provided in this Agreement, all monitoring activities at the Landfill required by any applicable laws and regulations as amended or required by any competent Commonwealth or federal agency, shall be the sole responsibility of Contractor at its own cost.

5.06 HOURS OF OPERATION - The Contractor shall keep the Landfill open to accept Refuse for disposal from Monday through Saturday, of each week at least between the hours of 8:00 a.m. and 5:00 p.m. On Saturday the Contractor agrees to keep the Landfill open and to accept materials for disposal at least between the hours of 8:00 a.m. and 2:00 p.m. Notwithstanding the foregoing, the Contractor shall not be required to keep the landfill open at any time not allowed by applicable law, regulation, or permit. The Contractor may change the

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Landfill hours when it determines, that it is necessary for emergencies or when it is necessary in order to complete collection on an existing collection route due to unusual circumstances.

5.07 HOLIDAYS – The Contractor may close the Landfill on holidays. The following shall be holidays for purposes of this Agreement:

New Year's Day	Three Kings Day
Good Friday	Fourth of July
Constitution Day	Labor Day
Thanksgiving Day	Christmas Day

6.00 EXPANSION OF LANDFILL

6.01 VERTICAL EXPANSION – Contractor will pursue the design and permitting of a Vertical Expansion of the Landfill including the maximum elevations and footprint (estimated to be at least 172 meters) that are consistent with generally accepted engineering principles, with EQB approvals and with the agreed term of this Agreement, at its own cost and expense. The construction and operation of such Vertical Expansion shall comply with all applicable laws and regulations, including environmental protection laws and regulations. The Municipality will provide its full cooperation and support as Contractor may request in connection with obtaining the necessary permits to construct and operate the Vertical Expansion, including executing any documents required to pursue the Vertical Expansion within 30 days after the date of written request by Contractor. Contractor will submit appropriate as-built engineering drawings upon completion of construction, and its certification that the Vertical Expansion was constructed in substantial accordance with approved design and specifications.

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6.02 FAILURE TO OBTAIN VERTICAL EXPANSION PERMITS – If Contractor fails to receive all permits necessary to construct and operate the Vertical Expansion within three years after the date of execution of this Agreement, and if Contractor does not cure such failure to receive such permits within two additional years thereafter, then the Municipality may terminate this Agreement by giving Contractor, at least 90 days prior to the effective date of termination, written notice of such termination specifying the effective date of termination.

6.03 **Expansion of the Landfill Generally** – Without limiting the provisions of Paragraph 6.01, both the Municipality and the Contractor agree that it is in both parties' best interest to maximize the useful life of the Landfill. In order to accomplish the foregoing and subject to municipal approval, Contractor will deed to the Municipality the approximately 25.7 cuerdas of land it owns adjacent to the Landfill (borrow area and sedimentation pond). Further and subject to municipal approvals as may be required, the Municipality will provide land, not to exceed 15 cuerdas, conditioned upon the proposed use of such additional land as permissible and allowed under the Ponce Territorial Plan or any of its revisions or amendments throughout the life of this Agreement, and the easements and rights-of-way required for 30 years of operation. The Municipality will provide all necessary support and actions to acquire the land, within the limitations herein agreed, and easements and rights-of-way required for expansion, including but not limited to, purchasing, public relations assistance, and agency coordination. While it is the responsibility of the Contractor to fund the activities associated with obtaining the Landfill permit(s), the Municipality will fund all the costs associated with acquiring the land, subject to the limitations herein agreed, and the easements and rights-of-way and will cooperate to the fullest extent possible in securing permits prior

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to acquisition. The Municipality will also, within the limitations herein agreed, provide the fullest cooperation, support, permits, consents, sanctions, endorsements and authorizations required to secure all permits for the term of this Agreement, including executing any documents required to be executed by the Municipality for such purpose within 30 days after the date of written request by Contractor. The Contractor and the Municipality will meet at least once per year to discuss the land needed for expansion and to communicate to the Municipality what land, easements and rights-of-way will be required within the next 36 months. The determination of when to deed the land to the Municipality and to begin construction of any and all expansions shall be made by the Contractor in its sole and absolute discretion, subject to the provisions of Paragraphs 6.01 and 6.02.

7.00 CAPITAL AND OTHER IMPROVEMENTS

7.01 CAPITAL IMPROVEMENTS

During the first 20 years of the term of this Agreement, Contractor shall make at its sole cost and expense, and without the right to reimbursement, all capital improvements at the Landfill that are required by any applicable law that applies equally to all landfills in the Commonwealth. During the remainder of the term of this Agreement, Contractor shall make at its sole cost and expense, and without the right to reimbursement, all capital improvements at the Landfill that are (a) required by any applicable law or regulation existing as of the date of this Agreement or (b) required by any applicable law or regulation enacted after the date of this Agreement; provided, however, that, in the case of an applicable law or regulation enacted after the date of this Agreement that makes it economically infeasible to operate the Landfill or that



would require capital improvements that are not commercially reasonably for Contractor to make (considering, among other things, the remaining life of the Landfill), Contractor may elect either to make such capital improvements or to terminate this Agreement rather than making such capital improvements. In addition to the required capital improvements described above, the Contractor may make such other capital improvements, if any, as it may from time to time deem necessary or desirable and which are not contrary to applicable laws and regulations. On the last day or earlier termination of this Agreement, any remaining permanent capital improvements shall inure to the Municipality and Contractor will not be entitled to reimbursement for such capital improvements. Notwithstanding the foregoing, however, the Contractor may bring its own furniture, fixtures, rolling stock and other moveable equipment onto the Landfill at its expense, and the same shall be the property of the Contractor and may be removed by the Contractor at any time.

To the extent that additional land, easements or rights-of-way are required in the judgment of Contractor to make any of the capital improvements which are required by law, the Municipality shall provide all necessary support and actions to acquire the land, easements and rights-of-way required for expansion, including but not limited to, purchasing, public relations assistance, and agency coordination. While it is the responsibility of the Contractor to fund the activities associated with capital improvements, the Municipality will fund all the costs associated with acquiring any such land, easements and rights-of-way and will cooperate to the fullest

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extent possible in securing access for the Contractor or its contractors to evaluate the land, easements and rights-of-way prior to acquisition.

7.02 ORDINARY IMPROVEMENTS, MAINTENANCE AND REPAIRS

Ordinary Improvements, maintenance and repairs are those necessary to preserve the normal use of the Landfill and include all maintenance and repairs to the Landfill required by normal wear and tear. Ordinary improvements, maintenance and repairs shall be made by Contractor at its sole cost and expense. If Contractor fails to make the same, Municipality may make them at Contractor's expense. Upon expiration or termination of this Agreement, ordinary improvements and repairs will inure to Municipality, and Contractor shall not be entitled to reimbursement for the same.

8.00 RCRA POST CLOSURE PERMIT

8.01 RCRA POST CLOSURE PERMIT COSTS - The Municipality and Contractor acknowledge receipt from the United States Environmental Protection Agency by letter dated October 11, 1991 of the final post-closure permit under the Resource Conservation and Recovery Act of 1976, as amended, with respect to the Landfill ("RCRA Permit"). Contractor hereby agrees to bear all costs incurred in connection with obtaining the RCRA Permit and agrees that it will not seek reimbursement from the Municipality for any such costs incurred to date, or any other costs incurred during the term of this Agreement, with respect to obtaining the RCRA Permit.

8.02 COMPLIANCE WITH RCRA PERMIT

(a) So long as Contractor is leasing and operating the Landfill pursuant to this Agreement, Contractor shall comply with the

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terms and conditions set forth in the RCRA Permit at its sole cost, subject to the terms of Paragraph 12.00. The Municipality shall provide such cooperation as Contractor may reasonably request in connection with complying with such terms and conditions of the RCRA Permit, At such time as Contractor is no longer leasing and operating the Landfill pursuant to this Agreement, Contractor shall have no further obligation or responsibility under this Agreement to comply with the terms and conditions of the RCRA Permit.

(b) The Municipality agrees that upon expiration of this Agreement or such earlier termination of the portion of the Agreement with respect to the lease and operation of the Landfill in accordance with this Agreement, the Municipality shall, or shall cause any new operator of the Landfill to, comply with the terms and conditions set forth in the RCRA Permit or any successor permit which may incorporate or supersede the terms and conditions of the RCRA Permit.

8.03 PERMIT HOLDER - Both parties acknowledge that upon expiration of the Agreement or such earlier termination of the portion of the Agreement with respect to the lease and operation of the Landfill in accordance with this Agreement, Contractor will request of the U.S. Environmental Protection Agency that the RCRA Permit be modified so as to delete reference to Contractor (or any Contractor affiliate) as a permittee of the RCRA Permit and the Municipality agrees not to oppose any such modification of the RCRA Permit.

8.04 REPORTS - So long as Contractor is leasing and operating the Landfill pursuant to this Agreement, Contractor shall provide the Municipality a copy of any RCRA compliance study, document, or report prepared by or for Contractor. Upon expiration of this Agreement or

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such earlier termination of the portion of the Agreement with respect to the lease and operation of the Landfill, the Municipality shall provide Contractor with a copy of the same type of information.

9.00 CLOSURE, POST-CLOSURE AND FINANCIAL ASSURANCE RESPONSIBILITIES

9.01 LANDFILL – When the Landfill (including any expansions) has been completely filled and rendered unusable or at the termination of this Agreement, whichever occurs first, or if the Landfill will not be operated after termination by either the Municipality or any third party other than Contractor, Contractor will properly close the entire Landfill. Closure activities, design, and construction shall be completed in accordance with all applicable permit conditions.

Notwithstanding the foregoing, however, if this Agreement is terminated with capacity remaining in the Landfill and if the Landfill will be operated after termination by either the Municipality or any third party other than Contractor, Contractor shall be required to complete the closure activities only to the point where the Landfill has reached its maximum capacity and where closure can be completed without limiting future use of the remaining capacity, and

(a) if the Municipality or such third party will use any remaining capacity in the existing footprint of the Landfill, the Municipality shall pay Contractor a proportionate share of the costs incurred by Contractor in performing the post closure care of the existing footprint. The proportionate share of the post closure cost to be paid by the Municipality will be determined by the remaining airspace volume (available at the date of termination of this Agreement) of the total permitted airspace volume of the Landfill. Thus, by way of example only, if the remaining airspace volume as of the date of

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termination of this Agreement is 3,000,000 cubic yards out of a total permitted airspace volume of the Landfill of 10,000,000 cubic yards, then the Municipality's proportionate share of the cost related to post closure is 30% or 3,000,000 cubic yards divided by 10,000,000 cubic yards. In case any remediation is required by any federal or state agency having jurisdiction over the Landfill, then the responsible party which incurred the violation of laws and regulations will be responsible for performing all remedial activities at its own cost and expense; or



(b) if the Municipality or such third party will not use any remaining capacity in the existing footprint of the Landfill but will instead use a lateral expansion of the Landfill, Contractor shall perform post-closure care of the existing footprint of the Landfill at its own cost and expense and the Municipality shall perform closure and post-closure care of the lateral expansion at its own cost and expense.

The Municipality shall notify Contractor prior to termination as to whether the Landfill will be operated after termination by either the Municipality or any third party other than Contractor and, if the Landfill will be operated, whether the Municipality or such third party will use any capacity in the existing footprint or will instead use lateral expansion space only. For those portions of the Landfill for which the Contractor is responsible for closure and post-closure care as provided above, the Contractor will perform and pay for such closure, for the maintenance of the final cover thereof, and for post-closure care throughout the 30 year post closure period, including all post closure activities required by laws and regulations pursuant to the terms of this Agreement. Notwithstanding any other provision in this Agreement, the Municipality shall provide Contractor access to

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the Landfill in order that Contractor can provide the closure and post-closure care Contractor is required to provide under this Agreement.

9.02 FINANCIAL ASSURANCE – With respect to the portions of the Landfill for which the Contractor is responsible for providing closure and post-closure care pursuant to Paragraph 9.01, Contractor will have the sole responsibility to provide any financial guarantee or assurance required by the Federal or Commonwealth government or its laws and regulations regarding the costs of closure and post closure monitoring of the Landfill throughout the term of this Agreement and existing beyond such period and until completion of all such post closure activities required by laws and regulations. Considering the financial obligations to be incurred by Contractor for closure and post closure monitoring as set forth herein, Contractor recognizes that the Municipality has no further obligations, monetary or otherwise, regarding the costs and expenses of any such closure and post closure monitoring of the Landfill and will pay over or cause to be paid over to the Municipality any and all funds deposited in the escrow account (Banco Popular de Puerto Rico, account # 071-078207) originally established for the purpose of financial assurance by the Municipality in the event of closure and post closure of the Landfill; provided, however, that simultaneously with such payment, the Municipality shall pay to Contractor the outstanding balance past due 60 days or more and interest owed by the Municipality to the Contractor under the Residential Collection Contract. If pursuant to Paragraph 9.01 the Contractor's responsibility for closure and post-closure care of certain portions of the Landfill terminates and the Contractor has provided any financial guarantee or assurance for such portions, the Municipality shall immediately post substitute financial guarantees or assurances sufficient to cause the release of the Contractor's financial guarantees or assurances.

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10.00 CORRECTIVE ACTION

Subject to the terms of Paragraph 17.00, Contractor will be responsible and pay for any remedial or corrective action required at the Landfill by applicable legal, administrative or regulatory requirements and resulting from Contractor's acts or omissions while operating the Landfill since March 1, 1987. Contractor will have the burden of proving that any such remedial or corrective action is not the result of its acts or omissions while operating the Landfill since March 1, 1987.

11.00 EXCLUSIVE AUTHORITY

The Contractor shall have the sole and exclusive authority with respect to the operation and management of the Landfill.

12.00 LICENSES AND PERMITS

The Contractor, on behalf of the Municipality shall obtain all licenses, permits and other approvals for construction, modification and operation of the Non-Hazardous Waste disposal facilities located at the Landfill. The Municipality shall provide such full cooperation and support as may be reasonably requested by Contractor in connection with obtaining all such licenses, permits and approvals. In anticipation of the expiration or early termination of this Agreement, Contractor shall provide such cooperation as may be reasonably requested by the Municipality in connection with delivering to the Municipality or any third party designated by the Municipality all permits, licenses and approvals then issued.

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13.00 DISPOSAL FEES UPON TERMINATION

In the event this Agreement is terminated, Contractor shall not be required to pay any Disposal fee at the Landfill with respect to waste of any type collected and disposed of on behalf of the Municipality, regardless of whether the Landfill is subsequently operated by the Municipality or some other third party or entity acting on behalf of the Municipality.

14.00 ROYALTY; PAYMENT OF ROYALTY

14.01 ROYALTY – Contractor shall pay the Municipality a royalty for all fees charged for disposal services at the Landfill equal to: 15% through December 31, 2004; 17.75% from January 1, 2005 to December 31, 2005; 18.5% from January 1, 2006 to December 31, 2006; 20.25% from January 1, 2007 to December 31, 2007; 22.00% from January 1, 2008 to December 31, 2008; 23.75% from January 1, 2009 to December 31, 2009 and 25% from January 1, 2010 to June 30, 2034. The parties agree that only fees relating to the Disposal of Non-Hazardous Waste shall be subject to the payment of a royalty and that other revenues (including those from the sale or other disposition of landfill gas) shall not be subject to the payment of a royalty. Any portion of the fees attributable to transportation, container rental, laboratory analysis of the proposed waste stream, demurrage, treatment (solidification) fees, late, administrative or fuel surcharge fees, consulting and project management fees, any other non-disposal type fees, surcharges or the like enacted by the Contractor, or Government Assessments are not subject to the payment of a royalty. For purposes hereof, "Government Assessments" mean any tax, fee or charge imposed by any governmental or regulatory authority (whether pursuant to regulatory authority or pursuant to a contract) on or with respect to the Disposal Services provided at the Landfill, but excluding income taxes. Further, no royalty shall be payable on Municipality waste disposed

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of at no charge as provided in this Agreement or on any waste or other material used for alternative daily cover.

14.02 PAYMENT OF ROYALTY – The royalty for each month shall be paid by Contractor to the Municipality throughout the term of this Agreement. Within 30 days after the end of each calendar month, the Contractor will submit to the Municipality a statement showing all the waste accepted by the amount charged and volumes disposed. Within 30 days after the end of each calendar month, the Contractor will pay the amount of royalties due to the Municipality for such month. Notwithstanding the foregoing, however, Contractor shall have the right to withhold from any royalty payment the amount of principal and interest due the Contractor for unpaid invoices due from the Municipality under this Agreement or under the Residential Collection Contract that are past due 60 days or more, with any such withheld royalty payment to be made by Contractor to the Municipality simultaneously with the payment of such unpaid invoice by the Municipality to Contractor.

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14.03 MINIMUM ANNUAL ROYALTY; MUNICIPALITY'S EFFORTS – Commencing with calendar year 2004, for each full calendar year during the term of this Agreement, Contractor shall pay the Municipality royalties in an amount equal to the greater of $1,400,000 or the amount of royalties calculated for such calendar year pursuant to Paragraph 14.01. Accordingly, if the Royalties for such calendar year calculated pursuant to Paragraph 14.01 are less than $1,400,000, then, subject to the withholding provisions of Paragraph 14.02, Contractor shall pay the Municipality the difference within 30 days after the end of the calendar year. During the term of this Agreement, the Municipality shall: (a) use its best efforts to direct all Permissible Waste generated within the Municipality at a Municipality-owned,

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Municipality-leased or Municipality-operated facility or site to the Landfill; (b) use its best efforts to encourage private parties within the Municipality to direct their Permissible Waste to the Landfill and not dispose of such waste illegally; and (c) not site or permit another landfill in the Municipality that would be owned, leased or operated by the Municipality and shall not in any way support the siting or permitting of any landfill in the Commonwealth by any third party.



14.04 ACKNOWLEDGMENTS BY MUNICIPALITY – Except as provided in Paragraph 14.03, royalties shall be payable only if, as and when waste is received at and deposited into the Landfill. The Municipality acknowledges and agrees that the Contractor has no express or implied obligation to bring in or accept any particular volume of waste at the Landfill or to take any action not contemplated by this Agreement to maximize or increase the royalty payments.

15.00 COMPLIANCE WITH LAW

The Contractor shall conduct all operations under this Agreement in compliance with all present or future applicable laws, rules, regulations and municipal ordinances, including, without limitation, the rules and regulations of the Commonwealth of Puerto Rico Environmental Quality Board and the U.S. Environmental Protection Agency.

16.00 NONDISCRIMINATION

The Contractor shall not discriminate against any person because of race, sex, age, creed, color, handicap, political or religious beliefs, social or national origin.

17.00 INDEMNIFICATION

17.01 INDEMNIFICATION BY CONTRACTOR - The Contractor shall indemnify, defend and hold harmless the Municipality, its mayor, the Municipal

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Assembly and its members, all municipal agents, officials, directors, employees, consultants, affiliates, legal counsel, and others (collectively, for purposes of this Paragraph 17.01, the "Municipality Indemnified Parties"), from and against any and all suits, liabilities, claims, debts, penalties, fines, forfeitures, causes of action, recoupment, subrogation, judgment or attachments, actions, legal proceedings, demands, damages, costs, expenses, and attorneys' fees of any kind or nature, including, but not limited to, injury to or death of its employees or to any other person, or damages, including loss of use, to real estate or personal property, public and private, contamination or adverse effect upon the environment, or any violation or alleged violation of statutes, ordinances, orders, rules or regulations of any governmental entity or agency, incidental to any work done in the performance by Contractor of this Agreement or arising out of willful or negligent acts and/or omissions of, the Contractor, its officers, agents, employees, and subcontractors; provided, however, that the Contractor shall not be liable for any of the foregoing to the extent they arise out of a willful or negligent act or omission of any of the Municipality Indemnified Parties. Whether the acts and/or omissions that a claimant alleges arose from Contractor, or the Municipality, or any of its subcontractors, agents, employees or persons who may bind it and such claims lack merit or not, the Contractor will defend, indemnify and hold harmless the indemnified Parties.

In all claims against the Municipality Indemnified Parties by any employees of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under this Paragraph 21.01 shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable

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by or for the Contractor or any subcontractor under worker's compensation acts, disability benefit acts or other employee benefit acts.

17.02 INDEMNIFICATION BY MUNICIPALITY

(a) The Municipality shall indemnify, defend and hold harmless the Contractor, its shareholders, directors, officers, agents, servants, employees, consultants, affiliates, legal counsel and others (collectively for purposes of this Paragraph 17.01(a), the "Contractor Indemnified Parties") from and against any and all suits, liabilities, claims, debts, penalties, fines, forfeitures, causes of action, recoupment, subrogation, judgment or attachments, actions, legal proceedings, demands, damages, costs, expenses, and attorneys' fees of any kind or nature, including, but not limited to, injury to or death of its employees or to any other person, or damages, including loss of use, to real estate or personal property, public and private, contamination or adverse effect upon the environment, or any violation or alleged violation of statutes, ordinances, orders, rules or regulations of any governmental entity or agency arising out of a willful or negligent act or omission of any Municipality Indemnified Party; provided, however, that the Municipality shall not be liable for any of the foregoing to the extent they arise out of a willful or negligent act or omission of any Contractor Indemnified Party. Whether the acts and/or omissions that a claimant alleges arose from Municipality, the Contractor, or any of its officers, agents, servants, employees or any of its subcontractors, and such claims lack merit or not, the Municipality will defend, indemnify and hold harmless the Contractor.

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In all claims against the Contractor Indemnified Parties by any employees of the Municipality or anyone directly or indirectly employed by the Municipality, or anyone for whose acts the Municipality may be liable, the indemnification obligation under this Paragraph 17.02(a) shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Municipality under workers compensation acts, disability benefit acts or other employee benefit acts.

(b) The Municipality shall indemnify, defend, and hold harmless the Contractor Indemnified Parties from and against any and all suits, liabilities, claims, debts, penalties, fines, forfeitures, causes of action, recoupment, subrogation, judgment or attachments, actions, legal proceedings, demands, damages, costs, expenses, and attorneys' fees of any kind or nature, including, but not limited to, injury to or death of its employees or to any other person, or damages, including loss of use, to real estate or personal property, public and private, contamination or adverse effect upon the environment, or any violation or alleged violation of statutes, ordinances, orders, rules or regulations of any governmental entity or agency, arising out of any activities conducted at the Landfill prior to March 1, 1987.

18.00 INSURANCE

The Contractor shall at all times during the term of this Agreement maintain in full force and effect any and all policies of Insurance with coverages and limits which are currently in force as part of the Prior Agreement. Annexed to this Agreement as Exhibit F attached hereto and incorporated herein by reference are Certificates of Insurance evidencing the current policies of

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insurance in effect under the Prior Agreement and their coverages and limits. Contractor shall provide a copy of such policies to the Municipality.

All policies shall be issued by insurance companies duly authorized to transact business in Puerto Rico and authorized by the office of the Insurance Commissioner. Annually, the Contractor shall furnish the Municipality certificates of insurance or other evidence satisfactory to the Municipality to the effect that such insurance has been procured and is in force. Said policies shall specify the Municipality as an additional insured with respect to negligent or willful acts or omissions of the Contractor. The certificates shall contain the following express 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 the policy adversely affecting the certificate holder, thirty (30) days prior written notice shall be given the certificate holder and the additional insured."

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19.00 BOND

19.01 PERFORMANCE BOND

(a) The Contractor shall not be required to furnish a separate performance bond in connection with this Agreement. Rather, the performance bond provided for in the Residential Collection Contract between the Municipality and the Contractor also shall secure the performance of this Agreement.

(b) Premium for the bond described above shall be paid solely by the Contractor. Annually, the Contractor shall provide to the Municipality a certificate from the sureties showing that the

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bond premiums have been paid in full and that the bond is currently in force.

(c) The surety on the bond shall be a duly authorized corporate surety company authorized by the Office of the Insurance Commissioner to transact business in the Commonwealth of Puerto Rico.

(d) At the termination of the Residential Collection Contract, Contractor will immediately furnish a performance bond to guarantee the obligations of Contractor under this Agreement in the amount of Two Million Five Hundred Thousand Dollars ($2,500,000).

(e) In addition to the performance bond required, as set forth in Paragraph (a) and Paragraph (d) above, and on the date of execution of this Agreement, Contractor will provide a corporate guarantee by Contractor's parent company, Allied Waste North America, Inc., a Delaware corporation, in the form set forth on the signature page to this Agreement. A corporate resolution authorizing such guarantee is attached as Exhibit G.

19.02 POWER OF ATTORNEY - Attorneys-In-fact who sign performance bonds or contract bonds must file with each bond a certified and effectively dated copy of their power of attorney.

19.03 REMEDY – In the event of a breach of this Agreement, among the remedies available to the Municipality shall be the making of claims under the performance bond.

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20.00 ASSIGNMENT OF CONTRACT

No assignment of this Agreement shall be made in whole or in part by the Contractor without the express written consent of the Municipality. Notwithstanding the foregoing, however, the Contractor may collaterally assign this Agreement to any bank or other lender to the Contractor or to any bank or lender to an affiliate of the Contractor.

Nothing contained in this Agreement will be deemed or construed to create any contractual relationship between the Municipality and any subcontractors retained by the Contractor. The subcontracting of any portion of the work agreed in this Agreement shall not release the Contractor from any responsibility or obligation agreed upon under this Agreement, and the Contractor shall be liable to the Municipality for default, negligent acts or noncompliance by any subcontractor, its agents, representatives or employees, as if such acts or negligence or noncompliance were its own.

21.00 ACCESS TO INFORMATION

During normal business hours, the Contractor shall provide to the Municipality or its authorized representatives access to all of its books and records related to the Landfill and reasonably appropriate and necessary to determine compliance by the Contractor with the terms of this Agreement and applicable laws and regulations. The Municipality will reasonably cooperate with Contractor to protect any of Contractor's proprietary or confidential Information disclosed to the Municipality pursuant to the foregoing and no copies of any such information may be made by the Municipality unless Contractor's prior written approval is first obtained.

22.00 DEFAULT

In the event any party defaults in any of the terms, conditions and obligations of this Agreement upon knowledge of said default, the affected

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party shall serve written notice thereof, by registered mail return receipt requested, specifying the event or events of default.

The party in default shall thereafter have thirty (30) days within which to cure such default or, in the event of a default (other than any payment default) not capable of being cured within thirty (30) days, shall have a six-month period from the date of notice within which to cure such default. If the party in default fails to so cure said default, the affected party may serve written notice to the party in default stating that this Agreement will terminate 90 days after the date of such written notice.



In any action against Contractor for termination or enforcement of this Agreement, Contractor may not claim as a defense that services were suspended or reduced due to Contractor's economic insolvency.

The remedies provided in this Paragraph 22.00 are in addition to any other remedies provided in this Agreement or in the laws of the Commonwealth of Puerto Rico.

23.00 MISCELLANEOUS

23.01 NOTICES - All notices or other communications required or permitted to be given hereunder shall be in writing by registered or certified mail, return receipt requested, properly addressed as follows:

To the Municipality:	Attention: Mayor Autonomous Municipality of Ponce Box 331709 Ponce, Puerto Rico 00733
With a copy to:	Attention: Director Legal Division Municipality of Ponce Box 331709 Ponce, Puerto Rico 00733
To Contractor:	BFI of Ponce, Inc.

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P.O. Box 7104
Ponce, Puerto Rico 00732
Attention: District Manager

With a copy to:

BFI of Ponce, Inc.
15880 North Greenway-Hayden Loop
Suite 100
Scottsdale, Arizona 85260
Attention: Corporate Secretary

or such other additional or amended addresses as may be given by one party to the other in the manner specified above.

23.02 FORCE MAJEURE - Unless otherwise provided under this Agreement, neither the Municipality nor the Contractor shall be responsible for non-compliance of their respective duties and responsibilities under this Agreement if said non-compliance is due to any fortuitous act or condition, or an act of God or nature, beyond control of prudent and reasonable men.

23.03 POWER OF ATTORNEY - The Municipality hereby grants to the Contractor the power to appear before any court, administrative board, office, agency, authority or commission of the Commonwealth of Puerto Rico or of the United States of America for the purpose of filing and maintaining any actions or claims for the benefit of, the Contractor and the Municipality that in any way relate to permit activities pertaining to the management and operation of the Landfill, all of the foregoing subject to Paragraph 5.04(a).

23.04 INDEPENDENT CONTRACTOR - NO AGENCY – Contractor will act hereunder at all times relevant to this Agreement as an independent contractor and specifically recognizes that it is not as an agent of the Municipality regarding its obligations under this Agreement. Similarly, the Municipality is not the agent of the Contractor.

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23.05 COOPERATION OF THE PARTIES - Where the Agreement provides that one party shall provide such cooperation as may be reasonably requested by the other party, then the party whose cooperation is requested shall provide such cooperation in an expeditious manner consistent with the necessities required by the particular situation.

23.06 SEVERABILITY - In case any one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein; provided, however, that it is the intention of the parties hereto that in lieu of each term, clause or provision that is invalid, illegal or unenforceable, there shall be added as a part of this Agreement a term, clause or provision as similar in terms to such invalid, illegal or unenforceable term, clause or provision as may be Possible and be valid, legal or enforceable.

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23.07 GOVERNING LAW FORUM SELECTION - This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Puerto Rico. Any action at law, suit in equity or Judicial proceeding brought for the enforcement of this Agreement or any provision thereof, or in any way related to this Agreement, shall be brought exclusively before the Court of First Instance of the Commonwealth of Puerto Rico, located at the Ponce Judicial Center, Ponce, Puerto Rico.

23.08 ENTIRE AGREEMENT - This Agreement and the exhibits hereto constitute the entire agreement and understanding between the parties hereto.

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23.09 AMENDMENTS AND WAIVERS - This Agreement may be amended only by an instrument in writing executed by both parties. The failure of any party at any time or times to require performance of any provision of this Agreement shall in no manner affect the right of such party to enforce the same with respect to such failure to perform such provision or any subsequent failure to so perform, and no waiver by any party of any provision (or of a breach of any provision) of this Agreement, whether by conduct or otherwise, in any one or more instances shall be deemed or construed either as a further or continuing waiver of any such provision (or breach of any such provision) or as a waiver of any other provision for of a breach of any other provision) of this Agreement.



23.10 SURVIVAL - All obligations hereunder, for the payment of money or otherwise, shall survive the termination of this Agreement until satisfied, discharged or waived.

23.11 COUNTERPARTS EXECUTION - This Agreement may be executed in one or more counterparts each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

23.12 CONFIDENTIALITY – Except as otherwise required by law or the rules of the New York Stock Exchange, Contractor will keep in confidence any information that may come to his knowledge from the Municipality with regard to the services to be rendered under this Agreement and will not release in whole or in part such information without the prior written authorization by the Municipality.

23.13 NO DEBT – FILING OF RETURNS – Contractor certifies that on the date of execution of this Agreement, Contractor:

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(a) has filed all income tax returns during the five years prior to date of this Agreement and has also filed such return for the current year;

(b) has no debts with the Treasury Department or the Municipal Revenue Collection Center (CRIM) or is subject to a payment plan;

(c) has no debts pending with the Labor Department or is subject to a payment plan;

(d) has no debts pending regarding Municipal Patents Taxes or is subject to a payment plan;

(e) has no debts of any kind with the Commonwealth of Puerto Rico or any of its municipalities or is subject to a payment plan.

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23.14 MONETARY INTEREST – Contractor certifies that no member of the Ponce Municipal Assembly, officer or employee of the Municipality has any monetary interest either direct or indirect in this Agreement or shares in the monetary benefits arising under this Agreement, in each case solely to the extent that such interest or benefit was provided by the Contractor or its officers or employees. The Contractor further certifies that its officers or employees have not been employees, officers or members of the Ponce Municipal Assembly for the two (2) years prior to the execution of this contract.

23.15 OTHER COMPENSATION – Contractor certifies that it is does not receive any payment or compensation for regular services rendered under appointment to another governmental entity, agency, organism or public corporation or municipality.

23.16 RIGHT TO EARLY TERMINATION - In addition to the other rights of the Municipality as herein set forth in this Agreement to notify and

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demand early termination, the Municipality may also notify and demand in writing to the Contractor the early termination of this Agreement in the following events:



(a) if Contractor or its officers or directors are found to be guilty or admit guilt for any felony or misdemeanor which may directly or indirectly affect the terms and conditions or obligations under this Agreement .

(b) in the event that Contractor or any of its officers have been found guilty or admitted guilt to offences that constitute fraud or the illegal use or appropriation of public funds or illegal appropriation in its aggravated modality and/or conspiracy, and/or destruction or mutilation of documents, cover up, fraud in any of its modalities, illegal intervention in public bids or government operations, bribery in any of its modalities, offences regarding publics funds, drafting of false writings, filing of false writing, forging of documents, forging of any license, certificate or other documentation, and/or possession and transfer or forged documents.

23.17 LOBBYING RESTRICTIONS – Contractor and the Municipality certify that no federal funds have been paid by or on behalf of these parties to any other person so as to influence any officer or employee of any agency or member or official or employee of the Congress of the United States of America regarding the execution of any federal contract.

23.18 MEMORANDUM OF AGREEMENT - At the request of the Contractor, the Municipality will execute and deliver to the Contractor a memorandum of agreement that is in recordable statutory form and

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that is in such form as the Contractor may reasonably request. The Contractor may record such memorandum at its own expense.

23.19 EXPENSES – The Contractor will pay the fees, expenses and disbursements of the Contractor and its representatives incurred in connection with this Agreement. The Municipality will pay the fees, expenses and disbursements of the Municipality and its representatives incurred in connection with this Agreement.

[Signatures Appear on Next Page]



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IN WITNESS WHEREOF, the Municipality and Contractor have caused their duly authorized officers to execute this Agreement as of the day and year first above written.

BFI OF PONCE, INC.

By: _____
Raquel Cortés, Vice President

Witnessed by:

By: _____
_____, _____

MUNICIPALITY OF PONCE
PUERTO RICO

By: _____
Delis Castillo de Santiago, Mayor

Witnessed by:

By: _____
_____, _____

Guarantee by Allied Waste North America, Inc.

Allied Waste North America, Inc. ("Allied") does hereby guarantee the prompt and complete performance of all obligations of Contractor under this Agreement. The undersigned warrants and states that he is duly authorized to execute this guarantee on behalf of Allied and that any and all corporate action necessary to authorize this guarantee has been taken.

ALLIED WASTE NORTH AMERICA, INC.

By: _____
Name: _____
Title: _____

Witnessed by:

By: _____
_____, _____

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INDEX TO EXHIBITS

Exhibit A	-	Corporate Resolution
Exhibit B	-	Municipal Ordinance
Exhibit C	-	Legal Description of Real Property
Exhibit D	-	Description of Appurtenances
Exhibit E	-	Waste Acceptance Procedures
Exhibit F	-	Certificates of Insurance
Exhibit G	-	Corporate Resolution Regarding Guarantee



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