

RESOLUTION NO. 2007- 158 R

A resolution authorizing the City Manager to execute a "SOLID WASTE LANDFILL OPERATIONS CONTRACT TERMINATION AND TRANSITION AGREEMENT" with Victoria Landfill of Tx, L.P. and BFI Waste Systems of North America, Inc. and declaring an effective date.

IT IS RESOLVED BY THE CITY COUNCIL OF THE CITY OF VICTORIA, TEXAS:

1.

The City Manager is authorized to execute the attached "SOLID WASTE LANDFILL OPERATIONS CONTRACT TERMINATION AND TRANSITION AGREEMENT", with Victoria Landfill of Tx, L.P. and BFI Waste Systems of North America, Inc., with such changes as are approved by the City Attorney.

2.

This resolution shall become effective immediately upon adoption.

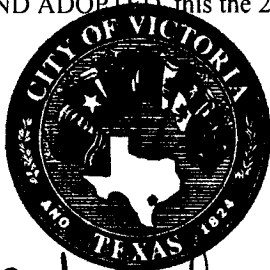
PASSED, this the 2nd day of October, 2007.

AYES: **7**


NAYS: **0**

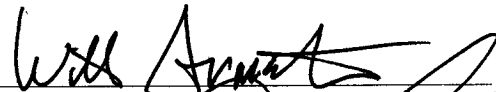
ABSTENTIONS: **0**

APPROVED AND ADOPTED, this the 2nd day of October, 2007.

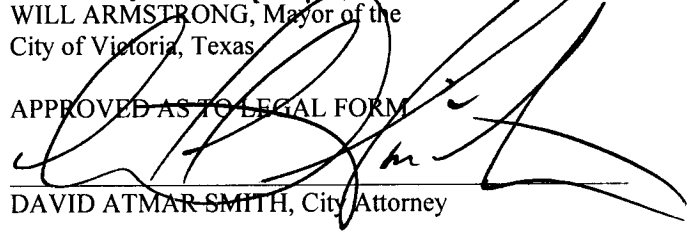


ATTEST:


SCARLET SWOBODA, City Secretary


WILL ARMSTRONG, Mayor of the
City of Victoria, Texas

APPROVED AS TO LEGAL FORM


DAVID ATMAR SMITH, City Attorney

Distribution: Legal Department
 Finance Department
 Department of Environmental Services

Copies Sent: October 4, 2007

SOLID WASTE LANDFILL OPERATIONS CONTRACT TERMINATION AND TRANSITION AGREEMENT

This Agreement, made and entered into effective as of the 7th day of October, 2007 (hereinafter, "Effective Date"), by and between the City of Victoria, a Municipal Corporation of Victoria County, Texas (hereinafter called the "City"), Victoria Landfill Tx., LP, an affiliated entity of Allied Waste Industries, Inc., a Delaware corporation, successor in interest to Browning-Ferris, Inc. (hereinafter called "VLT") and BFI Waste Systems of North America, Inc., a Delaware corporation (hereinafter called "BFI").

WHEREAS, VLT and the City entered into that certain Solid Waste Landfill Operations Contract dated July 1, 1993, pertaining to VLT's role as contract operator of the City's landfill located in Bloomington, Texas (hereinafter, the "Landfill") (as such contract has been amended from time to time, hereinafter, the "Contract"). VLT has continuously served as the contract operator of the City's Landfill pursuant to the terms and conditions of the Contract from the time the Contract was first executed until the date of termination specified in this Agreement.

WHEREAS, the City has requested that VLT terminate and transition its role as contract operator to City's new contract operator, and VLT has agreed to do so, pursuant to the terms and conditions specified herein.

NOW, THEREFORE, in consideration of the following mutual agreements and covenants, it is understood and agreed by and between the parties hereto as follows:

1. **Termination of Operational Responsibility.** VLT's responsibility for day to day operations at the City's Landfill will terminate effective at 11:59 PM Central Standard Time on the Effective Date of this Agreement, Sunday, October 7, 2007 on the condition that VLT tenders the payments as set forth in 2.1 and 2.2 and all items in Attachment "A" are completed, with the exception of Items 29 and 33, which must be completed by October 31, 2007 and Item 40, which the completion date is not now determinable. VLT agrees to take such actions and execute such documents as reasonably necessary to effect an orderly and efficient transition of operations to the City's new contract operator.

2. **Resolution of Disputed Issues.** In connection with the termination of VLT's operator status and transition to the City's new contract operator, the parties have reviewed the current status of the Landfill operations and existing conditions at the Landfill, have identified certain issues that have been resolved by agreement of the parties, Work (as defined herein) to be performed by VLT, and certain assets which will be transferred to the City (the "Assets") in connection with the orderly transition of operations to the City's new contract operator. These items are generally set forth in Attachment "A" to this Agreement, which is incorporated herein by reference and further set forth below:

2.1. **Closure Cost Settlement Payment.** VLT's liability for closure costs during VLT's tenure as contract operator under the Contract will be discharged and forever terminated upon the payment by BFI or VLT to the City in the amount of One Million Three Hundred Thousand and No/100 Dollars (\$1,300,000) due on or before October 31, 2007.

2.2 **Further Settlement Payment.** VLT's liability for the items numbered 22, 24, 25, 27, 31 and 32 in Attachment "A" will by fully discharged and forever terminated upon the payment by VLT or BFI to the City of the additional sum of One Hundred and Sixty Two Thousand Five Hundred and No/100 Dollars (\$162,500) due on or before October 31, 2007.

2.3 **Transfer of Title to Assets.** Attached hereto as Attachment "B" is a list of certain on-site Landfill fixtures and equipment, title to which shall transfer from VLT to the City on an "as-is, where-is" basis on the Effective Date of this Agreement.

2.3(a) **Reimbursement by City.** Pursuant to Section 17.02 (g) of the Contract, as amended by the Third Amendment to Regional Solid Waste Sanitary Landfill Operations Services Contract, the City acknowledges responsibility for its 50% share of actual construction, operation and maintenance costs incurred in connection with the methane gas extraction wells and the ground water monitoring wells during the year 2007. Invoices for the City's share of these expenses will be audited by the City and are payable to VLT by November 30, 2007.

2.4. **Further Work - Groundwater Conditions.**

VLT is currently engaged in discussions with the Texas Commission on Environmental Quality ("TCEQ") with respect to certain groundwater conditions at the Landfill. The City and VLT agree to evenly share out-of-pocket costs related to addressing groundwater conditions attributable to operations of the Landfill through termination of operations by VLT. BFI and VLT, jointly and severally, agree to incur one-half of whatever costs are necessary to address groundwater impacts, to the satisfaction of the TCEQ, or any other federal or state governmental unit with jurisdiction over the Landfill, attributable to operations of the Landfill from its initial operations through the termination of operations by VLT. This obligation of VLT and BFI survives termination of the Contract. The following designation of planned activities to address groundwater conditions is subject to acceptance by the TCEQ and shall not be construed as limited solely to Monitoring Wells MW19 and MW20.

VLT has commenced an effort to make an alternative source demonstration to the TCEQ in regard to groundwater conditions, as it appears the issues are reasonably attributable to sources other than the Landfill and its historical operation and management. The alternative source demonstration begins with a Phase I report and may result in approval by TCEQ upon presentation of the Phase I report; or a Phase II investigation may be required; and/or TCEQ may require that a remediation plan be prepared and carried out as set forth in more detail below. VLT and BFI, on the one hand, and the City, on the other hand, have agreed to share equal responsibility for the cost of these activities described below, and based upon this agreement, VLT and BFI shall perform the following tasks to ensure these issues are properly addressed (all of which shall be referred to hereinafter as the "Work"):

2.4.1 **Phase I:**

1. Conduct a site visit to procure all aerial photographs, leachate and condensate analytical data, Landfill gas probe data, and surface water analytical data. Review site files for other pertinent documents.
2. Analyze the samples taken during the week of September 24, 2007, from three downgradient wells, MW-10, MW 19 and MW 20, as well as two upgradient wells for major water quality parameters.
3. Analyze the samples collected during the week of September 24, 2007, of

the leachate and Landfill gas condensate for comparison to the background and downgradient ground water monitoring wells.

4. Collect samples from all site wells and analyze for dissolved oxygen, oxidation reduction potential, ferrous iron in addition to the regular sampling parameters (pH, specific conductants, turbidity, and temperature).
5. Gather and analyze the data received from the foregoing sampling, along with existing site information, and, prepare a report including observations, conclusions and recommendations for further actions.
6. Meet with TCEQ representatives to present the findings of this Phase I investigation. It is anticipated that this meeting will occur in late October, 2007, based upon discussions with the TCEQ Team Leader for this site.
7. The foregoing may result in one of the following options:
 - a. The TCEQ may approve this alternative source demonstration. No further action would be required in this event.
 - b. The TCEQ may require further investigation, resulting in a Phase II investigation, which will be planned and carried out by VLT and BFI upon review and approval by TCEQ; and/or
 - c. The TCEQ may require the initiation of ground water remediation efforts; which will be planned and carried out by VLT and BFI upon review and approval by TCEQ.

2.4.2 Phase II, (all or part may be conducted):

1. Conduct field sampling for arsenic in soils to establish a natural presence in ground water and soil materials; the location of sampling will be based upon the results of the Phase I and review, input and approval by TCEQ. This effort will serve to better define influences, if any, related to the sampling results from wells MW-19 and MW-20. Possible sources of influence include: Landfill leachate, Landfill gas and Landfill gas condensate; naturally occurring soil and groundwater; and surface water influx from surrounding area sources (e.g. agricultural activities).
2. If necessary, sample leachate, Landfill gas condensate, and ground water for radioisotopes to assist in delineating Landfill gas from leachate impacts.
3. Interpret and integrate the acquired analytical data with the existing site characterization information to develop a final delineation of the most probable cause of the reported results in MW 19 and MW 20.
4. Meet with TCEQ and present report of findings.

2.4.3 Further Remediation. If remediation is required VLT and BFI will initiate

remediation planning and perform the same upon the review and approval of the TCEQ. The remediation plans will be provided by VLT and BFI to the City for review and approvals, prior to submission to the TCEQ, which approval will not be unreasonably withheld.

2.4.4 **Cooperation.** The City of Victoria and the City's new contract operator will provide reasonable assistance and cooperation to VLT and BFI during the performance of the Work.

2.4.5 **Payment by City.** Upon presentation to the City of invoices to third parties and evidence of VLT's or BFI's payment of said invoices, the City will pay VLT or BFI its one-half share of third party costs related to the Work within thirty (30) days.

2.5 **Termination of Contract.** Upon the payments identified in Sections 2.1 and 2.2 and verification by the City of the work identified in Attachment A to this Agreement, with the exceptions of Items 29 and 33 (which have a deadline for compliance by VLT and BFI of October 31, 2007, barring any unforeseen weather delays or events of Force Majeure) and Item 40, the City and VLT agree that the Contract shall be terminated with the following provisions surviving termination, §§ 4.01, 4.04, 10.00, 17.05(a), 21.00, 22.00 and 23.00.

2.6 **Further Releases.** The City shall cause the release of the Performance Bond required by the Contract and any financial assurance posted by VLT with respect to the Contract or the Landfill upon payment pursuant to Sections 2.1 and 2.2 and completion of all items in Attachment A, with the exception of work performed under Item 40.

3. **Indemnification.**

3.1 **VLT and BFI will indemnify, defend and hold harmless the City, its elected officials, officers, employees, agents, servants, consultants and/or subcontractors from and against all suits, actions, legal proceedings, claims, demands, governmental enforcement actions, damages, costs, expenses, (including but not limited to attorney's fees), or other liability for fines, penalties, injury, death or damage to any person or property (hereinafter, "Claims") to the extent arising from or related to the negligence or willful misconduct of VLT, its officers, employees, agents, consultants, servants and/or subcontractors which:**

3.1.1 **occurred during the period of time when VLT served as the City's contract operator under the Contract; and/or**

3.1.2 **occur during VLT's and BFI's performance of the Work.**

3.2 **The foregoing indemnities shall survive the termination of the Contract.**

4. **Performance Standard.** VLT, BFI and the City shall act in good faith and in a reasonable and prudent manner in performing this Agreement. VLT and BFI shall conduct, or cause to be conducted, the Work in a good and workmanlike manner consistent with industry standards and in accordance with the requirements, instructions and approvals of any governmental authorities having jurisdiction thereof.

5. **No Interference.** In performing the work described in paragraph 2 VLT and BFI shall use reasonable efforts to avoid interference with the Landfill operations. The City, its agents, operators, employees and other contractors and their subcontractors and consultants shall at all times provide reasonable cooperation to VLT and BFI, its contractors and consultants, and the TCEQ during the performance of the Work. VLT and BFI shall provide the City or its designated agent with written notice of all major operations to be conducted at the Landfill at least forty – eight (48) hours prior to the commencement of such operations.

6. **Information and Documents.** VLT and BFI shall furnish to the City copies of all correspondence, notices, analytical results, approvals, records, reports, plans, specifications, schedules, contracts, certifications, logs and other written data and communications (hereinafter called “Information and Documents”) received from or furnished to any governmental entity with respect to the Work or relating to the Landfill within fourteen (14) days of receipt or submission. VLT and BFI shall furnish the City copies of all Information and Documents not otherwise furnished to any governmental entity within twenty-one (21) days of generation or receipt of said Information and Documents

7. **Notices.** All notices or requests hereunder must be in writing and delivered in person, sent via US mail, postage prepaid, return receipt requested, or by telecopy or electronic mail to the address of the parties set forth below. Any such notice shall be effective only upon receipt:

If to VLT: Allied Waste Services
5757A Oates Road
Houston, Texas 77078
Attn: Scott Trebus
Fax: 713 671 1555
Scott.Trebus@awin.com

If to BFI: BFI Waste Systems of North America, Inc.
5757A Oates Road
Houston, Texas 77078
Attn: Scott Trebus
Fax: 713 671 1555
Scott.Trebus@awin.com

If to the City: City of Victoria
700 Main Center, Suite 108
Victoria, Texas 77902
Attn: _____
Fax: _____
Email: _____

8. **Waiver.** No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions hereof (whether or not similar), nor shall such waiver constitute a continuing waiver unless otherwise expressly provided.

9. **Captions.** The captions in this Agreement are for convenience only and shall not be considered a part of or affect the construction or interpretation of any provision of this Agreement.

10. **Severability.** If any term or provision of this Agreement is determined to be invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect.
11. **No Employment or Agency Relationship.** The performance of the Work by VLT and BFI shall not be construed to create any agency, employment, joint venture or other relationship between VLT, BFI and the City.
12. **Entire Agreement.** This Agreement constitutes the entire agreement between VLT, BFI and the City pertaining to the subject matter hereof and supercedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the parties pertaining to the subject matter hereof. No supplement, amendment, alteration, modification, waiver or termination of this Agreement shall be binding unless executed in writing by the parties hereto.
13. **Governing Law.** This Agreement shall be governed and construed under the laws of the State of Texas without giving effect to its conflicts of laws principles. Any dispute arising hereunder shall be submitted to non-binding mediation prior to the initiation of any litigation respecting such dispute; and any lawsuit filed in connection with this Agreement shall be filed in Victoria County, Texas.
14. **Force Majeure.** Any performance required hereunder may be delayed or prohibited by contingencies beyond the control of the party from whom performance is due, including but not limited to strikes, riots, flooding, terrorism, fires or acts of God.
15. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which together constitute but one and the same instrument.
16. **Perpetuities Savings Clause.** Notwithstanding any other part of this instrument to the contrary, any obligation pursuant to this instrument that has not earlier terminated shall be deemed to terminate one day before 21 years following the latest death of any person employed by the City of Victoria on the date this contract is initially executed.

EXECUTED this ___ day of _____, 2007.

Victoria Landfill of Tx, L.P.

By: _____

Name: Rusty Waldrup

Title: District Manager, Houston Market

City of Victoria

By: _____

Name: _____

Title: _____

BFI Waste Systems of North America, Inc.

By: _____

Name: _____

Title: _____

ATTACHMENT "A"

Rusty Waldrup's September 25, 2007 Letter to Jerry James



September 25, 2007

City of Victoria
P.O. Box 1758
Victoria, Tx. 77902-1758

Attn. Mr. Jerry James

Dear Jerry,

Thanks for taking the time to meet with Mitch and I regarding the vendor transition at the City of Victoria Landfill. Please find listed all of the issues in question (as noted in the September 12th letter from the City to Allied Waste entitled "Solid Waste Landfill Operations Contract Dated July 1, 1993") and the respective solutions to each. If additional definitions of each listed item are required, please refer to the above mentioned document as well.

Item #1 - Air supply restoration and pump replacement (sump 3) - Allied agrees this sump will be operational prior to departure from the facility.

Item #2 - Water knockout replacement (sump 6) - Allied agrees to have repaired prior to departure from the facility.

Item #3 - Raise sump number 5 by 8-10 feet - Allied raised the height by 10 feet in April and agrees to further height increase prior to departure from facility if needed.

Item #4 - Well verification and drawing revisions - Allied agrees to prepare updated GCCS layout drawings prior to departure from the facility.

Item #5 - Well abandonment (wells as noted in September 12th letter) - City will not require Allied to abandon the wells indicated and as recommended.

Item #6 - Minor well repairs (specific wells noted in September 12th document) - Allied agrees to replace flex hoses and clamps on the wells indicated in the September 12th letter prior to departure from the facility.

Item #7 - Well repairs and raising of wells EW-23 & EW-24 - Allied agrees to repair and raise these two extraction wells prior to departure from the facility.

Item #8 - Temperature gauge installation on 38 wells - The city will not require Allied to address this issue.

Item #9 - Wellhead replacement - The city will not require Allied to respond to this issue.

Item #10 - Supplemental sump pump (blower inlet) - The city will not require additional action on this item.

Item #11 - Flame arrester cleaning - Maintenance was conducted in July "07". This item is no longer in dispute.

Item #12 - Blower belt adjustment (blower #1) - Allied agrees to conduct maintenance on blower #1 prior to departure from the facility.

Item #13 - Lateral installations (EW-27 & EW-28) - Allied repaired the lateral lines in August 2007.

Item #14 - Temporary pumping of 19 wells - The city will require no action on this point.

Item #15 - Generator replacement (sump #1 & #3) - Allied replaced the generators in May "07". Verification will be provided prior to Allied's departure from the facility.

Item #16 - Control panel grounding (sump #1) - Allied will ground the existing control panel at sump #1 prior to departure from the facility.

Item #17 - Head wall installation (sump #1) - The city is agreeable to Allied removing silt from around the riser prior to departure from the facility. The city will not require the installation of a head wall.

Item #18 - **Riser cap installation (sump #3)** - Allied installed the cap during maintenance activities in August 2007. Verification requested by city prior to departure from the facility.

Item #19 - **Discharge pipe modifications (Sumps #2 & #3)** - Allied agrees to complete modifications to discharge pipe and leachate sumps #2 & #3 to route the discharge lines through the risers to allow for the lids to be installed prior to departure from the facility.

Item #20 - **Tank beacon alarm repairs** - Allied agrees to repair prior to departure from the facility.

Item #21 - **Tank lockout mechanism installation** - The city will not require Allied to address this issue.

Item #22 - **Removal / disposal of excess leachate** - Allied agrees to compensate the city in the amount of \$20,000.

Item #23 - **Tier 2 testing & reporting** - Allied conducted Tier 2 non-methane organic compound testing on May 16, 2007 and submitted to the TCEQ.

Item #24 - **Installation of permanent pumping system (see September 12 letter for more definition)** - Allied agrees to compensate city in the amount of \$17,500.

Item #25 - **Replacing abandoned wells with 14 new wells** - Allied agrees to compensate the city in the amount of \$25,000.

Item #26 - **Drainage handling plan (sub-chapter G)** - Allied agrees to complete and update erosion control plan for the site prior to departure.

Item #27 - **Overfill of the waste limits on the top deck and slopes of the existing landfill was identified during the due diligence review** - Allied agrees to compensate city in the amount of \$12,500.

Item #28 - **Financial assurance for the site was prepared in 2005 prior to construction of trench 11** - Allied will update the financial assurance to include trench 11 prior to departure from the facility.

Item #29 - **The west, south and east side slopes of the landfill need to be repaired to comply with the SOP** - Allied has agreed to repair erosion and install temporary erosion berms and up to 6 temporary let downs prior to departure from the facility.

Item #30 - **Landfill markers need to be replaced, repaired or maintained to the required number as stated in the regulations** - Allied has agreed that the landfill markers will be updated per current SOP prior to departure from the facility.

Item #31 - **The perimeter drainage system and sedimentation pond were permitted in a modification in 2006** - Allied agrees to compensate the city in the amount of \$75,000.

Item #32 - **The liner tie in area between the existing constructed trenches and trench 12 consists of an overfill of soil and waste** - Allied agrees to compensate the city in the amount of \$12,500 (\$25K as agreed upon for number 27 and 31 in aggregate).

Item #33 - **An analysis in the un-constructed trench area was done in order to determine if the area was over excavated below the permitted excavation grades for future trenches** - The city will require installation and regrading of soil to permitted excavation grades. This must be completed prior to departure from the facility.

Item #34 - **Several facilities currently exist within the permitted waste boundary that will be required to be relocated to comply with the MSW permit** - The city will not require Allied to address this issue.

Item 35 - **The certified groundwater monitoring system at the landfill consists of eleven wells placed around the perimeter of the facility** - The city will not require Allied to address this issue.

Item #36 - **All monitoring wells will require at least minor attention or repairs** - Allied has agreed to remove sediment from groundwater monitoring wells MW-17, MW-19 and MW-20 prior to departure from facility.

Item #37 - **Background sampling and analysis for total (unfiltered) metals as required by newly adopted TAC 330.401 (b). Eight samples for total metals should be collected by March 2008** - The city understands that Allied has taken two samples and requests the documentation regarding these samples be provided to the city. The city will require no other action of Allied on this issue.

Item #38 - **Significant changes in surface runoff will be required to control surface water in the areas of GMP-5 and GMP-5A** - Allied agrees to remove sediment from gas monitoring probes (listed above). Allied will also provide surface water control as needed in the mentioned area prior to departure from the facility.

Item #39 - **Fifteen vapor vents, designated SV-1 through SV-15 were installed in September 2004 following submittal of a LGRP** - Allied will remove and straighten the vapor vents designated SV-1, SV-2 and SV-3 prior to departure from the facility.

Item #40 - **Impact to groundwater** - Allied agrees to draft an agreement outlining it's plan for dealing with the groundwater issue. This will include testing and remediation if required. This is a split cost with the city.

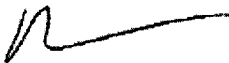
Other items to clarify:

- As noted in September 12th letter, the assets noted will transfer to the city.
- Departure date for Allied from the City of Victoria LF contract will be Sunday October 7th.
- The closure payment will remain at \$1.3 MM.
- The accumulative payments listed above (Items #22, #24, #25, #27, #31 and #32) total \$162,500.
- The Allied demand for payments through reduced royalties have been abandoned.
- Allied agrees to not seek reimbursement for the costs related to a permit modification for a height increase as noted in the September 12th letter.
- Agreed upon issues to be handled by Allied by 10/31/07.

I hope this covers all of the items between Allied and The City of Victoria regarding the landfill contract dated July 1st, 1993.

Again, thanks for your time and support.

Sincerely,



Rusty Waldrup

ATTACHMENT "B"

List of Equipment and Fixtures to be Transferred to the City

1. In ground scales and portable scalehouse with all included equipment (including surveillance equipment).
2. Maintenance Shop.
3. Two Fuel Tanks: One (1) 10,000 gallon diesel and one (1) 500 gallon gasoline (if drained, no other liquids other than diesel and gasoline in the respective tanks).
4. Two (2) 10,000 leachate tanks.
5. One (1) dual lined condensate tank
6. Candlestick flare and other equipment associated with the operation of Landfill methane gas management system.
7. Equipment associated with the operation of the monitoring wells.
8. All other fixtures located at the Landfill.