



ESTADO LIBRE ASOCIADO DE PUERTO RICO  
Gobierno Municipal Autónomo de Ponce

ASAMBLEA MUNICIPAL  
APARTADO 1709  
PONCE, PUERTO RICO 00733

228

ORDENANZA NUM. 136  
SERIE DE 1996-97

**“ORDENANZA DE LA HONORABLE ASAMBLEA MUNICIPAL DEL MUNICIPIO AUTONOMO DE PONCE AUTORIZANDO LAS ENMIENDAS EFECTUADAS AL CONVENIO PARA LA CONTRATACION DEL SERVICIO DE RECOGIDO Y DISPOSICION DE DESPERDICIOS MUNICIPALES Y LA OPERACION DEL RELLENO SANITARIO DEL MUNICIPIO DE PONCE SUSCRITO POR EL MUNICIPIO DE PONCE Y BFI DE PONCE, INC. PARA LA DISPOSICION DE DESPERDICIOS SOLIDOS NO PELIGROSOS Y PARA OTROS FINES”.**

**PROYECTO DE ADMINISTRACION**

**POR CUANTO:** Mediante las Ordenanzas Número 68, Serie 1991-92, Núm. 140, Serie 1992-93, Número 199, Serie 1992-93 y Número 37, Serie 1993-94 de fecha 27 de diciembre de 1991, 1 de febrero de 1993, 24 de junio de 1993 y 13 de diciembre de 1993, respectivamente, esta Asamblea Municipal ha reconocido reiteradamente la importancia que representa para el Municipio Autónomo de Ponce (El Municipio) el recogido y la disposición de desperdicios sólidos, que es una de las tareas más difíciles y complejas con que se enfrentan las autoridades municipales en Puerto Rico;

**POR CUANTO:** Los servicios relacionados con el recogido y disposición de desperdicios, la operación del relleno sanitario municipal y el cumplimiento de normas y requerimientos de las agencias competentes y así como también el cumplimiento con las leyes y reglamentos aplicables, requiere que este servicio se lleve a cabo por personas y entidades altamente competentes y especializadas en la prestación y realización de estas actividades;

**POR CUANTO:** Esta Asamblea Municipal también ha previamente reconocido que la contratación de entidades privadas para prestar los servicios que se indican precedentemente es la forma más apropiada en que el Municipio puede garantizar continuidad y eficiencia en la prestación de dichos servicios y sus actividades relacionadas;

**POR CUANTO:** La Ley Número 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) disponen que los contratos para la prestación de servicios para la disposición de desperdicios sólidos, así como también los contratos de arrendamiento de propiedad

*Lacy*  
*[Firma]*

municipal incidentales a estos contratos están exentos del requerimiento de subasta pública y pueden ser otorgados por cualquier término de duración, estableciéndose además, que dichas disposiciones son aplicables a contratos para la disposición de desperdicios sólidos otorgados con anterioridad a la vigencia de dicha Ley;

**POR CUANTO:** A la fecha de esta Ordenanza, tanto el servicio de recogido y disposición de desperdicios municipales, como también la operación del relleno sanitario municipal para la disposición de desperdicios sólidos no peligrosos se lleva a cabo por BFI of Ponce, Inc. (en adelante el Contratista), un contratista privado e independiente que opera el relleno sanitario municipal y presta dichos servicios mediante convenio suscrito con el Municipio de Ponce efectivo el 30 de enero de 1992 titulado "*Convenio para Prestación de Servicios de Recogido y Disposición de Desperdicio Municipal y Operación del Relleno Sanitario para la disposición de Desperdicios Sólidos No Peligrosos*" (en adelante el Convenio), el cual fue autorizado mediante la Ordenanza Municipal Número 68 antes citada;

**POR CUANTO:** Esta Asamblea Municipal mediante la Ordenanza Número 37, antes citada, autorizó las enmiendas al Convenio que se recogen en el documento titulado "*Primera Enmienda al Convenio para Prestación de Servicios de Recogido y Disposición de Desperdicio Municipal y Operación del Relleno Sanitario para la Disposición de Desperdicios Sólidos No Peligrosos*" (el Convenio Enmendado), efectivo el 2 de febrero de 1994;

**POR CUANTO:** El Contratista, a tenor con los términos, cláusulas y condiciones del párrafo 8.00 del Convenio Enmendado ha construido una nueva Celda Industrial a un costo sustancial para el Contratista, para la disposición de desperdicio especial, según este término es definido en el Anejo G, Apéndice 1 del Convenio Enmendado;

**POR CUANTO:** El Contratista ha informado al Municipio el hecho de que ha identificado ciertas oportunidades comerciales para atraer cantidades de desperdicio especial procedentes de fuera del Estado Libre Asociado para su disposición en la Celda Industrial mencionada anteriormente;

**POR CUANTO:** El Contratista le ha comunicado al Municipio su deseo de enmendar el Convenio para permitir al Contratista recibir desperdicio especial procedente de fuera del Estado Libre Asociado de Puerto Rico para su disposición en la Celda Industrial, sujeto al cumplimiento estricto del procedimiento para aceptación de desperdicio dispuesto en el Convenio;

**POR CUANTO:** Con posterioridad a dicha comunicación, el Contratista y los asesores del Municipio han sostenido conversaciones encaminadas a enmendar el Convenio mediante aquellas cláusulas y condiciones a pactarse que mejor convengan al Municipio y al interés público;

**POR CUANTO:** Las conversaciones sostenidas entre el Contratista y los Asesores del Municipio han resultado en enmiendas al Convenio que se recogen en un documento titulado

*“Segunda Enmienda al Convenio para Prestación de Servicios de Recogido y Disposición de Desperdicio Municipal y Operación del Relleno Sanitario para la Disposición de Desperdicios Sólidos No Peligrosos” (Segunda Enmienda al Convenio);*

**POR CUANTO:** Se han sometido ante la consideración de esta Asamblea Municipal las enmiendas contenidas en la Segunda Enmienda al Convenio;

**POR CUANTO:** Esta Asamblea Municipal ha estudiado y considerado detenidamente la Segunda Enmienda al Convenio y los beneficios que dichas enmiendas conllevan para el Municipio y el interés público;

**POR TANTO:           ORDENASE POR LA ASAMBLEA MUNICIPAL DE  
PONCE, PUERTO RICO:**

**SECCION PRIMERA:** Se autoriza al Honorable Alcalde de Ponce en representación del Municipio para que contrate con el Contratista las Enmiendas al Convenio, según surge de la Segunda Enmienda al Convenio que ha sido traída ante la consideración de esta Asamblea Municipal.

**SECCION SEGUNDA:** Al perfeccionar y formalizar las enmiendas aquí autorizadas, el Contratista tendrá todos los derechos, deberes y responsabilidades que surgen de su condición como Contratista Independiente.

**SECCION TERCERA:** El Contratista deberá proveer todos los servicios contratados incluyendo la aceptación, depósito, tratamiento y disposición de los Desperdicios Especiales procedentes de fuera de Puerto Rico, en estricto cumplimiento con las leyes y reglamentos aplicables, los estándares generalmente aceptados en la operación de una Celda Industrial y en cumplimiento de los procedimientos para la aceptación de desperdicios dispuestos en el Convenio.

**SECCION CUARTA:** Con excepción de las enmiendas autorizadas mediante esta Ordenanza y que surgen de la Segunda Enmienda al Convenio, las otras disposiciones contenidas en el Convenio continuarán en pleno vigor.

**SECCION QUINTA:** Esta Ordenanza formará parte de la Segunda Enmienda al Convenio suscrito entre el Municipio y el Contratista.

**SECCION SEXTA:** La vigencia de esta Ordenanza es de carácter inmediato a su aprobación por la Asamblea Municipal y la firma del Honorable Alcalde de Ponce.

**SECCION SEPTIMA:** Copia de esta Ordenanza será enviada al Honorable Gobernador de Puerto Rico, a la Junta de Calidad Ambiental, a la Autoridad de Desperdicios Sólidos y a la Oficina de la Contralor.

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*[Handwritten signature]*

**SECCION OCTAVA:** Copia de esta Ordenanza deberá ser radicada en el Departamento de Estado dentro de los diez (10) días siguientes a su aprobación final.

**APROBADA ESTA ORDENANZA POR LA ASAMBLEA MUNICIPAL DE PONCE, PUERTO RICO, A LOS 27 DIAS DEL MES DE MAYO DE 1997.**

  
**GUILLERMO JIMENEZ MONROIG**

SECRETARIO ASAMBLEA MUNICIPAL

  
**LUIS A. (WITO) MORALES**

PRESIDENTE ASAMBLEA MUNICIPAL

**SOMETIDA ESTA ORDENANZA A MI CONSIDERACION A LOS 28 DIAS DEL MES DE DE 1997, Y FIRMADA Y APROBADA POR MI A LOS 29 DIAS DEL MES DE DE 1997.**

  
**RAFAEL CORDERO SANTIAGO**  
ALCALDE

REB/mavc

**CERTIFICACION**

**YO: GUILLERMO JIMENEZ MONROIG, SECRETARIO ASAMBLEA MUNICIPAL DE PONCE, PUERTO RICO:**

**CERTIFICO:** Que la precedente **Ordenanza Núm. 136** Serie de 1996-97, fue aprobada por la Asamblea Municipal en la Sesión Extraordinaria el martes, 27 de mayo de 1997 y con los votos afirmativos de los siguientes Asambleístas a saber:

**Hon. Ruth García Ortiz**  
**Hon. Mayra C. Colón Toledo**  
**Hon. José A. González**  
**Hon. Nilda González**  
**Hon. Luis A. (Wito) Morales**  
**Hon. Cruz Ortolaza**  
**Hon. Pedro Pacheco**

**Hon. Ana M. Pieve de Antúnez**  
**Hon. Rafael L. Rovira**  
**Hon. Orlando Salichs**  
**Hon. Santos Silva**  
**Hon. Daisy Silvagnoli**  
**Hon. Waldemar Vélez**  
**Hon. Enrique A. Vicéns**


En Contra: Hon. Carlos Báez

Abstenido: Hon. Cosme A. Ortiz

Esta Ordenanza fue firmada por el Presidente y el Secretario de la Asamblea, el día martes, 27 de mayo de 1997, debidamente certificada al Alcalde el día miércoles, 28 de mayo de 1997 y éste la firmó el día jueves, 29 de mayo de 1997.

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

**Y PARA QUE ASI CONSTE,** y a los fines procedentes, expido la presente con mi firma y el Sello Oficial del Municipio Autónomo de Ponce, hoy día jueves, 29 de mayo de 1997.

  
**GUILLERMO JIMENEZ MONROIG**  
**SECRETARIO ASAMBLEA MUNICIPAL**

**SELLO OFICIAL**

nom

SECOND AMENDMENT TO  
AGREEMENT FOR MUNICIPAL  
WASTE COLLECTION AND DISPOSAL  
SERVICES AND LANDFILL OPERATION FOR THE  
DISPOSAL OF NON-HAZARDOUS SOLID WASTE

In the Municipality of Ponce, Puerto Rico, this \_\_\_\_ day of \_\_\_\_\_, 1997.

A P P E A R

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 José Ayala, of legal age, married and a resident of Juncos, Puerto Rico, in his capacity as Vice President of Contractor, who is duly authorized to appear at this act. Exhibit "A", Corporate Resolution.

The MUNICIPALITY OF PONCE, PUERTO RICO, represented by the Honorable Rafael Cordero Santiago, of legal age, married, and a resident of Ponce, Puerto Rico, hereinafter referred to as the "Municipality", who is duly authorized to appear at this act. Exhibit "B", Municipal Ordinance.

W I T N E S S E T H

WHEREAS, on January 30, 1992, the Municipality and Contractor entered into a agreement entitled Agreement for Municipal Waste Collection and Disposal Services and Landfill Operation for the Disposal of Non-Hazardous Solid Waste, as amended by First Amendment dated February 2, 1994 (the "Agreement"); and

WHEREAS, Contractor has constructed a new Industrial Cell at a substantial cost to Contractor for the disposal of special at the Landfill; and

WHEREAS, Contractor has identified certain opportunities to attract special waste volumes from outside of Puerto Rico, as hereinafter listed, for disposal in the Industrial Cell; and

WHEREAS, the Municipality is indebted to Contractor for waste collection services rendered by Contractor to the Municipality as a result of certain disputes with Commonwealth Central Government and certain of its agencies regarding monies owed to the Municipality; and

WHEREAS, the Municipality receives a royalty from Contractor for, among other things, special waste which is accepted by Contractor for disposal in the Industrial Cell; and

WHEREAS, the Municipality and Contractor wish to amend the Agreement to provide for a basis for the Municipality to pay Contractor the monies owed to it by the Municipality and to permit Contractor to receive at the Landfill for disposal in the Industrial Cell special waste from certain areas, as hereinafter listed, which otherwise fully comply with the waste acceptance criteria set out in the Agreement.

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. Unless otherwise provided for herein, each capitalized term shall have the meaning ascribed to such term in the Agreement.
2. The Municipality and Contractor mutually acknowledge and agree that as of the close of business on February 28, 1997, the Municipality was indebted to Contractor in the amount of \$6,765,548.59 for services rendered by Contractor under the Agreement, together with accrued interest thereon as provided for under the Agreement, as set forth in detail in Exhibit "C" attached hereto.
3. The Municipality and Contractor mutually acknowledge and agree that as of the close of business on February 28, 1997, Contractor was holding for contribution to the Escrow Account pursuant to Paragraphs 11.03 and 17.02(e) of the Agreement the sum of \$2,220,618.00. The Municipality and Contractor agree that such amount shall be applied, retroactively to March 1, 1997, against the total indebtedness owed by the Municipality to Contractor, first to accrued interest and then to the oldest outstanding invoice(s), as set forth in detail in Exhibit "D" attached hereto. After application of the \$2,220,618.00 balance as set forth herein, the parties agree that as of March 1, 1997, the Municipality was indebted to Contractor in the amount of \$4,544,930.59 as set forth in detail in Exhibit "D".
4. Notwithstanding the definition of "Permissible Waste" set forth in Paragraph 1.24 of the Agreement and the language contained on page G-3 of Amended Exhibit G under the heading "No Annual Limitation on Landfill Capacity Depletion", the Municipality hereby grants to Contractor the Municipality's express authorization for Contractor to accept for disposal only in the Industrial Cell special waste originating from any of the locations listed Exhibit "E"

Attached hereto. Any such waste accepted by Contractor for disposal in the Industrial Cell must otherwise comply with the waste acceptance procedures set forth in Amended Exhibit G. The parties acknowledge that the Industrial Cell may not, by the terms of its permit, receive for disposal Municipal Waste and, therefore, the receipt of special waste in the Industrial Cell from any of the locations listed on Exhibit "E" will have no impact whatsoever on the remaining airspace at the Landfill available for the disposal of the Municipality's Municipal Waste.

5. Notwithstanding anything to the contrary contained in Paragraph 16.01 of the Agreement, with respect to any special waste disposed of in the Industrial Cell which originates from any of the countries listed on Exhibit "E" Contractor will pay the Municipality a royalty equal to 20% of all fees charged for Disposal services at the Landfill rather than the customary 15% royalty.
6. On March 31, 1997, the Municipality paid to Contractor the amount of \$457,219.71 representing one month's invoice for services rendered by Contractor under the Agreement. Beginning on April 1, 1997, and on the first business day of each month thereafter the Municipality will pay to Contractor an amount equal to the then applicable monthly invoice amount for services rendered under the Agreement after taking into account the annual modification of the collection rate as established in Paragraph 15.02 of the Agreement. Each such payment shall be applied against the oldest invoice(s) outstanding at the time of payment. In addition to the foregoing payments, on or before September 30, 1997, the Municipality shall make an additional payment of \$457,219.71 to Contractor. This payment shall be applied against the oldest invoice(s) outstanding at the time of payment.
7. (a) The Municipality and Contractor mutually acknowledge and agree that as of March 1, 1997, all principal evidenced by the Promissory Note, together with all accrued interest thereon, has been paid in full by the Municipality to Contractor. Therefore, notwithstanding anything to the contrary contained in Paragraphs 16.02 of the Agreement, beginning in March 1997, 50% of all rents and royalties owed by Contractor to the Municipality under the Agreement each month will be designated for contribution to the Escrow Account and the remaining 50% of such rents and royalties will be offset against the then outstanding debt obligation of the Municipality to Contractor, first to accrued interest and then to the oldest invoice(s) outstanding at the time of offset.



- (b) At such point in time as the Municipality becomes current in its financial obligations to Contractor (defined as no invoice outstanding beyond 60 days from invoice date), 100% of all rents and royalties will be designated each month of contribution by Contractor to the Escrow Account. At such point in time as the Municipality becomes current in its financial obligations to Contractor and the balance of the Escrow Account equals at least \$3,400,000.00, all rents and royalties will be offset against any monthly amount due by the Municipality to Contractor under Paragraph 15.04 of the Agreement for waste collection services rendered.
- (c) At such point in time as the balance of the Escrow Account equals at least \$3,400,000.00, all rents and royalties will be offset against the then outstanding debt obligation of the Municipality to Contractor, first to accrued interest and then to the oldest invoice(s) outstanding at the time of offset. At such time as the Municipality becomes current in its financial obligations to Contractor, all rents and royalties will be offset against any monthly amount due by the Municipality to Contractor under Paragraph 15.04 of the Agreement for waste collection services rendered.
- (d) Notwithstanding anything to the contrary contained in this Paragraph 7, 100% of the royalties arising out of the disposal into the Industrial Cell of special waste originating from one of the locations listed on Exhibit "E" will be offset against the then outstanding debt obligation of the Municipality to Contractor, first to accrued interest and then to the oldest invoice(s) outstanding at the time of offset.
8. The Municipality represents to Contractor that Exhibit "F" attached hereto lists all pending litigation between the Municipality and the Central Government of the Commonwealth or any of its agencies concerning monies which the Municipality claims is owed to it by the Central Government or any of its agencies, together with a brief description of the status of each such case. The Municipality agrees that in the event it ultimately prevails in any litigation with the Central Government or any of its agencies, whether or not such litigation is listed on Exhibit "F", or in the event the Municipality should realize a financial windfall from any source whatsoever including, without limitation, by virtue of producing a budget surplus, then in such case the Municipality shall utilize such funds as first priority to pay the then remaining balance of the Municipality's debt obligation to Contractor necessary to bring the Municipality

current. Such funds shall be applied first to accrued interest and then to the oldest invoice(s) outstanding at the time of payment. The balance of the funds, if any, shall then be utilized to replenish the Escrow Account by paying to the Escrow Agent an amount equal to the lesser of \$2,220,618.00 or the amount necessary to bring the Escrow Account balance to \$3,400,000.00.

- 9. The Municipality acknowledges and agrees that time is of the essence with respect to the obligations of the Municipality set forth in this Second Amendment.
- 10. The Municipality and Contractor acknowledge and agree that nothing contained herein shall in any manner be construed as a waiver by Contractor or the Municipality of any of their respective rights or remedies provided for under the Agreement including, without limitation, the right of Contractor under Paragraph 18.00 to immediately suspend collection services.
- 11. Except as expressly modified or amended herein, the terms and provisions of the Agreement shall remain in full force and effect. To the extent of any conflict between this Second Amendment and the Agreement, the provisions of this Second Amendment shall prevail. The Agreement, as further amended by this Second Amendment, constitutes the entire agreement and understanding between the parties hereto with respect to the subject matter hereof.

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

**BFI OF PONCE, INC.**

**MUNICIPALITY OF PONCE, PUERTO RICO**

By: \_\_\_\_\_  
José Ayala  
Vice President

By: \_\_\_\_\_  
Rafael Cordero Santiago  
Mayor

EXHIBIT "A"  
CORPORATE RESOLUTION

EXHIBIT "B"  
MUNICIPAL ORDINANCE

Accounts Receivable  
BALANCE AS OF FEBRUARY 28, 1997

Period	Invoice Date	Invoice Amount	Interest Amount	Total Due	Invoice Payment	Interest Payment	Total Payment	Payment Date	Balance Due
Nov. 93	11/30/93	\$ 0.00		\$ 0.00			\$ 0.00		\$ 0.00
Dec. 93	12/31/93	\$ 3,855.51		\$ 3,855.51			\$ 0.00		3,855.51
Jan. 94	01/31/94	\$ 406,466.66		\$ 406,466.66			\$ 0.00		406,466.66
Feb. 94	02/28/94	406,466.66		406,466.66			\$ 0.00		406,466.66
March 94	03/31/94	422,725.33		422,725.33			\$ 0.00		422,725.33
March 95	03/31/95	439,634.34		439,634.34			\$ 0.00		439,634.34
August 95	8/31/95	0.00		0.00			\$ 0.00		0.00
Sept. 95	9/30/95	439,634.34		439,634.34			\$ 0.00		439,634.34
Oct. 95	10/31/95	0.00		0.00			\$ 0.00		0.00
Nov. 95	11/30/95	0.00		0.00			\$ 0.00		0.00
Dec. 95	12/31/95	0.00		0.00			\$ 0.00		0.00
Jan. 96	01/31/96	439,634.34	\$ 28,106.73	467,741.07	439,634.34		\$ 339,634.34	7/96	28,106.73
Feb. 96	02/29/96	439,634.34	30,978.48	470,612.82			0.00		470,612.82
March 96	03/31/96	457,219.71	34,762.20	491,981.91	457,219.71		457,219.71	8/96	34,762.20
April 96	04/30/96	457,219.71	34,105.89	491,325.60	457,219.71		457,219.71	9/96	34,105.89
May 96	05/31/96	457,219.71	35,758.60	492,978.31	457,219.71		457,219.71	10/96	35,758.60
June 96	06/30/96	457,219.71	39,366.00	496,585.71	457,219.71		457,219.71	11/96	39,366.00
July 96	07/31/96	457,219.71	40,039.94	497,259.65					497,259.65
Aug. 96	08/31/96	457,219.71	40,427.83	497,647.54					497,647.54
Sept. 96	09/30/96	457,219.71	39,502.71	496,722.42					496,722.42
Oct. 96	10/31/96	457,219.71	40,637.75	497,857.46					497,857.46
Nov. 96	11/30/96	457,219.71	39,702.60	496,922.31					496,922.31
Dec. 96	12/31/96	457,219.71	45,774.00	502,993.71					502,993.71
Jan. 97	01/31/97	457,219.71	50,580.00	507,799.71					507,799.71
Feb. 97	02/28/97	457,219.71	49,631.00	506,850.71					506,850.71
Acct. Balance		8,484,688.04	549,373.73	9,034,061.77	2,268,513.18	0.00	2,268,513.18		6,764,548.59

EXHIBIT "C"  
SCHEDULE OF INDEBTEDNESS  
FEBRUARY 28, 1997

EXHIBIT "D"  
SCHEDULE OF INDEBTEDNESS  
MARCH 1, 1997

<u>Period</u>	<u>Invoice Date</u>	<u>Balance Date</u>
March'95	03/31/95	\$ 7,904.23
Sept'95	09/30/95	\$ 439,634.34
Feb'96	02/29/96	\$ 439,634.34
July'96	07/31/96	\$ 457,219.17
Aug'96	08/31/96	\$ 457,219.71
Sept'96	09/30/96	\$ 457,219.71
Oct'96	10/31/96	\$ 457,219.71
Nov'96	11/30/96	\$ 457,219.71
Dec'96	12/31/96	\$ 457,219.71
Jan'97	01/31/97	\$ 457,219.71
Feb'97	02/28/97	\$ 457,219.71
		\$ 4,544,930.59





EXHIBIT "E"  
OTHER SPECIAL WASTE LOCATIONS

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The U.S. Virgin Island, including all their territories, shorelines and maritimes ports,  
as well all vessels which utilize any of their maritime ports.