

ORDINANCE 2004 - 89

STATE OF TEXAS §
 § **RIGHT-OF-WAY USE AGREEMENT**
COUNTY OF KAUFMAN §

This Agreement (“Agreement”) is entered into by and between the Town of Talty, Texas, (“Town”) and Ferris Container Service, (“Contractor”) acting by and through their authorized representatives.

RECITALS

WHEREAS, the Town and Contractor desire to enter into an Agreement for solid waste collection and disposal services within the Town, and to perform such work as may be incidental thereto; and

WHEREAS, the Town desires to grant to Contractor the privilege of the use of the Town’s streets, highways and rights-of-way to provide solid waste collection services;

NOW THEREFORE, in consideration of the mutual agreements and covenants contained herein, the parties agree as follows:

GENERAL PROVISIONS

SECTION 1. DEFINITIONS:

1.01 *Town* means the Town of Talty, Texas.

1.02 *Contractor* means any person, corporation, partnership or similar entity that contracts for valuable consideration to pick up or collect municipal solid waste on a regular basis from any collection point within the corporate or service limits of the Town of Talty.

1.03 *Municipal solid waste* means solid waste resulting from or incidental to municipal, community (residential), household, and recreational activities, and includes garbage, rubbish, ashes, and other solid waste other than industrial solid waste as defined by state or federal law.

SECTION 2. GRANT OF FRANCHISE:

2.01 The Contractor is hereby granted the privilege and duty within the territorial jurisdiction of the Town, and agrees to furnish all personnel, labor, equipment, trucks, and other items necessary to provide solid waste collection and disposal in accordance with this Agreement and to perform all of the work called for and described in the Agreement documents. Contractor agrees to at all times insure that its waste collection franchise is current and in compliance with all applicable regulations of the State of Texas, and ordinances of the Town of Talty, Texas. It is understood that this franchise is non-exclusive.

2.02 The Contractor shall at all times be duly licensed or permitted to deposit municipal solid waste at or in a land fill regulated and approved by the Texas Commission on Environmental Quality and any other appropriate state or federal authorities.

2.03 The Contractor operates as an independent Contractor under a non-exclusive franchise agreement, and may be terminated at the discretion of the Town Council as herein provided and under local, state, and federal law.

SECTION 3. CONTRACTOR DUTIES:

3.01 The Contractor shall at all times maintain in a current and valid status, all permits required by any other governmental agency or political subdivision having jurisdiction over Contractor's operations, including but not limited to the Texas Commission on Environmental Quality.

3.02 The Contractor shall not allow any municipal solid waste to spill or fall from the Contractor's equipment within the corporate limits of the Town. In the event that spillage should occur, the Contractor shall completely remove such spillage.

3.03 The Contractor shall insure that any of its trucks and equipment used for collection within the Town of Talty, and under this franchise, meet the approval of the Town. The Contractor agrees to only use trucks and equipment that will prevent spillage and damage to the streets and

ways used by such trucks and equipment. Contractor shall also abide by any Town regulations with regard to the placement of collection containers if it becomes necessary to establish such regulations. Unless such regulations become necessary the Contractor shall establish such locations.

3.04 The Contractor shall clearly mark all of its collection vehicles with the Contractor's name, address and telephone number.

3.05 Contractor shall operate single axle (1 steering and 1 rear) trucks not exceeding 40,000 pounds gross weight. Trucks used for commercial and roll-off services may be tandem axle and may not exceed 60,000 pounds gross weight.

SECTION 4. BILLING AND RATES:

Contractor shall bill customers directly and shall pay to the Town the license fee set forth in Section 5 herein.

Contractor shall charge its customers for collection services not more than the rates set forth by Town ordinance or, in the absence thereof, the following rates:

Residential Customers: Service provided is Roll Off Containers Only – Rate to be negotiated with customer.

Commercial/Industrial Customers: Rate to be negotiated with customer

Municipal/School customers: Rate to be negotiate with customer

The foregoing rates may be modified by the Town Council at the request of Contractor and after public hearing, not earlier than one (1) year after the effective date of this Agreement. Any rate increases must be based on increased costs of service.

SECTION 5. LICENSE FEE:

In addition to any other license or permit fees, the Contractor shall pay to the Town a license fee under this Agreement in the amount of 7% percent of all amounts received or charged by the Contractor for the Contractor's services provided pursuant to this Agreement. Such payment shall

be made to the Town on or before the twenty-fifth (25th) day of each month for amounts received by the Contractor for the performance of services during the immediate preceding month.

SECTION 6. RESTORATION OF PUBLIC WAYS:

The Contractor shall not cause damage, beyond normal wear and tear, to any street or roadway within the Town. In the event the Contractor causes damage to any street or roadway within the Town, the Contractor shall be given written notice to immediately cause such damage to be repaired under the supervision of the Town inspector. Such notice shall provide that in the event Contractor does not acknowledge responsibility for making such repairs within seven (7) days of notice, a hearing will be held by the Town Council on the question of responsibility for such damage. If at such hearing the Town Council finds that the damage was caused by Contractor and such damage was beyond normal wear and tear, the Town Council may request Contractor to cause such damage to be repaired under the supervision of the Town inspector and if such damage is not repaired within the time stated the Town Council may within its sole discretion terminate Contractor's Franchise and right to use the public streets within the Town to carry on its business.

SECTION 7. CONFLICTS:

In the event of any conflict between or among the Agreement documents, this Agreement or the Town's Request for Proposal, if any, shall control and govern in such order.

SECTION 8. MODIFICATIONS:

All provisions of the Agreement documents shall be strictly complied with by Contractor and no amendment to this Agreement shall be made except upon the mutual written consent of the parties. No amendment shall be construed to release either party from any obligation under the Agreement except as specifically provided in such amendment.

SECTION 9. INDEMNIFICATION:

The Contractor agrees to defend, indemnify, and hold Town and each of its officers and employees harmless from any and all suits, actions, claims, losses or damages of any character, and from all expenses incidental to the defense of such suits, actions or claims based on or arising out of any injury, disease, sickness, or death of any person or persons, or any damages to any property caused by any act or omission of Contractor or its officers, agents, servants, employees or anyone else under Contractor's direction and control, and arising out of, occurring in connection with, resulting from, or caused by the performance or failure of performance of any work or services under the franchise or conditions created by the performance or non-

performance of said work or services.

SECTION 10. INSURANCE:

Contractor shall keep in full force and effect throughout the term of this Agreement insurance in the amounts and types specified in and required by the Agreement documents. Contractor shall provide the Town with a certificate of insurance showing commercial general liability, general public and motor vehicle liability coverage with limits of at least \$500,000.00 per person / \$1,000,000.00 per accident/occurrence / \$100,000.00 property damage.

Such policies shall name the Town as an additional insured and shall contain provisions requiring that the Town be notified within ten (10) days of any cancellation or termination of the policy. The foregoing additional insured requirement and the ten (10) day notice requirement shall be shown on the face of the certificate submitted by Contractor.

SECTION 11. BREACH AND TERMINATION:

11.01 The sufficiency of the grounds for termination as enumerated hereinafter shall be within the sole discretion of the Town Council. It is understood and agreed that this license may be terminated after hearing before the Town Council if:

- a. The Contractor has failed to give prompt and courteous attention to, and correct complaints filed by its customers.

- b. The Contractor has failed to provide an adequate regular collection service, or is in an any way in violation of this Agreement, after being given a reasonable time to correct such failure or violation.

- c. The failure of the Contractor to abide by any of the terms and conditions of this Agreement, applicable ordinances of the Town, or State or Federal regulations.

- d. For cause as determined by the Town Council;

- e. For convenience, when such convenience is determined by the Town Council to be in the best interest of the public health, safety and welfare.

- f. The filing of bankruptcy or receivership proceedings, transfers for the benefit of creditors, or acts evidencing insolvency.

11.02 In the event of termination for the reasons set forth in the foregoing paragraphs 11.01 (a) through (d) the Town shall notify Contractor of the reasons for consideration of termination and Contractor shall have a period of thirty (30) days to cure such reason.

11.03 Contractor may terminate this Agreement upon written notice received by the Town not less than one hundred twenty (120) days before the date set forth in said notice for termination.

SECTION 12. ASSIGNMENT:

This Agreement shall be binding on and inure to the benefit of the parties to it and their respective heirs, executors, administrators, legal representatives, successors, and assigns. This Agreement may be assigned by Contractor only with the written consent of Town.

SECTION 13. NOTICE:

Any notices required or permitted to be delivered under this Agreement shall be deemed receivable when sent by United States mail, postage pre-paid, certified mail, return receipt requested, addressed to the party at the address set forth opposite the signature of the party.

SECTION 14. MERGER CLAUSE:

This Agreement is the entire agreement between the parties with respect to the subject matter covered in this Agreement. There is no other collateral, oral, or written agreement between the parties that in any matter relates to the subject matter of this Agreement, except as provided in the Agreement documents.

SECTION 15. JURISDICTION:

The validity of this Agreement and any of its terms and provisions, as well as the rights and obligations of the parties shall be governed by the laws of the State of Texas, and venue for any action concerning this Agreement shall be in a state court of proper jurisdiction in Kaufman County, Texas.

SECTION 16. FORCE MAJEURE:

Notwithstanding anything herein to the contrary, Contractor shall not be liable for the failure to perform its duties if such failure is caused by a catastrophe, riot, war, fire, act of God or other similar or different contingency beyond the reasonable control of Contractor.

SECTION 17. SEVERABILITY:

Each paragraph, sentence, subdivision, clause, phrase, or section of this Agreement are deemed severable. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable for any reason, such invalidity, illegality, or unenforceability shall not effect other provisions, and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

SECTION 18. TERM OF AGREEMENT:

This Agreement shall be for a period beginning on October 1, 2004, and ending September 30, 2006, ("Expiration Date"). This Agreement may be renewed for one additional period of one year if the Contractor makes a request for a renewal to the Town six (6) months prior to the Expiration Date and has satisfactorily performed all conditions under the Agreement and Contractor's service performance is satisfactory. The Town may deny the renewal of this Agreement by giving notice to the Contractor within forty-five (45) days after Contractor has requested a renewal.

SECTION 19. COUNTERPARTS:

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

SECTION 20. RECITALS:

The recitals to this Agreement are incorporated herein.

Executed in single or multiple originals this 27th day of September, 2004.

Contractor:

FERRIS CONTAINER SERVICE

TOWN OF TALTY, TEXAS

By: _____
Kelly Joe Ferris, Owner

By: _____
Allison Weaver, Mayor

Address: P. O. Box 790
Wills Point, TX 75169

ATTEST:

By: _____
Roberta Owens, Town Secretary

APPROVED AS TO FORM:

By: _____
Town Attorney