

Extension of the City of Fraser Single Hauler

Waste Collection and Disposal Contract Entered Into on September 13, 2011

This Agreement made and effective the 13th day of July, 2017, by and between the City of Fraser, a Michigan municipal corporation, whose offices are located at 33000 Garfield Road, Fraser, Michigan 48026 (hereinafter referred to as "City") and GFL Environmental USA Inc. whose offices are located at 6200 Elmridge, Sterling Heights, Michigan 48313 (hereinafter referred to as "Contractor.")

RECITALS

WHEREAS, the City in 2005, solicited bids for a Single Hauler Waste Collection and Disposal Program in accordance with the Advertisement for Bids, Request for Bids and Instructions to Bidders Proposal Form, Service Descriptions and Specifications, this Contract and certain attachments thereto hereinafter referred to as "Contract Documents";

WHEREAS, the Contractor has submitted a Proposal with a three year term in accordance with the Contract Documents, which has been accepted by the City, and that Contract has a renewal option for an additional three year period at a set rate, which was accepted by the City with an effective date of September 13, 2008;

WHEREAS, the City and Contractor extended the Agreement until September 12, 2014;

WHEREAS, the City and Contractor extended the Agreement again until September 12, 2017;

- WHEREAS, the City and Contractor seek to extend until September 12, 2025 with no increase for the first year but then a 2 ¼ percent increase effective September 13, 2018, and an additional 2 ¼ percent increase on each one year anniversary thereafter pursuant to the terms herein and in Exhibits titled as follows:
- Correspondence dated July 5, 2017 from Contractor to City ("Letter").

Whereas the parties agree that Letter "Option I" pricing will remain in place until carts are delivered and then "Option III" pricing will be implemented.

Whereas, to implement the eight-year Universal Trash Cart Program an additional monthly service fee of \$1.04 would be added to each service unit.

NOW THEREFORE, for and in consideration of the mutual undertakings of the parties hereto, as hereinafter set forth, the receipt of which is hereby acknowledged by both parties, it is agreed by and between the parties hereto as follows:

1. **Contractor Responsibilities and Compensation.** The Contractor shall, during the term of this Contract or any extension thereof, collect, transport, and dispose of all items of mixed waste, recyclable materials and yard waste from residential dwelling units and provide other services to the City in accordance with all provisions of any applicable

federal, state and county laws and ordinances of the City. The Contractor shall perform all other terms, conditions, requirements, and services as set forth in the Contract Documents and those services which are incidental thereto without any additional compensation other than as set forth in the Contract Documents in the Contract dated August 29, 2005, and incorporated herein. Notwithstanding anything contained herein the Contractor will receive a 2 ¼ percent increase effective September 13, 2018 and each and every year thereafter (September 13, 2019, September 13, 2020, etc.)

2. **Enhanced Recycling Program Continues.** As a courtesy to the City of Fraser for extending our existing agreement for another eight years, GFL will continue the following recycling program to the City and all residents:
 - GFL will continue providing interested residents, free of charge, with a new 64 gallon wheeled recycling cart. Once ordered, the cart will be assembled and delivered within a reasonable period of time, usually seven to ten days.
3. **Contract Documents.** The Contract Documents consisting of the Advertisement for Bids, Request for Bids and Instructions to Bidders, the Service Descriptions and Specifications, the Proposal submitted by the Contractor in 2005, including all attachments and the Appendices to the September 13, 2005 and September 13, 2011 Contracts between the parties are incorporated herein by reference and shall become a part of this Contract and shall be binding upon the parties hereto. If there is any variance between the Contract and any of the other documents, the Contract itself will be the controlling document. The Contractor hereby agrees to waive any claim for failure of the Contract to conform to the Contract Documents. The Contractor represents that the Contractor has reviewed the Contract Documents and agrees to be bound by the same.
4. **Term of Contract.** The initial term of this Contract shall be for a period of eight (8) years commencing on September 13, 2017. It may be extended for a like term as long as City and Contractor, reach agreement to the price for service for each year of the extension.
5. **Licenses.** Contractor shall obtain at its own expense any licenses required by the federal, state or local governments necessary to operate the equipment and perform the work required by this Contract. Employees of the Contractor shall have all licenses and endorsements required by federal, state and local laws in order to operate the equipment and vehicles utilized in the performance of this Contract.
6. **Vehicles.** All vehicles and equipment utilized by the Contractor in the performance of the services under this Contract shall be kept in a safe and good operating order and in a clean, presentable condition. All Equipment and facilities used by the Contractor shall be subject to inspection for sanitation, safety and appearance and subject to approval or rejection by the City or its designate at any time. Rejected equipment must be replaced or repaired by the Contractor within a reasonable time stated by the City.
7. **Complaints.** All complaints of refuse or yard waste/lawn debris pick-up made by residential dwelling units regarding the collection and removal of the same shall be made to the Contractor's field supervisor and a written decision of the results of such complaint

shall be returned to the City within twenty-four (24) hours. Complaints shall be resolved on a daily basis. The Contractor shall maintain a twenty-four (24) hour telephone service for the purpose of receiving complaints. The complaint telephone number shall be given by the Contractor to all residential dwelling units. The City reserves the right to change, amend and/or revise the complaint resolution process.

8. **Assignability.** The Contractor shall not assign nor subcontract this Contract or any part thereof to any person or firm unless such assignment or subcontract is first approved in writing by the City, it being understood that the Contract shall not be assigned unless the proposed assignee is acceptable to the City. However, permission to assign this contract will not be unreasonably withheld by the City.
9. Contractor will provide residents with GFL Rewards for Recycling Program that rewards residents for their recycling efforts. This program will allow residents to access our rewards website and take advantage to coupons and discounts from local businesses along with regional and national companies. The best part of this program is that it's free and easy to use.

10. Waiver/Indemnity.

- a. **Waiver.** The CONTRACTOR for itself, its successors and assigns further releases, waives, discharges and covenants not to sue the City of Fraser, its officers, employees, agents and elected officials, successors and assigns from and against any and all actions or causes of action, claims, demands, liabilities, loss, damage or expense of whatsoever kind and nature, including attorney's fees and including claims for injury or death, on account of injury to the person or equipment of the CONTRACTOR resulting directly or indirectly from the performance of the work above-referred to, however caused, including but not limited to, the negligence of the CITY.
- b. **Indemnity.** To the fullest extent permitted by law, CONTRACTOR expressly agrees to indemnify and hold CITY harmless against all losses and liabilities arising out of bodily injury or property damages based upon any act or omission, negligent or otherwise, of CONTRACTOR or anyone acting on CONTRACTOR'S behalf in connection or incident to this Contract or the work to be performed hereunder, except that CONTRACTOR shall not be responsible to indemnify the CITY for losses or damages caused by or resulting from the CITY's sole negligence.

For the purposes of this indemnity clause, "CITY" shall mean the CITY, its elected and appointed officials, employees, and volunteers working on behalf of the CITY; "losses and liabilities" shall mean loss, cost, expense, damage, liability or claims, whether groundless or not; "personal injury" shall mean false arrest, erroneous service of civil papers, false imprisonment, malicious prosecution, assault and battery, libel, slander, defamation of character, discrimination, mental anguish, wrongful entry or eviction, violation of property or deprivation of any rights, privileges or immunities secured by the constitution and laws of the United States of America or the State of Michigan, for which may be held liable to the injured party in any action at law, suit in equity or other

proceedings for redress; "bodily injury" shall mean bodily injury, sickness or disease (including death resulting at any time therefrom) mental anguish and mental injury which may be sustained or claimed by any person or persons; and "property damage" shall mean the damage or destruction of any property, including the loss of use thereof.

The CONTRACTOR's obligations to indemnify and hold the CITY harmless shall include, but it not limited to (1) the obligation to defend the CITY from any such suit, action, or proceeding, and (2) the obligation to pay any and all judgments which may be recovered any such suit, action or proceeding, and/or any and all expenses including, but not limited to, costs, attorney fees and settlement expenses which may be incurred. The CONTRACTOR shall indemnify and save harmless the City of Fraser, its officers, employees and agents, for or on account of any injuries or damages received or sustained by any party or parties by or from the acts of the said CONTRACTOR or its servants, agents and subcontractors in doing the work and rendering the services herein contracted for, or by, or in consequence of any negligence in operations or any improper material or equipment used by or on account, or any act or omission of said CONTRACTOR or his servants, agents and subcontractors. This indemnity shall include attorney's fees and costs and all other expenses incurred in the defense of any claim, suit or action of every kind and character.

11. **Default/Termination.** Except in the case of repeated defaults, the CITY shall provide written notice to the CONTRACTOR specifying the failure in order to give the CONTRACTOR an opportunity to cure the default. The CITY may terminate this Contract prior to its expiration date upon fourteen (14) days written notice to the CONTRACTOR of the occurrence of a default as provided hereafter:

Each of the following events shall constitute a default:

- A. The failure by the CONTRACTOR to fulfill its obligations hereunder in a timely and proper manner in accordance with this Contract.
- B. The failure by the CONTRACTOR to perform any material covenants, agreements, terms or obligations set forth in this Contract.
- C. The CONTRACTOR ceases conducting business in a normal course by reason of insolvency or bankruptcy, whether voluntary or involuntary.
- D. The CONTRACTOR assigning this Contract without the prior written consent of the CITY.

The CITY shall provide written notice to the CONTRACTOR specifying the failure. The CONTRACTOR shall have the right within fourteen (14) days to cure the failure, and thereby avoid any default. Further, if the CONTRACTOR promptly undertakes reasonable actions to cure the failure and diligently pursues same to completion to the satisfaction of the CITY, there shall be no default, unless the CONTRACTOR defaults in its performance on a repeated basis. In such event, the CITY may terminate this Contract without written notice and opportunity to cure.

After the event of a default, which is not cured by CONTRACTOR as provided above, the CITY at any time thereafter may terminate this Contract by written notice of termination by CITY sent by certified mail, return receipt requested, to the CONTRACTOR. Upon such termination, the CITY may, in its discretion, instruct the CONTRACTOR to continue performance of the Contract for a period up to an additional sixty (60) days after termination, in order to facilitate the CITY's use of a replacement contractor. If the CITY utilizes the CONTRACTOR for these additional services, it shall pay the CONTRACTOR at the rates provided for in the Contract.

After the event of a default which is not cured by CONTRACTOR as provided above, upon the occurrence of a default, the CONTRACTOR shall be liable to the CITY for any damages the CITY sustains by virtue of the CONTRACTOR's breach, and any reasonable costs the CITY incurs enforcing or attempting to enforce the Contract, including reasonable attorney's fees. The CITY may cause to be withheld any payment(s) to the CONTRACTOR for the purpose of set-off until such time as the exact amount of damages due to the CITY from the CONTRACTOR is determined by law or equity, provided the CITY promptly pursues said determination. It is expressly understood that the CONTRACTOR will remain liable for the above damages and costs the CITY sustains in excess of any set-offs.

12. Performance Guarantee.

a. **Performance Bond.** The CONTRACTOR whose Bid Proposal is accepted shall furnish at its own expense concurrently with the executed Contract, a performance bond in the amount of \$250,000.00.

b. **Form of Performance Bond.** The performance bond shall be made out in favor of the Treasurer of the City of Fraser, 33000 Garfield Road, Fraser, Michigan 48026, release of which is conditioned upon the faithful performance of the CONTRACTOR's duties as set forth in the Contract Documents. All performance bonds shall be with an insurance company or surety licensed and admitted to do business in the State of Michigan and shall be with an insurance carrier or surety acceptable to the City of Fraser.

13. **Insurance Requirements.** The CONTRACTOR shall not commence work under this Contract until it has obtained the insurance required under this section. All coverages and bonds shall be with insurance carriers acceptable to the CITY. The CONTRACTOR shall require each of its subcontractors to maintain insurance as outlined in this Contract. If any insurance is written with a deductible or self-insured retention, the CONTRACTOR shall be solely responsible for the deductible or self-insured retention. The purchase of insurance and the furnishing of a certificate of insurance shall not be a satisfaction of the CONTRACTOR's indemnification of the CITY.

a. **Worker's Compensation Insurance.** The CONTRACTOR shall procure and maintain during the life of this Contract, Worker's Compensation Insurance and Employer's Liability Insurance in accordance with all applicable statutes of the State of Michigan.

b. Commercial General Liability Insurance. The CONTRACTOR shall procure and maintain during the life of this Contract, Commercial General Liability Insurance on an "Occurrence" basis with limits of liability not less than \$3,000,000 per occurrence and/or aggregate combined single limit, Personal Injury, Bodily Injury and Property Damage. Coverage shall include the following extensions:

- (1) Contractual Liability
- (2) Products and Completed Operations
- (3) Independent Contractors Coverage
- (4) Broad Form General Liability Extensions or Equivalent

c. Motor Vehicle Liability Insurance. The CONTRACTOR shall procure and maintain during the life of this Contract, Motor Vehicle Liability insurance including Michigan No-Fault Coverages for all vehicles used in the performance of this Contract. Limits of liability shall not be less than \$3,000,000 per occurrence and/or aggregate combined single limit Bodily Injury and Property Damage. The Limits of Liability shall not be less than \$3,000,000 per occurrence and/or aggregate combined single limit Bodily Injury and Property Damage when the CONTRACTOR is using a transfer station.

d. Additional Insured. Commercial General Liability Insurance, as described above, shall include an endorsement stating the following shall be additional insureds:

"The City of Fraser, including all elected and appointed officials and employees.

This coverage shall be primary to the Additional Insureds, and not contributing with any other insurance or similar protection available to the Additional Insureds, w whether said other available coverage be primary, contributing or excess."

e. Cancellation Notice. Worker's Compensation Insurance, Commercial General Liability Insurance and Motor Vehicle Liability Insurance as described above shall include an endorsement stating that thirty (30) days advance written notice of cancellation, non-renewal, reduction and/or material change shall be sent to:

City of Fraser
Attention: City Manager
33000 Garfield Road
Fraser, MI 48026

f. Self-Insurance. The CITY reserves the right to waive the insurance requirements set forth in this Contract if the CONTRACTOR provides evidence

on an annual basis of an established self-insurance program satisfactory to the CITY protecting against liabilities required to be assumed by CONTRACTOR under this Contract. The CONTRACTOR must maintain a self-insurance program satisfactory to the CITY or secure and maintain the insurance set forth in this Contract during the entire term of this Contract.

14. **Modification.** The terms of this Contract may only be modified, changed or altered upon the mutual written agreement of the Contractor and City. No such amendment shall be effective and binding unless it expressly makes reference to this Contract, is in writing, has been approved by the City, and is signed by the Contractor and the duly authorized representative(s) of the City.
15. **Fair Employment Practices.** In accordance with the United States Constitution and all Federal legislation and regulations, the Michigan Constitution and all State laws and regulations governing fair employment practices and equal employment opportunity, the Contractor shall not discriminate against any person, employee, or applicant for employment with respect to his/her hire, tenure, terms, conditions, or privileges of employment because of his/her religion, race, color, national origin, age sex, height, weight, marital status, or handicap that is unrelated to the individual's ability to perform the duties of a particular job or position.
16. **Waiver.** No failure on the part of the City to insist upon the strict performance of any covenant, term, or condition of this Contract or to exercise any right, term, or remedy consequent upon a breach thereof, shall constitute a waiver of any such breach. No waiver of any breach shall affect or alter this Contract, but each and every covenant, term, and condition of this Contract shall continue in full force and effect with respect to any other then existing or subsequent breach thereof. This Contract shall be governed by the laws of the State of Michigan.
17. **Severability.** If any provision of this Contract, or the application thereof to any person or circumstance shall to any extent, judicially be determined to be invalid or unenforceable, the remainder of this contract, or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable to the fullest extent permitted by law.
18. **Entire Agreement.** This Contract and the other Contract Documents, including any exhibits attached thereto, contains the entire agreement between the parties and all prior negotiations and agreements are merged herein.
19. **Construction.** All terms and provisions of this Contract shall be deemed and construed to be "covenants" and "conditions" as though the words specifically expressed or imparted covenants and conditions were used in each separate term and provision.
20. **Service Rates.** The Proposal submitted by the Contractor shall be attached to and become part of this Contract. It shall serve as evidence of the appropriate rates for service to be charged to the City of Fraser residential dwelling units being serviced by the Contractor under this Contract.

21. **Payment of employee Contributions: Hold Harmless.** The Contractor shall pay the contributions measured by the wages of its employees and the employees of its subcontractors required by the Social Security Act and/or the Public Laws of the State of Michigan and shall assume exclusive liability for said contributions. The Contractor shall further hold harmless the City for any contributions measured by the wages of employees of the Contractor and its subcontractors.
22. **Payment of Taxes.** The Contractor shall pay the federal and state sales, use or other taxes or permits now in force or enacted during the term of the Contract, except as otherwise noted.
23. **Compliance with labor and Civil rights Laws.** The Contractor shall comply with all requirements of the Wage and Hour Act, Civil Rights Acts and all other statutory provisions both State and Federal, regarding hours, rates, etc. and shall be held responsible for compliance therewith.
24. **Compliance With Laws.** The Contractor, its employees and agents, shall carry on its business and operations in compliance with all applicable federal, state, county or local laws, statutes, rules, regulations or ordinances.
25. **Governing Law.** This Contract is made in and shall be governed by the laws of the State of Michigan.
26. **Independent Contractor Relationship: Hold Harmless.** The Contractor shall be considered an independent contractor and not an agent, servant or employee of the City. No liabilities or benefits - such as workers' compensation, pension rights or liabilities, insurance rights or liabilities, or other provisions or liabilities arising out of or related to a contract-for-hire or employer/employee relationship - shall arise or accrue to the Contractor or to the Contractor's agents or its employees in performing the Contract, and the Contractor shall indemnify the City of any and all costs incurred for any such claims, including attorney fees, and hold the City harmless from and against any such claims and any and all interest, costs, or attorney fees incurred thereby.
27. **Notices.** Any notices to be given hereunder shall be in writing and delivered personally (marked with the time and to whom delivered) or by certified mail postage prepaid as follows:

To City: City of Fraser – City Manager
33000 Garfield Road
Fraser, MI 48026

To Contractor: GFL Environmental USA Inc.
Michael Fleming
6200 Elmridge
Sterling Heights, Michigan 48317



July 5, 2017

Mr. Wayne O'Neal, City Manager
City of Fraser
33000 Garfield Road
Fraser, Michigan 48026

Confidential

Re: Contract Extension Proposal

Dear Mr. O'Neal,

Thank you for taking the time out of your busy day to meet with Ray Hernandez and Don Barretta the other day to discuss topics relevant to the continued relationship between the City of Fraser and GFL Environmental USA Inc (GFL). We hope that you feel as we do, that the meeting was productive and the recommendations we have outlined below are a direct result from the dialogue at that time.

As you are aware, we are approaching the end of our three-year renewal period. GFL would like to extend the three options below for your review and consideration;

- **Option I – Standard Collection:** Extend the existing solid waste agreement for an additional five (5) years starting September 13, 2017 and run through September 12, 2022. All services would remain the same, standard collection of household solid waste, yard waste, bulky waste and recycling service. Under this option, we would hold the existing price firm for the first year. Annual increases of 2 ¼% would apply on the contract anniversary date thereafter.
- **Option II – Universal Trash Cart Program:** Extend the existing solid waste agreement for five (5) years starting September 13, 2017 and run through September 12, 2022. The Universal Trash Cart option would consist of providing one (1) 95-gallon trash cart to each resident. All services would remain the same, household solid waste, yard waste, bulky waste and recycling service. Under this option, we would hold the price firm for the first year. Annual increases after the first year of 2 ½% would apply on the contract anniversary date thereafter.

To implement the five-year Universal Trash Cart Program an additional monthly service fee of \$1.35 would be added to each service unit.

- **Option III – Universal Trash Cart Program:** Extend the existing solid waste agreement for eight (8) years starting September 13, 2017 and run through September 12, 2025. The Universal Trash Cart option would consist of providing one (1) 95 gallon to each resident. All services would remain the same, household solid waste, yard waste, bulky waste and recycling service. Under this option, we would hold the price firm for the first year. Annual increases after the first year of 2 ¼ % would apply on the contract anniversary date thereafter.

To implement the eight-year Universal Trash Cart Program an additional monthly service fee of \$1.04 would be added to each service unit.



Should the City of Fraser approve one on the two cart options above, GFL would maintain the cart program for the entire term of the agreement and any extension. This would include managing the ten (10) warranty period for carts and replacement of damaged carts that are directly related to the negligence of GFL.

Enhanced Recycling Program Continues: As a courtesy to the City of Fraser for extending our existing agreement for another five or eight years, GFL would like to continue the following recycling program to the City and all residents.

- GFL will continue providing interested residents, free of charge, with a new 64 gallon wheeled recycling cart. Once ordered, the cart will be assembled and delivered within a reasonable period of time, usually seven to ten days.

In closing, I would just like to point out that our recommendations do not include any fuel surcharges and that your collection, transportation and disposal costs are based on today's real dollars. There are no hidden costs or guess work associated with trying to project future expenditures because you have then locked in for the next five or eight years. This can only further benefit the City and solidify upcoming budgets.

We are available at any time to meet with you, your staff or Mayor and Council as soon as time permits once you have had a chance to review the recommendations we have provided. As a good corporate citizen of the City and proud sponsor of community events, we are looking forward to your response and to continue our valued relationship.

Sincerely,

Michael Fleming
Executive Vice-President
GFL Environmental USA Inc

Cc: Bernard J. Vanfleeterin, Public Works Superintendent
Ray Hernandez, GFL
Mary Jo Van Natter, GFL
Don Barretta, GFL

28. **Compliance with Fair Employment Laws.** The Contractor shall comply with all provisions of the Fair Employment Practices Act of the State of Michigan.

In Witness Whereof, the parties have caused this Contract to be executed the day and year first above written.

In the Presence of:

Keya Neal
City Clerk

CITY OF FRASER

By:

Wayne O'Neal
Wayne O'Neal, City Manager

By:

Michael Carnagie 8/19/17
~~Joseph Nichols, Mayor~~

In the Presence of:

Dorell Barnett

GFL Environmental USA Inc.

By:

Michael Henry
Executive Vice President