

RESOLUTION NO. 35-1994

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS,
AMENDING THE LANDFILL AGREEMENT.

WHEREAS, the City entered into a contract with Regional Landfill, Inc., on June 13, 1993, for the purpose of contracting out landfill services; and,

WHEREAS, said Agreement has been previously amended; and,

WHEREAS, the landfill was purchased by Browning-Ferris, Inc., and said contract was assumed by them; and,

WHEREAS, said contract as amended calls for a general overall review of the entire Agreement every five years; and,


WHEREAS, after considerable review it has been found to be necessary to amend the Agreement; now therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS:

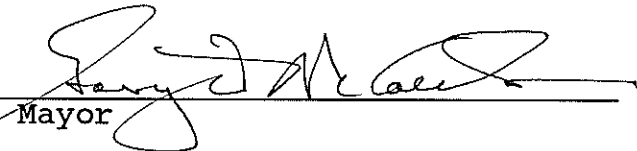
PART 1: That the City Council authorizes the Mayor to execute the attached Amendment to the Landfill Agreement.

ADOPTED this 22th day of September, A.D., 1994.

ATTEST:

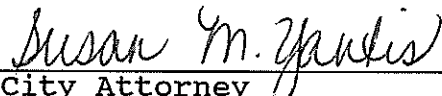


City Secretary



Mayor

APPROVED:



City Attorney

AMENDMENTS TO LANDFILL AGREEMENT

These Amendments to that certain Landfill Agreement dated June 13, 1983, as amended, (the "Agreement") are made by and between The City of Abilene, a municipal corporation of Taylor County, Texas ("City") and Browning-Ferris, Inc., a Delaware corporation and successor-in-interest to Regional Landfill, Inc., ("Contractor"). It is mutually agreed by City and Contractor to amend the Agreement only as set forth below. City and Contractor agree that, except solely as modified herein, the terms, provisions and conditions of the Agreement, as previously amended, shall continue in full force and effect.

This document fully contains the Amendments agreed upon by both parties, and any statements, promises or other representations concerning the Amendments, whether implied, oral or written, made by either party or agents for either party that are not contained in these written Amendments are not binding or valid.

It is recognized that certain requirements in several sections of the agreement are superceded by State and/or Federal regulations. However, these requirements shall be retained in the agreement as the minimum requirements to be met if the State and/or Federal regulations are lessened.

The Amendments are:

1. All references to the State Health Department are amended to read the Texas Natural Resource Conservation Commission (TNRCC) or its successor in interest.
2. Amend Article I, Section C, concerning termination of the Agreement such that the second enumerated clause reads as follows:

..."(2) by the City's providing the Contractor with three (3) years written notice,"...
3. Amend Article II, Section A, as amended, by the following items.
 - a. Revise the third paragraph to read as follows:

"If the City Council authorizes payment by the City for non-commercial waste delivered to the Landfill by residents of the City, then the Contractor agrees to accept any non-commercial waste delivered to the Landfill by any properly identified resident of the City and to bill the City for such waste at the same amount per cubic yard of waste as stated in Article II.B. The City agrees to pay the Contractor for all such properly billed waste."

- b. Delete the following:

"LANDFILL DUMP FEE SCHEDULE"

Type of Vehicle Hauling Refuse to Designated Disposal Area	Charge Per Vehicle Whether Loaded to Capacity or Not
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Resident of the City vehicle, regardless of capacity, hauling said resident's non-commercial waste, upon presentation of proof of Abilene residence....	No Charge"
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- c. Revise the first paragraph to read as follows:

"The City agrees to pay the Contractor for all waste brought to the landfill by the City based upon the charges set forth in Article II.B."

4. Amend Article II, Section B, as amended, to read as follows.

"B. Base Fee and Adjustments"

Subject to the provisions set forth below, the City shall pay Contractor Four and 00/100 Dollars (\$4.00) (the "Base Fee") per cubic yard of waste delivered to the Landfill. In addition, City shall reimburse Contractor, when invoiced by Contractor, for any fee imposed by the State of Texas Health and Safety Code § 361.013 (Vernon 1993) and as amended. The manner in which any other refuse disposal fee imposed by the State of Texas or the United States of America is handled shall be negotiated by both parties. The City shall not reimburse the Contractor for any other amounts expended in the operation of this Landfill, including, but not limited to punitive, corrective, rehabilitative, or disciplinary amounts such as civil or criminal penalties, fines, judgements, torts, attorney fees, or settlements imposed by a government agency, through arbitration/mediation or through any administrative, regulatory, or judicial process. Notwithstanding the provisions of Article II, Section B, in the event of a judicial determination arising out of a breach of contract action, the prevailing party shall be entitled to reasonable and necessary attorney fees and costs.

The Base Fee shall become effective October 1, 1994. Effective October 1, 1995, the Base Fee shall be increased to Four and 50/100 Dollars (\$4.50) per cubic

AMENDMENTS TO LANDFILL AGREEMENT

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yard; on October 1, 1996, the Base Fee shall be increased to Five and 00/100 Dollars (\$5.00) per cubic yard, and shall remain effective thru September 30, 1998. On or before April 1, 1998, the City and Contractor shall renegotiate the Base Fee in good faith. If agreement is not reached on a new Base Fee by October 1, 1998, the Base Fee shall be adjusted by the percentage increase of the June CPI-U of the current year over the June CPI-U of the previous year.

There shall be a general overall review of the entire Agreement every five (5) years, from June 13, 1983, in light of fee adjustments and technological advances."

5. Amend Article II, Section D, by replacing "audited financial statements" with "financial statements for the Regional Landfill site".
6. Delete Article II, Section E.
7. Amend Article III, Section A, by adding the following to the end of the first paragraph.

"Such waste shall be limited to that generated within the present and any subsequently revised City limits of the City of Abilene, Texas, and within the first one mile of the City's extraterritorial jurisdiction."

8. Amend Article III, Section B, by adding the following at the beginning of the first paragraph:

"If authorized by the City Council,..."

9. Amend Article III, Section F, as amended, to read as follows.

"For the purpose of conducting business with the City, the Contractor shall hereinafter keep the Landfill site open for access to the City and to its residents during at least the following:

7:00 AM to 5:45 PM	Mondays through Fridays
8:00 AM to 2:45 PM	Saturdays

However, the Landfill site may be closed on any holiday that the City of Abilene is not collecting refuse for disposal."

10. Delete Article III, Section P.

11. Amend Article IV, Section A, to change the Contractor's address to:


"BFI Regional Landfill, Inc.
P. O. Box 3391
Abilene, Texas 79604"

12. These changes shall be effective as of October 1, 1994.

IN WITNESS WHEREOF, the parties have executed this Agreement on the 22nd day of September, A.D., 1994.

Browning-Ferris, Inc.
(Contractor)

ATTEST: (If Corporation)

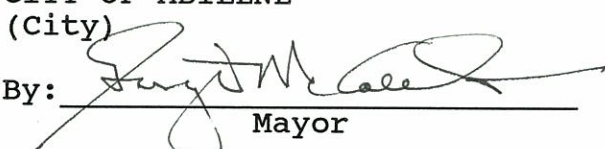
By: 
Signature

Secretary of Corporation

Title: D.V.P. Vice-President

CITY OF ABILENE
(City)

ATTEST:

By: 
Mayor


City Secretary (Seal)

APPROVED:


City Attorney