



**MOTION**

I MOVE that Item No. 32 on today's Council Agenda (CF 05-1179), regarding CONSIDERATION OF CONTRACT OPTIONS relative to the contract with BFI including, but not limited to possible rescission or amendment, and related matters, BE AMENDED to **ADOPT** the following action which would facilitate the diversion of 600 tons per day from Sunshine Canyon Landfill to an alternative landfill(s) pursuant to Council action on March 10, 2006:

- APPROVE AMENDMENT No. 2, as substantially attached, to the Agreement between the City of Los Angeles and Browning-Ferris Industries of California, Inc. (BFI) for disposal services for City-collected waste (C-93688) to provide the City with the option to reduce its capacity at Sunshine Canyon Landfill by 600 tons per day which incorporate the following terms:
  - Household waste disposal shall increase by \$1.50 per ton to resolve BFI's CHANGE IN LAW claim.
  - Should the City select the option to reduce 600 tons per day of household waste disposed at Sunshine Canyon Landfill, the operating fee for household waste disposal shall increase by \$2.00 per ton.

*Motion*  
**ADOPTED**  
MAR 17 2006

PRESENTED BY: *E.G. #2*

**LOS ANGELES CITY COUNCIL**

SECONDED BY: *[Signature]*  
*Bernard C. Fisher*

**MAR 17 2006**

*[Signature]*

**SECOND AMENDMENT NO.2**  
**TO THE AGREEMENT BETWEEN THE CITY OF LOS ANGELES AND**  
**BROWNING-FERRIS INDUSTRIES OF CALIFORNIA, INC.**  
**FOR DISPOSAL SERVICES FOR CITY-COLLECTED WASTE**  
**(C-93688)**

This Second Amendment To Agreement Between The City of Los Angeles and Browning-Ferris Industries of California, Inc. for Disposal Services for City Waste (C-93688) (hereinafter referred to as "SECOND AMENDMENT") is made and entered into by the City of Los Angeles, a municipal corporation, acting by order of and through its Board of Public Works (hereinafter referred to as "CITY") and Browning-Ferris Industries of California, Inc., a corporation duly organized and existing in good standing under the laws of the State of California and having its principal place of business in Los Angeles, CA (hereinafter referred to as "CONTRACTOR")-"CONTRACTOR". Any capitalized terms used in this SECOND AMENDMENT which are not defined herein shall have the same meaning as ascribed to such terms in the AGREEMENT.

WHEREAS, the CITY is responsible for collection, disposal and facility planning for all solid waste generated at single-family residences and smaller apartment complexes in the CITY, providing services to households throughout the City; and

WHEREAS, the CITY and the CONTRACTOR entered into an AGREEMENT BETWEEN THE CITY OF LOS ANGELES AND BROWNING-FERRIS INDUSTRIES OF CALIFORNIA, INC. FOR DISPOSAL SERVICES FOR CITY COLLECTED WASTE (C-93688) on February 13, 1996 (the 'Disposal Agreement' 13, 1996, as amended (the "AGREEMENT"), pursuant to which the CITY agreed to deliver certain waste collected by or for the CITY to the CONTRACTOR'S landfill located in the County of Los Angeles at the Sunshine Canyon Landfill, and the CONTRACTOR agreed to receive and dispose of such delivered waste, under the terms and conditions set forth therein; and

WHEREAS, the parties amended the AGREEMENT pursuant to the FIRST AMENDMENT to the Disposal Agreement, which was fully executed and authorized on September 12, 2000, 2000; and

WHEREAS, the FIRST AMENDMENT provided that the CITY has the sole option of extending the term of the AGREEMENT for three (3) five-year terms ending on June 30, 2021;

WHEREAS, the FIRST AMENDMENT further provided that, if the CITY chooses not to exercise any subsequent term, the CITY agrees to negotiate in good faith with the CONTRACTOR until the issuance of a Request for Bids (RFP) or Request for Proposals (RFP); and

WHEREAS, the Board of Public Works authorized release of a Request for Proposals (RFPII) through a competitive process on May 28, 2004; and 2004, and only received one response which was later withdrawn on May 23, 2005; and

WHEREAS, the City chose to release a third RFP (RFP III) in August of 2005 and received two feasible proposals for the disposal of its Household Refuse; and

WHEREAS, the only responsive proposer to RFPII withdrew its proposal on May 23, 2005;

and

~~WHEREAS, the CITY and the CONTRACTOR have negotiated this SECOND AMENDMENT to the Disposal Agreement in good faith; and~~

WHEREAS, on July 19, 2005, the City Council authorized the Bureau of Sanitation to issue a notification to ~~BFI, Inc.~~ CONTRACTOR of the City's intent to ~~exercise a five-year renewal option to agreement C-93688 between the City and Browning-Ferris Industries of California, Inc, for disposal services of city waste, for the period~~ CITY'S intent to exercise its option under the FIRST AMENDMENT to renew the term of the AGREEMENT for a period of five-years starting July 1, 2006 and ending June 30, 2011; and

~~WHEREAS, on July 19, 2005, the City Council Authorized the Board of Public Works to execute Amendment No 2 to Contract Agreement C-93688, as amended by council action; and~~

~~WHEREAS, subject to the foregoing, the parties hereto wish to extend the Disposal Agreement, and otherwise amend the Disposal Agreement as provided herein.~~

WHEREAS, pursuant to the FIRST AMENDMENT, the CITY'S deadline for exercising its first option to extend the term of the AGREEMENT was July 1, 2005; and

WHEREAS, CONTRACTOR extended the City's right to exercise its first option until February 28, 2006 with an added right to recind it's exercise of the option up and until Friday, March 17, 2006;

WHEREAS, CITY believes it is in its best interest to diversify it's solid waste disposal options and wishes to divert approximately 600 tons of solid waste from Sunshine Canyon;

WHEREAS, CITY and the CONTRACTOR have negotiated this SECOND AMENDMENT in good faith to allow the CITY to divert 600 tons of solid waste from Sunshine Canyon; and

NOW, THEREFORE, in consideration of the ~~and representation~~ mutual promises set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties hereto agree to the following ~~to Contract No. C-93688 thereto:~~

ARTICLE 1 -HEADINGS

No change.

ARTICLE 2 -DEFINITIONS No

Change

ARTICLE 3 -LANDFILL No Change.

ARTICLE 3-LANDFILL

No Change.

ARTICLE 4-RESPONSIBILITIES OF AND TASKS TO BE PERFORMED BY THE CONTRACTOR

Amend Section 4.1.2 as follows: ~~Add~~ by adding the following paragraphs at the end of Section 4.1.2:

~~Upon~~ CONTRACTOR hereby grants the CITY the right to reduce the CITY CAPACITY by up to six hundred (600) TONS of TRANSFER HAUL WASTE per day (calculated as a daily average over the period of each month during the term). The CITY may only exercise this right upon six (6) months prior written notice by ~~to the CITY to CONTRACTOR, and following approval of a contract with other landfill operators by the City Council, CITY CAPACITY will be reduced by 600 tons per day (on average by monthly calculation) of TRANSFER HAUL WASTE. For the term of the AGREEMENT, on no occasion shall CITY CAPACITY be reduced by greater than 600 tons per day~~ six hundred (600) TONS of TRANSFER HAUL WASTE per day (calculated as a daily average over the period of each month during the term). CONTRACTOR shall be compensated in accordance with ~~See~~ Section 8.1.1 (as amended) as consideration for granting the CITY this option ~~right.~~

The CITY shall not be in default of this CONTRACT if the amount of HOUSEHOLD REFUSE delivered to the LANDFILL declines in volume when the reduction in volume is attributed to the CITY'S use of any other facility or facilities which transform, convert or reuse the waste through the use of the following processes, including, but not limited to, pyrolysis, anaerobic digestion, composting, gasification, and incineration or a facility or facilities which otherwise diverts the HOUSEHOLD REFUSE from disposal at a landfill. The CITY must give the CONTRACTOR six months notice of its intent to send HOUSEHOLD REFUSE to such a facility or facilities if the diversion is intended to last more than three months. If the CITY chooses to divert HOUSEHOLD REFUSE through a recycling facility, any residual HOUSEHOLD REFUSE that is required to be disposed of at a landfill must be deposited at the LANDFILL at the CITY'S preferred rate. This requirement shall not apply to curbside separated recycling.

#### ARTICLE 5 -RESPONSIBILITIES OF AND TASKS TO BE PERFORMED BY THE CITY

No Change.

#### ARTICLE 6-TERMINATION

No Change.

#### ARTICLE 7 -DELETED

No Change.

#### ARTICLE 8 -COMPENSATION, INVOICING AND PAYMENT

Amend Section 8.1 as follows: ~~Section 8.1 is amended by adding the following:~~

Effective July ~~1~~, 2006, the SERVICE FEE for both DIRECT HAUL WASTE and TRANSFER HAUL WASTE shall increase by \$1.50 per ~~ton~~ for TON as compensation for ~~Change in Law (CL) Contractor's Claim pursuant to the "CHANGE IN LAW" provisions of the AGREEMENT~~ AGREEMENT as defined by Section 8.1.3 of the AGREEMENT. The CITY's agreement to pay the CONTACTOR \$1.50 of it's claim in no way binds the CITY to approve any other such claim or claims made by the CONTRACTOR in the future.

Amend Section 8.1.1 as follows: ~~Section 8.1.1 is amended by adding the following :~~

~~Should~~ If the City select the option exercises its right to reduce 600 tons CITY CAPACITY by up to

six hundred (600) TONS per day of TRANSFER HAUL WASTE tonnage of CITY CAPACITY in accordance with Section 4.1.2 of the AGREEMENT (as amended), the operating fee for both DIRECT HAUL WASTE and TRANSFER HAUL WASTE shall increase by \$2.00 per ton TON.

If at any time after the CITY exercises its right to reduce CITY CAPACITY by up to six hundred (600) TONS per day, and the CITY chooses at a later date to dispose of this removed tonnage at Sunshine Canyon, the CITY shall be charged for this added tonnage at whatever rate all other CITY refuse is charged.

Amend Section 8.1.2 as follows:

The following two pass through taxes or governmental fees ("TX") shall be added to the list of applicable pass through taxes and governmental fees at the end of ~~paragraph 8.1.2~~ Section 8.1.2:

Los Angeles ~~CITY~~ City LEA fee: \$0.27 per TON (Applicable to all solid waste disposed of in the landfill space located in the City of Los Angeles only.)

Los Angeles ~~CITY~~ City franchise fee: twelve percent: (12%) (Applicable to all operating fees generated from solid waste disposed of in the landfill space located in the City of Los Angeles only.)

Amend Section 8.4 to read as follows:

Effective July 1, 2006 the CITY will be entitled to receive the lowest price charged to any third party (non BFI/Allied Waste Company) customer under a signed disposal agreement for a similar waste stream (i.e. commercial solid waste and residential refuse as defined in CCR Title 14), delivered to the LANDFILL in similar vehicles (TRANSFER HAUL or DIRECT HAUL). Should the City HOUSEHOLD REFUSE volume fall below the volume of the next largest third party customer of CONTRACTOR for a period of six months, the CITY will no longer be entitled to the lowest price charged to any third party customer. The CITY shall have the right to audit the CONTRACTOR'S third party customer contracts in order to insure compliance with this paragraph.

#### ARTICLE 9 -CHANGES AND MODIFICATIONS

No Change.

#### ARTICLE 10 -INSURANCE AND BONDS

No Change.

#### ARTICLE 11-INDEMNIFICATION

No Change.

#### ARTICLE 12 -INDEPENDENT CONTRACTORS

No Change.

#### ARTICLE 13 -WARRANTIES AND RESPONSIBILITIES OF CONTRACTORS

No Change.

ARTICLE 14-14-NONDISCRIMINATION AND AFFIRMATIVE ACTION

No Change

ARTICLE 15-SUCCESSORS AND ASSIGNS

No Change

ARTICLE 16 -CONTACT PERSONS -PROPER ADDRESSES

No change

ARTICLE 17 -TERM OF AGREEMENT

Amend Article 17 to read:

The parties' obligations hereunder shall commence on the COMMENCEMENT DATE, which is defined as the first full day of operations at the LANDFILL. The term of this AGREEMENT, unless terminated earlier in accordance with the provisions of this AGREEMENT, shall be the close of business on June 30, 2011. The CITY has the sole option of extending this term for two (2) five-year terms ending on the close of business June 30, 2021. ~~30, 2021.~~ The CITY shall notify the CONTRACTOR in writing of its intent to exercise its option to extend the next five-year term no later than twelve (12) months prior to the end of the current term. If the CITY chooses not to exercise ~~anyits~~ subsequent option to extend the current term, the CITY agrees to negotiate in good faith with the CONTRACTOR until the issuance of a Request for Bids (RFB) or Request for Proposals (RFP). The CONTRACTOR also retains the right to respond to an RFB issued by the CITY.

ARTICLE 18 -FORCE MAJEURE -

No Change

ARTICLE 19 -SEVERABILITY -

No Change

ARTICLE 20 -DISPUTES

No Change

ARTICLE 21-ENTIRE AGREEMENT

No Change

ARTICLE 22 -GOVERNING LAW

No Change

ARTICLE 23 -LOS ANGELES CITY BUSINESS TAX REGISTRATION

No Change

ARTICLE 24 -PARENT COMPANY GUARANTEE

Amend Article 24 to read:

All of the obligations of the CONTRACTOR shall be guaranteed by Allied Waste Industries, Inc. (referred herein as the "GUARANTOR"), the parent company of the CONTRACTOR. The rights and obligations of the GUARANTOR are provided in the GUARANTEE AGREEMENT provided

as Attachment B, hereto.

ARTICLE 25 -CONDITIONS PRECEDENT

No Change.

IN WITNESS WHEREOF, the parties hereto subscribe the same in quadruplicate, and this AGREEMENT is executed by the City of Los Angeles, acting by and through its Board of Public Works, and by Browning-Ferris Industries of California, Inc.

FOR THE CITY OF LOS ANGELES

FOR BROWNING-FERRIS INDUSTRIES OF CALIFORNIA, INC.

APPROVED AND AGREED TO:

APPROVED AND AGREED TO:

BY \_\_\_\_\_  
TITLE \_\_\_\_\_  
DATE \_\_\_\_\_

BY \_\_\_\_\_  
TITLE \_\_\_\_\_  
DATE \_\_\_\_\_

APPROVED AS TO FORM:  
ROCKARD J. DELGADILLO,  
CITY ATTORNEY

ATTEST:  
FRANK T. MARTINEZ, CITY CLERK

BY \_\_\_\_\_  
Christopher M. Westhoff  
Assistant City Attorney

BY \_\_\_\_\_  
Deputy City Clerk

DATE \_\_\_\_\_

DATE \_\_\_\_\_