

CITY OF ROWLETT, TEXAS

RESOLUTION NO. 11-17-87A

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROWLETT, TEXAS, AUTHORIZING THE MAYOR TO ENTER INTO A SANITARY WASTE DISPOSAL AGREEMENT WITH THE CITY OF GARLAND; PROVIDING AN EFFECTIVE DATE.

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

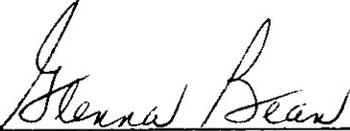
Section 1. That the Mayor of the City of Rowlett, Texas, is hereby authorized to enter into an agreement with the City of Garland for the disposal of sanitary waste material, a copy of said Agreement being attached hereto and labeled Exhibit "A".

Section 2. That this Resolution shall take effect from and after its adoption and it is accordingly so resolved.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF ROWLETT, TEXAS this 17th day of November, 1987.

  
\_\_\_\_\_  
Mayor, City of Rowlett, Texas

ATTEST:

  
\_\_\_\_\_  
City Secretary, City of Rowlett, Texas



APPROVED AS TO FORM:

  
\_\_\_\_\_  
City Attorney, City of Rowlett, Texas

**AGREEMENT BETWEEN THE CITY OF GARLAND AND  
THE CITY OF ROWLETT CONCERNING THE DISPOSAL OF WASTE**

WHEREAS, the City of Garland ("Garland") and the City of Rowlett ("Rowlett") desire to enter into this Agreement to provide for their continued ability to dispose of the garbage and other types of municipal solid waste generated by their citizens;

WHEREAS, Rowlett does not have a permit or other authorization from the Texas Department of Health or any other governmental entity authorizing it to operate a municipal solid waste landfill or other solid waste facility;

WHEREAS, Garland presently allows Rowlett to use its Castle Drive Landfill and desires to continue to allow Rowlett to use this landfill;

WHEREAS, Rowlett desires to continue to use the Castle Drive landfill for the duration of its remaining useful life, which life is estimated to be limited to 13 years;

WHEREAS, Garland has filed Application No. 1895 with the Texas Department of Health to construct and operate a solid waste facility known as the Raney Tract landfill, a portion of which is in the city limits of Rowlett, a portion of which is in Dallas County and a portion of which is in the city limits of Garland, all as previously established by various annexations and disannexations by both Rowlett and Garland;

WHEREAS, Rowlett desires to provide for the continued disposal of municipal solid waste generated by its citizens by disposing of this waste in the proposed Raney Tract landfill and Garland desires to provide Rowlett with the ability to dispose of said municipal solid waste in the Raney Tract landfill pursuant to the terms of this Agreement;

WHEREAS, Rowlett supports Garland in its efforts to obtain any and all permits necessary to construct and operate the proposed Raney Tract Landfill because it is in the best interest of health safety and welfare of the public to provide a solid waste facility at this proposed location;

WHEREAS, Garland and Rowlett find that this Agreement is in the best interest of both parties and in the best interest of the public at large.

NOW, THEREFORE, in recognition of the premises and mutual covenants and obligations contained herein, Garland and Rowlett do hereby contract and agree as follows:

I. Garland

1.1 Garland agrees to allow Rowlett or its designated contractor to dispose of municipal solid waste generated by Rowlett's citizens at either the Castle Drive or proposed Raney Tract landfill pursuant to the same terms and conditions as Garland's residential and commercial customers.

1.2 Garland agrees to allow Rowlett residents to use Garland's solid waste transfer station pursuant to the same terms and conditions as Garland residents.

1.3 Garland agrees to continue to support Rowlett's bi-annual city-wide clean-up month by allowing Rowlett to dispose of its clean up containers at the Castle Drive and proposed Raney Tract landfills without charge.

1.4 Garland agrees that its audit of disposal activities of Rowlett's designated contractor, as set out in Attachment "B" to this Agreement, shall include a quarterly summary, provided to Rowlett and the designated contractor, of the volume of waste delivered by the designated contractor through the date of the summary.

## II. Rowlett

2.1 Rowlett agrees to support Garland in its efforts to obtain any and all environmental and/or governmental permits and amendments thereto required for Garland's construction and operation of a solid waste facility on the Raney property, such property being more particularly described in Attachment "A." Said permits include but are not limited to permits from the Texas Department of Health, Texas Water Commission, City of Rowlett and the Federal Government.

2.2 Rowlett agrees that this Agreement shall be deemed to be evidence of Rowlett's support for Garland's proposed Raney

Tract landfill. In addition, Rowlett agrees to submit this Agreement and a statement of support for the proposed Raney Tract landfill to the Texas Department of Health within three (3) months of the execution of this Agreement.

2.3 Rowlett agrees that it shall not enact any ordinance or other regulation nor enforce any existing ordinance or other regulation which would impose any operational or closure requirements upon the proposed Raney Tract solid waste facility.

2.4 Rowlett agrees to relinquish any extraterritorial jurisdictional authority it may have over any portion of the proposed Raney Tract landfill property by enacting an ordinance, in accordance with law, releasing and relinquishing such extraterritorial jurisdiction. Provided, however, that in the event Garland does not obtain all of the environmental and/or governmental permits and amendments thereto required for Garland's construction and operation of a solid waste facility on the Raney property, then Garland agrees to release and relinquish back to Rowlett any territorial and extraterritorial jurisdiction obtained from Rowlett pursuant to this Agreement.

2.5 Rowlett agrees to recognize and abide by the provisions of Garland's Resolution No. 1740, adopted on October 3, 1972, insofar as it delineates the city limits between Garland and Rowlett. Rowlett acknowledges and approves the extension of the city limits of Garland to the Ray Olinger Electric Power

Generating Plant accomplished through Garland Ordinance No. 1754, Garland Ordinance No. 2131, Garland Ordinance No. 2167, Garland Ordinance No. 2516, and Garland Ordinance No. 2525; and the annexation of a portion of the Raney Tract landfill site accomplished through Garland Ordinance No. 3964, and Rowlett agrees that Rowlett will not contest or dispute the validity of those ordinances through legal proceedings or otherwise.

2.6 Rowlett agrees to enter into a contract with a designated contractor of its choice for the purpose of collection of disposal of municipal solid waste generated by its citizens which contains a provision or provisions substantially similar to the provisions substantially similar to the provisions set out in attachment "B" to this Agreement.

### III. Term

3.1 The term of this agreement shall be coterminous with the useful life of the Raney Tract landfill unless Garland never constructs and operates the Raney Tract landfill for whatever reason. In that event, the term of this agreement shall be for the remaining life of the present Castle Drive landfill.

### IV. Severability

4.1 If any portion of this Agreement is determined to be void, illegal or unenforceable, that portion shall be stricken from the Agreement but the remainder of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, Garland and Rowlett, acting under authority of their respective governing bodies, have caused this agreement to be duly executed in multiple originals, all as of this 17<sup>th</sup> day of November, 1987.

THE CITY OF GARLAND, TEXAS

By: James K. Somers  
City Manager

Attest:

Velma Drury  
City Secretary

THE CITY OF ROWLETT, TEXAS

By: H. C. Ruysh  
Mayor

Attest:

Glenn Bean  
City Secretary

ATTACHMENT B

PROVISIONS(S) FOR INCLUSION IN CONTRACT  
BETWEEN ROWLETT AND ITS DESIGNATED CONTRACTOR

Rowlett and Garland have entered into an Agreement dated the 17th day of November, 1987, wherein Garland has agreed to allow Rowlett or its designated contractor to dispose of municipal solid waste generated by Rowlett's citizens at either the Castle Drive landfill or the proposed Raney Tract landfill on the same terms and conditions as Garland disposes of its citizen's waste.

As a condition to allowing Rowlett to dispose of municipal solid waste under these favorable terms and conditions, [contractor] is prohibited from disposing of municipal solid waste in the Castle Drive or proposed Raney Tract landfills generated by any source other than Rowlett's citizens.

In order to be able to insure that only municipal solid waste from Rowlett's citizens is disposed of in these landfills, Garland shall be permitted to audit the disposal activities of [contractor]. Auditing shall consist of the following activities:

1. An annual determination of the number of homes and businesses in Rowlett which generate municipal solid waste shall be made by [contractor]. That information shall be immediately provided to Garland.
2. A mathematical calculation using 2,739 lbs. of waste per household per year and 16,202 lbs. of waste per business per year shall be done. This calculation shall yield the total allowable quantity of municipal solid waste per year which [contractor] can dispose of in the landfill(s).
3. Garland shall have the right to audit the quantity of waste delivered by [contractor] through the use of weighing scales or other method of measurement.

In the event Garland, in its sole discretion, determines that [contractor] has disposed of or sought to dispose of municipal solid waste at the favorable terms and conditions referenced above in excess of the total volume allowed under this contract as determined by the use of the above listed formula, then this contract between Rowlett and [contractor] shall be immediately terminated.

ATTACHMENT B

PROVISIONS(S) FOR INCLUSION IN CONTRACT  
BETWEEN ROWLETT AND ITS DESIGNATED CONTRACTOR

Rowlett and Garland have entered into an Agreement dated the day of \_\_\_\_\_, 1987, wherein Garland has agreed to allow Rowlett or its designated contractor to dispose of municipal solid waste generated by Rowlett's citizens at either the Castle Drive landfill or the proposed Raney Tract landfill on the same terms and conditions as Garland disposes of its citizen's waste.

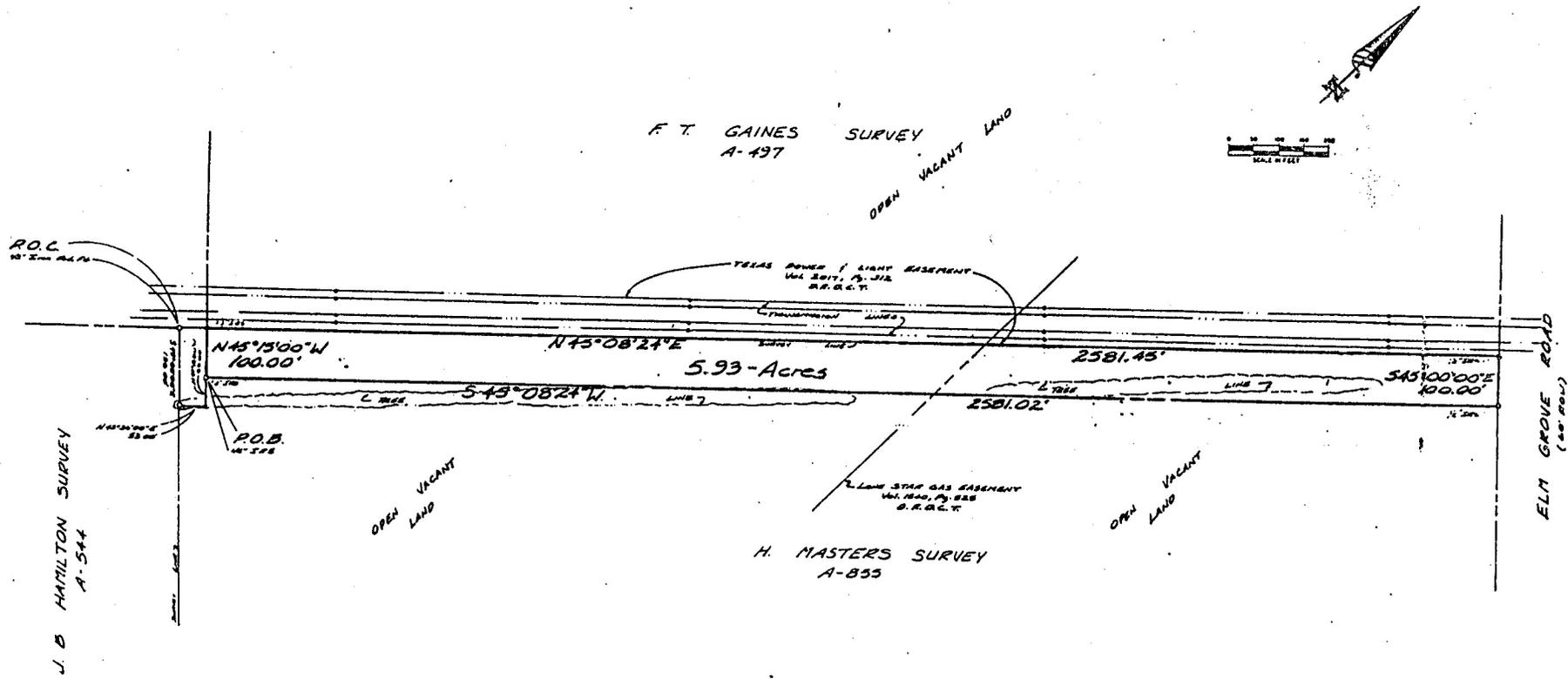
As a condition to allowing Rowlett to dispose of municipal solid waste under these favorable terms and conditions, [contractor] is prohibited from disposing of municipal solid waste in the Castle Drive or proposed Raney Tract landfills generated by any source other than Rowlett's citizens.

In order to be able to insure that only municipal solid waste from Rowlett's citizens is disposed of in these landfills, Garland shall be permitted to audit the disposal activities of [contractor]. Auditing shall consist of the following activities:

1. An annual determination of the number of homes and businesses in Rowlett which generate municipal solid waste shall be made by [contractor]. That information shall be immediately provided to Garland.
2. A mathematical calculation using 2,737 lbs. of waste per household per year and 16,202 lbs. of waste per business per year shall be done. This calculation shall yield the total allowable quantity of municipal solid waste per year which [contractor] can dispose of in the landfill(s).
3. Garland shall have the right to audit the quantity of waste delivered by [contractor] through the use of weighing scales or other method of measurement.

In the event Garland, in its sole discretion, determines that [contractor] has disposed of or sought to dispose of municipal solid waste at the favorable terms and conditions referenced above in excess of the total volume allowed under this contract as determined by the use of the above listed formula, then this contract between Rowlett and [contractor] shall be immediately terminated.

"DRAFT"  
Page 9 of 9  
Item 24  
CITY ATTORNEY'S OFFICE  
DATE 11-11-87



DESCRIPTION & CERTIFICATION  
5.93-Acres in the H. Masters Sr. A-855  
Dallas County, Texas

BEING 5.93-acres of land in the H. Masters Survey, Abstract No. 855, Dallas County, Texas, said 5.93-acre being a portion of that certain tract of land so described as Princeton Park in the City of Amoret, Dallas County, Texas, said 5.93-acre being more particularly described as follows:

COMMENCING at a 1/2" iron rod found at the NEER corner of the J. B. Hamilton Survey, Abstract No. 544, the west corner of the H. Masters Survey, Abstract No. 855 and in the southeast line of the F. T. Gaines Survey, Abstract No. 497;

- THENCE, S 45° 00' 00" E, 100.00' along the northeast line of said Hamilton Survey;
- THENCE, N 43° 08' 24" E, 2581.45' to a 1/2" iron rod set at the BEGINNING of the tract herein described;
- THENCE, S 43° 08' 24" W, 2501.02' to a 1/2" iron rod set;
- THENCE, N 45° 00' 00" W, 100.00' to a 1/2" iron rod set in the southeast line of Elm Grove Road (see map);
- THENCE, S 45° 00' 00" W, 100.00' along said southeast line to a 1/2" iron rod set;
- THENCE, S 45° 00' 00" W, 2581.45' to the POINT OF BEGINNING and containing 5.93-acres of land.

STATE OF TEXAS     ))  
COUNTY OF DALLAS   ))

I, Daniel A. Smith, a Registered Professional Land Surveyor, do hereby certify to Bluebonnet Savings Bank, that the attached plat and field note description comprises the findings of a careful and accurate survey made on the ground on May 18, 1990, and is true and correct to the best of my knowledge and belief.

*Daniel A. Smith*  
Daniel A. Smith  
Registered Professional Land Surveyor  
Texas Registration No. 6643

BOUNDARY SURVEY  
5.93 ACRES  
IN THE  
H. MASTERS SURVEY, A-855  
PORTION OF PRINCETON PARK  
DALLAS COUNTY, TX.

ASSET NO. 610222  
A & B LAND SURVEYORS  
857 VIA AVENIDA  
MESQUITE TEXAS 75149 (972) 861-7144  
OWNER BY \_\_\_\_\_ DATE 11/17/90  
DRAWN BY HWY  
CHECKED BY D.A.



**EXTENSION CERTIFICATE**  
(TO BE FILED WITH OBLIGEE)

To be attached to Bond described below, executed by **FEDERAL INSURANCE COMPANY**  
as Surety:

PRINCIPAL **TEXAS INDUSTRIAL DISPOSAL, INC.**

OBLIGEE **CITY OF ROWLETT**

DESCRIPTION **Residential and commercial collection.**

BOND NO. **8096-08-73** BOND CLASS **41** CLASS CODE **369** AGENT NO. **7-51439**

Said Principal and said Surety hereby agree that the term thereof be and hereby is extended  
from the **1st** day of **November**, 19 **87**, to the **1st** day of **November**,  
19 **88**, subject to all other provisions, conditions and limitations of said bond, upon the express  
condition that the Surety's liability thereunder during the original term of said bond and during any  
extended term thereof shall not be cumulative and shall in no event exceed the sum of \$ **205,000.00**

IN WITNESS WHEREOF, the said Principal and said Surety have signed or caused  
this Certificate to be duly signed and their respective seals to be hereto affixed this **30th**  
day of **November**, 19 **87**.

**TEXAS INDUSTRIAL DISPOSAL, INC.**

By *Gregory T. Sangalis*  
**Gregory T. Sangalis, Assistant Secretary**

**FEDERAL INSURANCE COMPANY**

By *Jill Karls*  
**Jill Karls, Attorney-in-Fact**

**POWER OF ATTORNEY**

Know all Men by these Presents, That the **FEDERAL INSURANCE COMPANY**, 15 Mountain View Road, Warren, New Jersey, a New Jersey Corporation, has constituted and appointed, and does hereby constitute and appoint **Donald S. Haufe, Deborah J. Adams, Janet B. Heckinger, Jill Karls and Karen E. Bogard of Oak Brook, Illinois**-----

each its true and lawful Attorney-in-Fact to execute under such designation in its name and to affix its corporate seal to and deliver for and on its behalf as surety thereon or otherwise, bonds or obligations on behalf of **WASTE MANAGEMENT, INC. AND SUBSIDIARIES**-----

in connection with bids, proposals or contracts to or with the United States of America, any State or political subdivision thereof or any person, firm or corporation. And the execution of such bond or obligation by such Attorneys-in-Fact in this Company's name and on its behalf as Surety thereon or otherwise, under its corporate seal, in pursuance of the authority hereby conferred shall, upon delivery thereof, be valid and binding upon this Company.

In Witness Whereof, the said **FEDERAL INSURANCE COMPANY** has, pursuant to its By-Laws, caused these presents to be signed by its Assistant Vice-President and Assistant Secretary and its corporate seal to be hereto affixed this **29th** day of **April** 19 **87**

Corporate Seal



*Richard D. O'Connor*  
Richard D. O'Connor  
Assistant Secretary

FEDERAL INSURANCE COMPANY

By *George McClellan*  
George McClellan  
Assistant Vice-President

STATE OF NEW JERSEY }  
County of Somerset } ss.

On this **29th** day of **April** 19 **87**, before me personally came Richard D. O'Connor to me known and by me known to be Assistant Secretary of the **FEDERAL INSURANCE COMPANY**, the corporation described in and which executed the foregoing Power of Attorney, and the said Richard D. O'Connor being by me duly sworn, did depose and say that he is Assistant Secretary of the **FEDERAL INSURANCE COMPANY** and knows the corporate seal thereof, that the seal affixed to the foregoing Power of Attorney is such corporate seal and was thereto affixed by authority of the By-Laws of said Company, and that he signed said Power of Attorney as Assistant Secretary of said Company by like authority; and that he is acquainted with George McClellan and knows him to be the Assistant Vice-President of said Company, and that the signature of said George McClellan subscribed to said Power of Attorney is in the genuine handwriting of said George McClellan and was thereto subscribed by authority of said By-Laws and in deponent's presence.

Notarial Seal



Acknowledged and Sworn to before me  
on the date above written.  
*Alice Leonard*  
ALICE LEONARD  
Notary Public  
NOTARY PUBLIC OF NEW JERSEY  
My Commission Expires June 28, 1988

CERTIFICATION

STATE OF NEW JERSEY }  
County of Somerset } ss.

I, the undersigned, Assistant Secretary of the **FEDERAL INSURANCE COMPANY**, do hereby certify that the following is a true excerpt from the By-Laws of the said Company as adopted by its Board of Directors on March 11, 1953 and most recently amended March 11, 1983 and that this By-Law is in full force and effect.

"ARTICLE XVIII.

Section 2. All bonds, undertakings, contracts and other instruments other than as above for and on behalf of the Company which it is authorized by law or its charter to execute, may and shall be executed in the name and on behalf of the Company either by the Chairman or the Vice-Chairman or the President or a Vice-President, jointly with the Secretary or an Assistant Secretary, under their respective designations, except that any one or more officers or attorneys-in-fact designated in any resolution of the Board of Directors or the Executive Committee, or in any power of attorney executed as provided for in Section 3 below, may execute any such bond, undertaking or other obligation as provided in such resolution or power of attorney.

Section 3. All powers of attorney for and on behalf of the Company may and shall be executed in the name and on behalf of the Company, either by the Chairman or the Vice-Chairman or the President or a Vice-President or an Assistant Vice-President, jointly with the Secretary or an Assistant Secretary, under their respective designations. The signature of such officers may be engraved, printed or lithographed."

I further certify that said **FEDERAL INSURANCE COMPANY** is duly licensed to transact fidelity and surety business in each of the States of the United States of America, District of Columbia, Puerto Rico, and each of the Provinces of Canada with the exception of Prince Edward Island; and is also duly licensed to become sole surety on bonds, undertakings, etc., permitted or required by law.

I, the undersigned Assistant Secretary of **FEDERAL INSURANCE COMPANY**, do hereby certify that the foregoing Power of Attorney is in full force and effect.

Given under my hand and the seal of said Company at Warren, N.J., this **30th** day of **November** 19 **87**

Corporate Seal



*S. Mabley*  
Assistant Secretary

ACKNOWLEDGMENT OF ANNEXED INSTRUMENT

STATE OF Illinois }  
COUNTY OF DuPage } ss.:

On this 30th day of November 19 87, before me personally came \_\_\_\_\_

Jill Karls \_\_\_\_\_ who, being by me duly sworn, did depose and say that he is an Attorney-in-Fact of the FEDERAL INSURANCE COMPANY, and knows the corporate seal thereof; that the seal affixed to said annexed instrument is such corporate seal, and was thereto affixed by authority of the Power of Attorney of said Company, of which a Certified Copy is hereto attached, and that he signed said Instrument as an Attorney-in-Fact of said Company by like authority.

Acknowledged and Sworn to before me  
on the date above written

My Commission Expires



*Tricia E. Radzus*  
\_\_\_\_\_  
(Notary Public)

MINUTES OF THE REGULAR MEETING OF THE CITY COUNCIL OF THE  
CITY OF ROWLETT, TEXAS, HELD IN THE MUNICIPAL CENTER  
AT 7:30 P.M., NOVEMBER 17, 1987, cont. . . . .

After discussion on the enforcement, etc., Mr. Eckert suggested that he could draft an ordinance to except out the door-to-door delivery of handbills, etc., from the definition of solicitor. Mr. Gray asked about age limits and expressed his concern of voiding the original intent of the ordinance to regulate persons coming into the residential districts. Mr. Ruyle asked Mr. Eckert to prepare several alternatives. No official action was taken by the Council.

Item 21. Consider authorizing appropriations to purchase reserve radio equipment for Police/Fire Departments.

With staff reports, the Council was informed that emergency services of the police/fire departments have been jeopardized twice this year due to lightning damage of radio equipment. Dennis Thomas, Fire Chief, recommended the City purchase a back up repeater which could be manually put into service within minutes to reactivate the pager system and emergency sirens.

Chief Thomas recommended the City purchase the back up repeater from Ken's Communications at the price of \$3,400. Mr. Milford informed the Council that adequate bond funds are available for this expenditure.

Mr. Watkins moved, seconded by Mr. Burns, to purchase the reserve equipment from Ken's Communications at the price of \$3,400. The motion carried with a 6-1 vote. Mrs. Hawkins cast the one dissenting vote.

Item 22. Consider authorizing an additional 1/2 day paid holiday for city employees on December 24, 1987.

Mr. Kiesler questioned why this wasn't put in the regular budget, stating that the Council should have voted on a complete budget. Mrs. Hawkins moved, seconded by Mr. Hickman, to authorize an additional 1/2 day paid holiday for city employees. The motion carried with a 6-1 vote. Mr. Kiesler cast the one dissenting vote.

Item 23. Consider adopting Ordinance (11-3-87D) establishing a permit system for overweight vehicles.

The Council was provided with another draft of this ordinance during the worksession preceding the meeting. Mr. Ruyle asked that this item be tabled to allow time for proper consideration. Mr. Gray moved, seconded by Mr. Burns, to table this item until the next regular meeting. The motion carried unanimously.

Item 24. Consider adopting Resolution (11-17-87A) entering into an agreement with the City of Garland concerning the disposal of waste.

Mr. Milford asked for Mr. Eckert's comments on the agreement. Mr. Eckert informed the Council that the biggest point of contention is in Section 2.4 of the agreement. Mr. Eckert informed the Council that the matter was resolved by Rowlett relinquishing any extraterritorial jurisdiction over the proposed Raney Tract landfill by ordinance, provided that Garland releases back to

MINUTES OF THE REGULAR MEETING OF THE CITY COUNCIL OF THE  
CITY OF ROWLETT, TEXAS, HELD IN THE MUNICIPAL CENTER  
AT 7:30 P.M., NOVEMBER 17, 1987, cont. . . . .

Rowlett the extraterritorial jurisdiction of the Raney Tract if Garland is not successful in obtaining the state permit for a dump site at this location.

Mr. Hickman asked Mr. Eckert if, in his opinion, the approval by Rowlett of the agreement strengthens Garland's position with the State for the dump site location on the Raney Tract. Mr. Eckert responded, "Yes." Mr. Milford informed the Council that if the site is approved, it will not be ready for public use until 1998 or 1999.

Mr. Gray moved, seconded by Mr. Watkins, to adopt Resolution (11-17-87A). The motion carried with a 5-2 vote. Mr. Hickman and Mrs. Hawkins cast the two dissenting votes.

Item 25. Consider adopting Resolution (11-17-87B) outlining and defining the duties and responsibilities of the Municipal Court Judge and the Alternate Municipal Court Judge.

This item was placed on the agenda calling for the adoption of a resolution. After reviewing our Code of Ordinances, Mr. Eckert concluded that an ordinance amending our Section 5-1-2 of the Code is in order.

Mr. Ruyle asked Mr. Eckert if a reference to state statute could be included in the ordinance. Mr. Eckert informed the Council that the statutes do not set out the specific duties of a municipal court judge. According to Mr. Eckert, a municipal court judge has the same scope and authority as a magistrate.

Mr. Kiesler moved, seconded by Mr. Watkins, to remove Resolution (11-17-87B) from the agenda and table this matter until December 1, 1987, for Council consideration of an ordinance. The motion carried unanimously.

Item 26. Citizens input.

At this time, George Kneedler expressed his views on the solicitor's ordinance. Mr. Kneedler does not feel the ordinance serves a useful purpose. Mr. Eckert stated that an overriding interest in the public has caused the courts to uphold cities' rights to regulate these activities.

Item 27. City Manager's Update.

During a discussion of the Newsletter, a suggestion was made to include the dates of Chamber Luncheons and other civic events in the newsletter. A calendar of events on a periodic basis was mentioned. Mr. Kiesler questioned the appropriateness, since it is not City business.

Mrs. Hawkins expressed her appreciation for the list of properties which have been mowed, and asked if the list included the properties mowed with city crews. Mr. Milford told Mrs. Hawkins that he could not respond without checking.

MG-10/30/89  
CC-11/7/89 Misc.  
CC-11/21/89 #17

## Hutchison Boyle Brooks & Fisher

A PROFESSIONAL CORPORATION  
ATTORNEYS AT LAW

3900 FIRST CITY CENTER  
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FAX (214) 754-0840

AUSTIN OFFICE:  
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AUSTIN, TEXAS 78701-4039  
(512) 477-4121  
FAX (512) 477-4136

### MEMORANDUM

TO: The Honorable H.C. Ruyle, Jr. and Members of the City Council of Rowlett, Texas; Mike Gibson, City Manager; and Glenna Bean, City Secretary

FROM City Attorney's Office

DATE: October 30, 1989

RE: Garland's Proposed Raney Tract Landfill

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Dear Mayor Ruyle and Members of the City Council:

You have requested our opinion as to the legal validity of a contract entered into between the cities of Garland and Rowlett entitled "Agreement Between The City of Garland and the City of Rowlett Concerning the Disposal of Waste (the "Agreement"). The Agreement is dated November 17, 1987, and was adopted by Resolution No. 11-17-87A of the City Council of Rowlett. Additionally, you have requested various courses of action that the City Council may consider with respect to the Agreement.

Rowlett and Garland have entered into a contract in which the two cities have exchanged contractual promises as consideration. Mutual contractual promises generally serve under the law to establish a binding contract.

Under the Agreement, Garland promised in essence to (a) allow Rowlett to dispose of its solid waste "pursuant to the same terms and conditions as Garland's residential and commercial customers" at the Castle Drive landfill and, if built, at the Raney Tract landfill, including the free dumping of cleanup containers during Rowlett's annual cleanup month;

(b) allow Rowlett's residents to use the solid waste transfer station pursuant to the same terms as for Garland residents; and

(c) provide Rowlett with Garland's quarterly summary of the volume of waste delivered by Rowlett's designated disposal contractor.

In exchange for these solid waste disposal services, Rowlett promised to (a) support Garland in its efforts to obtain the necessary permits in order to construct and operate the proposed Raney Tract landfill, including the use of the Agreement as evidence of Rowlett's support by submitting it and a statement of support to the Texas Department of Health within three months of the execution of the Agreement;

(b) refrain from enacting or enforcing any ordinances and regulations that "would impose any operational or closure requirements" on the Raney Tract facility;

(c) relinquish any extraterritorial jurisdictional authority related to the Raney Tract; Garland agreeing, however, that if it is not able to obtain all necessary permits for the Raney facility, then Garland will relinquish back the applicable extraterritorial jurisdiction;

(d) recognize certain common boundary lines between Rowlett and Garland as described in certain Garland ordinances; and

(e) include certain contractual provisions in any contract that Rowlett enters into with disposal contractors.

As to the length of term of the Agreement, it was agreed by the parties that it will run for the useful life of the Castle Drive landfill; additionally, if the Raney facility is constructed and operated, the term of the Agreement is "coterminous with the useful life of the Raney Tract landfill."

We understand that at present the parties have partially performed under the Agreement. Garland is allowing the use of its Castle Drive landfill. Rowlett has authorized by council action of July 19, 1988, the (i) Boundary Adjustment Agreement between Rowlett and Garland, and (ii) Ordinance No. 7-19-88 both disannexing and excluding certain property and relinquishing extraterritorial jurisdiction related to the Raney Tract. In addition, Rowlett's contractor is evidently dumping in the Castle Drive landfill within its prescribed volume limits.

Although Rowlett and Garland, as home rule cities, had independent authority to enter into the Agreement, the various statutory provisions of the Texas Interlocal Cooperation Act [Article 4413(32c), and amendments thereto] are applicable to such a contract between two local governments for the performance of "governmental functions and services" including "waste disposal." It will be useful to review these statutory provisions in discussing several proposed challenges to the validity of the Agreement.

### Analysis

A valid municipal contract must meet the general principles of contract law. In addition, such a contract must meet the test of whether the municipality had the power to enter into the contract as well as whether statutory formalities were met by the local government in approving the contract.

We believe that the Agreement is in compliance with general principles of contract law, including the voluntary assent between the parties; sufficiency of consideration, including mutuality of obligations; and certainty of the length of term of the contract. The fact that the length of term of the Agreement is dependent in part upon the condition precedent of whether the Raney facility will be constructed and operated does not prevent the Agreement from being a binding contract. Garland is presently bound by the terms of the Agreement to permit Rowlett the use of its Castle Drive landfill for its useful life.

We will now consider whether there are any principles of municipal law that would void the terms of the Agreement.

A key principal of municipal law is that a city may not bargain away or surrender control of its governmental or legislative functions or police powers, even for a reasonable time. Such a contract is terminable at will by either party. Clear Lake City Water Authority v. Clear Lake Utilities Company, 549 S.W. 2d 385 (Tex. 1977). Thus, if one party has bargained away municipal power to the extent that the contract is voidable, then either party may terminate the contract at will.

It has been suggested that, by entering into the Agreement, Rowlett or Garland or both have bargained away the governmental function of solid waste disposal regulation.

In support of the position that Garland has bargained away its ability to regulate waste disposal by allowing Rowlett to use its landfills, a case has been cited wherein the court held a sanitary sewer system contract unenforceable between two cities. City of Farmers Branch v. City of Addison, 694 S.W.2d 94 (Tex. App.--Dallas 1985, no writ). The court found that although Farmers Branch had the power to provide sanitary sewer services to persons outside its corporate limits, it did not have the power to grant Addison the right to make unlimited sewer connections nor deposit "an unlimited amount of sewage" in the trunk line. Such a grant "is a surrender of a consequential part of control and regulation of the system" for sanitary sewer service.

Here, however, Garland has not granted unlimited use of its landfills. It has contracted with Rowlett such that waste generated only by Rowlett citizens may be dumped, not to exceed a maximum amount per household and per business, and Garland has the right to carefully monitor the volume of dumping performed by Rowlett's disposal contractor.

It does not appear that Garland has bargained away a consequential part of control and regulation of its landfills, and therefore a court would likely treat the Agreement as binding on Garland.

In a Texas supreme court case cited earlier, the court held that a contract between a city water authority and a utility company was terminable at will even though in force for several years at the time that the city water authority terminated the contract by letter. Clear Lake City Water Authority v. Clear Lake Utilities Company.

The court found that the water and sewerage contract "obligates Authority to meet all water and sewage treatment needs for Utilities" and "precludes Authority from extending these services directly . . . under terms and rates that it deems best." It held that since the contract "has the effect of potentially controlling and embarrassing Authority in the exercise of its governmental powers," it was not "binding on the parties for a reasonable period of time but was rather terminable at will by either party."

Here Garland has not obligated itself to meet "all" the solid waste disposal needs of Rowlett but rather contracted under controlled conditions to take a limited amount of Rowlett's wastes. Thus in our opinion Clear Lake does not serve as appropriate authority for the termination of the Agreement.

In addition to the volume of service at issue, it has also been suggested that the level of fees set by the Agreement embarrass Garland in its exercise of governmental power such that it may choose to terminate the Agreement. The fee case cited to support such a position involved a challenge brought by a home rule city against a regional sewage system authority. Cibolo Creek Municipal Authority v. City of Universal City, 568 S.W.2d 699 (Tex. Civ. App.--San Antonio 1978, writ ref'd n.r.e.). The court held that the authority, in fulfilling a specific governmental function placed upon it by the Texas legislature, had the power to impose sewer connection fees on residents of the home rule city. In making a contract with this home rule city, the court said that the authority could not surrender its governmental or legislative functions by bargaining away its ability to charge sewer service connection fees.

Here Garland has not bargained away control to set reasonable fees for solid waste disposal services. Instead, the Agreement provides for fees to be charged Rowlett's citizens and businesses at the same rates and conditions as placed on Garland's own residents.

We believe that Garland had the power to enter into the terms of the Agreement to allow Rowlett the use of its landfill facilities. We also believe that Rowlett had the power to enter into the terms of the Agreement.

Rowlett's bargain has been criticized for two reasons: (i) the inability of Rowlett to enact ordinances regulating the proposed Raney facility even though it adjoins Rowlett's northern boundary, and (ii) Rowlett's agreement to support Garland in its efforts to obtain the necessary governmental permits for the construction and operation of the Raney facility.

Under the provisions of the Interlocal Cooperation Act mentioned earlier, two local governments may contract under Section 4(c) of the Act "to apply the rules, regulations, and ordinances of either the subdivision receiving the service or of the subdivision providing the service, whichever standard may be agreed upon by the contracting political subdivisions."

The Agreement provides that Garland will regulate the use of the Raney facility. It would appear that such provision is in accordance with Section 4(c) of the Interlocal Cooperation Act. It also appears to be a practical arrangement that Garland's regulations should apply since it bears the operational burdens. Finally, Rowlett is not left without recourse if it finds that Garland's operation of the Raney Tract landfill to be an unreasonable nuisance. It has among its options the ability to go to the state and federal permitting agencies regulating landfill operations.

As to Rowlett's promise to support Garland in efforts to secure the Raney permits, Rowlett has the power to make provisions for garbage disposal in order to protect the health of the city. Rowlett found at the time of the Agreement that it was in Rowlett's "best interest of health safety and welfare of the public to provide a solid waste facility" at the Raney Tract, and that "this Agreement is in the best interest of both parties and in the best interest of the public at large."

Looking at contractual consideration for a moment, Rowlett's promise to support Garland's efforts to obtain necessary permits is a promise that helped bind the Agreement. Here we don't have a take-or-pay arrangement whereby Rowlett agrees to pay for service whether used or not. Rowlett has not

promised to use the landfills nor has it agreed to pay for such use. Rather it has agreed that, in order to bind Garland's promise to allow use of the landfills, it will promise to support Garland's efforts to secure permits related to the Raney Tract. We have found no authority that would prohibit Rowlett from making such a promise.

Another matter to consider is whether Rowlett's city council, in exercising its power to provide for garbage disposal, had the ability to bind successive council members. There is out-of-state authority for the position that a city council in exercising governmental functions rather than proprietary functions may not bind successive council members. Texas law, however, has upheld that in making garbage disposal contracts, city councils may bind successive council members. City of Wichita Falls v. Kemp Hotel Operating Co., 162 S.W.2d 150 (Tex. Civ. App.--Fort Worth); affirmed, 141 Tex. 90, 170 S.W.2d 217 (1943).

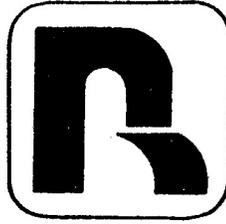
#### Options

We believe that Rowlett and Garland have entered into a valid and binding contract regarding waste disposal. For the duration of the contract, assuming that Garland performs according to agreed terms, Rowlett has various options. It may continue to substantially perform under the Agreement. It may instead seek to enter into an agreement with Garland to modify the Agreement or to rescind the contract. In the event that Rowlett decides to breach the Agreement by opposing Garland's efforts to secure the Raney permits, Garland may seek to obtain damages from Rowlett in addition to prohibiting the use of its landfills.

Such damages would be difficult to estimate though they would perhaps be of a nominal amount. It is our understanding that prior to the Agreement, Garland had already purchased the Raney Tract and had completed some engineering studies. It would appear then that Garland may not claim damages in the amount of the land purchase price and the cost of engineering studies done prior to the date of the Agreement, but further investigation of the facts will be necessary.

In conclusion, we believe that the Agreement is binding on both Garland and Rowlett for the useful life of at least the Castle Drive landfill. If the City Council wishes to terminate its waste disposal arrangement with Garland, it may risk action on the part of Garland to seek certain damages under the Agreement in addition to the cancellation of the use of its landfill.

PE/KEI



**Rowlett**

December 11, 1987

Brad Neighbor  
Assistant City Attorney  
City of Garland Texas  
200 N. Fifth St.  
Garland, Texas 75040

Dear Mr. Neighbor:

We have enclosed two copies of our Resolution No. 11-17-87A and two copies of the agreement between the City of Garland and the City of Rowlett. We have retained the original for our files.

If you need any more information, please contact my office.

Sincerely,

A handwritten signature in cursive script that reads "Glenna Bean".

Glenna Bean  
City Secretary

GB/bmc

enclosure

ROWLETT

January 5, 1990

Request copy of Resolution #11-17-87A, authorizing the City Manager to enter into an agreement with the City of Garland concerning disposal of waste, and the minutes approving it, so as to reflect who the councilmen were and how they voted.

CITY ATTORNEY'S OFFICE  
CITY OF GARLAND

1/5/90

I made these  
copies on 1/5  
as requested  
Jey