

ORDINANCE NO. 2009-O-4D

AN ORDINANCE OF THE CITY OF ANGLETON, TEXAS APPROVING AN ASSIGNMENT OF THE FRANCHISE AGREEMENT FOR THE COLLECTION, HAULING AND DISPOSAL OF MUNICIPAL SOLID WASTE IN THE CITY OF ANGLETON, TEXAS FROM REPUBLIC WASTE SERVICES OF TEXAS, LTD. TO WASTE CONNECTIONS, INC.; PROVIDING CONDITIONS TO SUCH APPROVAL; AUTHORIZING THE CITY MANAGER TO PROVIDE WRITTEN CONSENT TO THIS ASSIGNMENT; AMENDING THE FRANCHISE TO SUBSTITUTE THE ADDRESS OF WASTE CONNECTIONS FOR THE ADDRESS OF REPUBLIC; PROVIDING CERTAIN CHANGES IN THE RATE, TERM AND OTHER SECTIONS OF THE FRANCHISE; PROVIDING FOR A PERFORMANCE REVIEW; PROVIDING FOR THE ASSIGNEE TO PAY FOR THE PUBLICATION OF THIS ORDINANCE AND FOR BOTH REPUBLIC AND WASTE CONNECTIONS TO ACCEPT THE PROVISIONS OF THIS ORDINANCE; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR AN OPEN MEETINGS CLAUSE; PROVIDING FOR AN EFFECTIVE DATE; PROVIDING FOR PUBLICATION AND PROVIDING FOR OTHER PURPOSES.

WHEREAS, on December 20th, 2005 the City of Angleton, Texas (City) entered into that certain Franchise Agreement For The Collection, Hauling And Disposal Of Municipal Solid Waste In The City Of Angleton, Texas (Franchise) with Republic Waste Services of Texas, Ltd. (Republic); and

WHEREAS, by a letter dated March 5, 2009, Republic requested that the City Administrator (City Manager), pursuant to Section 13 of the Franchise, obtain the City's approval of and written consent to an assignment of the Franchise from Republic to Waste Connections, Inc. (Waste Connections); and

WHEREAS, Republic subsequently requested it be allowed to subcontract its solid waste services under the Franchise to Waste Connections; and

WHEREAS, Section 9.39 of the Code of Ordinances of the City (City Code) authorizes the City Manager to grant a temporary franchise agreement for a period of no more than 62 days pending action by the City on a solid waste franchise which provides authority to authorize a subcontract under the Franchise; and

WHEREAS, at its regularly scheduled meeting of April 14, 2009, the City Council authorized the City Manager to grant Republic the right to subcontract solid waste services to Waste Connections substantially in accordance with the terms of a Memorandum of Agreement (Memorandum) which the parties have entered into; and

WHEREAS, as a condition of the City Council approving the assignment of the Franchise, certain amendments to the Franchise will be required; and

WHEREAS, the City Council deems it in the public interest to approve the assignment subject to Republic and Waste Connections full acceptance of and compliance with the terms and conditions of this Ordinance:

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ANGLETON, TEXAS:

SECTION 1: That the matters and facts recited in the preamble hereof are hereby found and determined to be true and correct and are hereby incorporated into the body of this Ordinance.

SECTION 2: That the assignment of the Franchise from Republic to Waste Connections is hereby approved and the City Manager is authorized to sign a written consent to the assignment in accordance with Section 13 of the Franchise subject to the following terms and conditions:

- A. That Waste Connections shall fully perform all the terms and conditions of the Franchise as amended hereby.
- B. That in the event that Waste Connections commits a breach of the Franchise within 12 months of the effective date of this Ordinance, that is not cured in accordance with the terms and conditions of the Franchise, Republic shall remain fully liable to the City for performance under the Franchise.
- C. That within 12 months of the effective date of this Ordinance the City shall conduct a performance review of Waste Connections performance under the Franchise and, if it is dissatisfied with the performance, it shall be able to terminate the Franchise without providing the notice and time to cure as set forth in the Franchise, and/or to pursue any other remedies it may have either under the Franchise or at law or in equity.
- D. That Waste Connections shall accept, execute and perform all the terms and conditions of the attached First Amendment to the Franchise, which is attached to and made a part of this Ordinance for all purposes as if written word for word herein.
- E. That Waste Connections shall pay for the cost of the publication of this entire Ordinance in accordance with the requirements of Article 9 of the City Charter.

The failure of Waste Connections or Republic to accept or perform any of these terms and conditions shall result in the assignment being forfeited and considered null and void from the inception.

SECTION 3: PROVIDING FOR SEVERABILITY:

If any provision, section, sentence, clause or phrase of this Ordinance, or the application of same to any person or set of circumstances is for any reason held to be unconstitutional, void, invalid, or unenforceable, the validity of the remaining portions of this Ordinance or its application to other persons or sets of circumstances shall not be affected thereby, it being the intent of the City Council of the City of Angleton in adopting, and of the Mayor in approving this Ordinance that no portion hereof or provision or regulation contained herein shall become inoperative or fail by reason of any unconstitutionality or invalidity of any portion, provision or regulation.

SECTION 4: OPEN MEETINGS CLAUSE:

It is hereby found and determined that the meetings at which this Ordinance is considered are open to the public and that notice of the time, place and purpose thereof was given in accordance with the provisions of the Texas Government Code – Chapter 551, as amended, and that a quorum of the City Council was present.

SECTION 5: EFFECTIVE DATE:

This Ordinance shall become effective after it is read at two separate regular meetings of the City Council, shall not be finally passed until 30 days after the first reading, and after it has been published and shall not take effect until 30 days after its final passage in accordance with Section 9.04 of the City Charter and until its provisions have been accepted as indicated herein by both Republic Waste Services of Texas, LTD and Waste Connections, Inc.

SECTION 6: PUBLICATION:

The City Secretary shall publish the full text of this Ordinance, in the official newspaper of the City, within 15 days following the first reading, and the full expense of this publication shall be borne by Waste Connections.

**READ, PASSED, AND APPROVED ON THIS THE _____ DAY OF _____,
2009. (First Reading)**

**READ, PASSED, AND APPROVED ON THIS THE _____ DAY OF
_____, 2009. (Second Reading)**

**J. PATRICK HENRY, MAYOR
CITY OF ANGLETON**

ATTEST:

**_____
SHELLY DEISHER, CITY SECRETARY**

APPROVED AS TO FORM:

**_____
HERBERT L. PROUTY, INTERIM CITY ATTORNEY**

**ACCEPTANCE BY REPUBLIC WASTE SERVICES OF TEXAS, LTD. AND
WASTE CONNECTIONS, INC.**

WHEREAS, the City Council of the City of Angleton, Texas did on the _____ day of _____, 2009, on second reading enact an Ordinance entitled:

AN ORDINANCE OF THE CITY OF ANGLETON, TEXAS APPROVING AN ASSIGNMENT OF THE FRANCHISE AGREEMENT FOR THE COLLECTION, HAULING AND DISPOSAL OF MUNICIPAL SOLID WASTE IN THE CITY OF ANGLETON, TEXAS FROM REPUBLIC WASTE SERVICES OF TEXAS, LTD. TO WASTE CONNECTIONS, INC.; PROVIDING CONDITIONS TO SUCH APPROVAL; AUTHORIZING THE CITY MANAGER TO PROVIDE WRITTEN CONSENT TO THIS ASSIGNMENT; AMENDING THE FRANCHISE TO SUBSTITUTE THE ADDRESS OF WASTE CONNECTIONS FOR THE ADDRESS OF REPUBLIC; PROVIDING CERTAIN CHANGES IN THE RATE, TERM AND OTHER SECTIONS OF THE FRANCHISE; PROVIDING FOR A PERFORMANCE REVIEW; PROVIDING FOR THE ASSIGNEE TO PAY FOR THE PUBLICATION OF THIS ORDINANCE AND FOR BOTH REPUBLIC AND WASTE CONNECTIONS TO ACCEPT THE PROVISIONS OF THIS ORDINANCE; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR AN OPEN MEETINGS CLAUSE; PROVIDING FOR AN EFFECTIVE DATE; PROVIDING FOR PUBLICATION AND PROVIDING FOR OTHER PURPOSES.

WHEREAS, on the _____ day of _____ 2009, the Ordinance was duly approved and signed by the Mayor of the City of Angleton, attested by the City Secretary and approved by the City Attorney and became effective 30 days after its final passage and upon the execution and filing of this Acceptance;

NOW, THEREFORE, Republic Waste Services of Texas, Ltd. and Waste Connections, Inc., executing this Acceptance through their duly authorized representatives, hereby in all respects ACCEPT, APPROVE AND AGREE TO this Ordinance, and the same being a binding contractual obligation of both Republic Waste Services of Texas, Ltd. and Waste Connections, Inc., and of the City, without waiver of any other remedy by the City, Republic Waste Services of Texas, Ltd. and Waste Connections, Inc., and the undersigned do hereby file this, their written acceptance, with the City Secretary of the City of Angleton, Texas, in her office.

DATED this the _____ day of _____ 2009.

ASSIGNOR:
Republic Waste Services of Texas, Ltd.
10554 Tanner Road
Houston, Texas 77041
By its General Partner:
Republic Waste Services of Texas GP,
Inc., a Delaware corporation

ASSIGNEE:
Waste Connections, Inc.
8304 Walnut Grove Road
Suite 100
Cordova, Tennessee 38018

BY: _____
Jerry Martin, General Manager

BY: _____
Chris Ruane, Southern
Region Vice President

WITNESS:

WITNESS:

ACCEPTANCE FILED in the Office of the City Secretary of the City of
Angleton, Texas, this the _____ day of _____, 2009.

Shelly Deisher, City Secretary