

Order Authorizing Agreement

The State of Texas }
 } Know All Men By These Presents:
County of Williamson }

That on this, the 3rd day of February, A. D. 2009, the Commissioners Court of Williamson County, Texas, met in duly called and convened lawful Session at the County Courthouse in Georgetown, Texas, with the following members present:

Dan A. Gattis, County Judge, Presiding,
Lisa Birkman, Commissioner Precinct One,
Cynthia Long, Commissioner Precinct Two,
Valerie Covey, Commissioner Precinct Three, and
Ron Morrison, Commissioner Precinct Four

where, among other matters, came up for consideration and adoption the following Order:

Whereas, the Williamson County Commissioners Court, sitting as a legislative, executive, and judicial finder of fact pursuant to its exclusive original jurisdiction under Article V, Section 18(b) of the Texas Constitution, has made the following

Findings of Law and Fact

1. The following findings are based on information provided to the members of this Court by both proponents and opponents of the attached agreement at an extensive series of public meetings and hearings and in numerous written and oral communications with the Court and its individual members over a period of two years. The Court sought, carefully considered, and relied upon the legal advice of numerous attorneys. The opportunity for public comment and participation was unprecedented for any contract ever considered by this Court.
2. The Court gave due consideration to all the advice and comments and each was given appropriate weight in the decisions of the Court. There is substantial evidence for each of the findings contained in this Order.
3. This Order and the attached Agreement are being adopted at a properly convened public session of the Court after all the notices and formalities required by the Texas Open Meetings Act. All prior acts and deliberations of the Court concerning the contract and related issues have also been in compliance with that Act. Specifically, all

deliberations on this matter by a quorum of the Court have been held either in a public session or in a closed session required for consultation with attorneys as authorized by that Act. No decisions have been made by the Court, either formally or informally, except in its properly-held public sessions.

4. Williamson County, Texas, (County) has been an Organized County since 1848, with the authority to carry out governmental (though not proprietary) functions, including but not limited to the operation of sanitary landfills. Among other provisions of law not cited here, general authority for County to manage solid waste and expend public funds for that purpose is granted by § 361.153, Texas Health and Safety Code; specific authority to operate a landfill is granted by § 364.013; § 363.113 requires that County “assure that [solid waste management] services are provided to all persons in its jurisdiction.”
5. County currently owns fee simple title to the Williamson County Landfill (Landfill), the real property described in the attached “2009 Williamson County Landfill Operation Agreement” (the Agreement) between County and Waste Management of Texas, Inc. (Contractor). The Agreement, with any exhibits, is set out in this Order by reference as fully and completely as if set out verbatim in the body of the Order.
6. County exclusively holds and retains all right, title, and interest in and to the real property, improvements, fixtures, and appurtenances, to any current or pending state permits, and to all water, mining, mineral, and other rights appurtenant to the Landfill, permits, or Agreement. None of these rights are currently subject to a lease, reversionary interest, partnership, or joint venture.
7. Beginning in the early 1980s, County acquired this property for the operation of a sanitary landfill and obtained appropriate permits from the State of Texas to operate the Landfill. Since May 6, 1985, Contractor or its corporate predecessors have continuously operated the Landfill on behalf of County. The original operation agreement was amended in 1990 and 2003.
8. Under the Agreement and all prior operation agreements, Contractor is a “contract operator” of the Landfill and is not the “site operator,” as those terms are defined by Texas Commission on Environmental Quality regulations and policy. Contractor has and claims none of the rights or privileges of a site operator.

9. Contractor and its predecessors are not now (and, apart from brief prior ownership of some of the real estate subsequently acquired by County and added to the original Landfill property, have never been) the legal or beneficial owners of either the Landfill or its permits, whether in whole or in part. It is the intent of the Agreement that Contractor will not acquire any additional ownership of either the Landfill or its permits as compared to the 2003 contract.
10. Apart from the rights expressly granted by the Agreement and prior contracts between County and Contractor or its predecessors, Contractor has no right, title, or interest in the landfill property, permits, or operations. Specifically and without limitation, it has no interest as a lessee, remainderman, partner, or joint venturer. Contractor has consistently and publicly disclaimed any other interest beyond its express contractual rights.
11. The Agreement explicitly supersedes all prior or contemporaneous agreements, understandings, arrangements, commitments, and representations, whether oral or written, and will constitute the sole agreement between the parties. Contractor will therefore have no continuing rights under the 1985, 1990, or 2003 contracts, which the Court has found to be far inferior to the terms of the attached Agreement.
12. County has the authority to enter into and perform the obligations set out in the Agreement. County's authority to enter into such contracts is set out, among other places, in § 363.116, § 364.013, and § 364.031, Texas Health and Safety Code.
13. The Agreement, like the prior contracts with Contractor, contains termination conditions that prevent it from being a contract in perpetuity.
14. The proper operation of any public or private landfill located in Williamson County is critical to public health, safety, and welfare. Without a proper facility in an accessible location charging affordable rates, garbage, trash, and other waste materials will be disposed of in a manner that supports unacceptable levels of air and water pollution, as well as vermin, insects, noxious odors, and disease vectors. These risks mandate that the criteria for awarding landfill contracts are not readily susceptible to traditional competitive bidding.
15. The State of Texas has recognized the unique issues affecting waste disposal by the legislative findings in Section 363.003 of the Health and Safety Code. In addition, § 363.002 states, "It is this state's policy to safeguard the health, general welfare, and

physical property of the people and to protect the environment by encouraging the reduction in solid waste generation and the proper management of solid waste, including disposal and processing to extract usable materials or energy. Encouraging a cooperative effort among federal, state, and local governments and private enterprise, to accomplish the purposes of this chapter, will further that policy.”

16. For these reasons, it is long established in Texas that contracts related to solid waste disposal need not be subject to competitive bidding, as public health, safety, and welfare are to be the primary criteria; see, for example, *Browning-Ferris, Inc. v. City of Leon Valley*, 590 S.W.2d 729 (San Antonio 1979, *no writ*). The Texas County Purchasing Act, §262.024 (a) (2), Texas Local Govt. Code, exempts from competitive bidding contracts “necessary to preserve or protect the public health or safety.” The Williamson County Commissioners Court specifically finds that the Agreement is necessary to preserve or protect the public health and grants an exemption from competitive bidding, insofar as any competitive bidding statute might apply.
17. The 1985 contract between County and Contractor was previously renegotiated in 1990 and 2003. At the time of each of the prior renegotiations, County and Contractor had valid, subsisting contracts in place that were not subject to cancellation. Since County could deal with only the existing contract holder, neither of the prior renegotiated contracts were the result of a competitive process.
18. Today, as in 1990 and 2003, County and Contractor have a current agreement that has not been cancelled by either party. In response to citizen concerns, County recently contested the validity of the 2003 contract in the 368th District Court (Cause No. 07–748–C368, *County of Williamson v. Waste Management of Texas, Inc.*). In a judgment that addressed procedural issues including competitive bidding, but not the substance of the contract, the court declared on July 18, 2008, that the 2003 contract “is not void or voidable but, rather, remains in full force and effect.” County and Contractor were parties to that lawsuit and are bound by the judgment as *res judicata*.
19. If the Agreement is not approved by both parties, the 2003 contract will continue in effect unless it is cancelled according to its own terms or in some other lawful manner. The terms of the Agreement are plainly more favorable to the County than the terms of that contract. The Court finds that—considered as an alternative to the Agreement and not as an abstract proposition—breaking the 2003 contract without legal justification at this time would carry probable costs and liabilities greatly exceeding the possible

benefits. The Court has determined that none of Contractor's competitors would likely agree to indemnify the County against these probable costs. This makes the Agreement the best (though not perfect) alternative among those available.

20. The 2003 contract provides Contractor with an exclusive right to manage a landfill on the present site, including any expansion within the contiguous County property. Without cancellation of that contract, it is clearly impossible to offer a Landfill operations agreement to any other party, whether by competitive bidding or by any other means. The County Purchasing Act, §262.024 (a) (7), exempts from competitive bidding contracts for "an item that can be obtained from only one source." The Court finds that Contractor is the sole source currently available to the County for providing these services and grants an exemption from competitive bidding, insofar as any competitive bidding statute might apply.
21. Because Contractor is paying County, rather than the reverse, the Court finds that the County Purchasing Act does not apply to the Agreement or require that it be offered competitively.
22. Since any possession of Landfill real or personal property by Contractor is in its capacity as an agent of County and purely incidental to operations, the Agreement is not a lease to Contractor for its own use of the site. If it were considered a lease, Texas law would require a public auction, sealed bids, or sealed proposals. The Court finds that these available bidding procedures are clearly inapplicable to solid waste disposal contracts where public health and safety, not price, are to be the paramount concerns, as Chapters 361–364 of the Health and Safety Code provide. The Court finds that this transaction is therefore not subject to competitive bidding as a lease.
23. The Agreement does not contemplate the construction of county facilities that are unrelated to the ongoing operation of the Landfill and does not create County financial obligations for any construction whatsoever. Any construction activity will be purely incidental to Contractor's duty, as county's agent, to provide the services promised in the Agreement. The Court finds that this transaction is therefore not subject to competitive bidding as a facilities construction contract or on any other basis.
24. The Agreement represents a substantial improvement for the people of Williamson County over the 2003 contract. Its provisions are fair to all concerned. Replacing the old contract by the new will produce major benefits for the public health, safety, and

welfare. Protection of those interests mandates the execution of this Agreement even though no additional competitive process is available. Adoption of the Agreement is thus in the best interest of Williamson County.

Therefore be it

Ordered, that the Williamson County Commissioners Court, having adopted the foregoing Findings of Law and Fact, does hereby commit Williamson County, Texas, by this Order to enter into the attached "2009 Williamson County Landfill Operation Agreement" between the county and Waste Management of Texas, Inc., with such amendments as may have been adopted in open court, and does hereby by order grant any lawful exceptions to competitive bidding necessary to enter into the Agreement;

Further Ordered, that County Judge Dan A. Gattis be, and is hereby, authorized to sign this Order and the attached Agreement as the act and deed of the Commissioners Court and of Williamson County; and

Further Ordered, that the County Judge be, and is hereby, authorized to transmit the signed Agreement to Waste Management of Texas, Inc., for their corporate approval and signature and the Judge is further authorized to execute any and all necessary additional documents in connection therewith.

The foregoing Order was lawfully moved by _____, duly seconded by _____, and duly adopted by the Commissioners Court on a vote of _____ members for the motion and _____ opposed.

Dan A. Gattis, Williamson County Judge

Attest:

Nancy Rister, Williamson County Clerk

Attach 2009
Williamson County Landfill
Operation Agreement here