

CITY OF MONROE
ORDINANCE NO. 004/2023

AN ORDINANCE OF THE CITY OF MONROE, WASHINGTON, APPROVING A SMALL ANNEXATION TRANSITION AND WAIVER AGREEMENT WITH WASTE MANAGEMENT OF WASHINGTON, INC.; ESTABLISHING THE CONTRACTUAL PARAMETERS GOVERNING SOLID WASTE COLLECTION SERVICES WITHIN THE WOODLANDS ANNEXATION AREA PURUSANT TO RCW 35A.14.900; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, on February 8, 2022, the City Council adopted Ordinance No. 002/2022, formally annexing to the City the area comprised of approximately 178 acres and commonly known as the Woodlands Annexation Area; and

WHEREAS, Waste Management of Washington, Inc. (“Waste Management”) provides solid waste collection services within the Woodlands Annexation Area pursuant to Certificate No. G-237 issued by the Washington Utilities and Transportation Commission (“WUTC”); and

WHEREAS, RCW 35A.14.900 establishes various requirements and procedures governing the provision of utility service in recently annexed areas, including the automatic cancelation of preexisting utility franchise and permit rights; the mandatory granting of a new franchise or permit to the holder of such preexisting rights; a prohibition against extending similar or competing services to the annexed area for a specified transition period; the duration and scope of the WUTC’s regulatory authority during such period; and potential claims by the holder of the franchise or permit for any measurable damages resulting from the cancelation thereof; and

WHEREAS, the City and Waste Management desire to contractually address the requirements of RCW 35A.14.900 in relation to solid waste collection within the Woodlands Annexation Area as set forth in the attached *Small Annexation Transition and Waiver Agreement*; and

WHEREAS, the *Small Annexation Transition and Waiver Agreement* establishes a 10-year transition period during which Waste Management will continue to provide solid waste collection services within the Woodlands Annexation Area; defers the City’s notification to the WUTC of the City’s intent to contract for solid waste collection services within the Woodlands Annexation Area or to provide such services itself; establishes the parameters for transitioning Waste Management’s solid waste collection services to the City upon the expiration of the transition period; waives Waste Management’s claims to enter into a new replacement franchise and for any measurable damages resulting from the cancelation of its franchise rights; and contains other relevant and appropriate provisions; and

WHEREAS, approval of the *Small Annexation Transition and Waiver Agreement* as set forth herein will serve the public interest by ensuring continued solid waste collection service within the Woodland Annexation Area and facilitating an orderly transition of such services in the future;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MONROE, WASHINGTON, HEREBY ORDAINS AS FOLLOWS:

Section 1. Small Annexation Transition and Waiver Agreement Approved; Execution Authority. The City Council hereby approves the *Small Annexation Transition and Waiver Agreement* for the Woodlands Annexation Area in substantially the form provided in Exhibit A, attached hereto and incorporated herein by this reference as if set forth in full. The Mayor is authorized to execute said agreement on behalf of the City.

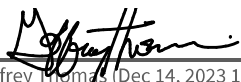
Section 2. Severability. Should any section, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this ordinance be preempted by State or federal law or regulation, such decision or pre-emption shall not affect the validity or enforceability of the remaining portions of this ordinance or its application to other persons or circumstances.

Section 3. Effective Date. This ordinance shall be in full force and effect five (5) days from and after its passage and approval and publication as required by law.

PASSED by the City Council and APPROVED by the Mayor of the City of Monroe, at a regular meeting held this 12th day of December, 2023

First Reading: December 05, 2023
Adoption: December 12, 2023
Published: December 15, 2023
Effective: December 20, 2023


CITY OF MONROE, WASHINGTON:



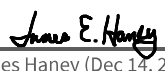
Geoffrey Thomas (Dec 14, 2023 10:58 PST)
Geoffrey Thomas, Mayor

ATTEST:

APPROVED AS TO FORM:



Jodi Wycoff (Dec 15, 2023 13:42 PST)
Jodi Wycoff, City Clerk



James Haney (Dec 14, 2023 10:25 PST)
James Haney, City Attorney

**ORDINANCE 004/2023 EXHIBIT A
SMALL ANNEXATION
TRANSITION AND WAIVER AGREEMENT
(Annexation Transition RCW 35.13.280)**

Woodlands Annexation

This SMALL ANNEXATION TRANSITION AND WAIVER AGREEMENT (“Agreement”) is made and entered into between WASTE MANAGEMENT OF WASHINGTON, INC. (“WMW”) and the CITY OF MONROE, WASHINGTON (“City”). The parties shall be collectively referred to herein as the “Parties” and individually as a “Party”, unless specifically identified otherwise. This Agreement shall be effective upon the date that all Parties have executed this Agreement (the “Effective Date”), as evidenced by the signatures below.

RECITALS

WHEREAS by Ordinance No. 002/2022, dated February 8, 2022 with an Effective Date of February 16, 2022 (the “Ordinance”) and attached hereto as **Exhibit A**, the City has annexed certain territory identified in the Ordinance and commonly referred to as the **Woodlands Annexation** (the “Annexed Territory”);

WHEREAS WMW holds Certificate No. G-237 issued by the Washington Utilities and Transportation Commission (“WUTC”) whereby WMW provides solid waste collection services (the “Collection Service”) within the Annexed Territory;

WHEREAS under RCW 35.13.280, the WUTC regulates the collection of solid waste within the Annexed Territory until such time as the City notifies the WUTC, in writing, of its decision to contract for solid waste collection or provide solid waste collection itself pursuant to RCW 81.77.020;

WHEREAS upon such notice to the WUTC, the City is required to grant to WMW a franchise to continue its Collection Services for a term of at least SEVEN (7) years and to pay to WMW any “measurable damages” incurred by WMW as a result of the City’s annexation of the Annexed Territory;

WHEREAS the Parties acknowledge and agree that, for the annexation of small areas such as the Annexed Territory, it is burdensome and unnecessary for the Parties to negotiate and implement a separate franchise for WMW to continue Collection Services within the Annexed Territory and to determine the amount of “measurable damages” incurred by WMW because of the City’s annexation of the Annexed Territory;

WHEREAS to avoid the unnecessary burden of negotiating and implementing a separate franchise for the Annexed Territory and determining “measurable damages”, the Parties agree that, subject to the terms and conditions herein, WMW shall continue to provide Collection Services within the Annexed Territory pursuant to Certificate No. G-237 and subject to regulation by the WUTC for the duration of the “Transition Period”, but shall thereafter waive (1) its rights to enter into a separate franchise, and (2) its claim to any “measurable damages”;

TERMS AND CONDITIONS

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, the Parties mutually agree, represent, and warrant as follows:

1. The “Transition Period”. The Parties agree that the “Transition Period” shall be a minimum of TEN (10) years, commencing on December 12, 2023 and continuing until the date upon which the City elects to terminate the Transition Period (“Transition Date”) by providing NINETY (90) days advance written notice to WMW, provided however that the “Transition Date” shall not be any earlier than December 11, 2033.

2. WMW’s Collection Services During the Transition Period. During the Transition Period, WMW shall continue to provide Collection Services pursuant to Certificate No. G-237 and subject to regulation by the WUTC under Chapter 81-77 RCW, applicable regulations, and tariffs. Nothing in this Agreement is intended to affect WMW’s rights and obligations to provide Collection Services under Certificate No. G-237 to the Annexed Territory during the Transition Period.

3. Deferral of Notice to WUTC. To effectuate the terms of this Agreement, the City agrees that during the Transition Period it shall defer notifying the WUTC of its intent to contract for solid waste collection or provide solid waste collection itself. After the City has provided written notice of the Transition Date to WMW under Section 1 above, but prior to the Transition Date, the City shall provide written notice to the WUTC (a) that it has decided to contract for solid waste collection or provide solid waste collection itself pursuant to RCW 81.77.020, and (b) that the Transition Date (as defined above) is the effective date for the City to assume responsibility for solid waste collection.

4. Transition of WMW’s Collection Services to City. After the end of the Transition Period,

4.1. the City shall assume full responsibility for solid waste collection within the Annexed Territory as authorized under RCW 81.77.020, either by contracting for collection or providing collection itself; and

4.2. unless otherwise agreed to in writing by the Parties, WMW shall have no further obligation or right to provide the Collection Services within the Annexed Territory;

Upon request of the City, the Parties shall meet prior to the end of the Transition Period to plan for the transition of the Collection Services within the Annexed Territory. WMW shall cooperate with the City by providing all reasonably necessary information required by the City to allow for an orderly transition of the Collection Services from WMW to the City or its contractor. Such information shall include service account addresses, billing addresses, current service levels, frequency and types of services, customer container sizes, and other similar information requested by the City and reasonably necessary to the transition of service.

5. Waiver of Franchise Rights and Damages under RCW 35.13.280. In exchange for the 10-year Transition Period under Section 1 above and the City's deferral under Section 3 above, WMW hereby waives:

5.1. all claims under RCW 35.13.280 to enter into a franchise to continue its solid waste collection business within the Annexed Territory; and

5.2. all claims under RCW 35.13.280 to any measurable damages resulting from the cancellation of its solid waste collection business within the Annexed Territory.

6. Assessment of Administrative Fee. A six percent (6%) Administrative Fee shall be imposed by the City on WMW, and WMW shall remit to the City quarterly for the amount collected. Interest on any delinquent or unpaid Administrative Fee shall accrue at the rate of 12 percent per annum or the highest legally permissible rate, whichever is greater.

7. Notification of Taxes, Fees, and Other Charges. If, as a result of the City's annexation of the Annexed Territory, the City imposes any taxes, fees, or charges on WMW's Collection Services within the Annexed Territory, the City shall notify WMW of such taxes, fees, or other charges.

8. Revisions to WUTC Tariffs. Nothing in this Agreement is intended to restrict or prohibit WMW from seeking approval from the WUTC for new and/or revised WUTC Tariffs applicable to solid waste collection within its Certificate No. G-237 territory, including within the Annexed Territory. If the WUTC approves revisions to WMW's WUTC Tariff, WMW shall adjust the rates and charges applicable to the Collection Services within the Annexed Territory.

9. Successors and Assigns. Neither Party shall assign this Agreement without the prior written consent of the other Party, except that WMW may assign this Agreement to any subsidiary, parent or affiliated company without the other Party's consent. If this Agreement is assigned as provided above, it shall be binding on and shall inure to the benefit of the Parties hereto and their respective successors and assigns.

10. Notice. Any notice required or permitted hereunder shall be in writing (including, without limitation, by facsimile transmission) and sent to the address shown below:

If to WMW:	Waste Management of Washington, Inc.	If to City:	City of Monroe
	<u>720 Fourth Avenue, Suite 400</u>		<u>806 West Main Street</u>
	<u>Kirkland, WA 98033-8136</u>		<u>Monroe, WA 98272</u>
	Director of Public		
Attention:	<u>Sector Services</u>	Attention:	<u>Public Works Department</u>

11. Entire Agreement; Amendment. This Agreement constitutes the entire agreement among the Parties concerning the subject matter hereof and supersedes all previous correspondence, communications, agreements and understandings, whether oral or written among the Parties. This Agreement may not be modified, in whole or in part, except upon unanimous approval of the Parties and by a writing signed by all the Parties.

12. No Third-Party Beneficiaries. This Agreement is made solely and specifically among and for the benefit of the Parties hereto, and their respective successors and assigns, and no other person will have any rights, interest, or claim hereunder or be entitled to any benefits under or because this Agreement, whether as a third-party beneficiary or otherwise.

13. Construction. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, that invalidity, illegality, or unenforceability shall not affect any other provision in this Agreement and this Agreement shall be construed as if the invalid illegal, or unenforceable provision had never been contained in it.

14. Governing Law. This Agreement, and all amendments or supplements thereto, shall be governed by and construed in accordance with the laws of the State of Washington.


15. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

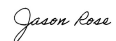
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IN WITNESS WHEREOF, the Parties enter into this Agreement. Each person signing this Agreement represents and warrants that he or she has been duly authorized to enter into this Agreement by the Party on whose behalf it is indicated that the person is signing.

CITY OF MONROE

WASTE MANAGEMENT OF WASHINGTON, INC.

By: 
Geoffrey Thomas (Dec 14, 2023 10:58 PST)
Name: Geoffrey Thomas
Title: Mayor
Date: Dec 14, 2023

By: 
Name: Jason S. Rose
Title: Vice President
Date: Dec 16, 2023

Attachments:

Exhibit A - Ordinance No. 002/2022, dated February 8, 2022 with an Effective Date of February 16, 2022, the Woodlands Annexation

AL
AL (Dec 15, 2023 14:59 PST)