

**CITY OF EL PASO, TEXAS  
AGENDA ITEM  
DEPARTMENT HEAD'S SUMMARY FORM**

**DEPARTMENT:** Environmental Services

**AGENDA DATE:** March 15, 2022

**CONTACT PERSON NAME AND PHONE NUMBER:** Ellen A. Smyth, P.E., Managing Director (915) 212-6000

**DISTRICT(S) AFFECTED:** All Districts

**STRATEGIC GOAL8:** Nurture and Promote a Healthy, Sustainable Community

**SUBJECT:**

The City consents to the assignment of the rights, duties and obligations under the contract 2006-015 to Assignee, who agrees to perform all duties under the contract as the Friedman contract is transferred to Waste Connections of El Paso, LB d/b/a BARCO. The termination clause will be amended such that the contractor shall have the option to require the City to reimburse it for any fees due and its unrecoverable investments in plant and facilities including its investment in real estate in the amount of \$160,000 (Termination/Transfer fee) 1) if the City exercises its right to terminate for convenience 2) if the Contractor suffers a material financial hardship from the contract as a result of significant changes in the scope or nature of the project or 3) if the Contractor terminates the Contract because of default by the City.

**BACKGROUND / DISCUSSION:**

Friedman Recycling has operated the curbside recycling program for the City of El Paso since 2006, and is seeking the sale of its El Paso recycling facility and operations to Waste Connections of El Paso, LP d/b/a BARCO. Prior to the completion of the sale, the contract requires the City to consider its consent to assign the contract to BARCO.

**PRIOR COUNCIL ACTION:**

Friedman was awarded contractor bid No. 2006-015 February 14, 2006. Parties entered into the addendum for single stream curbside recycling collection and processing services June 26, 2006. Parties agreed to the first amendment to addendum February 22, 2011. A second amendment was approved on December 15, 2015.

**AMOUNT AND SOURCE OF FUNDING:**

ESD Operational Funds

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\*\*\*\*\*REQUIRED AUTHORIZATION\*\*\*\*\*

**DEPARTMENT HEAD:** Ellen A. Smyth P.E



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**(If Department Head Summary Form is initiated by Purchasing, client department should sign also)**

**RESOLUTION**

**THAT** the City Manager be authorized to sign the Consent to Assignment of Contract No. 2006-015 between Friedman Recycling of El Paso, LP and the City of El Paso, therein consenting to the assignment of Friedman Recycling (“Assignor”) to Waste Connections of El Paso, LP dba BARCO El Paso (“Assignee”).

**APPROVED** this \_\_\_\_ day of \_\_\_\_\_ 2022.

**CITY OF EL PASO:**

\_\_\_\_\_  
Oscar Leeser  
Mayor

**ATTEST:**

\_\_\_\_\_  
Laura D. Prine  
City Clerk

**APPROVED AS TO FORM:**

*Wendi Vineyard*  
\_\_\_\_\_  
Wendi N. Vineyard  
Assistant City Attorney

**APPROVED AS TO CONTENT:**

*Ellen A. Smyth*  
\_\_\_\_\_  
Ellen A. Smyth, P.E. Director  
Department of Environmental Services

STATE OF TEXAS )  
 )  
COUNTY OF EL PASO )

**CONSENT TO ASSIGNMENT OF  
CONTRACT/BID NO. 2006-015**

This Consent to Assignment is executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the City of El Paso (the “City”), Friedman Recycling of El Paso, LP (“Assignor”) and Waste Connections of El Paso, LP dba BARCO El Paso (“Assignee”).

**WHEREAS**, in February of 2006 the City of El Paso (City) awarded Bid No. 2006-015 (“Contract”) with Assignor to provide recycling services to the citizens of El Paso through 2022;

**WHEREAS**, the Contract between Assignor and the City of El Paso was amended in 2008 to establish a revenue sharing, include plastics (#3-#7) to recyclables, and address other financial issues; and

**WHEREAS**, the contract between Assignor and the City of El Paso was further amended 2015 addressing revenue sharing, tipping fees and extending the contract through 2030;

**WHEREAS**, Assignor has entered into an agreement to sell its El Paso recycling business to Assignee;

**WHEREAS**, the provisions of Contract 2006-015 specific that the Contract is not assignable without the consent of the City;

**WHEREAS**, Assignor has requested that the City approve a Consent to Assignment of the Contract to Assignee;

**WHEREAS**, at the time of the sale of the El Paso recycling portion of its business, Assignor owed the City of El Paso \$532,556.56; and

**WHEREAS**, at the time of the finalization of the sale from Assignor to Assignee, the above-stated amounts owed to the City by Assignor have been paid in full; and

**WHEREAS**, it is in the best interest of the City to continue the contract entered into by the City and Assignor by assigning and transferring the Contract rights, duties and obligations to Assignee; and

**WHEREAS**, Assignee agrees to continuing the contract, as amended, with the City; and

**WHEREAS**, In addition, the parties wish to amend the contract termination provisions of the Contract;

**WHEREAS**, Assignee has agreed to be responsible for all duties and obligations under the Contract; and

**WHEREAS**, the City agrees to the assignment of all rights, duties and obligations encompassed in the Contract to Assignee with the amendments;

**NOW, THEREFORE, IT IS HEREBY AGREED as follows:**

1. The City consents to the assignment of the rights, duties and obligations under the contract to Assignee.
2. Assignee agrees to assume and perform all duties, obligations and responsibilities under the contract including the amendment of IFB Revised Section F, Subsection 9 entitled “ADDITIONAL REMEDIES” as amended by Article V, Section 5.4 of the Addendum, in particular the 2<sup>nd</sup> paragraph is restated as follows:

The Contractor shall have the option to require the City to reimburse it for any fees due and its unrecoverable investments in plant and facilities, including its investment in real estate, in the amount of \$160,000 (“Termination/Transfer fee”): 1) if the City exercises its right to terminate for convenience, which includes and is not limited to termination for material reduction in the scope of this Contract due to unavailability of funds (as provided in IFB subsection 17), 2) if the Contractor suffers a material financial hardship from the contract as a result of significant changes in the scope or nature of the recycling project by the City, or 3) if the Contractor terminates the Contract because of default by the City.

The above stated Termination/Transfer fee amount shall be reduced by \$20,000.00 per remaining year through the expiration of the existing contract term, not to include any extensions that the City and Contractor may agree to. At the expiration of the contract, the Termination/Transfer fee will be \$0.

3. All remaining terms and conditions of the contract shall remain in full force and effect.

*(Signatures begin on following page)*

STATE OF TEXAS )  
 )  
COUNTY OF EL PASO )

**CONSENT TO ASSIGNMENT OF  
CONTRACT/BID NO. 2006-015**

EXECUTED this the \_\_\_\_\_ day of \_\_\_\_\_, 2022

**THE CITY OF EL PASO:**

\_\_\_\_\_  
Tomás González  
City Manager

**APPROVED AS TO FORM:**

*Wendi N. Vineyard*

\_\_\_\_\_  
Wendi N. Vineyard  
Assistant City Attorney

**APPROVED AS TO CONTENT:**

*Ellen A. Smyth*  
\_\_\_\_\_  
Ellen Smyth P.E., Managing Director  
Environmental Services

**ASSIGNOR:  
Friedman Recycling El Paso, LP**

By: \_\_\_\_\_  
Name: *Maria Friedman*  
Title: *President*

**ASSIGNEE:  
Waste Connections of El Paso, LP  
dba BARCO El Paso**

By: \_\_\_\_\_  
Name: *Ph. T. Bivard*  
Title: *Regional V.P.*