

RESOLUTION 2013 - 36



A RESOLUTION OF THE CITY OF SUNNYSIDE, WASHINGTON, AUTHORIZING THE INTERIM CITY MANAGER TO SIGN THE RELEASE AND SETTLEMENT AGREEMENT BETWEEN THE CITY OF SUNNYSIDE, WASHINGTON AND YAKIMA WASTE SYSTEMS, INC.

WHEREAS, the City of Sunnyside and Yakima Waste Systems, Inc. are parties to an Amended and Restated Agreement for Garbage Collection Services dated January 9, 2012; and

WHEREAS, errors in the payment of invoices resulted in an underpayment by the City in the amount of Forty-Five Thousand and Sixty-Eight Dollars and 00/100 (\$45,068.00); and

WHEREAS, the parties have mutually agreed to compromise and settle the outstanding balance for a one-time payment of Ten Thousand One Hundred and Twenty-Nine Dollars and 00/100 (\$10,129.00), and such other consideration as detailed in the Release and Settlement Agreement attached hereto as Exhibit "A"; and

WHEREAS, entering into the Release and Settlement Agreement is in the best interests of the City and its residents.

NOW, THEREFORE, IT IS HEREBY RESOLVED BY THE CITY COUNCIL OF THE CITY OF SUNNYSIDE, WASHINGTON, as follows:

SECTION 1. That the Interim City Manager of the City of Sunnyside, Washington, is hereby authorized and directed to sign the original Release and Settlement Agreement between the City of Sunnyside, Washington, and Yakima Waste Systems, Inc., a copy of which is attached hereto and incorporated herein by this reference as Exhibit "A"; and to take all necessary steps required for the implementation of this Agreement.

SECTION 2. This Resolution shall be effective upon passage, approval and signatures hereon as required by law.

PASSED this 22nd day of April, 2013.



JAMES A. RESTUCCI, MAYOR

ATTEST:


DELILAH SAENZ, CMC, CITY CLERK

APPROVED AS TO FORM:



KERR LAW GROUP, LLP
Attorneys for the City of Sunnyside

RELEASE AND SETTLEMENT AGREEMENT

THIS RELEASE AND SETTLEMENT AGREEMENT is entered into this ____ day of February, 2013, between the City of Sunnyside, Washington ("City"), and Yakima Waste Systems, Inc. ("Company").

WHEREAS, the parties previously entered into an amended and restated agreement for garbage collection services dated January 9, 2012; and

WHEREAS, errors in the payment of invoices resulted in an underpayment by the City in the amount of Forty-Five Thousand and Sixty-Eight Dollars and 00/100 (\$45,068.00) which the parties have agreed to compromise and settle for a one-time payment of Ten Thousand One Hundred and Twenty-Nine Dollars and 00/100 (\$10,129.00); and

WHEREAS, the parties have met and tentatively agreed to this settlement along with additional amendments to the Garbage Collection Services Agreement, and now wish to memorialize this tentative agreement in writing.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, it is agreed as follows:

1. The City shall pay to the Company Ten Thousand One Hundred and Twenty-Nine Dollars and 00/100 (\$10,129.00) receipt of which is hereby acknowledged. The City also agrees to pay off current and future invoices subject to necessary adjustments until such time as new billing software is in place that incorporates necessary adjustments and allows for accurate invoice amounts.

2. Company, on behalf of itself, agents, members, assigns and successors in interest, releases and discharges the City and the City's officers, members, employees, representatives, agents and assigns from any and all claims, liabilities, causes of action, damages, losses, demands or obligations, including but not limited to attorney fees and costs, of every kind and nature, related to, based upon, or arising out of the above-referenced Agreement; and accepts as full and final satisfaction of all such claims the payment as described in this Agreement.

3. By entering into this Agreement, both parties expressly acknowledge that there is no admission of liability on behalf of either party except as specifically provided herein and that this Agreement is the result of a negotiated compromise and settlement. Both parties acknowledge that they have been provided sufficient time to seek independent review of this Agreement prior to its execution.

4. This Agreement settles, waives, releases, and forever bars any and all claims and actions at law by either party, or their successors, heirs, or assigns arising out of the above-referenced matter, except as provided herein.

EXHIBIT "A"

5. Each signatory hereto represents and warrants that all necessary signatures and consents to enter into this Agreement, and to assume and perform the obligations hereunder, have been properly obtained.

6. Each term and provision of this Agreement is deemed to have been explicitly negotiated at arm's length between the parties and in all cases, shall be construed and interpreted according to the fair meaning and not strictly for or against either party, and without reference to who might have drafted the term.

7. This Agreement is entered into and shall be construed and interpreted in accordance with the laws of the State of Washington.

8. This Agreement embraces and includes the entire agreement between the parties and may not be changed except in writing signed by all parties.

9. This Agreement may be executed in counterparts. Each counterpart shall be deemed an original, all of which taken together shall be one and the same instrument. This Agreement shall become effective upon execution of the counterpart by each party and delivery to the other party.

THIS IS A RELEASE.

IN WITNESS WHEREOF, the parties have duly executed this Agreement on the date designated above:

CITY OF SUNNYSIDE, WASHINGTON

YAKIMA WASTE SYSTEMS, INC.

By: _____
John C. Darrington, Interim City Manager

By: _____
Title: _____

APPROVED AS TO FORM:

Kerr Law Group
Attorneys for the City of Sunnyside