

**RESOLUTION 2012 - 01**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SUNNYSIDE, WASHINGTON, AUTHORIZING THE CITY MANAGER TO EXECUTE AND ADMINISTER AN AMENDED AND RESTATED AGREEMENT FOR GARBAGE COLLECTION SERVICES WITH YAKIMA WASTE SYSTEMS, INC.**

**WHEREAS**, the City currently contracts with Yakima Waste Systems, Inc., hereinafter referred to as "Yakima Waste Systems," for refuse collection services; and

**WHEREAS**, the City has amended Chapter 8.04 of the Sunnyside Municipal Code with respect to methods and materials for refuse collection and to incorporate a 60¢ increase, all effective April 16, 2012; and

**WHEREAS**, the City has negotiated an amended and Restated Agreement For Garbage Collection Services with Yakima Waste Systems to account for the amendments of Chapter 8.04 of the Sunnyside Municipal and to extend the term of the agreement so the vendor can recover its capital costs incurred with respect to the changes in the collection methods and materials as provided in the amended ordinance; and

**WHEREAS**, the City Council finds and determines that the Amended and Restated Agreement For Garbage Collection Services with Yakima Waste Systems in the form attached hereto as Exhibit "A" is in the best interests of the City and the health, safety and welfare of the City's residents; and

**NOW, THEREFORE, IT IS HEREBY RESOLVED BY THE CITY COUNCIL OF THE CITY OF SUNNYSIDE, WASHINGTON, AS FOLLOWS:**

**Section 1.** That the City Council hereby approves the Amended and Restated Agreement for Garbage Collections with Yakima Waste Systems Inc. attached hereto as Exhibit "A" and the City Manager is hereby authorized to execute such agreement for and on behalf of the City of Sunnyside and to take all actions reasonable and necessary to administer performance of such agreement.

**Section 2.** That this resolution shall be effective upon passage, approval and signatures hereon in accordance with law.

**PASSED** this 9<sup>th</sup> day of January, 2012.



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MIKE FARMER, MAYOR

**ATTEST:**



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DELILAH SAENZ, CITY CLERK

**APPROVED AS TO FORM:**



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MENKE JACKSON BEYER EHLIS & HARPER, LLP  
Attorneys for the City of Sunnyside

**AMENDED AND RESTATED AGREEMENT  
FOR  
GARBAGE COLLECTION SERVICES**

**City of Sunnyside  
and  
Yakima Waste Systems, Inc.**

THIS AMENDED AND RESTATED AGREEMENT (this "Agreement") is entered into this 9<sup>th</sup> day of January, 2012, by and between the CITY OF SUNNYSIDE, WASHINGTON, a municipal corporation of the State of Washington, with City Hall located at 818 East Edison Avenue, Sunnyside, Washington 98944 (the "City"), and YAKIMA WASTE SYSTEMS, INC., a Washington corporation, with its principal place of business at 2812-1/2 Terrace Heights Drive, P.O. Box 2830, Yakima, Washington (the "Company"), for the collection, transportation, processing and disposal of garbage and refuse in accordance with the requirements of Chapter 8.04 of the Sunnyside Municipal Code (the "SMC"). The City and the Company are sometimes referred to herein individually as a "Party" and collectively as the "Parties."

**Recitals**

A. Company is a qualified provider of refuse collection services, and has provided such services to City pursuant to agreements previously approved by the City, including the following agreements:

1. Agreement for Extension of Garbage Collection Services, approved pursuant to Resolution No. 1997-61 (the "1997 Extension Agreement");
2. Agreement for Extension of Garbage Collection Services, approved pursuant to Resolution No. 2002-52 (the "2002 Extension Agreement");
3. Amendment to Agreement for Extension of Garbage Collection Services, dated February 28, 2003 (the "2003 Amendment");
4. Amendment to Agreement for Garbage Collection Services, dated February 25, 2008 (the "2008 Amendment");
5. Agreement for Extension of Garbage Collection Services, approved pursuant to Resolution No. 200816 (the "2008 Extension Agreement"); and
6. Amendment No. 2 to Agreement for Garbage Collection Services, dated November 23, 2009 (the "2009 Amendment" and together with the 1997 Extension Agreement, the 2002 Extension Agreement, the 2003 Amendment, the 2008 Amendment and the 2008 Extension Agreement, collectively referred to as the "Original Agreement").

EXHIBIT "A"

B. The parties desire to amend and restate the Original Agreement and to extend the term of the Original Agreement through April 15, 2022.

**Agreement**

NOW, THEREFORE, in consideration of the mutual covenants, conditions and promises herein, the parties agree as follows:

1. **Company as Contractor.**

A. The Company shall provide garbage and refuse collection and disposal services for the City in accordance with the requirements of Chapter 8.04 of the SMC, as the same currently exists and may be hereafter amended. The Company shall provide garbage and refuse collection and disposal services in a manner satisfactory to the City and in keeping with the practices heretofore provided.

B. The Company is and shall be construed to be, during the term of this Agreement and any extension hereof, the "Contractor" to whom reference is made in Chapter 8.04 of the SMC, unless clearly indicated otherwise.

C. It is understood and agreed that the right to haul garbage, refuse and recyclables, during the term of this Agreement, shall be the exclusive right of the Company, and that the City shall not grant such right to any other person during the term of this Agreement, provided that the services are being rendered as herein provided. It is understood and agreed that in the event the services are not satisfactorily provided by the Company as set forth in this Agreement and in Chapter 8.04 of the SMC, and if the Company is in breach of its obligations thereunder, the City shall have the right to invoke the remedies and procedures pertaining to default as set forth in Section 7 below.

2. **Waste Materials.** The garbage and refuse to be collected and disposed of by the Contractor pursuant to this Agreement consists of all solid waste (including recyclable materials) and other materials, as set forth in Chapter 8.04 of the SMC, generated or collected by the residents and businesses of the City; provided, however, that such waste materials specifically excludes and the residents and businesses of the City shall not deposit in the Contractor's equipment or place for collection by the Contractor any radioactive, volatile, corrosive, highly flammable, explosive, biomedical, infectious, biohazardous, toxic or hazardous materials as defined by applicable federal, state or local laws or regulations ("Excluded Waste"). The Contractor has no obligation to collect Excluded Waste. Title to and liability for any Excluded Waste shall remain with the resident/generator of such Excluded Waste. If the Contractor finds what reasonably appears to be discarded Excluded Waste, the Contractor shall notify the resident/business/generator, if such can be determined, that the Contractor may not lawfully collect such waste and leave a tag specifying the nearest location available for such appropriate disposal.

3. **Revenue to Company.**

A. The Company shall receive from the City, revenue corresponding to 90.4% of the revenue received by the City as and for garbage collection rates, after the deduction of state and

## EXHIBIT "A"

local taxes, credits and penalties, pursuant to Section 8.04.090 of the SMC and other applicable codes and ordinances, and the Company shall be entitled to bill for and receive those additional charges provided for in Section 8.04.095 of the SMC. Payments made by the City to the Company shall be made no later than the tenth (10<sup>th</sup>) day of each month following receipt of garbage collection revenues.

B. Notwithstanding the foregoing, any subsequent change in the garbage collection rates or other payment schedules or any negotiated adjustments in rates to address specific expenditures in connection with the services contemplated hereunder may change the percentage provided for above; provided, however, in no event shall the Company receive less than the amount of revenue to which the Company would be entitled according to the 90.4% figure, except as adjusted for specific expenditures and specifically requested increased amounts, unless a reduction of revenue is negotiated in connection with a reduction or change in service provided by the Company.

### 4. **Request for Increases.**

A. Any request by the Company for an increase in revenue to cover the Company's costs, including, but not limited to, the purchase of equipment needed for replacement or for additional services, increased landfill charges and increases in general operating expenses, shall be submitted to the City together with the supporting financial information and other documentation as appropriate, for review and consideration for approval by the City.

B. When an increase has been requested by the Company and approved by the City for specific purposes, for additional services, or for equipment purchases, the Company shall provide the City, within sixty (60) days of a request by the City, documentation explaining and describing the progress or status of such specific purposes, additional services or purchases of equipment.

C. The Company shall not be entitled to request any increases in rates or revenues any sooner than six (6) months after the last rate increase that was approved by the City; provided, however, that this Section 3(C) shall not apply to increases in fees not set forth in Chapter 8.04 of the SMC, including such fees and costs charged as pass-through fees, such as "tonnage fees".

### 5. **Recyclables.**

A. In addition to the collection services provided for in Section 1(A) above, the Company shall provide collection services for residential drop-site recyclables in accordance with the plans, procedures and schedules devised by the Company, and in accordance with the applicable provisions of the Yakima County Solid Waste Management Plan. Customers served within the City shall not be charged any extra charge or assessment for provision of recyclable collection services.

B. At such time as any commodity may or may not be economically feasible to collect and market, materials may be added or removed from the program.

EXHIBIT "A"

C. At such time as the City requests or requires additional or enhanced residential recycling or yard waste collection services, said additions will be mutually negotiated and agreed to by the City and the Company.

6. **Disputes Procedure.** The Contractor and the City hereby agree that all disputes or questions arising as to the proper performance of this Agreement shall first be submitted to the City Manager of the City, and then shall go to the City Council, if the Contractor does not agree with the City Manager's decision. However, as to any dispute, controversy or claim arising out of or relating to this Agreement, including without limitation any question regarding breach, termination or invalidity thereof, which either party has after appeal to the City Council, nothing herein shall bar either party from pursuing its rights and remedies in any court of competent jurisdiction in Yakima County.

7. **Term of Agreement - Extension.** The term of this Agreement shall be for a period of ten (10) years, starting on April 16, 2012 and going through April 15, 2022; provided, however, that this Agreement may be further extended upon the agreement of the Parties, for additional five (5) year increments thereafter, subject to such changes and amendments as the Parties may mutually agree. This Agreement restates, amends and supercedes all prior agreements.

8. **Default.**

A. **By Contractor.** If the Contractor shall fail to perform any of the terms or conditions of this Agreement or otherwise breach the terms of this Agreement, the City Manager of the City shall notify the Contractor of such failure in writing. The Contractor shall have fourteen (14) days from the receipt of such written notice to take corrective measures to remedy such failure or breach. If the Contractor fails to take corrective measure within such time period, the City Manager shall notify the Contractor, in writing, that he intends to bring the matter before the City Council at the next regular meeting thereof. The Contractor may appear at said meeting and make a statement regarding its actions and reasons for its failure to comply with the written demands of the City Manager. If the Contractor fails to provide satisfactory justification for its non-compliance, the City Council may then, by resolution, declare the Contractor to be in default under this Agreement, and may, at its option, declare this Agreement terminated and arrange for a third-party to provide the services previously provided by the Contractor hereunder and shall only be liable to the Contractor for amounts due and owing for services performed. The City shall also be entitled to maintain an action for damages arising as a result of the Contractor's breach of this Agreement.

B. **By City.** If the City shall fail to observe or perform any covenant, condition or provision of this Agreement, including failure to compensate the Contractor as provided for hereunder, the Contractor shall have the right to immediately suspend its performance hereunder and provide the City with written notice of such failure or breach. The City shall have fourteen (14) days from the receipt of such written notice to take corrective measures to remedy such failure or breach. Upon any such failure to cure, the Contractor may terminate this Agreement and have recourse to any other right or remedy to which it may be entitled by law or in equity, including, but not limited to, the right of all damage or loss suffered as a result of such failure or breach.

EXHIBIT "A"

C. A waiver by a Party of any default, defect or deficiency by the other Party shall not be construed to be a waiver of any unperformed obligation of the other Party or any subsequent default, defect or deficiency, unless agreed to in a writing signed by both parties.

D. If any legal action is necessary to enforce the provisions of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and costs. For any legal action involved herewith, venue shall lie in Yakima County, State of Washington.

9. **Force Majure.** Except for the payment of amounts owed hereunder, neither Party hereto shall be liable for its failure to perform or delay in its performance hereunder due to contingencies beyond its reasonable control including, but not limited to, strikes, riots, compliance with laws or governmental orders, inability to access a container, fires, inclement weather and acts of God, and such failure shall not constitute a breach under this Agreement; provided, that performance shall be excused only for the period caused by such contingencies beyond the Party's reasonable control.

10. **Binding Upon Successors and Assigns.** This Agreement shall be binding upon the successors and assigns of the Parties, provided that neither Party may assign its interests, rights or obligations under this Agreement without the prior written consent of the other Party, which prior written consent shall not be unreasonably withheld.

11. **Amendments.** The Parties understand and agree that this Agreement may be amended from time to time upon mutual agreement of the Parties.

12. **Third Parties.** There are no intended third-party beneficiaries to this Agreement.

13. **Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of Washington, without regard to conflict of law provisions.

*(Remainder of page intentionally left blank.)*

EXHIBIT "A"

WHEREFORE, this Agreement is executed this 9<sup>th</sup> day of January, 2012.

**CITY OF SUNNYSIDE**

**YAKIMA WASTE SYSTEMS, INC.**

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MARK J. GERVASI, City Manager

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ROB NIELSEN, Regional Vice President

**ATTEST:**

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DELILAH SAENZ, City Clerk

**APPROVED AS TO FORM:**

  
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MENKE JACKSON BEYER EHLIS & HARPER, LLP  
ATTORNEYS AT LAW