

ORIGINAL

RESOLUTION – 2009-92

**A RESOLUTION OF THE CITY COUNCIL OF THE
CITY OF SUNNYSIDE, WASHINGTON, APPROVING
AMENDMENT NO. 2 TO AGREEMENT FOR
GARBAGE COLLECTION SERVICES WITH
YAKIMA WASTE SYSTEMS, INC.
(February 7, 2009 through February 7, 2014)**

WHEREAS, the City of Sunnyside and Yakima Waste Systems, Inc. have previously entered into agreements for collection of garbage and refuse for customers within the City of Sunnyside, with the current agreement for a term February 7, 2009 through February 7, 2014; and

WHEREAS, the parties have negotiated adjustment of rates for garbage collection services, which adjusted rates shall be effective for the first garbage service billings issued in January, 2010, and thereafter; and

WHEREAS, such adjusted rates require the amendment of the Agreement for Garbage Collection Services for the term February 7, 2009 through February 7, 2014 to provide an amended and adjusted provision regarding the percentage of distribution of revenue to the City of Sunnyside and Yakima Waste Systems, Inc.; and

WHEREAS, the City Council finds and determines that approval of such amendment is in the best interests of residents of the City of Sunnyside and will promote the general health, safety and welfare.

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

Section 1. That "Amendment No. 2 to the Agreement for Garbage Collection Services" by and between the City of Sunnyside and Yakima Waste Systems, Inc., for the term February 7, 2009 through February 7, 2014, a copy of which Amendment No. 2 is attached hereto as Exhibit "A"

and incorporated herein by this reference, is hereby approved; and the City Manager is hereby authorized to incorporate the appropriate rate split into such amended agreement, which rate split shall be calculated based on the rate increase for garbage collection service approved December 16, 2008 pursuant to Ordinance No. 2206, and to execute and administer such amended agreement for and on behalf of the City of Sunnyside.

Section 2. Prior to any extension of any Agreement for Garbage Collection Services for any term beyond February 7, 2014, the City Council reserves the right to consider any and all other available providers for garbage collection services.

Section 3. This Resolution shall be effective upon passage, approval and signatures hereon in accordance with law.

PASSED this 23rd day of November, 2009



PABLO GARCIA, MAYOR

ATTEST:



DELILAH CYR, DEPUTY CITY CLERK

APPROVED AS TO FORM:



MENKE JACKSON BEYER EHLIS & HARPER, LLP
Attorneys at Law

**AMENDMENT NO. 2 TO AGREEMENT FOR
GARBAGE COLLECTION SERVICES
City of Sunnyside
and
Yakima Waste Systems, Inc.
(February 7, 2009 through February 7, 2014)**

THIS AMENDMENT to the Agreement for Extension of Garbage Collection Services is entered into this 23rd day of November, 2009, by and between the CITY OF SUNNYSIDE, a municipal corporation of the State of Washington (hereafter called "City"), and YAKIMA WASTE SYSTEMS, INC., a Washington corporation (hereafter called "Company").

I. Recitals

A. City is a municipal corporation duly formed and existing under Title 35A RCW, with city hall located at 818 East Edison Avenue, Sunnyside, Washington 98944.

B. Company is a corporation duly formed and existing under the laws of the State of Washington with principal offices located at 2812½ Terrace Heights Drive, Post Office Box 2830, Yakima, Washington 98907.

C. Company is a qualified provider of refuse collection services, and has provided such services to the City pursuant to agreements previously approved, including the "Agreement for Extension of Garbage Collection Services," approved pursuant to Resolution No. 1997-61, and thereafter extended by resolution from February 7, 1999 through February 7, 2004, February 7, 2004 through February 7, 2009, and most recently from February 7, 2009 through February 7, 2014, and further provided for additional extensions in five year increments, subject to agreement by the parties.

D. City and Company desire to enter into this Amended Agreement for Garbage Collection Services, which amends the extension agreement (from February 7, 2009 through February 7, 2014), to provide an amended and adjusted provision regarding the percentage of distribution of revenue to City and Company.

II. Agreement

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

Section 1. Amendment. Section 2 of the "Agreement for Extension of Garbage Collection Services," for the period February 7, 2009 through February 7, 2014, is hereby amended to read as follows:

EXHIBIT "A"

Section 2. Revenue to Company. 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 local taxes, credits and penalties, pursuant to Section 8.04.090 of the Sunnyside Municipal Code (hereafter "SMC") and appropriate codes and ordinances, and the Company shall be entitled to bill for and receive those additional charges provided for in Section 8.04.095 SMC. Payments made by the City to the Company shall be made no later than the tenth (10th) day of each month following receipt of garbage collection revenues.

PROVIDED, however, that 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 provided hereby may change the percentage referred to above. 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 services provided by the Company.

Section 3. Effect of Amendment. Except as amended herein the 2009-2014 Extension Agreement shall remain unchanged.

Section 4. Washington State Law. This agreement shall be governed and construed in accordance with the laws of the State of Washington.

EXECUTED on the date and year first above written.

CITY OF SUNNYSIDE

YAKIMA WASTE SYSTEMS, INC.

James L. Bridges, P.E., Interim City Manager

Scott Robertson, General Manager

ATTEST:

Delilah Cyr, Deputy City Clerk

APPROVED AS TO FORM:

MENKE JACKSON BEYER EHLIS & HARPER, LLP
Attorneys at Law