

# City of Union Gap

"The Old Town with New Ideas"

[www.ci.union-gap.wa.us](http://www.ci.union-gap.wa.us)

January 10, 2017

WA Utilities & Transportation Commission  
Attn: Penny Ingram  
P.O. Box 47250  
Olympia, WA 98504-7250

RECEIVED  
RECORDS MANAGEMENT  
2017 JAN 17 AM 9:37  
STATE OF WASH.  
UTIL. AND TRANS-  
PORTATION  
COMMISSION

RE: Kwik Lok Annexation; City of Union Gap, WA  
Ordinance No. 2911

Dear Ms. Ingram:

The City of Union Gap annexed the Kwik Lok annexation area by Ordinance No. 2911, approved on November 28, 2016 (copy attached). The City understands that there is a Washington Utilities & Transportation Commission (WUTC) certificate for solid waste collection within that area; Permit G-89 WUTC – Washington Utilities & Transportation Commission.

Consistent with RCW 35.13.280, the City gives notice to the WUTC of its decision that the City hereafter shall contract for solid waste collection or provide solid waste collection itself pursuant to RCW 81.77.020. Solid waste collection services will continue to be provided in the annexation area, by contract, with Yakima Waste Systems, Inc. holder of Permit G-89.

If you have any questions regarding this issue, please feel free to contact me at 509.249.9206 or [dennis.henne@uniongapwa.gov](mailto:dennis.henne@uniongapwa.gov).

Sincerely,

Dennis Henne, Director  
Public Works & Community Development

DH:jl  
enclosure (1)

c: Yakima Waste Systems, Inc.  
Basin Disposal, Inc.  
file



## WASHINGTON STATE BOUNDARY REVIEW BOARD FOR YAKIMA COUNTY

128 North Second Street  
Fourth Floor Courthouse  
Yakima, Washington 98901

(509) 574-2300 • FAX (509) 574-2301

December 16, 2016

**TO:** John Puccinelli, Jim Sewell, Bill Cook, Public Services – Vern Redifer, Gary Ekstedt, Planning – Lynn Deitrick, Phil Hoge, Water Resources – Chris Saunders, Transportation – Matt Pietrusiewicz, Jason Rinehart, Kardy Schuknecht, Ryan Calhoun, Building – Harold MacLean, BOCC, Corp. Counsel – Don Anderson, COG, Elections, Treasurer, Assessor – Walt Valentine, YC Sheriff's Office, Health District, GIS, WVSD #208, City of Union Gap - Planning, Fire Dist. #11, Yakima Fire Dept, Yakima Valley Regional Library, Dept. of Ecology, WSDOT,

**FROM:** Patty A. LeBlanc *Patty A. LeBlanc*  
Chief Clerk of the Boundary Review Board

**SUBJ:** File No. BRB 16-001  
City of Union Gap, Kwik Lok Annexation

Enclosed is the final Ordinance No. 2911 for the City of Union Gap, Kwik Lok Annexation. The Ordinance was recorded under Auditors File # 7931326 on December 15, 2016, and is in effect.

If you have any questions or need further information, please give me a call at 574-2300.

Encl. Ord. No. 2911

RECEIVED

DEC 19 2016

Yakima County ensures full compliance with Title VI of the Civil Rights Act of 1964 by prohibiting discrimination against any person on the basis of race, color, national origin, or sex in the provision of benefits and services resulting from its federally assisted programs and activities. For questions regarding Yakima County's Title VI Program, you may contact the Title VI Coordinator at 509-574-2300.

If this letter pertains to a meeting and you need special accommodations, please call us at 509-574-2300 by 10:00 a.m. three days prior to the meeting. For TDD users, please use the State's toll free relay service 1-800-833-6388 and ask the operator to dial 509-574-2300.

CITY OF UNION GAP



**CITY OF UNION GAP, WASHINGTON**  
**ORDINANCE NO. 2911**

AN ORDINANCE regarding the Kwik Lok, Inc. Petition for Annexation and annexing certain real property to the City of Union Gap, Washington under the provisions of RCW 35A.14.297; Providing for Zoning; Providing for Severability; and Establishing an Effective Date.

**WHEREAS**, a Notice of Intent to Annex was initiated by Kwik Lok Corporation and SKM Paxton, LLC;

**WHEREAS**, the City Council passed resolution 16-31 stating the council's intent to annex to Union Gap Un-Incorporated Yakima County Territory in accordance with RCW 35A.14.295, describing the boundaries, stating the number of voters residing in the area, and setting a public hearing on the resolution;

**WHEREAS**, the City Council held a public meeting concerning resolution 16-31 and determined that the City will accept the proposed annexation boundary; determined whether the petition will require the simultaneous adoption of a zoning classification; determined whether the City will require the assumption of all or any portion of the existing City indebtedness by the area to be annexed,;

**WHEREAS**, Notice of Intention for annexation was submitted to the Washington State Boundary Review Board for Yakima County;

**WHEREAS**, the 45-day period for assumption of jurisdiction by the Boundary Review Board lapsed on November 26, 2016;

**WHEREAS**, the City thereafter set a public hearing for July 11, 2016 and duly provided notice and posted and published the same;

**WHEREAS**, having conducted the public hearing and having considered testimony for or against (if any);

**NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF UNION GAP DOES ORDAIN as follows:**

**Section 1. Annexation.** Filed with the City of Union Gap is a petition in writing signed by the owners of the property. The written petition was accompanied by maps depicting the boundary for the area to annexed and depicting the proposed zoning for the property to be annexed. The written petition also provides that property be zoned as proposed and that it be taxed and assessed at the same general rate as other property within in the City of Union Gap for the purpose of paying outstanding indebtedness of the City which may have been incurred prior to or existing at the time of annexation, among other things.

**Section 2. Legal Description for Area Annexed.** The legal description for the area to be annexed to the City is attached hereto as Attachment A. Said legally described property will be taxed and assessed at the same rate as other property within the City of Union Gap.

**Section 3. Zoning.** The area annexed shall be zoned in conformance with the proposed zoning set forth in the annexation petition. The City of Union Gap Comprehensive Plan and Official Zoning Map shall be and are hereby amended to reflect the zoning for the annexed area.

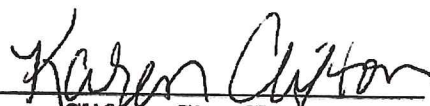
**Section 4. Severability.** The provisions of this ordinance are declared separate and severable. If any section, paragraph, clause, or phrase of this Ordinance is for any reason held to be unconstitutional or invalid, such decision shall not effect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this ordinance and each section, paragraph subsection, clause or phrase thereof irrespective of the fact that any one or more sections, paragraphs subsections, clauses or phrases may subsequently be found by competent authority to be unconstitutional or invalid.

**Section 5. Effective Date.** This Ordinance shall take effect and be in force five (5) days after final passage by the City Council and publication.


ORDAINED this 28th day of November, 2016.

  
~~Roger Wentz, Mayor~~  
Julie Schilling,

ATTEST:

  
Karen Clifton, City Clerk

APPROVED AS TO FORM:

  
Bronson Brown, City Attorney

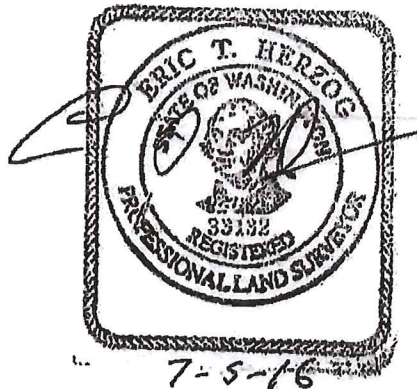


**CITY OF UNION GAP  
ANNEXATION – KWIK LOK  
HLA PROJECT #15056  
JULY 5, 2016**

**PROPOSED ANNEXATION**

**THAT PORTION OF THE SOUTH HALF OF SECTION 2, TOWNSHIP 12  
NORTH, RANGE 18 EAST, W.M., DESCRIBED AS FOLLOWS:**

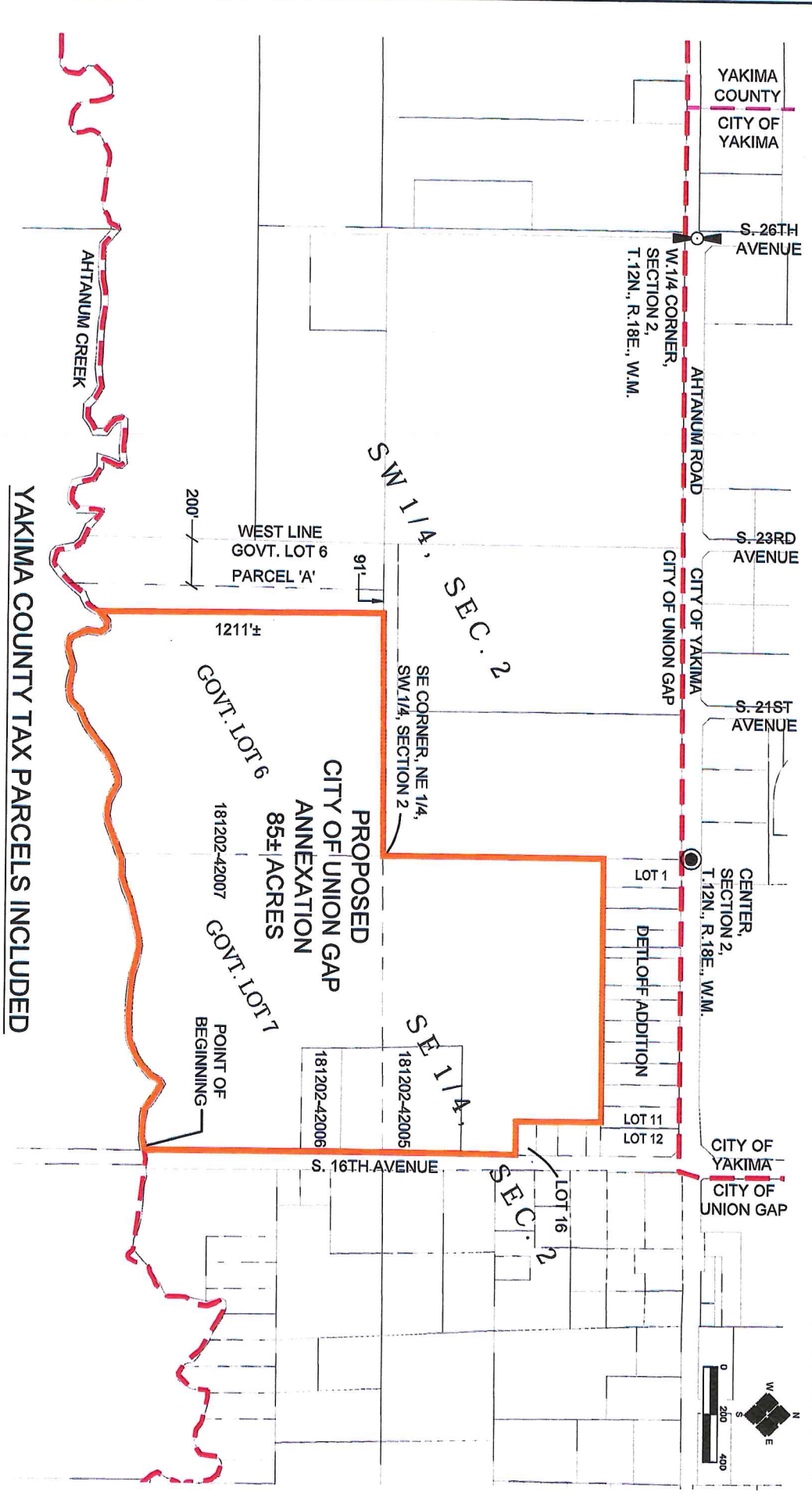
**BEGINNING AT THE INTERSECTION OF THE WESTERLY RIGHT OF WAY  
LINE OF SOUTH 16<sup>TH</sup> AVENUE AND THE CENTERLINE OF AHTANUM  
CREEK;  
THENCE NORTHERLY ALONG SAID WESTERLY RIGHT OF WAY LINE TO  
THE SOUTHEAST CORNER OF LOT 16, ASSESOR'S PLAT NO. 2 OF  
DETLOFF SUB DIVISION, DATED OCTOBER 10, 1960;  
THENCE WESTERLY ALONG THE SOUTHERLY LINE OF SAID LOT 16 TO  
THE SOUTHWEST CORNER THEREOF;  
THENCE NORTHERLY ALONG THE WESTERLY LINE OF LOTS 13 THRU 16  
OF SAID PLAT TO THE SOUTHERLY LINE OF LOT 11 OF SAID PLAT;  
THENCE WESTERLY ALONG THE SOUTHERLY LINE OF LOTS 1 THRU 11  
OF SAID PLAT TO THE SOUTHWEST CORNER OF LOT 1 OF SAID PLAT,  
SAID CORNER BEING ON THE EASTERLY LINE OF THE NORTHEAST  
QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 2;  
THENCE SOUTHERLY ALONG THE EASTERLY LINE OF SAID SUBDIVISION  
TO THE SOUTHEAST CORNER THEREOF;  
THENCE WESTERLY ALONG THE SOUTH LINE OF SAID SUBDIVISION TO  
THE EXISTING CITY LIMITS OF THE CITY OF UNION GAP;  
THENCE SOUTHERLY ALONG SAID CITY LIMITS TO THE CENTERLINE OF  
AHTANUM CREEK;  
THENCE EASTERLY ALONG SAID CENTERLINE OF SAID CREEK TO THE  
TO THE POINT OF BEGINNING;**



**EXHIBIT B**

DSJ NUMBER	DATE
6056	5-2-16
FILE NUMBER	
DRAWING	ANNEXATION
BROWN 811	TOP

**CITY OF UNION GAP  
 ANNEXATION EXHIBIT**





**CITY OF UNION GAP / YAKIMA WASTE SYSTEMS, INC.**  
*Solid Waste Collection Contract*  
2017 thru 2027

THIS AGREEMENT made and executed this day 9 of January, 2017, by and between the City of Union Gap, a Municipal Corporation, hereinafter called "CITY", and Yakima Waste Systems, Inc., a Washington Corporation, hereinafter called "CONTRACTOR",

I. Recitals

WHEREAS, CITY annexed an area known as the Kwik Lok Annexation by Ordinance No. 2911, approved on, legally described in the attached Exhibit "Kwik Lok Annexation Area", and

WHEREAS, CONTRACTOR operates a garbage and refuse collection business and is the holder of the Washington Utilities and Transportation Commission (WUTC) certificate for the annexed area, and

WHEREAS, CITY has determined it is in the best interests of the residents and businesses in the annexed area to contract with CONTRACTOR for the exclusive collection of garbage for CITY in that area, and

WHEREAS, pursuant to RCW 35.13.280, CITY and CONTRACTOR wish to execute this agreement for the purpose of confirming and memorializing conditions and requirements for solid waste collection within the area and it is intended that this agreement shall meet the requirement of RCW 35.13.280 that CITY provide a franchise to continue such business within the annexed territory for a term of not less than seven years,

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

II. Agreement

1. **Term:** This Agreement shall commence February 1, 2017 and shall end December 31, 2027.
2. **Garbage Service:** During said term, CONTRACTOR shall have the sole and exclusive right to, and agrees to, collect and remove all solid waste, refuse, garbage, and rubbish from all buildings, structures, places of business, plants, dwellings, stores, office buildings, fire houses, schools, hotels, municipal buildings, theaters, garages, public markets, restaurants, and other places of accumulation, all in accordance with the Agreement as contained herein and CONTRACTOR shall make a complete and thorough collection and disposal thereof. The method of collection shall be by regular route pick-ups according to a fixed route and schedule as determined by CONTRACTOR. Except as provided for in Section 40, CITY shall not, during the term of this Agreement, contract with any other party for services provided by CONTRACTOR pursuant to this Agreement.

CITY may, in its sole discretion, enforce the exclusivity provisions of this Agreement against third-party violators, taking into account the cost of doing so and other factors. CONTRACTOR may independently enforce the exclusivity provisions of this Agreement against third-party violators, including, but not limited to, seeking injunctive relief and/or damages, and CITY shall use good-faith efforts to cooperate in such enforcement actions brought by CONTRACTOR. CITY shall use its best efforts to adopt ordinances, rules or regulations that have the effect of requiring third parties, including, without limitation, customers, to comply with the provisions of this Agreement, including, without limitation, the exclusive service rights granted to CONTRACTOR pursuant to this Agreement.

Solid waste shall mean the same as defined in RCW 70.95.030 and RCW 81.77.010 (9); PROVIDED THAT the term "solid waste" shall include source separated recyclables. Agricultural processing waste shall be excluded from the definition of solid waste for the purposes of the Agreement only if such agricultural processing waste is transported directly to a site which is properly permitted and approved by all local, state, or federal agencies having jurisdiction over the site, including, but not necessarily limited to, local health departments, Department of Ecology, and the State Health Department. All such transportation and disposal shall be in conformance with any applicable Solid Waste Comprehensive Plan.

Agricultural processing waste is defined as that waste which consists exclusively of the remainder and residue of processed fruit or vegetables. It is not any solid matter such as wood, packaging, paper products, plastics, cardboard, or other food products, rubbish or any other material, which is included in the definition of solid waste in RCW 70.95.030, and is transported to a permitted facility for disposal.

3. Spring Cleanup: CONTRACTOR will provide for one day per year in the month of April on a day determined by CITY one drop box for the purposes of collecting yard waste generated from the residential accounts within CITY. Said drop box will be placed at location determined by CITY. All haul fees will be without charge to CITY. Disposal or processing fees related to the yard waste collected will be submitted to and paid by CITY.

4. Application of Service: If two or more types of service are available to a garbage account, both of which adequately and satisfactorily serve the account, the party receiving the service shall have the option of selecting the service he wishes to receive so long as no unsanitary condition is created as a result of the service selection.

If a single commercial building or a complex is occupied by more than one business, the party(s) receiving the garbage service may elect to receive and be charged for a single container service to serve the entire building or complex, so long as no unsanitary condition is created as a result of the single container service. To qualify for this election, one party must agree to be solely responsible for the entire garbage account as relates to the building or complex. Written notice must be given to CITY, signed and dated by such party, which notice must state the following:

- (a) The name and address of the commercial building or complex;
- (b) The parties which have elected to receive single container service;
- (c) The name and address of the party agreeing to be responsible for the account;



- (d) A statement that such party agrees to be solely responsible for the entire garbage account as relates to the building or complex.

For purposes of this provision, a "commercial complex" shall consist of all buildings or businesses located on a single parcel of real property, and which property, businesses, and buildings are owned by the same person or entity.

If a dispute arises between the party(s) receiving service and CONTRACTOR, the Director of Public Works & Community Development shall make the determination as to the type of service and charge. The decision of the Director of Public Works & Community Development shall be final.

5. Points of Collection: Residential and Commercial collection shall be at curbside, or if curbside collection is impossible, at such point as designated by CONTRACTOR.

6. Recycling Program: CONTRACTOR will provide each residential customer with at least one two-piece stackable recycling bin set, for each home owner requesting the service. The recycling bin set will be picked up at least twice per month. Multi-unit dwellings of four units or more, (including mobile home parks of four or more units, and multi-unit apartment complexes of four or more residential units) if requested, shall be provided with one one-and-a quarter-yard container for the collection of cardboard only. CONTRACTOR shall provide collection services for such multi-unit dwellings at least twice per month. CONTRACTOR shall be paid for the container instead of the recycling bin set. CONTRACTOR will also furnish the tools needed to educate the community on the ways of recycling. This would include brochures, calendars (showing the pick-up dates for recyclables), and other methods of communication that would economically educate and inform the residents of CITY of the Recycling Program.

CONTRACTOR shall not, under any circumstances, be allowed to dispose of the recyclable materials at the landfill without CITY approval given in writing. If CONTRACTOR cannot sell the recycled material on commercially reasonable terms, CONTRACTOR will immediately notify CITY. CITY and CONTRACTOR will work together in good faith to arrive an equitable solution towards both parties.

7. Recycling of all Collected Recyclable Materials: CONTRACTOR will recycle all items listed in Appendix B, that it collects under any Residential Recycling Program offered within CITY. At such time that market conditions do not favor the recycling of specific commodities, CONTRACTOR and CITY will negotiate in good faith to determine which commodities shall be included or excluded in Appendix B as recyclable.

8. Consideration to be Paid: For the full and faithful performance of the services required to be performed by CONTRACTOR pursuant to the Agreement, CONTRACTOR shall be compensated in accordance with the schedule of rates and charge attached hereto as Appendix A or as amended pursuant to this Agreement. Payment shall be made to CONTRACTOR by CITY by the last day of each month for services rendered in the prior month, and all charges assessed for said prior month, pursuant to the provisions of the Agreement, shall be deducted from such monthly payment. The customer count shall be based upon the record of active customers every month.



9. **Escalation Clause:** Payment pursuant to this agreement shall be adjusted on January 1 each year in an amount not to exceed eighty percent (80%) of the Consumer Price Index – All Urban Consumers; Seattle-Tacoma-Bremerton, “All Items”, Base Period 1982 – 84 = 100, hereinafter referred to as the “Adjustment Index”. The adjustment on January 1, 2017 will be computed using the Adjustment Index for August 1, 2016, as the base and the percentage increase or decrease will be determined between the base and the percentage increase or decrease as of August 1, 2016.

In addition CONTRACTOR shall be allowed the following rate adjustments:

i) **Tipping Fee Increases.** CONTRACTOR shall be allowed to pass through to CITY’s customers any approved governmental increases in tipping fees. CONTRACTOR shall provide CITY with notice of tipping fee increase or decrease immediately upon CONTRACTOR being notified of an adjustment in such fees but, in any event, not less than forty-five (45) days prior to the requested effective date of the pass through rate increase or decrease. CONTRACTOR shall pass through to CITY’S customers any decrease in tipping fees unless expressly agreed to by CITY in writing.

ii) CONTRACTOR may also apply to CITY for rate adjustments to reflect any unforeseen increases in costs of operations, which may arise during the term of the Agreement, such as increased taxes, and/or other governmental fees and surcharges. CONTRACTOR shall submit a written request to adjust the rates no more than one hundred twenty (120) days and not less than sixty (60) days prior to the proposed effective date of the requested change. CITY shall promptly consider such proposed rate change and shall not unreasonably withhold any rate increase based upon the occurrence of an unforeseen circumstance.

10. **Fuel Surcharge:** In addition to the base collection rates set forth in this Agreement under Appendix A, CONTRACTOR is hereby authorized to charge a “fuel surcharge” on all solid waste collection accounts, provided the surcharge is determined and used in accordance with the provisions hereinafter set forth. The fuel surcharge will be implemented in the instance that the Current Fuel Price exceeds the Base Fuel Price by 15% or more.

The following definitions apply to the use of the fuel surcharge:

- i) **Base Fuel Expense:** the proportion of approved rates attributable to gross fuel expense, hereby fixed at 9.30%.
- ii) **Base Fuel Price:** \$2.75.
- iii) **Current Fuel Price:** the per gallon price for retail sales of “West Coast Number 2 Diesel Ultra-Low Sulfur” (0-15 PPM) for the most recent full month reported in the “Monthly Diesel Prices – Ultra-Low” index published by the Energy Information Administration of the US Government.
- iv) **Surcharge:** the product of multiplying the base fuel expense by the percentage change between the base fuel price and current fuel price.

**Section A. Surcharge Methodology:** the Surcharge shall be calculated by subtracting the Base Fuel Price from the Current Fuel Price and converting the difference to a percentage of the



Base Fuel Price; that percentage shall then be multiplied by the Base Fuel Expense and the resulting product shall constitute the Surcharge. The Surcharge shall be applied to each monthly billing.

Section B. CONTRACTOR shall submit to CITY a surcharge calculation worksheet (example provided in Appendix D) by the 25th day of the month immediately preceding the months of August, October, December, February, April and June; the fuel surcharge shall be deemed approved and authorized unless written objection from CITY is received CONTRACTOR within seven (7) days of CITY's receipt of the worksheet. The surcharge shall commence only on the first of each of the months named herein above, and shall continue in effect for a two (2) month period, at which time CONTRACTOR will submit a new fuel surcharge calculation to CITY based on the above described methodology.

11. Reports supplied by CONTRACTOR: In addition to any report required by law, CONTRACTOR shall keep adequate, complete and current records showing the number and size of loads collected within the limits of CITY and the approximate tonnage of solid waste hauled by CONTRACTOR to the disposal site. Such information shall be available to CITY upon request.

12. Volume Reduction: CONTRACTOR should use commercially reasonable efforts to implement any economically and technically feasible volume reduction methods which are generally available to the public.

13. Mandatory Collection: Garbage and refuse collection shall be mandatory within the incorporated city limits of CITY.

14. Collection Schedules: CONTRACTOR shall use commercially reasonable efforts at all times to keep all persons from whom it is collecting garbage and refuse advised of the schedules for collection both day and time of pickup and shall further exert commercially reasonable efforts to maintain actual collection in accordance with written schedules.

Collection of all commercial and industrial accounts shall be required on a regularly scheduled basis. Collection for residential accounts shall be a minimum of once per week. Additionally, all business classification locations, permanent drop box customers, and all temporary frontload container customers shall also receive collection services a minimum of once per week. Further, CONTRACTOR shall collect recyclable materials twice per month from each residential customer. CONTRACTOR may, but is not required to, provide collection service on Saturdays, Sundays and holidays.

15. Hours of Collection

For commercial and industrial: Between the hours of 3:00 a.m. and 5:00 p.m., Monday through Friday. Where special circumstances or complaints received by CITY indicates the necessity or desirability of an adjustment in the hours between which pickups may be made, CITY may require such an adjustment to be made upon written notice to CONTRACTOR. If the hours of operation create a complaint problem, CONTRACTOR and CITY will determine a solution that may result in a revision of the operating schedule.

For residential dwellings: Between the hours of 6:00 a.m. and 5:00 p.m., Monday through Friday. Any temporary change in the above hours shall be only upon approval by CITY.

16. Area to be Served: The area to be served shall be the entire area known as the Kwik Lok Annexation Area within the incorporated city limits as it was annexed into CITY and as it now exists in the attached Exhibit "Kwik Lok Annexation Area".

17. City Supervision: The work embraced in accordance with the provision of the Agreement shall be under supervision of the Director of Public Works & Community Development or his/her authorized representative.

18. Meaning of Terms: The meaning of terms and words as contained herein shall be governed by the common and customary understanding of the industry.

19. Requirements for Employee Conduct: CONTRACTOR shall require all employees to be courteous at all times and not to use loud or profane language and to do their work as quietly as possible. Employees in collecting garbage, refuse and certain other waste shall follow the regular walks for pedestrians while on private property, returning to the street or alley after replacing the empty cans. Employees shall also replace all garbage cans and covers and close all gates, which they have opened. All employees shall wear clean, presentable clothing. Employees shall not trespass or cross property to neighbor's premises nor meddle with property, which does not concern them.

20. Loading: Extra care shall be taken in loading and transportation of garbage, refuse, and other waste so that none of the materials to be collected is left either on private property or on the streets or alleys. Any garbage, refuse or other waste left on the private property or on streets or alleys by CONTRACTOR shall be cleaned up upon notice from CITY.

CONTRACTOR shall be responsible for the cleaning of all debris that was spilled or tracked on any street, alley, or public place by CONTRACTOR's equipment. If CONTRACTOR fails to clean the same within two (2) hours after notice by CITY then CITY may cause such streets to be cleaned and charge the costs of same to CONTRACTOR.

21. Emergency Collections/Provisions: Adequate provisions acceptable to CITY shall be made by CONTRACTOR to provide special collections when garbage, refuse and other waste has not been collected during the regularly scheduled pickup. Special pickups for missed collections shall be made by CONTRACTOR when ordered by CITY. For the purposes of this paragraph, "missed collection" shall not include collections not made for reasons beyond the control of CONTRACTOR, such as "acts of God" temporary road surface conditions due to temporary utility work that obstructs all routes of collection, or unusual or inclement weather. Collection may be delayed due to dangerous conditions as determined and agreed to by CITY and CONTRACTOR.

22. Collection Equipment: In collecting garbage, refuse and other waste under this Agreement CONTRACTOR shall use all metal, plastic, or other CITY approved material, water-tight, completely enclosed packer-type truck and/or container units that are designed and manufactured specifically for the collection of garbage and refuse and are capable of servicing detachable containers for servicing residential, commercial and industrial accounts. No leakage from either packer-type bodies or detachable containers shall be allowed. The number and type of collection



vehicles furnished shall be sufficient for the collection of all garbage, refuse and other waste within the area to be served. If there is any doubt by CONTRACTOR whether the equipment is satisfactory, it shall secure prior written approval from CITY.

23. Contractor Facility: CONTRACTOR shall maintain during regular business hours a telephone by which CONTRACTOR may be contacted.

24. Method of Disposal: CONTRACTOR shall deliver at its cost all garbage, refuse and other waste to the Yakima County Solid Waste System, i.e., Terrace Heights Landfill or Cheyne Landfill.

25. Ownership of Equipment: All vehicles, facilities, equipment and property used in the performance of providing solid waste collection services under this agreement shall be wholly owned and maintained by CONTRACTOR.; however, while at the service recipient's location, such service recipient shall have care, custody and control of the equipment and shall be responsible for all loss or damage to the equipment (except for normal wear and tear or for loss or damage resulting from CONTRACTOR's handling of the equipment) and for its contents. The service recipient shall not overload (by weight or volume) any equipment provided by CONTRACTOR or any container serviced by CONTRACTOR.

26. Painting and Cleaning of Equipment and Vehicles: Collection vehicles shall be painted and numbered and shall have CONTRACTOR'S name and vehicle number printed in letters of a contrasting color at least four (4) inches high, on each side of each vehicle and the number on the rear of each vehicle. No advertising shall be permitted other than the name of CONTRACTOR.

All vehicles shall be kept in a clean and sanitary condition. All detachable containers furnished under this Agreement shall display CONTRACTOR'S name and number on the container. In addition, all such containers shall be marked with any necessary or appropriate safety warnings as may be required or recommended by an appropriate regulatory agency.

Dumpsters provided by CONTRACTOR shall display CONTRACTOR'S name and will be good repair.

27. Insurance: CONTRACTOR shall provide and maintain in full force and effect during the entire term of this agreement a policy of CONTRACTOR's Public Liability Insurance, naming CITY as additional insured, providing for limits of not less than one million dollars (\$1,000,000) for all damages arising out of bodily injury to or death of one (1) person and subject to that limit for each person; a total of not less than two million dollars (\$2,000,000) for all damages arising out of bodily injury to or death of two (2) or more person in any one accident; and regular CONTRACTOR's Property Damage Liability Insurance providing for a limit of not less than one million dollars (\$1,000,000) for all damage arising out of injury to or destruction of property in any one accident and subject to that limit per accident; a total limit of not less than two million dollars (\$2,000,000) for all damages arising out of injury to or destruction of property each year of this Agreement commencing January 1, 2016.

All the foregoing insurance policies shall provide for notice to CITY of any change, cancellation or lapse of such policy in accordance with applicable notice provision of such policy. Proof of coverage for these policies must be submitted to CITY by CONTRACTOR.



28. **Indemnification:** CONTRACTOR shall indemnify and save CITY harmless, its officers, agents and employees from and against any and all loss, damage, actions, claims, suits, judgments and liability ("Loss") in connection with the loss of life, personal injury and/or damage to property to the extent arising from or out of any occurrence, conduct or operation of or by CONTRACTOR, CONTRACTOR's agents, subcontractors, sub consultants and employees; provided, however, that the obligations in this Section 28 shall not apply to the extent that such Loss is caused by the intentional or negligent act or omission of CITY or its agents, employees or other parties not affiliated with CONTRACTOR.

CONTRACTOR'S duty to defend, indemnify and hold CITY harmless shall include, as to all claims, demands, losses and liability to which it applies, City's personnel-related costs, reasonable attorney's fees, and the reasonable value of any services rendered by the office of City Attorney, outside consultant costs, court costs, fees for collection, and all other claim-related expenses.

CONTRACTOR specifically and expressly waives any immunity that may be granted it under the Washington State Industrial Insurance Act, Title 51 RCW. These indemnification obligations shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable to or for any third party under workers' compensation acts, disability benefit acts, or other employee benefits acts. Provided that CONTRACTOR waiver of immunity by the provisions of this paragraph extends only to claims against CONTRACTOR by CITY and does not include, or extend to, any claims by CONTRACTOR'S employees directly against CONTRACTOR.

CONTRACTOR hereby certifies that this indemnification provision was mutually negotiated.

In the event either party breaches this Agreement or a dispute arises between the parties hereto for interpretation or enforcement of this Agreement, the prevailing party shall be entitled to reasonable attorney fees and costs.

29. **Fees, Taxes and Licenses:** CONTRACTOR shall be required to pay all taxes, licenses and other such fees required by applicable federal, state or local rules and regulations and upon request by CITY shall provide proof of the payment of the same.

30. **CONTRACTOR Assistance:** CONTRACTOR shall, upon request and without cost, provide CITY and/or CITY's customers technical assistance regarding design and location of garbage and/or refuse containers and enclosures.

31. **CITY Assistance and Reporting:** CITY shall, upon request and without cost, make available to CONTRACTOR all information pertaining to current billing records and information regarding quantity and container sizes for all residential, commercial, and industrial customers.

32. **Excluded Waste.** Title to all non-hazardous solid waste and yard waste shall pass to CONTRACTOR upon its being loaded onto CONTRACTOR's collection vehicle. Those residents and businesses receiving services within CITY shall not deposit in CONTRACTOR's equipment or place for collection by CONTRACTOR any Excluded Waste (as hereinafter defined). Title to and liability for any Excluded Waste shall remain with the customer and/or generator of such Excluded Waste, even if CONTRACTOR inadvertently collects and disposes of such Excluded Waste. Notwithstanding any other term contained herein, CONTRACTOR shall



have no obligation to collect any material which is, or which CONTRACTOR reasonably believes to be, Excluded Waste. If CONTRACTOR finds what reasonably appears to be discarded Excluded Waste, CONTRACTOR shall notify the resident/generator, if such can be determined, that CONTRACTOR may not lawfully collect such Excluded Waste and leave a tag specifying the nearest location available for appropriate disposal. For the purposes of this Agreement, "Excluded Waste" shall mean any body wastes, abandoned vehicles, vehicle parts, bulky waste, construction debris, large equipment and parts, dead animals, radioactive, volatile, corrosive, highly flammable, explosive, biomedical, infectious, biohazardous, toxic or hazardous material as defined by applicable federal, state or local laws or regulations.

33. Company Name: CONTRACTOR shall not use a firm name containing the word "CITY" or any words implying municipal ownership.

34. Affirmative Action Plan: CONTRACTOR shall at all times during the term of this Agreement engage in employment practices in a manner whereby equal employment opportunity is observed and practiced.

CONTRACTOR shall not refuse to hire, and shall not discriminate against any person hired in terms or conditions of employment because of such person's age, sex, marital status, race, creed, color, national origin, veteran status including Vietnam era Veteran, or handicap, unless a bona fide job requirement exists.

35. Modification: This Agreement may only be modified in writing and signed by appropriate representatives of each party.

36. Severability: Should any part or provision of this Agreement be found to be illegal or in conflict with any applicable statute or regulation, the validity of the remaining parts or provisions hereof shall not be affected thereby.

37. Holidays: CONTRACTOR shall designate which holidays the firm will observe and indicate to CITY the schedule CONTRACTOR will work if a holiday falls on a regular collection day. If a holiday falls during the regular work-week, Monday through Friday, collections will be made the following day. The following holidays will be observed with no collections being made.

New Year's Day, January 1<sup>st</sup>  
Memorial Day  
Fourth of July  
Labor Day  
Thanksgiving Day  
Christmas Day

38. City's Streets, Alleys: CITY reserves the right to construct any improvement or to permit any such construction in any street or alley in such manner as CITY may direct, which may have the effect for a time of preventing CONTRACTOR from traveling its accustomed route or routes for collection. CONTRACTOR shall make every reasonable effort to collect all routes. CITY hereby grants to CONTRACTOR the right to utilize rights-of-way for the purpose of allowing CONTRACTOR to provide the collection services and to place and remove receptacles therefor; provided, that the right granted hereunder and the obligation of CONTRACTOR to provide such



collection services is applicable only where there is a maintained road, street or alley allowing lawful access to a receptacle placed out for collection. CONTRACTOR shall have the right, until receipt of written notice revoking permission to pass is delivered to CONTRACTOR, to enter or drive on any private street, court, place, easement or other private property for the purpose of providing the collection services pursuant to this Agreement. CITY warrants that CITY's paved streets, curbing or other driving surface or any right of way reasonably necessary for CONTRACTOR to provide the collection services are sufficient to bear the weight of all of CONTRACTOR's equipment and vehicles reasonably required to perform such collection services. CONTRACTOR will not be responsible for damage to any such paved streets, curbing, driving surface or right of way, and CITY agrees to assume all liabilities for any such damage, which results from the weight of CONTRACTOR's vehicles providing collection services to CITY and its residents and businesses.

39. Cans, Container: CONTRACTOR shall provide one (1) or more ninety six (96) gallon containers for each residential customer. The cost for providing each container shall be included in the monthly rate for residential service. For commercial and industrial accounts, special containers compatible with CONTRACTOR's equipment shall be supplied by CONTRACTOR. The applicable rates for such containers are specified in this Agreement.

40. Default: If CONTRACTOR abandons or materially breaches its obligations hereunder or fails to fully and promptly comply with all of its provisions or fails to give reason satisfactory to CITY for noncompliance, CITY may then declare CONTRACTOR to be in default of this Agreement and shall notify CONTRACTOR in writing of such default and shall provide CONTRACTOR with thirty (30) days to cure such default. If CONTRACTOR fails to cure such default in a timely manner, CITY may thereafter give written notice of termination to CONTRACTOR. Upon receipt of any such written notice, this Agreement shall terminate. In the event of default, CITY may immediately select another solid waste collection and disposal contractor.

If CITY materially breaches its obligations hereunder or fails to fully and promptly comply with all of its provisions or fails to give reason satisfactory to CONTRACTOR for noncompliance, CONTRACTOR may then declare CITY to be in default of this Agreement and shall notify CITY in writing of such default and shall provide CITY with thirty (30) days to cure such default. If CITY fails to cure such default in a timely manner, CONTRACTOR may thereafter give written notice of termination to CITY. Upon receipt of any such written notice, this Agreement shall terminate.

41. City Ordinances: All work to be performed under this Agreement shall be in accordance with the conditions and provisions of Union Gap Municipal Code Chapters 5 & 12 and any amendments thereof and all other provisions of the code applicable to CONTRACTOR operations.

42. State Regulations: CITY shall fulfill its obligations pursuant to RCW 35.13.280 with respect to the annexed an area known as the Kwik Lok Annexation by Ordinance No. 2878 approved on August 10, 2015 as legally described in the attached Exhibit "Kwik Lok Annexation Area".



43. Compliance with Laws: CONTRACTOR shall, in the performance of this Agreement, comply with all federal, state, county, and CITY laws and regulations.

44. Billing: CITY shall handle billing for all customer accounts.

45. Complaints: CONTRACTOR shall promptly respond to all complaints received and shall provide documentation to CITY that complaint has been addressed.

46. Force Majeure. Provided that the requirements of this Section are met, CONTRACTOR shall be excused from performance and shall not be liable for failure to perform under this Agreement if CONTRACTOR's performance is prevented or delayed by acts of terrorism, acts of God, landslides, lightning, forest fires, storms, floods, typhoons, hurricanes, severe weather, freezing, earthquakes, volcanic eruptions, other natural disasters or the imminent threat of such natural disasters, pandemics, quarantines, civil disturbances, acts of the public enemy, wars, blockades, public riots, strikes, lockouts, or other labor disturbances, acts of government, or governmental restraint or other causes, whether of the kind enumerated or otherwise, and whether foreseeable or unforeseeable, that are not reasonably within the control of CONTRACTOR ("Force Majeure"). If, as a result of a Force Majeure event, CONTRACTOR is unable wholly or partially to meet its obligations under this Agreement, it shall promptly give CITY notice of the Force Majeure event, describing it in reasonable detail. CONTRACTOR's obligations under this Agreement shall be suspended, but only with respect to the particular component of obligations affected by the Force Majeure and only for the period during which the Force Majeure exists.

47. Notices: All correspondence and/or notices required or referenced herein shall be directed as follows;

**CITY:**

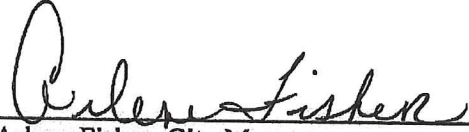
**City of Union Gap**  
Attn.: Arlene Fisher, City Manager  
107 W. Ahtanum Road  
P.O. Box 3008  
Union Gap, WA 98903  
Phone: 509.248.0432  
Fax: 509.249.9292

**CONTRACTOR:**

**Waste Connections DBA Yakima Waste Systems, Inc.**  
Attn.: District Manager  
2812 ½ Terrace Heights Drive  
Yakima, WA 98901  
P.O. Box 2830  
Yakima, WA 98907  
Phone: 509.248.4213

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above written.

**CITY OF UNION GAP**



Arlene Fisher, City Manager

**ATTEST**



Karen Clifton, City Clerk

**YAKIMA WASTE SYSTEMS, INC.**



**ATTEST**

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**CITY OF UNION GAP, WASHINGTON**  
**RESOLUTION NO. 17-01**

**A RESOLUTION** authorizing the City Manager to sign a contract with Yakima Waste Systems, Inc. for collection of garbage.

**WHEREAS**, the City annexed an area known as the Kwik Lok Annexation by Ordinance No. 2911 and this area is in need of garbage service; and

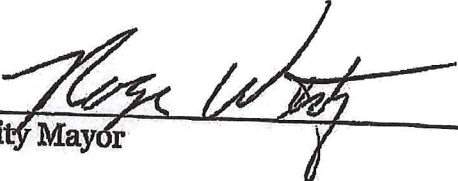
**WHEREAS**, Yakima Waste Systems operates a garbage and refuse collection business; and

**WHEREAS**, City has determined it is in the best interests of the residents and businesses in the annexed area to contract with Yakima Waste Systems, Inc for the exclusive collection of garbage for the City within this area; and

**NOW, THEREFORE, BE IT RESOLVED BY THE UNION GAP CITY COUNCIL** as follows:

That the City Manager is authorized to sign an Agreement with Yakima Waste Systems Inc. for garbage collection service in the area known as the Kwik Lok Annexation.

**PASSED** this 9<sup>th</sup> day of January, 2017.

  
\_\_\_\_\_  
City Mayor

**ATTEST:**

  
\_\_\_\_\_  
Karen Clifton, City Clerk

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Bronson Brown, City Attorney