

RESOLUTION NO. 1447

**A RESOLUTION OF THE CITY OF DAYTON, WASHINGTON, AUTHORIZING A
SECOND AMENDMENT TO SOLID WASTE COLLECTION SERVICE AGREEMENT;
ESTABLISHING ADMINISTRATIVE PROCEDURES FOR IMPLEMENTATION; AND,
EFFECTIVE DATE**

WHEREAS, the City and Basin Disposal, Inc. (the "Contractor") entered into a Solid Waste Collection Service Agreement, dated December 22, 1999 (the "Agreement"), pursuant to which the City granted to Contractor the right to collect and dispose of all solid waste, refuse, garbage, rubbish and ashes generated within the City of Dayton; and

WHEREAS, the City and Contractor amended the Agreement pursuant to the First Amendment to Solid Waste Collection Service Agreement on June 9, 2014; and

WHEREAS, certain categories of expenses and taxes incurred by the Contractor in the performance of its duties under the Agreement have increased over time and which are not adequately compensated by the adjustments to rates authorized under Paragraph 3 of the Agreement; and

WHEREAS, the Contractor provided a proposed Amendment to Paragraph 3 of the Agreement that would allow the Contractor to recover certain categories of expenses and taxes; and

WHEREAS, the Finance Standing Committee reviewed the proposed Second Amendment to Solid Waste Collection Service Agreement and recommends authorizing the Mayor to execute said Amendment attached hereto as Attachment "A".

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF DAYTON, WASHINGTON, DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. AUTHORIZATION OF AGREEMENT. The Mayor is hereby authorized to execute on behalf of the City of Dayton the "Second Amendment to Solid Waste Collection Service Agreement" as provided in the form attached hereto as Attachment "A".

SECTION 2. ADMINISTRATIVE PROCEDURES. The Mayor or his designee is hereby authorized to implement such administrative procedures as may be necessary to carry out the directions of this legislation.

SECTION 3. EFFECTIVE DATE. This resolution shall take effect and be in full force upon passage and signatures hereon.

PASSED by the City Council of the City of Dayton, Washington on this 16TH day of December, 2020.

City of Dayton


Zac Weatherford, Mayor

Attested/Authenticated by:


Trina Cole, City Administrator

Approved as to form:


Quinn Plant, City Attorney

SECOND AMENDMENT TO SOLID WASTE COLLECTION SERVICE AGREEMENT

This Second Amendment to Solid Waste Collection Service Agreement ("Second Amendment") is entered into this 16 day of Dec., 2020, (the Effective Date) by and between Basin Disposal, Inc., a Washington corporation ("Contractor") and the City of Dayton, Washington, a Washington municipal corporation (the "City").

RECITALS

A. The City and Contractor entered into that certain Solid Waste Collection Service Agreement, dated December 22, 1999 (the "Agreement"), pursuant to which the City granted to Contractor the right to collect and dispose of all solid waste, refuse, garbage, rubbish and ashes generated within the City of Dayton.

B. The City and Contractor amended the Agreement pursuant to the First Amendment to Solid Waste Collection Service Agreement on June 9, 2014.

C. Certain categories of expense and taxes incurred by Contractor in the performance of its duties under the Agreement have increased over time and which are not adequately compensated by the adjustments to rates authorized under Paragraph 3 of the Agreement.

D. The City and Contractor have determined that Paragraph 3 of the Agreement should be amended to permit Contractor to recover in the rates authorized by the Agreement as a pass-through expense certain taxes, tipping fees, disposal fees, or acceptance fees incurred for the disposal of Solid Waste collected by Contractor under the Agreement.

AMENDMENT

NOW, THEREFORE, in consideration of the foregoing recitals and the covenants and agreements contained herein, the parties mutually agree as follows:

1. Definition.

All capitalized terms contained herein and not otherwise defined herein shall have the meaning ascribed to them in the Agreement.

2. Amendment to the Agreement.

Commencing on the Effective Date, the Agreement is amended by the insertion of a new section following Paragraph 3, numbered 3.A, as follows:

3.A ADJUSTMENT FOR PASS-THROUGH EXPENSES AND TAXES.

(1) The State Refuse Collection Tax (currently at 3.6%) and any other applicable taxes imposed by on Contractor's services by the state, The City, or any other taxing entity, shall be added to the rates specified for each class of service and may be identified separately and as additive to said rate on each billing service.

(2) A tipping disposal or acceptance fee charged for Solid Waste shall be the financial responsibility of Contractor, provided however, Contractor may incorporate such disposal, tipping or acceptance fees as part of the service rates set forth in the Agreement and adjusted pursuant to Paragraph 3. In the event of an adjustment in tipping fees or disposal fees paid by Contractor, Contractor shall adjust the tipping fee and disposal fee component of the Solid Waste service rates for each level of service to reflect such adjustment. Contractor shall provide the City with notice of any tipping fee or disposal fee adjustment promptly upon knowledge thereof by Contractor. Contractor shall provide to the City evidence supporting the requested change in service fees as a result of an adjustment to tipping fees and disposal fees at least forty-five (45) days prior to date requested by Contractor for such adjustment to go into effect, which in any event shall not be earlier than the date of the adjustment to the tipping fee or disposal fee. Upon receipt of the City's confirmation that the calculations are correct, the new Solid Waste service rates for each level of service shall take effect on the date requested by Contractor. For the initial twelve (12) months after the date that the Contractor increases its Solid Waste service rates, Contractor may gross up the increase in the new Solid Waste service rates for each level of service to allow the Contractor to recapture the marginal increase in such tipping fees and disposal fees paid by the Contractor but not incorporated into the Solid Waste service rates for the period between the commencement date of the increase in tipping fees and disposal fees and the date that the increase in Solid Waste service rates commence. The marginal increase in tipping fees and disposal fees paid by the Contractor and unreimbursed by the Customers shall be amortized on a straight-line basis with interest at eight percent (8%) per annum over a twelve (12) month period. Contractor shall include a notice in the next invoice issued to the Customers describing the increase in the service rates pursuant to this section. Specific examples of rate modifications due to increase in disposal, tipping or acceptance fees are provided in Exhibit A.

(3) If The City, county, state or federal authorities impose new taxes, fees or surcharges or change the rates of existing taxes, fees or surcharges after the Effective Date, or there are other changes in federal, state or local laws or regulations, and the impact of these changes results in increased or decreased Contractor costs, Contractor and City shall enter into good faith negotiations to determine whether rate adjustments are appropriate and if so, to determine the amount and the method of rate adjustment. If The City requires review of Contractor's financial or other proprietary information in conducting its rate review, at the request of Contractor, The City shall retain a third party to review such information at Contractor's expense, provided however, that Contractor may require such third party to execute a commercially reasonable confidentiality agreement. Any such additional financial review costs shall be included in the determination of any rate adjustment and shall be amortized on a straight-line basis with interest at eight percent (8%) per annum over a twelve (12) month period.

3. Whole Agreement.

The Agreement, as amended by the First Amendment to Solid Waste Collection Service Agreement entered into on June 9, 2014, and this Second Amendment, represents the entire agreement between the City and the Contractor with respect to the services provided under the Agreement. No prior written or oral statement or proposal shall alter any term or provision of the Agreement. The City and Contractor acknowledge that the Agreement, as amended by the First

STATE OF WASHINGTON)
)
COUNTY OF FRANKLIN) ss.

On this day personally appeared before me Darrick Dietrich, to me known to be the President of Basin Disposal, Inc., the Washington corporation, that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute the same instrument.

GIVEN under my hand and official seal this 28TH day of Dec, 2020.



Debra M Hays
DEBRA M. HAYS

(print notary's name)

Notary Public in and for the State of Washington,
residing at Columbia County, DAYTON, WA
My commission expires: May 23, 2022

Exhibit A

Adjustments to Tipping Fees and Disposal Fees (Section 3.A.1)

In the case of a disposal fee modification at the disposal facilities, the Contractor Service Rates will be adjusted as follows:

Step 1

$$DCA = CDC \times \left(\frac{NDF - ODF}{ODF} \right)$$

Step 2

$$NCSR = (CCSR \times CDC \times (1 + DCA)) + (CCSR \times (1 - CDC))$$

Where	NCSR	New Contractor Service Rates
	CCSR	Current Contractor Service Rates
	CDC	The current disposal charge component of the Contractor Service Rates, expressed as a percentage
	NDF	The new disposal fee, expressed in dollars per ton
	ODF	The old disposal fee, expressed in dollars per ton
	DCA	The Disposal Component Adjustment, expressed as a percentage

For example, using a hypothetical initial one 105-gallon cart rate of \$21.09 per month: if the previous disposal fee (ODF) will increase from \$95 to \$105 per ton starting on January 1, 2021, and the current disposal component (CDC) is 35%, the January 1, 2021 New Contractor Service Rate for one 105-gallon cart per week Residential Curbside service would be:

Step 1

$$DCA = 35\% \times \left(\frac{(\$105 - \$95)}{\$95} \right) = 3.68\%$$

Step 2

$$NCSR = (\$21.09 \times 35\% \times (1 + 3.68\%)) + (\$21.09 \times (1 - 35\%)) = \$21.36$$

Thus, the new Customer charge for one 105-gallon cart per week Residential Curbside service would be \$21.36.