



City of Biggs

Agenda Item Staff Report for the Regular City Council Meeting: September 20, 2010 6:00PM

DATE: September 15, 2010
TO: Honorable Mayor and Members of the City Council
FROM: Pete Carr, City Administrator
SUBJECT: Solid Waste Service Proposals (Discussion/Action)

City Administrator is seeking Council authority to enter into an amended agreement with Waste Management, Inc. for continued and improved services at no additional expense to the City or its customers – or to enter into a new agreement for similar services from Northern Recycling & Waste Services.

Background

The five-year waste removal services contract with Waste Management (WM) expires in January 2011. Council discussed in July the potential to amend and extend the contract rather than explore new service providers. Service levels and potential changes were discussed. Staff was encouraged to negotiate potential terms of an extension with WM, without a commitment to extend vs issue a RFP for a new vendor.

In the meantime, a second vendor, Northern Recycling & Waste Services (NRWS), initiated contact with the City, identifying itself as interested in providing waste collection services in Biggs. A proposal was received September 15.

Attached is a draft agreement from WM to amend and extend the current contract with WM. The extension is for an additional five years. There is no change to the current rate or rate adjustment formula. Modifications to service include:

1. In addition to the annual Community Clean-up Day in the fall, customers will be provided a voucher in the spring for use at the Ord transfer Station, good for 60 days.
2. All billing will be handled by the City (currently customers requiring over-size carts get one bill from the city and one from WM every month). WM will cover any costs of modifying the city's billing software. Staff advises the administrative change will have minimal impact on staff but significant positive impact to the affected customers.
3. Additional carts for recycling and green waste will be stocked at the City Public Works yard, dispatched by the city to the customer at no charge. WM

- will swap out old carts with clean replacement carts as needed. This will result in a service upgrade and cost decrease for affected customers.
4. City will have the right to select disposal sites for its green and solid waste; this may be desirable in case of location of a biomass waste processing facility in or near Biggs.

Also attached is the proposal from NRWS, along with two letters attesting to NRWS service quality. This proposal offers similar service features with the following exceptions:

1. NRWS recycling carts are 95 gallon size, compared to WM's 65 gallons.
2. The first two yard waste containers are free, additional are \$5.00 each/mo.
3. Instead of an annual coupon for the Ord transfer station, customers would be issued 12 tags they could use at any time during the year, each good for free disposal at curbside of one extra bagged waste.

Occasionally the concern is raised about recycling and green waste being collected only every-other-week. This arrangement minimizes WM's heavy truck traffic on city streets, while controlling WM collection costs. Municipalities receiving weekly collection of all three waste streams (mixed, recycle and green) experience more truck traffic and higher rates. Providing additional carts at no extra charge should prevent cart over-fill issues.

Attachments:

- A: WM Proposal: First Amendment to the Franchise Agreement
- B: NRWS Proposal
- C: Current Franchise Agreement
- D: Refuse Collection Service page from City Fee Schedule

Recommendation

Select a vendor, authorize city administrator to complete negotiations and execute the agreement.

Fiscal Impact

No change to current city budget is anticipated.



USA Waste of California, Inc.
Waste Management
2569 Scott Ave.
Chico, California 95928
530-893-8053-ext101 phone
530-893-5825 fax

August 23, 2020

Mr. Pete Carr
City Administrator
City of Biggs
3016 Sixth St.
Biggs, CA 95917

Dear Mr. Carr,

This letter is in response to the City's request for a proposal from Waste Management to continue the current waste and recycling services for the City of Biggs. WM is providing this proposal to the City with the goal of increasing the level of service currently provided to the City at a competitive rate. Both proposals assume the costs will be amortized over a five-year contract term and that the City will have the option to direct the waste stream to a future waste to energy facility built in the City.

In the City of Biggs, a \$4.00 administrative fee is added to the rates. This gives the impression to the residents that the rate charged by Waste Management is 20% higher than it actually is. It also gives the impression that the City is not getting the same level of services as surrounding communities for the rate paid which is not the case.

Proposal

Service Level

Waste Management (WM) would like to propose that the City's current level of service, rates and contractual elements of the agreement remain in effect. This franchise agreement would be amended to address the following service enhancements at no additional charge.

Vouchers

In addition to the City annual cleanup, residents would be provided with a free voucher for 3 cubic yards of debris redeemable at the Ord Transfer Station. These vouchers would be provided to residents five months after the City annual cleanup and would be redeemable for a 30-day period as specified on the voucher during the transfer station normal hours of operation.

The current annual cleanup allows residents the opportunity to dispose of general debris and green waste. The additional voucher would provide a second disposal opportunity for household debris (excluding white goods) and general non-hazardous waste generated by residents in the Community. In order to use the voucher a resident would be required to bring their voucher and a copy of their City utility bill to show proof of residence in Biggs.

Billing

The City currently bills each resident for the basic 32-gallon residential waste and recycling services. A customer wishing a larger container is billed the higher difference in rate by Waste Management. This means a customer wishing a larger container receives two bills – one from the City and one from Waste Management.

The reason for the two bills is that the City's billing system needs a minor software upgrade to bill for the larger containers. It is anticipated that the upgrade would cost \$250 to \$300. Waste Management will pay for the software upgrade. This will eliminate double billing and be more convenient for residents to pay their utility bill at City Hall.

Additional Recycling and Green Waste Carts

Every other week curbside recycling and green waste collection would continue to be provided but would be enhanced as follows:

- **Curbside Recycling**

For those residents, that find it difficult to fit all their recycling into one cart on an every other week schedule, a second 64-gallon cart would be offered at no additional charge.

- **Green Waste**

A second green waste cart at no additional charge would be provided for those residents with larger or thickly vegetated lots. The second cart would double the current capacity, which would allow the resident to continue green waste collection on the current every other week schedule.

Conclusion

The proposal continues the current service levels and allows those residents with the need for an additional recycling or green waste cart to get one at no additional charge. It also provides residents with a voucher to the Ord Transfer Station, which gives all residents in addition to the annual clean up, the opportunity for a second free disposal day.

This proposal provides increased services with no impact to the ratepayer.

Please let me know if you need any additional information.

Sincerely,



Mike Donohue
District Manager

FIRST AMENDMENT TO THE
FRANCHISE AGREEMENT

THIS FIRST AMENDMENT TO THE FRANCHISE AGREEMENT (the "Amendment") is made and entered into effective as of _____, 2010, by and between the CITY OF BIGGS, a municipal corporation ("City"), and USA WASTE OF CALIFORNIA, INC., a Delaware corporation ("Franchisee").

RECITALS

The purpose of this Amendment is to document the parties' agreement to modify the terms and conditions of that certain Franchise Agreement by and between the City of Biggs and USA Waste of California, Inc., entered into January 24, 2006 (the "Franchise Agreement"), all as set forth below.

AGREEMENTS

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein and other good and valuable consideration, the sufficiency and receipt of which is acknowledged hereby, the parties hereto, each intending to be legally bound, covenant and agree as follows:

1. Vouchers. Approximately five months after the Annual Cleanup Event described in Exhibit A to the Franchise Agreement, Franchisee will provide each dwelling unit receiving residential services with one transfer station voucher. The voucher will entitle a resident of that dwelling unit to dispose at no cost of up to three cubic yards of refuse at the Ord Ranch Road Transfer Station during the a 60-day period specified in the voucher. To be valid, the voucher must be presented upon entrance to the transfer station together with a copy of the resident's utility bill demonstrating proof of residence in the City. Notwithstanding the foregoing, the voucher shall not permit the disposal of commercial waste or any materials that under current or future statute, ordinance or regulation require the application of special treatment, handling, or disposal practices beyond those normally required for solid waste, including without limitation dirt, concrete, tires, liquids, toxic or hazardous materials, cathode ray tubes (CRT), materials containing CFC's, and large or heavy metal objects such as auto bodies, engines, transmissions, refrigerators, and air-conditioners; provided, however, that Franchisee may, in its discretion, accept such waste and materials for an additional charge to be determined by Franchisee.
2. Software Upgrade. Franchisee will reimburse the City in an amount not to exceed \$300 for its third-party costs in obtaining a software upgrade that would allow the City to eliminate the current practice of sending separate bills (one from the City and another from Franchisee) to customers receiving a trash cart larger than the standard 32-gallon cart.
3. Additional Carts. For no additional charge, Franchisee will provide a second 64-gallon recycling cart to a dwelling unit with recycling needs that commonly exceed the capacity of a single recycling cart. For no additional charge, Franchisee will provide a second 96-

gallon yard waste cart to a dwelling unit with a large or thickly vegetated lot that commonly requires more than a single yard waste cart.

4. Disposal Sites. The City shall have the right to select the disposal site for Green Waste and Solid Waste. Should a change in disposal site required by the City increase the Franchisee's transportation, processing, disposal and/or other costs, Franchisee's rates shall be adjusted by the City as described in Section 7.3 of the Franchise Agreement.
5. Amendment to Section 3 of the Franchise Agreement. The first sentence of Section 3 of the Franchise Agreement shall be amended to read as follows: "The term of this Agreement shall commence on the Effective Date and end January 31, 2016, unless sooner terminated in accordance with the provisions of this Agreement."
6. Continued Effect of the Franchise Agreement. Except as expressly modified by this Amendment, the other terms and conditions of the Franchise Agreement, which is incorporated herein by this reference, shall remain in full force and effect and be binding on the parties.
7. Effective Date of this Amendment. This Amendment shall be effective on the date first written above.
8. Counterparts. This Amendment may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which shall constitute one and the same agreement.

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment to the Franchise Agreement.

<p>City of Biggs</p> <p>By: _____</p> <p>Its: _____</p> <p>Date: _____</p>	<p>USA Waste of California, Inc.</p> <p>By: _____</p> <p>Its: _____</p> <p>Date: _____</p>
<p>ATTEST:</p> <p>_____</p> <p>City Clerk</p>	



Northern Recycling & Waste Services, LLC.

P.O. Box 2529 * Paradise, Ca. 95967

(530) 876-3340 Phone * (530) 877-3825 Fax

September 15, 2010

Pete Carr
City Administrator
City of Biggs
465 C Street
PO Box 307
Biggs, Ca 95917

Dear Mr. Carr:

On behalf of Northern Recycling & Waste Services (NRWS), we are pleased to present this proposal to the City of Biggs (Biggs). Our team is passionate about the world class services we provide and truly value the relationships within the communities we serve. We appreciate the opportunity to share with Biggs all that NRWS is capable of offering.

I would like to introduce who we are and how our experience offers a value to the community of Biggs. I am Doug Speicher General Manager of NRWS. NRWS is a recycling company that also hauls garbage. Although NRWS is rather new to Butte County our staff, including myself, bring decades of local experience. Previous to 2007, I was the District Manager of Waste Management of Butte County and previous to that my family owned and operated Paradise Solid Waste Systems.

In 2007 our company formed to serve as the franchised contractor for the Town of Paradise. Our NRWS team is comprised of the finest experience in the industry with the ability to offer state of the art programs that are a value to our customers. Our ownership is made up of a partnership of private companies here in northern California. In addition to Butte County, our ownership currently has operations in Marin, Napa, Lake, Contra Costa, and Solano Counties. We are a small local company but have significant resources to benefit various aspects in our industry. Specifically, NRWS is a local company serving local needs and offering custom programs that benefit the community we serve. In addition, our networking recycling operations allow us to market more recyclable materials than our competitors.

Why choose the small local company? National firms do have significant financial resources; however they make decisions from other states, for reasons that have more to do with the price of stocks than the stock in the communities they serve. We are confident that NRWS's philosophy of customer service and environmental protection is the correct fit for Biggs.

We are also confident that we can help Biggs increase the recycling diversion rate. Success dictates mastery over recycling. NRWS has achieved this success and we are eager to share our methods in order to promote a sustainable future for our community and environment. With our program Biggs will be able to recycle more material than currently offered by your provider. Our Mixed Recycling System

allows you to throw all recyclables into one 95 gallon container. Currently residents receive a 65 gallon recycle container, which fills quickly and forces residents to dispose of recyclables in the trash. There is no separation on part of residents (see attachment 2 for all acceptable items). NRWS will provide as many of these mixed recyclable containers as residents need, free of charge. Yard waste collection will include all vegetative materials and include small wood scraps. NRWS will offer two 95 gallon carts to each parcel participating in the trash services, free of charge.

Public outreach and education is a key to a successful program. NRWS employs a Recycling & Public Outreach Coordinator that will be locally available to promote the Biggs Recycling culture. NRWS will send out an annual newsletter and recycling / yard waste calendar that will be approved by City staff. We will meet with the local business community to educate and promote commercial recycling.

NRWS tracks success and will report to the City quarterly diversion statistics. In addition, NRWS will continue the October Drop & Dash; we will encourage more of a Recycle Roundup but will make this as an addition to the annual cleanup. NRWS will also offer as part of the annual newsletter a bag and tag program for residents with extra waste throughout the year. NRWS will provide annually each resident 12 tags for bagged waste.

A transition to a new provider has many important aspects. From new container delivery, public outreach and education, and solid waste collection schedules. Accommodating a change this extensive is a challenge, but we have undergone these transitions and, if chosen, we will share our thorough and tested transition plan with City staff.

We appreciate the opportunity to provide this proposal and together promote a culture that instills environmental stewardship. Together we can do more. You will find that the proposed fee schedule is referenced in attachment 1. In addition you will find information details regarding the recycling programs and miscellaneous pertinent information.

Please feel free to contact me should you have any questions or comments regarding this proposal.

Sincerely,



Douglas K. Speicher, General Manager
Northern Recycling & Waste Services
530-876-3340 Office
530-877-3825 Fax
Doug@NorthernRecycling.biz

City of Biggs Rate Structure

<u>Residential</u>	<u>35 gallon (Base Rate)</u>	<u>65 Gallon</u>	<u>95 Gallon</u>
Trash Service Rate	\$15.10	\$20.10	\$24.10
Blue Recycling Collection	N/A	N/A	Free
Brown Yard Waste Collection	N/A	N/A	Free

Notes:

*Rates are based on City of Biggs billing residents.

*Services are all based on at street collection.

*Additional 95 gallon blue recycling containers are Free. (Must be used regularly)

*The first two 95 gallon yard waste containers are free. (Third or more are \$5.00 each per month)

Commercial

<u>Bin Size</u>	<u>1x week</u>	<u>2x week</u>	<u>3x week</u>	<u>4x week</u>	<u>5x week</u>
1.5 yard	\$63.61	N/A	N/A	N/A	N/A
2 yard	\$73.19	\$107.22	\$166.95	\$214.44	\$271.37
3 yard	\$90.64	\$149.73	\$207.16	\$266.75	\$360.31
4 yard	\$117.86	\$191.54	\$265.65	\$342.47	\$428.09
6 yard	\$155.23	\$256.67	\$358.66	\$463.91	\$579.87

*Commercial recycling and cardboard containers are offered at free of charge with trash service.

City of Biggs Additional Services:

1. Annual Newsletter with recycling calendar provided by NRWS.
2. Free October Collection event provided by NRWS. Universal waste and E-Waste collection will be included with this event.
3. Each resident will receive 12 stickers via Annual Newsletter for Bag & Tag Program which will be provided at no additional charge for picking up extra bags on the normal collection day.
4. NRWS will provide free solid waste and recycling collection services to City of Biggs facilities.
5. Free community event solid waste and recycling services.
6. In-kind Support: Recycling and Public Education Coordinator
 - a. Assist in planning implementation and training to increase recycling program
 - b. Developing concepts to expand and enhance diversion efforts with City staff
 - c. Coordinating and performing site visits and recycling audits to develop customer recycling programs, resolve customer complaints, recommend alternative equipment and/or services
 - d. Working with City Staff on public relations and new programs
 - e. Recommend steps required to successfully install the new system and assist in assembling setup information and education used in the implementation process.
 - f. Pursuit of collaborative grants for increasing zero waste efforts
 - g. Education, training, waste audits, quarterly reports, and site assessments
7. In-kind Support: Recycling Services
 - a. Collection of all recyclable material including rigid plastics
 - b. Unlimited number of blue recycling carts 95 gallon
 - c. Signs, posters, guides, etc.
8. Post-Implementation Support
 - a. NRWS will continue full support on an on going basis to assure success



TOWN OF PARADISE

5555 SKYWAY • PARADISE, CALIFORNIA 95969-4931

September 13, 2010

Mayor Roger Frith
City of Biggs
PO Box 307
Biggs, CA 95917

Dear Roger:

I am writing in reference to council consideration in renewing a new municipal solid waste and recycling franchise for the City of Biggs.

Over four years ago the Town of Paradise went out with a request for proposal for a new sole franchisee after previously having a choice of multiple providers. Through a long process of using a consultant and getting all the items included in the proposal that we wanted, we came up with a very comprehensive RFP.

After many meetings, and hearings the Town Council selected Northern Recycling and Waste Services to be our new provider. While the council and the staff were well educated and positive in our decision, it was not without some controversy as some citizens wanted their choice of providers, which for the Town was really an unmanageable choice.

Northern Recycling proved all the naysayers wrong, we have been absolutely thrilled with their performance. Our citizens are extremely happy with their new services. We added single stream recycling carts and green waste pick ups at no additional charge to all garbage services. Most citizens have been able to cut back on the size of their trash receptacle and the green waste containers are extremely popular and have reduced dooryard burning in the Town significantly. Rates have been kept low, with minimal increases only reflecting landfill tipping fee increases.

Our town diversion rate has reached 60% which is the best in the county, which was previously in the high 30% range with WM and NorCal (now Recology). One of the reasons for this is that NRWS goes out of their way to accept more items as recyclable, with far more options for our citizens than other providers are willing to give. NRWS has a terrific education and community outreach program that reinforces the choices and options for our citizens and business community.

Doug Speicher and his team at Northern Recycling have met every challenge, and exceeded our expectations at every turn. We had a smooth transition, hiring of all the local former Waste Management employees and we added new staff and a locally based operation. It has been the greatest success for our community in my tenure on the Town Council.

We also worked closely with the NRWS parent company and their partners in launching the Paradise operation. NRWS Managing partner Greg Kelly was our key contact as Doug Speicher was not hired from Waste Management until changeover was in motion. Greg and his team are the best in the business and kept their word on everything we asked of them. We thoroughly looked at the financial ability of the new company and their member partners to handle our franchise, their ability, experience and clean legal and environmental record were unsurpassed. These items made the decision for the Town of Paradise much easier in selecting Northern Recycling and Waste Services. The NRWS team spent many long hours in Paradise getting things just right for the launch of the new franchise.

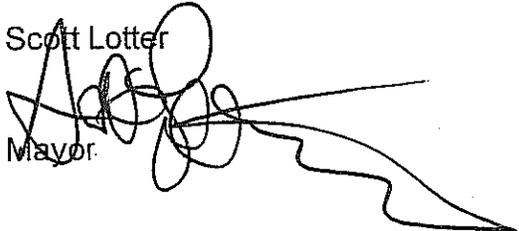
I would invite you to contact our solid waste coordinator Susan Hartman at the Town of Paradise with any questions you have about NRWS, our RFP and diversion numbers. A standing committee of myself, Council member Steve Culleton, Susan Hartman and the NRWS management team meet quarterly to go over any issues that come up with regard to their services. We carefully track citizen complaints and phone calls about trash service and they are very few.

Your staff and council can feel free to contact myself, staff or my council colleagues with any questions regarding NRWS's performance.

The City of Biggs will be making an excellent choice by selecting Northern Recycling and Waste Services as their franchise provider.

Scott Lotter

Mayor





TOWN OF PARADISE

5555 SKYWAY • PARADISE, CALIFORNIA 95969-4931

TELEPHONE (530) 872-6291 FAX (530) 877-5059

www.townofparadise.com

Sept. 13, 2010

Mayor Roger Frith
City of Biggs
PO Box 307
Biggs, CA 95917

Dear Roger:

I am writing to highly recommend Northern Recycling and Waste Systems as the best choice for your Cities new Municipal Solid Waste franchise contract provider. As a sitting Councilman with the Town of Paradise I have had the pleasure of serving on our Town's Solid Waste committee for the past five years and was involved when we changed from a multi provider franchise to a single provider. This policy change was not without a lot of negative public response, but one that we felt was in the best interest of the community with the addition of single stream recycling and yard waste pick up at no additional charge to the rate payer. In fact many of our rate payers saw a reduction in the size of the garbage can they needed resulting in a lower rate.

Northern Recycling was selected over the providers because of their commitment and dedication to being locally based, with local customer service as well as their historical commitment to recycling and community outreach and education. During the last four years our citizens have expressed a real positive respect and liking for this company. We have reached a diversion rate of 60% which is the best in the county. They are very community minded and have been



TOWN OF PARADISE

5555 SKYWAY • PARADISE, CALIFORNIA 95969-4931
TELEPHONE (530) 872-6291 FAX (530) 877-5059
www.townofparadise.com

very active in community events and programs. They have not only met all of the conditions of the franchise, but in many areas they have exceeded what we have asked. Their operation is one of the cleanest and safest that I have had the opportunity to observe.

Mr. Speicher and his team are both professional and friendly, and working with them is always a pleasure. They are available to Mayor Lotter and me as members of our solid waste committee at all times and they are always willing to meet with us to improve services and programs for our community. It would be appropriate to mention that during the transition from the former two providers (Nor-Cal and Waste Management) the process was very smooth and happened without any disruption to our citizens scheduled pick-up.

I am very pleased with the quality of service and community support that Northern Recycling has brought to our Town. Voting for them was one of the best things I have done in my 6 years on the council, and our Town is a better place to live in because of their expertise and commitment to their profession and our community. They are "A Recycling Company that also hauls trash..."

Should you or your colleagues or staff have any questions please feel free to call me...

Steve "Woody" Culleton, Councilman, Town of Paradise

530-521-1984

FRANCHISE AGREEMENT
BETWEEN THE CITY OF BIGGS
AND
USA WASTE OF CALIFORNIA, INC.

This Franchise Agreement ("Franchise Agreement" or "Agreement") is entered into as of the Effective Date, as defined below, by and between the City of Biggs ("Franchisor" or "City") and USA Waste of California, Inc. ("Franchisee"), for the collection, transportation, and disposal of solid waste. Franchisor and Franchisee may be referred to herein collectively as the "Parties" or individually as a "Party."

RECITALS

WHEREAS, Franchisee has represented and warranted to Franchisor that it has the experience, responsibility, and qualifications to arrange with residents, commercial, industrial, institutional and other entities in the franchise area for the collection and safe transport to disposal facilities of municipal Solid Waste and Franchisor determines and finds that the public interest, health, safety and well-being would be best served if Franchisee were to perform these services; and

WHEREAS, Franchisor declares its intention of maintaining reasonable rates for reliable, proven collection, transportation and disposal of Solid Waste within the area covered by this grant of franchise.

NOW, THEREFORE, in consideration of the covenants and promises contained herein, the Parties mutually agree to the following terms and conditions.

1. Definitions.

"Effective Date" means the latest date on which this Agreement is executed, as set forth on the signature page hereto.

"Force Majeure" means acts of God including landslides, lightning, forest fires, storms, floods, freezing and earthquakes, civil disturbances, strikes, lockouts or other industrial disturbances, acts of the public enemy, wars, blockades, public riots, breakage, explosions, accident to machinery, equipment or materials, unavailability of required materials or disposal site, governmental restraint or other causes, whether of the kind enumerated or otherwise, which are not reasonably within the control of the party affected by the Force Majeure event.

"Franchise Area" means: (i) the entire territory included within the City limits as of the Effective Date of this Agreement; and (ii) such additional area as may thereafter become included with the City limits from time to time due to annexation, incorporation or other means.

"Green Waste" means grass clippings, leaves, hedge trimmings, small branches and similar vegetative waste generated from residential property or landscaping activities, but does not include stumps or similar bulky wood materials.

“Hazardous Waste” means (i) all waste defined or characterized as hazardous by the federal Solid Waste Disposal Act (42 U.S.C. §§ 3251 et seq.), as amended, including the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §§6901 et seq.) and all future amendments thereto, or regulations promulgated thereunder and (ii) all waste defined or characterized as hazardous by the principal agencies of the State of California having jurisdiction (including without limitation the Department of Health Services, the Regional Water Quality Control Board and the Integrated Waste Management Board). Hazardous Waste shall not include incidental Household Hazardous Waste or Small Quantity Generator Waste which is commingled with Solid Waste.

“Pass-Through Expenses” means (i) surcharges, fees, assessments or taxes levied by federal, state or local regulatory authorities or other governmental entities upon the collection or disposal of Solid Waste, (ii) increases in fuel costs after the Effective Date and/or (iii) increases in landfill disposal costs after the Effective Date.

“Recyclable” or “Recyclable Material” means a material or group of materials that can be processed into a form suitable for reuse through reprocessing or remanufacture but shall not include commingled materials that contain five percent (5%) or more of Solid Waste. Recyclables may include Green Waste hereunder.

“Solid Waste” means all putrescible and nonputrescible solid, semi-solid, and liquid wastes, including residential, industrial, commercial, community and municipal garbage, trash, refuse, paper, rubbish, ashes, demolition and construction wastes, discarded home and industrial appliances, manure, vegetable or animal solid and semi-solid wastes, and other discarded solid and semi-solid wastes, including, without limitation, commingled Recyclables that contain five percent (5%) or more of refuse or other non-reusable material. The term “Solid Waste” as used herein does not include: Hazardous Waste; designated waste or contaminants which *may* be injurious to personnel engaged in solid waste handling, including but not limited to infectious waste, acids, explosives, radioactive material and septic tank pumping; dead animals; large mechanical devices; nor any materials that are, or in the future become, prohibited from receipt, handling or disposal by state, federal or local law, regulation, rule, code, ordinance, order, permit or permit condition.

2. Exclusive Right; Exclusion. The Franchisor does hereby grant to Franchisee and Franchisee shall have the exclusive duty, right and privilege to collect and dispose or otherwise handle all Solid Waste, Recyclable Materials, and Green Waste generated, deposited, accumulated or otherwise coming to exist in the Franchise Area. All commercial, industrial and residential premises and community activities within the Franchise Area shall be required by Franchisor to utilize the collection services of Franchisee provided hereunder. Nothing in this Agreement shall prevent any owner, occupant or tenant of premises from personally handling, hauling, or transporting Solid Waste or Recyclables generated by or from his/her own residence or business operations for purposes of disposing of the same at an authorized disposal area or transfer station (if allowed by City ordinance), nor shall anything in this Agreement affect or limit the right of any person to sell any Recyclable Material to any person lawfully engaged in business in the Franchise Area or to donate Recyclable Material to any bona fide charity, provided that all such Recyclable Material is separated by the generator.

3. Term of Agreement. The term of this Agreement shall be five (5) years, commencing on the Effective Date and, unless sooner terminated in accordance with the provisions of this Agreement, expiring on the same day five years later. The parties may, but shall be under no obligation to, agree to extend the term of this Agreement for an additional period of five (5) years or on such other terms and conditions as they may agree in their sole discretion.

4. Franchisee Services.

4.1. Collection Services. The scope of services to be performed by Franchisee hereunder, including the collection schedule, special services provided to Franchisor and requirements pertaining to container supply and replacement, is set forth in *Exhibit A* attached hereto. The work to be done by Franchisee as set forth in *Exhibit A* of this Agreement shall be accomplished in a professional manner so that the residents and businesses within the Franchise Area are provided reliable, courteous and high-quality collection of Solid Waste and Recyclables.

4.2. Solid Waste Disposal. Franchisee shall dispose of all Solid Waste at any permitted and licensed site or facility where such disposal is lawful, as selected by Franchisee in its sole discretion.

4.3. Recyclable Materials. Recyclable Materials placed at the curbside for collection shall be deemed the property of Franchisee and, thereafter, the Franchisee may market or dispose of them in any manner the Franchisee deems to be economically feasible. The Franchisee shall be responsible for all marketing and sale of Recyclable Materials collected hereunder and shall be entitled to all proceeds therefrom. Recyclable Materials which are collected by the Franchisee may be disposed of in a landfill if the Franchisee has considered other alternatives and, after good faith efforts to locate a market, has determined that such disposal is the most economical means of handling Recyclable Materials.

5. Collection Exclusions. It is understood that the Franchisee is not authorized and is not required hereunder to collect and transport Hazardous Waste or restricted or other waste that is not acceptable or permitted for disposal at a transfer station or disposal site. In addition, Franchisee shall not be required to collect containers that are not set out or filled in accordance with, or do not meet the requirements as set forth in, *Exhibit A* hereto. Any services not set forth in *Exhibit A* shall be directly contracted for between Franchisee and residents of the Franchise Area at rates to be determined by Franchisee.

6. Standards for Collection and Operation.

- 6.1. Compliance with Law. Franchisee shall comply with all laws and regulations applicable to Franchisee's operations, including laws, ordinance, rules and regulations of the United States, the State of California, the Franchisor and the City and County of the location at which Solid Waste may be transported or disposed of hereunder.
- 6.2. Equipment. Franchisee shall possess or demonstrate to the Franchisor's reasonable satisfaction that it has available to it adequate equipment and vehicles, including reserve or replacement vehicles and equipment, sufficient to perform the services required of Franchisee herein. Franchisee shall maintain all trucks and equipment used within the Franchise Area in good mechanical condition and the same shall be clean, numbered and uniformly painted.
- 6.3. Collection Operations. Franchisee shall conduct its operation so as to minimize as practicable any obstruction and inconvenience to public traffic or disruption of the peace and quiet of the area within which collection occurs.

7. Rates; Adjustments; Billing.

- 7.1. Service Rate Schedule. Franchisee shall provide the collection and disposal services required under this Agreement for the rates set forth in the Service Rate Schedule attached hereto and incorporated herein as *Exhibit B*, as the same may be adjusted in accordance with this Section.
- 7.2. CPI Adjustment. Commencing on the date which is one (1) year after the Effective Date, and on the same date annually thereafter (the "Adjustment Date"), the rates set forth in the Service Rate Schedule, as adjusted hereunder, shall be automatically adjusted by a percentage equal to the annual percent change in the Consumer Price Index ("CPI") for All Urban Consumers - for the San Francisco metropolitan area (1982-84 = 100) as published by the Bureau of Labor Statistics for the 12-month period ending nearest, but at least sixty (60) days prior to, the Adjustment Date. At least thirty (30) days prior to the Adjustment Date, Franchisee shall notify Franchisor of the CPI adjustment to take effect on the Adjustment Date and shall provide Franchisor with its computations therefor.
- 7.3. Rate Review and Adjustment. The rates set by this Agreement are calculated to pay certain expenses and costs that are of a contingent and uncertain nature. Therefore, in addition to the CPI adjustment provided by Section 7.2, the Service Rate Schedule shall, upon written request of Franchisee, be further adjusted for increased expenses associated with

performance of the services hereunder due to any one or more of the following causes:

- (a) any change in law, statute, rule, regulation, ordinance, order or requirement of any federal, state, regional or local government that is effective after the Effective Date of this Agreement;
- (b) changes in disposal methods or sites mandated by any political body which may now or in the future have legal jurisdiction;
- (c) any increase in Pass-Through Expenses (subject to Section 7.5); or
- (d) any other causes or reasons that are not within the reasonable control of Franchisee.

Franchisee shall submit to Franchisor a written request for a rate adjustment, including a report detailing the increased expenses associated with performance of the services hereunder due to any of the above enumerated causes. Within thirty (30) days after Franchisee provides the Franchisor with such request and report, the Franchisor shall notify the Franchisee in writing as to whether the Franchisor accepts such information as complete or specifying any respect in which the Franchisor deems such information incomplete or deficient. Failure of the Franchisor to so notify the Franchisee within such 30-day period shall constitute acceptance by the Franchisor of such information as complete, which deemed acceptance shall be effective as of such 30th day. Franchisor's staff shall review such information and complete all its deliberations in connection therewith within forty-five (45) days from the date of acceptance or deemed acceptance by the Franchisor of the request and report. Not later than the next regularly scheduled meeting of the City Council following the end of such 45-day period, the matter of rate adjustments hereunder shall be placed on the City Council agenda for approval. As so approved, the rate adjustment shall go into effect no later than ninety (90) days after Franchisee's submission of the rate adjustment request and report. If the rate adjustment is not approved and effective within ninety (90) days or by the required pass-through date, or if the Franchisor approves an adjustment less than that sought by the Franchisee, the Franchisee may submit the matter to arbitration as provided in Section 10.

7.4. Billing and Payment. Franchisor shall bill all customers for all services provided pursuant to *Exhibit A* and shall pay Franchisee pursuant to *Exhibit B*. Franchisee shall bill and collect from all customers for all other services.

7.5. Fuel Increases. In the event of a rate increase pursuant to Section 7.3(c) for an increase in a Pass-Through Expense consisting of fuel costs, the increase shall be calculated by the following formula:

$$(1 + [(Fuel\ Cost\ Change - CPI\ Change) \times Fuel\ Percentage]) \times Old\ Rate = New\ Rate$$

This rate increase shall be in addition to, and not in lieu of, any other rate increase to which Franchisee may be entitled under this Agreement. The terms used in the preceding formula shall have the following meanings:

- (a) "Fuel Cost Change" means the average price for California No. 2 diesel fuel for the most recent 12 month period November through October divided by such average price for the preceding twelve month period November through October. The price used to compute the Fuel Cost Change shall be the price reported by the United States Department of Energy, Energy Information Administration. In the event that price is no longer reported, the parties will designate a new methodology for determining the price based on comparable data.
- (b) "CPI Change" means the average CPI index for the most recent 12 month period November through October divided by such average price for the preceding twelve month period November through October.
- (c) "Fuel Percentage" means the Franchisee's total cost for diesel fuel incurred during the most recent 12 month period November through October divided by Franchisee's total operating revenue for such 12 month period, in both cases calculated for Franchisee's operations district that includes the City of Biggs.
- (d) "Old Rate" means each of the rates on Exhibit B, as they may have been previously adjusted or amended.
- (e) "New Rate" means the new rate calculated pursuant to the preceding formula that will replace the Old Rate. Exhibit B shall be deemed to be amended to reflect the New Rate without any further action required by the parties.

8. Default, Termination.

- 8.1. Default. In the event of any material failure or refusal of Franchisee to comply with any obligation or duty imposed on Franchisee under this Agreement, the Franchisor shall give written notice to Franchisee specifying that a particular default or defaults exist which will, unless corrected, constitute a material breach of this Agreement on the part of Franchisee.
- 8.2. Termination. If Franchisee fails to correct such default or fails to take reasonable steps to correct the same within thirty (30) days from the date of the notice given by Franchisor, the City, in its sole discretion, shall have the option to terminate the Franchise and the privileges granted

herein. Upon the declaration of termination of this Agreement by the Franchisor, this Agreement shall be of no further force and effect unless the Franchisor elects to terminate only a portion of the services set forth herein and maintain the remainder of the Agreement.

8.3. Force Majeure. The performance of this Agreement may be discontinued or temporarily suspended in the event of Force Majeure. Franchisee shall not be deemed to be in default and shall not be liable for failure to perform under this Agreement if Franchisee's performance is prevented or delayed by Force Majeure.

9. Indemnity.

9.1. Franchisee Indemnity.

(a) Franchisee shall protect, defend with counsel reasonably acceptable to the City, indemnify and hold harmless City from and against any and all losses, liabilities, fines, penalties, costs, claims, damages, liabilities and judgments, including reasonable attorneys fees, which are caused by Franchisee's failure to comply with the laws legally binding on Franchisee which are described in this Agreement, including but not limited to liabilities, costs, claims and damages described in this section unless and to the extent such claim is due to the negligence or willful acts of the City, its officers, employees, agents or contractors, or from City's grant of this Franchise to Franchisee.

(b) Franchisee shall protect, defend with counsel reasonably acceptable to City, indemnify and hold harmless City from and against any and all losses, liabilities, fines, penalties, costs, claims, damages, liabilities and judgments, including reasonable attorneys' fees, arising out of, or resulting in any way from, Franchisee's breach of this Agreement or the Franchise, unless and to the extent such claim is due to the negligence or willful acts of the City, its officers, employees, agents or contractors, or from City's grant of this Franchise to Franchisee.

(c) In the event of litigation brought by a third party without the encouragement or support of the City or Franchisee to challenge the Franchise Agreement and/or Franchisee's exclusive rights granted thereunder, then:

(1) Upon request of the City, Franchisee may, at Franchisee's election, defend with counsel reasonably acceptable to the City, indemnify and hold the City harmless from any and all such litigation and claims, damages and liabilities arising

therefrom, provided, however, the Franchisee's obligations hereunder extend only to actions brought against or by persons not parties to this Agreement; and provided, further, Franchisee shall be entitled to recover as recoverable costs for rate setting purposes its reasonable attorneys' fees and costs incurred in any such proceeding; or

(2) The City may, at City's election, defend such litigation and claims, in which case Franchisee will have no liability to City with respect to such litigation and claims, damages and liabilities arising therefrom; or

(3) If the Franchisee does not make the election provided in Section 9.1(c)(1) and the City does not make the election provided in Section 9.1(c)(2), then either party may, upon six months' prior written notice to the other party, terminate this Agreement.

9.2. Procedure. Franchisee shall have no obligation to indemnify or defend hereunder unless the City provides written notice to Franchisee of the occurrence of events giving rise to Franchisee's obligation to indemnify hereunder within thirty (30) days after the City knows or should have known of such events. The City shall cooperate in the defense of suit if requested by Franchisee and shall have the right to approve counsel chosen by Franchisee to litigate such suit, which approval shall not be unreasonably withheld. Franchisee shall have the sole right to contest, defend, litigate and settle claims tendered by the City hereunder provided that a least ten (10) business days prior to any such settlement, written notice of Franchisee's intention to settle is given to the City. In the event a dispute exists over whether the City is entitled to indemnification, the City shall defend itself until the dispute is resolved. Upon resolution of the indemnification dispute, the prevailing party shall be entitled to indemnification for its defense costs incurred prior to resolution.

10. Insurance.

10.1. Minimum Limits of Insurance. Franchisee shall procure and maintain for the duration of the Agreement insurance of the following types:

- (a) **Commercial General Liability:** Commercial General Liability Insurance (including bodily injury and property damage) with limits of not less than Two Million Dollars (\$2,000,000) per occurrence with an aggregate of Five Million Dollars (\$5,000,000).

- (b) **Automobile Liability:** Comprehensive Automobile Liability Insurance with limits for bodily injury of not less than One Million Dollars (\$1,000,000). Coverage shall include owned and non-owned vehicles used in connection with the Agreement, endorsed to delete paragraph A of the Pollution exclusion (or, alternatively, include a CA 9948 endorsement).
- (c) **Worker's Compensation:** A policy of Worker's Compensation insurance as may be required by the California Labor Code.

10.2. Other Insurance Provisions. The policies are to contain, or be endorsed to contain, the following provisions:

- (a) City, its officers, officials, employees and volunteers are to be covered as additional insureds with respect to the Commercial General Liability policy and the Automobile Liability policy.
- (b) Coverage shall not extend to any indemnity coverage for the negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of Civil Code Section 2782.

10.3. Verification of Coverage. Franchisee shall furnish City with certificates evidencing coverage required by this Section 10.

11. Dispute Resolution; Attorneys' Fees. In the event of a dispute arising under this Agreement, the Parties shall continue performance of their respective obligations under this Agreement and shall attempt to resolve such dispute in a cooperative manner. In the event of any litigation to interpret or enforce the terms of this Agreement, the prevailing Party shall be entitled to its reasonable attorneys' fees and costs from the losing Party, at trial and on appeal. Venue for any action arising out of or enforcing the terms of this Agreement shall be laid in Butte County, California.

12. Assignment. Franchisee shall not assign its rights nor delegate or otherwise transfer its obligations under this Agreement to any other person or corporate entity without the prior written consent of the Franchisor, which consent shall not be unreasonably delayed or withheld. Notwithstanding the foregoing, Franchisee shall have the right, without seeking or obtaining approval or authority from the Franchisor, to assign or transfer this Agreement to any affiliate of Franchisee or its parent corporation.

13. Change in Law. In the event that new or amended local, state or federal laws, rulings or regulations are enacted after the Effective Date of this Agreement and have the effect of preventing or precluding compliance with one or more provisions of this Agreement, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such new or amended local, state or federal laws or regulations, and the Franchisor and the Franchisee shall enter into an amendment of this Agreement that reflects the extent to which the

provisions hereof have been so modified or suspended. Notwithstanding the foregoing, should Franchisee, by force of any such law, ruling or regulation, at any time during the term hereof, be ordered or required to do any act relative to this Agreement which substantially impairs or materially changes the Franchisee's ability to perform under this Agreement, then the Franchisee may notify the Franchisor in writing of this condition and may terminate this Agreement upon providing at least sixty (60) days' advance written notice of termination to the Franchisor. Nothing in this Agreement shall prohibit Franchisee from obtaining or seeking to obtain modification, reversal or repeal of such law, ruling or regulation or restrict Franchisee's right to legally contest the validity of such law, ruling or regulation. Franchisee shall not be considered in breach of this Agreement during such time as Franchisee is contesting or appealing any notice of violation, ordinance, rule, regulation, ruling or law.

14. Waiver. No waiver of any right or obligation of either Party hereto shall be effective unless in writing, specifying such waiver, executed by the Party against whom such waiver is sought to be enforced. A waiver by either Party of any of its rights under this Agreement on any occasion shall not be a bar to the exercise of the same right on any subsequent occasion or of any other right at any time.

15. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

16. Amendment. This Agreement may be amended, altered or modified only by a writing, specifying such amendment, alteration or modification, executed by authorized representatives of both of the Parties hereto.

17. Complete Agreement. This writing constitutes the full and complete Agreement and understanding between the Franchisee and the Franchisor. All previous agreements are hereby superseded.

[END OF TEXT; SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, this Agreement is effective as of the latest date set forth below.

City of Biggs

By: Randy Coyle
Its: City Administrator

Date: 1/24/06

ATTEST:

Heather LaBeyrie
City Clerk

USA Waste of California, Inc.

By: Raymond Coyle
Its: Market Area Vice-President

Date: 1-23-06

Solid Waste and Recycling Agreement
City of Biggs and USA Waste of California, Inc.

Exhibit A

Services:

Trash:

Thirty-two (32) gallon cart for each single family residence and multifamily unit, (Four-plex and smaller) serviced weekly.

Curbside Recycling:

Sixty-four (64) gallon cart provided for recyclable paper and containers, serviced every other week. Recyclable material consists of newspaper, cardboard, food and beverage glass, metal, and plastic containers, aluminum, #2 (HDPE) plastic.

Yard Waste (green waste):

Ninety-six (96) gallon can provided for grass clippings, prunings and leaves serviced every other week.

City Service:

Franchisee will service City garbage cans as specified for the eight locations in the previous Agreement dated July 10, 1995 at no cost.

Additional services:

Christmas trees recycling:

During a designated period, Christmas trees will be collected curbside. Trees need to cut to 3-foot sections.

Annual Cleanup Event:

Once a year, Franchisee will provide a Cleanup Event for residential properties within the City. Material collected in the event will be wood, yard waste (green waste), white goods (appliances without freon), metal, bulky items and other non-Hazardous Waste. In addition, Franchisee shall coordinate with Butte County to provide for the collection of motor oil, antifreeze, car batteries and tires at the Cleanup Event, but in no event shall Franchisee take title to any such materials or have any responsibility for the handling, transportation or disposal thereof. The Cleanup Event will be held one Saturday in October at a single location to be designated by Franchisee.

Solid Waste and Recycling Agreement
City of Biggs and USA Waste of California, Inc.

Exhibit B

Basic Monthly Service Fee per Household (32 gal. trash, recycling, yard waste)	\$ 14.26
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Additional Rates:

(to be charged directly to customer by Franchisee)

Trash:

64 gallon cart in lieu of 32 gallon cart	\$ 4.80
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96 gallon cart in lieu of 32 gallon cart	\$ 9.24
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Recycling:

Additional cart	\$ 2.15
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Yard Waste:

Additional cart	\$ 2.15
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CITY OF BIGGS – FEE SCHEDULES

REFUSE COLLECTION SERVICE RATES

AUTHORITY: Council Motion-December 21, 2008

EFFECTIVE DATE: January 1, 2010

**COROLLARY
REFERENCE:** None

FEE CATEGORY	FEE
Refuse Collection Service Rates:	\$20.04/Customer/Month