

EXCLUSIVE FRANCHISE AGREEMENT

**FOR THE COLLECTION, HAULING AND DISPOSAL OF SOLID WASTE MATERIAL IN
THE CITY OF STAGECOACH, TEXAS**

STATE OF TEXAS

COUNTY OF MONTGOMERY

THIS EXCLUSIVE FRANCHISE AGREEMENT (“Agreement”) is made and entered into as of this 23rd day of October, 2020 with an effective date of December 1, 2020 by and between USA Waste Solutions, LLC (the “Service Provider”) and “Contractor” herein,) and the City of Stagecoach, Texas (the “City”).

WHEREAS, the City, subject to the terms in conditions set forth herein in the ordinances and regulations of the City, desires to grant to the Service Provider the exclusive franchise, license, and privilege to collect, haul and dispose of Residential Solid Waste Services, Commercial Solid Waste Services, and temporary or permanent Roll-off services within the city’s corporate limits.

WHEREAS, the Service Provider desires to operate and maintain the service of collection, transportation and disposal of Residential Solid Waste Services, Commercial Solid Waste Services, and Industrial Solid Waste Services over, along, and across the present and future streets, alleys, bridges and public properties of the City subject to the terms of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements set forth herein, the Service Provider in the City hereby agree as follows:

SECTION 1. DEFINITIONS

The following terms, as used herein, will be defined as follows:

Ashes. Residue from burning of wood, coal, or combustible material from a Residential Unit.

Bags. Plastic sacks designed to store garbage with sufficient wall strength to maintain physical integrity when lifted by the top. Total weight of a Bag and its contents shall not exceed 50 pounds.

Brush. Tree trimmings, grass cuttings, dead plants, weeds, leaves, or trimmed branches.

Bulky Waste/Bulk Items. Solid Waste not easily containerized in a Cart or Bags such as, but not limited to appliances (free from chlorofluorocarbons), water tanks, furniture, and other Solid Waste other than Construction Debris, or Stable Matter with weights or volumes greater than those allowed for Containers, as the case may be. Bulky Waste or Bulk Items shall not include Excluded Waste.

Bulky Waste/Bulk Items Services. Collection of Bulky Waste or Bulk Items and Disposal of Bulky Waste or Bulk Items at a Disposal Site.

Brush Bundles. Tree, shrub, brush trimmings and/or yard trimmings, not exceeding four feet in length or 50 pounds in weight.

Cart. A receptacle designed for solid waste, equipped with wheels and a bar, with a capacity of approximately ninety-five (95) gallons, designed to be mechanically dumped into a loader packer type

truck via a fully-automated truck arm or semi-automated truck tipper, purchased with a minimum of ten (10) year manufacturer's warranty and approved in advance by the City Manager.

City. The City of Stagecoach, Texas.

City Council. The governing body of the City.

City Event. An event designed by the City Manager to receive City Services. The City Manager has the sole authority to add or eliminate City Events.

City Manager. The City Manager of the City of Stagecoach or a person authorized to act on behalf of the City.

City Services. Solid Waste Services for City Events and City Facilities.

City Staff. Personnel employed by the City of Stagecoach and authorized by the City Manager to act on behalf of the City in a limited capacity as provided for in this Agreement.

Collect or Collection. The act of removing Solid Waste or Bulky Waste/Bulk Items for transport to a Disposal Site.

Corrugated Cardboard. Any packaging material formed by gluing one or more fluted sheets of paperboard (corrugated medium) to one or more flat sheets (facings) of linerboard.

Commercial and Industrial Unit. All premises, locations, or entities, public or private, requiring Solid Waste Collection within the City that is not a Residential Unit.

Commercial Services. Solid Waste and Bulky Waste Services for Commercial Units.

Compactor. A compaction mechanism, whether stationary or mobile, designed to attach to a Roll-off.

Construction or Demolition Waste. In accordance with 30 Texas Administrative Code § 330.3, defined as "Waste resulting from construction or demolition projects; includes all materials that are directly or indirectly the by-products of construction work or that result from demolition of buildings and other structures, including, but not limited to paper, cartons, gypsum board, wood, excelsior, rubber and plastics."

Contract. Any written contractual agreement resulting from submitted RFP dated August 24, 2020.

Contractor. The successful Proposer, USA Waste Solutions, LLC, receiving award of Contract resulting from RFP submitted on August 24, 2020.

Contractor's Representative. Contractor's employee designated in charge of Contractor's operations under the Contract and who is authorized to make decisions and act on Contractor's behalf as set forth in the Contract.

Curbside. The location within three (3) feet of the curb of the street abutting such property that provides primary access to the Residential Unit or Commercial Unit as designated by the City Staff unless such placement interferes or endangers movement of vehicles or pedestrians.

Current Provider. The City's current provider of Solid Waste Services.

Customer(s). An occupant of a Residential Unit or a Commercial Unit within the city limits of the City that has a City utility account that is billed for Solid Waste Services on a monthly basis.

Dead Animals. Animals weighing no more than 10 pounds, or portions thereof, including any and all household animals that has expired from any cause.

Disposal. In accordance with 30 Texas Administrative Code § 330.3, defined as “The discharge, deposit, injection, dumping, spilling, leaking, or placing of any Solid Waste or Hazardous Waste (whether containerized or un-containerized into or on any land or water so that such Solid Waste or Hazardous Waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including, groundwater.”

Disposal Site or Facility. All contiguous land, structures, other appurtenances, and improvements on the land that is licensed and permitted, as required by all governmental bodies having jurisdiction, for disposing of Solid Waste. A Disposal Site may be publicly or privately owned and may consist of several Disposal operational units.

Dumpster. A watertight receptacle, with a capacity of approximately two (2) cubic yards up to approximately 10 (ten) cubic yards, equipped with a tight-fitting lid and designed to be mechanically dumped into a loader-packer type truck.

Dwelling Unit. Any group of rooms located within a dwelling and forming a single habitable unit with facilities which are used, or are intended to be used, for living, sleeping, cooking, and eating.

Excluded Waste. Hazardous Waste, Special Waste, and Construction or Demolition Waste.

Garbage. Every accumulation of waste (animal, vegetable and/or other matter) that results from the preparation, processing, consumption, dealing in, handling, packing, canning, storage, transportation, decay or decomposition of meats, fish, fowl, birds, fruits, grains or other animal or vegetable matter (including, but not limited to, used tin cans and other food containers, and all putrescible or easily decomposable waste animal or vegetable matter which is likely to attract flies or rodents), except (in all cases) any matter included in the definition of Bulky Waste/Bulk Items, Construction Debris, Dead Animals over ten pounds in weight, Hazardous Waste, Rubbish, and Stable Matter.

Generator. Any person or entity that produces Solid Waste.

Hazardous Waste. In accordance with 30 Texas Administrative Code § 330.3 and for purposes of the Exclusive Franchise Agreement, the term Hazardous Waste shall also include, but not be limited to, used motor oil, gasoline, oil-based paint or paint cans, and any radioactive, volatile, corrosive, highly flammable, explosive, biomedical, infectious, biohazardous, toxic or hazardous material as defined by applicable federal, state or local laws or regulations.

Non-Hazardous Waste. The Texas Commission on Environment Quality defines Non-Hazardous Waste as waste that does not meet the EPA’s definition of hazardous waste. Waste is considered hazardous if it is found on the EPA’s list of hazardous waste **or** it exhibits one or more hazardous characteristics.

Portable Toilets. Temporary sanitation services.

Proposer. A company authorized to do business in the State of Texas that submitted a proposal for Solid Waste Services in response to RFP dated August 24, 2020.

Resident. A person who resides at a Residential Unit within the City of Stagecoach.

Residential Services. Solid Waste and Bulky Waste/Bulk Items Services for Residential Units.

Residential Unit(s). An improved property which is used, or capable of being used, for domestic use by a single family, including a single-family dwelling, duplex, fourplex, townhouse, apartment, or condominium unit. A Residential Unit shall be deemed occupied when either water or electric services are being supplied thereto. A townhouse, fourplex, duplex, or condominium dwelling, whether of single or multi-level construction, consisting of four or less contiguous or separate single-family Dwelling Units, shall be treated as a Residential Unit, except that each Dwelling Unit within any such Residential Unit shall be billed separately as a Residential Unit. Those Residential Units designated by the City Staff to be served by a Dumpster or Roll-Off Compactor shall not be included in this definition and shall be a Commercial Unit.

Roll-off. A watertight receptacle, with a capacity of approximately ten (10) cubic yards up to approximately forty (40) cubic yards, intended to be loaded onto a motor vehicle.

Roll-off Compactor. A Roll-off with a Compactor.

Rubbish. In accordance with 30 Texas Administrative Code § 330.3, defined as “Non-putrescible solid waste (excluding ashes), consisting of both combustible and noncombustible waste materials. Combustible rubbish includes paper, rags, cartons, wood, excelsior, furniture, rubber, plastics, brush, or similar materials; noncombustible rubbish includes glass, crockery, tin cans, aluminum cans, and similar materials that will not burn at ordinary temperatures (1,600 degrees) Fahrenheit to 1,800 degrees Fahrenheit).”

Solid Waste. In accordance with 30 Texas Administrative Code § 330.3, defined as “Garbage, rubbish, sludge from a wastewater treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations and from community and institutional activities. The term does not include:

- A. solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit issued under Texas Water Code, Chapter 26; or
- B. soil, dirt, rock, sand, and other natural or man-made inert solid materials used to fill land if the object of the fill is to make the land suitable for the construction of surface improvements; or
- C. waste materials that result from activities associated with the exploration, development, or production of oil or gas or geothermal resources and other substance or material regulated by the Railroad Commission of Texas under Natural Resources Code, §91.101, unless the waste, substance, or material results from activities associated with gasoline plants, natural gas liquids processing plants, pressure maintenance plants, or re-pressurizing plants and is Hazardous Waste as defined by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended (42 United States Code, §§6901 *et seq.*).

Solid Waste Cart. A receptacle exclusively designated for the collection of Solid Waste.

Solid Waste Services. Collection of Solid Waste and Disposal of Solid Waste at a Disposal Site.

Special Collection. A service provided by the Service Provider under this franchise agreement for which a fee is not specifically provided for in Exhibit “A”, attached hereto as a Fee Schedule.

Special Waste. In accordance with 30 Texas Administrative Code §330.3, defined as “Any Solid Waste or combination of Solid Wastes that because of its quantity, concentration, physical or chemical characteristics, or biological properties requires special handling and Disposal to protect the human health or the environment. If improperly handled, transported, stored, processed, or disposed of or otherwise managed, it may pose a present or potential danger to the human health or the environment. Special wastes are:

- A. Hazardous Waste from conditionally exempt small-quantity generators that may be exempt from full controls under Chapter 335, Subchapter N of this title (relating to household materials which could be classified as Hazardous Wastes);
- B. Class 1 industrial Non-Hazardous waste;
- C. untreated medical waste;
- D. municipal wastewater treatment plant sludge, other types of domestic sewage treatment plant sludge, and water-supply treatment plant sludge;
- E. septic tank pumping;
- F. grease and grit trap wastes;
- G. wastes from commercial or industrial wastewater treatment plants; air pollution control facilities; and tanks, drums, or containers used for shipping or storing any material that has been listed as a hazardous constituent in 40 Code of Federal Regulations (CFR) Part 261, Appendix VIII but has not been listed as a commercial chemical product in 40 CFR §261.33E or (f);¹
- H. slaughterhouse wastes;
- I. Dead Animals except as otherwise provided for herein;
- J. drugs, contaminated foods, or contaminated beverages, other than those contained in normal household waste;
- K. pesticide (insecticide, herbicide, fungicide, or rodenticide)
- L. discarded materials containing asbestos;
- M. incinerator ash;
- N. soil contaminated by petroleum products, crude oils, or chemicals in concentrations of greater than 1,500 milligrams per kilogram total petroleum hydrocarbons; or contaminated by constituents of concern that exceed the concentrations listed in Table 1 of §335.21(a)(1) of the Texas Administrative Code
- O. used oil;
- P. waste from oil, gas, and geothermal activities subject to regulation by the Railroad Commission of Texas when those wastes are to be processed, treated, or disposed of at a Solid Waste management facility authorized under this chapter;

- Q. waste generated outside the boundaries of Texas that contains:
 - 1) any industrial waste; or
 - 2) any waste associated with oil, gas, and geothermal exploration, production, or development activities; or
 - 3) any item listed as a Special Waste in this paragraph;
- R. lead acid storage batteries;
- S. used oil filters from internal combustion engines.

TCEQ. Texas Commission on Environment Quality

30 TAC Section 330.5. The definitions or pertinent terms, prohibitions and restrictions contained in Title 30, Texas Administrative Code, Section 330.5, (General Prohibitions) – as amended.

Unit. Residential and Commercial Units that qualify for services agreed upon in this Franchise Agreement.

Work. The furnishing of all labor, materials, equipment, and other incidentals necessary for the successful completion of this franchise agreement and the carrying out of all duties and obligations imposed on the Service Provider by this agreement.

SECTION 2. EXCLUSIVE FRANCHISE AND RELATED SERVICES

The City hereby grants to USA Waste Solutions, LLC, an exclusive franchise for all Residential and Commercial Solid Waste and Bulky Waste Collections services inside the corporate City limits of the City. The exclusive franchise shall include permanent & temporary Roll-off services for Solid Waste but shall not include temporary Solid Waste disposal services to a construction project, in accordance with Chapter 364.034(h) of the Texas Health & Safety Code, which shall not include and is expressly exempted from debris removal/pickup service entered into under the City’s Disaster Management Plan when activated.

Solid Waste Services shall be provided as follows:

A. Residential Services

The Service Provider shall provide the following Residential Solid Waste Service for each Residential Customer:

- 1) Residential Curbside Solid Waste Collection, curb side once (1) per week pick up.
- 2) No rocks, dirt, bricks, car batteries, oil, oil filters, ashes, or Hazardous Waste as defined in Section 1. Definitions page 3 will be collected in Curbside pickup.
- 3) Except as otherwise provided for herein, Curbside Solid Waste Collection shall be limited to two (2) cubic yards, once per week, of Solid Waste, Bulky Waste and Brush Bundles for each Customer. Solid Waste, Bulky Waste and/or Brush Bundles in excess of two (2) cubic yards per weekly pickup shall be billed at an additional fee as provided for in Exhibit “A” upon Resident request.

- 4) Service Provider shall provide house side Collections, at no extra cost to citizens who are handicapped or disabled. Determination for citizens requesting this service shall be made between the City and Service Provider.
- 5) All Residential Units shall be required by City ordinance to be billed for Solid Waste Services.
- 6) Residents may obtain an additional cart for Residential Curbside Solid Waste Collection, at an additional cost as provided for in Exhibit "A".
- 7) Poly Cart Replacement, excluding normal wear and tear, will be charged to the Customer at the cost as provided for in Exhibit "A".

B. Commercial Services

The Service Provider shall provide the following Commercial Solid Waste Services for Commercial Customers:

- 1) Commercial Cart Curbside Solid Waste Collection pick up as scheduled by Customer & Service Provider. Commercial Customers may obtain an additional 95-gallon Solid Waste Cart, at an additional cost as provided for in Exhibit "A".
- 2) Commercial Solid Waste Collection via Dumpster, closed Roll-off or Compactor Roll-off, Collections between one (1) and six (6) days weekly as agreed to by Customer & Service Provider.
- 3) The Service Provider will bill for Special Collections and the City shall receive a two percent (2%) fee of gross Special Collections hauled.
- 4) All Commercial Units shall be required by City ordinance to be billed for Solid Waste Services.
- 5) Poly Cart Replacement, excluding normal wear and tear, will be charged to the customer at the cost as provided for in Exhibit "A".

C. Municipal Services

The Service Provider shall provide the following Solid Waste Services to the City, at no cost to the City, unless otherwise stated:

- 1) All City facilities shall be served with one (1) 95-gallon Cart or the appropriately sized, Commercial Dumpster, to be serviced and collected as requested by the City, at no cost to the City.
- 2) **Storms and Other Disasters** that create increased volume resulting from flood, hurricane, terrorism, or any other act of God over which the Contractor nor City has no control. The City will grant the Contractor variances in routes and schedules as agreed to by the City for a period as mutually agreed upon by City and Contractor. If the City is declared a disaster area the City's Disaster Management Plan is activated, the contracts for debris removal/pickup services and debris removal/pickup monitoring services entered into by the City in accordance with State law and FEMA shall take priority over this contract.

D. General Services.

The Service Provider shall provide the following services:

1) **Special Collections.**

Service Provider shall provide Special Collections for Bulky Waste and other Solid Waste Services that have been identified as such by the City and the Service Provider.

Commercial Solid Waste Collection via a Roll-off shall be considered a Special Collection.

Notwithstanding anything to the contrary contained herein, the Contractor will bill for all Special Collections. The Contractor will pay a two percent (2%) franchise fee to the City based on the Contractor's gross receipts Collected (less taxes) from the Contractor's billings for providing Special Collections. The Contractor will pay to the City the franchise fees collected on a quarterly basis, in arrears, on or before the twentieth (20th) calendar day after the end of each calendar quarter. The City may act as the biller and collector for certain Special Collections, upon mutual agreement of the City and the Contractor.

2) **Post Tenant Cleanup.**

Post tenant clean-up resulting in Bulky Waste or Solid Waste that exceeds the permitted volume for Residential services may be considered as Bulky Waste and shall be billed separately in accordance with the rate specified for Bulky Waste in Exhibit "A".

E. Schedules and Routes

The Service Provider shall provide Collection to Customers on a scheduled Collection day in accordance with Section 10. The Service Provider shall maintain the schedules and the routes on file with the City. Any changes to the schedule and/or routes for Residential Customers are subject to the approval of the City Manager.

F. Disposal Site

Service Provider shall dispose of all Solid Waste and Bulky Waste Collected at a permitted Disposal Site. The Disposal Site shall be licensed and permitted as required by all governmental bodies having jurisdiction for disposing of Solid Waste. The charge for Disposal shall be included in the rates. Service Provider shall not be required to Collect liquid or gaseous materials not permitted by the Texas Commission on Environmental Quality (TCEQ) to be disposed of at the Disposal Site.

G. Personnel

The Service Provider shall ensure that all federal and state laws pertaining to salaries, wages, employment, and operating requirements are met or exceeded.

During the term of this Agreement and any extension thereof, the Service Provider shall be responsible for the actions of its agents, servants, and employees while such agents, servants and employees are acting within the scope of their employment or agency.

The Service Provider will hire and maintain qualified personal to provide the scope of services.

The Service Provider shall ensure personnel, who normally or regularly come into direct contact with the public, bear some means of individual identification, such as uniform with name badges, name tags, or identification cards;

All personnel shall serve the public in a courteous and helpful manner. The City may require that any personnel that is discourteous, belligerent, profane, or in any way intimidating toward Customers, or City personnel, be barred from further Work in connection with this Agreement;

The Service Provider shall not employ any personnel who are registered sex offenders when said personnel would normally or regularly come into direct contact with the public during the execution of the provisions of this Agreement;

For the term for the Agreement, the Service Provider shall maintain the following personnel:

- 1) Service Provider's Representative that is authorized to make decisions and act on its behalf, accessible to the City twenty-four (24) hours per day;
- 2) Operations manager qualified to be in charge of the work provided for in connection with this Agreement;
- 3) Any other personnel required to provide the scope of services;

H. Recordkeeping and Reporting

- 1) The Service Provider shall submit electronic reports of the required records, using software and formats approved by the City, on a monthly basis. All records shall be available to the City at reasonable times and places throughout the term of this Agreement and for a period of five (5) years after last or final payment.
- 2) The Service Provider shall create, maintain, and deliver to the City the following records:
 - a. Document Solid Waste and Bulky Waste tonnage delivered to Disposal facility;
 - b. Document Commercial Collection activity by container size and frequency of pick up;
 - c. Identify unaccepted loads by date collected, route, and facility;
 - d. Document complaints, on a daily basis, including the address, time and date for each and the reason, and resolution;
 - e. Written reports of documented complaints indicating the date and hour of the complaint, nature of the complaint, and the manner and timing of its resolution;
 - f. Such other documents and reports, as the City may reasonably require, to verify compliance with any Agreement or to meet the City's reporting requirements;
 - g. Other recordkeeping and reporting requirements as agreed upon by City and Service Provider.
- 3) A report accurately reflecting the value of the Service Provider's property used and useful in rendering Service Provider's service to the public and which reflects the Service Provider's expenses, receipts and profits of all kinds shall be provided annually or upon request by the City;
- 4) Service Provider will meet, at least quarterly, with the City Manager and/or City Staff to discuss any and all issues related to the Work provided herein.

- 5) Service Provider will present to the City Council on an as needed basis. Such presentation shall include, but not limited to, current and future service issues, quantities of Solid Waste and public education.

J. Performance Standards

Service Provider (and its drivers, employees, and agents) shall adhere to the following performance standards:

- 1) Carts shall be replaced upright as close to their original location as possible, without obstructing traffic or damaging landscaping. Lids will be closed after servicing.
- 2) Dumpsters and Roll-off Compactors shall be replaced upright at the Customer's placement, without obstructing traffic or damaging landscape;
- 3) Service Provider shall not leave loose material, which during Collections may fall in the streets or property of Customers, and will Collect any loose material that is generated during the Collection operations;
- 4) Service Provider shall make all reasonable efforts to Collect waste and Refuse regardless of barriers (i.e. blocked streets) except when the safety and health of the Service Provider's employees or the public is placed in danger;
- 5) Drivers are expressly forbidden to use their emergency brake to stop a moving vehicle, except in cases of emergencies.
- 6) Service Provider shall comply with the Customer complaint resolution provisions as provided for herein;

K. Audit

The City shall have the right to examine and audit, at any time during business hours, the accounts, and other records of the Service Provider. City and Service Provider shall perform an annual audit to verify service levels and billing.

SECTION 3. TITLE TO EQUIPMENT.

Notwithstanding anything to the contrary contained herein, it is expressly understood and agreed that all equipment, including, but not limited to, Containers, provided by the Service Provider in connection with the Services, shall at all times remain the property of the Service Provider.

SECTION 4. RATES AND FEES.

Subject to adjustment, as provided in Section 5 hereof, the rates and fees to be charged and received by the Service Provider are provided for in Exhibit "A".

SECTION 5. RATE ADJUSTMENT.

A. Annual Rate Adjustments.

The fees which may be charged by the Contractor for the sixth and subsequent years of the term hereof may be adjusted upward to reflect changes in the cost of operations based on the factors set forth hereinbelow, with a maximum allowable increase of 3% per annum. Contractor will petition the City, in writing, at least ninety (90) days prior to the anniversary date of the effective date of this contract for any adjustment to the rates charged to the City as established hereunder, by submitting any such request for a rate adjustment to the City.

B. Factors to be considered in determining whether or not a rate adjustment is justified shall be as follows:

1. Changes in costs for labor, fuel, equipment, insurance, taxes, disposal fees, or other operations and any increase or decrease in the consumer price index for the year preceding the proposed effective date of such rate adjustment.

C. Contractor shall submit financial and accounting data to the City, which substantiates its request for a rate adjustment.

D. All rate modifications shall be subject to City Council approval.

SECTION 6. PROCESSING, BILLING AND FEES.

A. Billing. The Resident(s) of the City shall pay the Service Provider, on a quarterly basis, for services rendered to Residential Units. The Customer(s) of the City shall pay the Service Provider, on a monthly basis, for services rendered Commercial Units. Said payment shall be based on City's count of active customers as per the last day of such service month. Such payment shall be based upon the rates and schedules set forth in Exhibit "A", less the two percent (2%) franchise/street use fee payable to the City based on the Contractor's gross receipts. The Service Provider shall be entitled to payment for Services rendered irrespective of whether or not the City collects from the customer for such service. Such payment shall be paid to the Service Provider within thirty (30) days of end of service month. The City and Service Provider shall cooperate in a good faith manner to resolve any disputed amounts within the initial ten (10) day period. Any amounts remaining disputed after the initial ten (10) day period shall be deducted from the Monthly Invoice and resolved in a timely manner. The City shall solely be responsible for billing Residential Services and Commercial Services excluding Special Collections. Nothing herein shall prohibit the City from collecting sums from Customers in addition to those sums called for herein.

B. Taxes. The Resident(s) of City shall also be responsible for paying any and all sales, use and service taxes collected from the Contractor customers and/or payable in connection with the Services billed by the Contractor.

C. Bad Debt; Unpaid Rates. Fees. The City agrees that payments owing to the Service Provider pursuant to this Agreement shall be based solely on the Services rendered by the Service Provider. The Service Provider shall not be held responsible for the collection of "bad debt" billed by and owned to City for the Services, nor shall the Service Provider be penalized for Services rendered that remain unpaid by any Residential or Commercial Unit.

D. Billing for Special Collections. Notwithstanding anything to the contrary contained herein, the Service Provider shall bill for all Special Collections. The Service Provider shall pay a two

percent (2%) franchise fee to the City based on the Service Provider's gross receipts Collected from the Service Provider's billings for providing Special Collections. Gross receipts shall not include; (1) local, state, or federal taxes collected by the Service Provider that have been billed to its customers and separately stated on its customer's bills, or (2) the franchise fee paid under this Agreement, or (3) revenue uncollectible from Service Provider's customers (i.e. bad debts) with billing addresses in the City that were previously included in the gross revenues.

SECTION 7. SPILLAGE AND LEAKAGE.

Service provider shall clean up any materials, including leakage of fluids spilled from Service Provider's vehicles.

During transport, all materials shall be contained, covered, and enclosed so that spilling, and leakage of materials does not occur.

Service Provider shall be responsible for the cleanup of any spillage or leakage from its vehicles. Service Provider shall perform all clean-ups of any spillage or leakage from its vehicles within two (2) hours of the spillage of the leakage. Service Provider shall not leave the spill or leak from its vehicles unattended.

Service Provider will carry absorbent materials to clean up liquid and hydraulic spills or leaks on all trucks.

If a spill or leak leaves a stain on a roadway, building, or other similar surface caused by Service Provider, its vehicles or employees, the Service Provider will use all reasonable means available to remove the stain and restore the facility to the satisfaction of the City Manager.

SECTION 8. LITTER AND ODOR

Service Provider shall clean up any litter caused by the provision of services.

Service Provider shall clean up any litter larger than three (3) inches within a ten (10) foot radius of Collection areas.

Collection equipment shall be maintained as to prevent odors. The Service Provider shall routinely clean Collection equipment, so as to maintain a standard of cleanliness.

SECTION 9. SAFETY

The Service Provider shall perform the Work in accordance with applicable laws, codes, ordinances, and regulations of the State of Texas and the United States and in compliance with OSHA and other laws, as they apply to its employees. Safety precautions at the site are a part of the construction technique and processes for which Service Provider shall be solely responsible. Service Provider is solely responsible for handling and use of Hazardous Materials or waste and informing employees of any such Hazardous Materials or waste. The Service Provider shall be responsible for instructing its employees in regard to safe working habits and shall be responsible for compliance with all Occupational Safety and Health Administration regulations. Service Provider shall provide copies of all Hazardous Materials and waste data sheets to the City's Fire Department marked Attn: Fire Chief.

SECTION 10. HOURS OF OPERATION

Collections shall be scheduled by route for each day of the week. No Collections shall be made on Sundays unless the Service Provider is directed to do so by the City Manager. Residential Collections shall occur between 7:00 a.m. and 7:00 p.m. on the scheduled Collection day(s). No Commercial Collections will be made prior to 7:00 a.m. if such Collection is in a Residential neighborhood, unless otherwise approved by the City Staff. Service Provider shall maintain a consistent route schedule and comply with provisions related to hours of service. Service Provider shall not provide Residential Collection service one-half (1/2) hour before the beginning or one (1) hour after dismissal on a scheduled school date on streets directly adjacent to school campuses.

SECTION 11. HOLIDAYS

Service Provider may observe New Year's Day, Independence Day, Thanksgiving Day, and Christmas Day. Service Provider shall request any additionally proposed holidays to be observed each calendar year prior to October 1st of the prior calendar year for approval by the City Manager. Suspension of service for any holiday shall not relieve Service Provider of its obligation to provide Collection service in frequencies provided for in this Agreement. Should Service Provider observe a holiday that falls on a Service Day, Service Provider shall, for the remainder of the calendar week, provide Collection services to Customers the following Thursday after their normal Collection day, as its catch-up day.

SECTION 12. CUSTOMER SERVICE

A. Service Inquiries.

The City shall manage current and new Customer service requests for all Residential and Commercial Customers, excluding Roll-off and Special Collections, or as otherwise provided for herein. The City shall notify Service Provider of any additions, deletions or modification in Solid Waste Services and Recycling Services within one (1) business day of the request by the Customer.

The Service Provider and the City agree to cooperate with each other in the response to any such inquiries and the resolution of any such complaints. The Service Provider shall be responsible for maintaining a log of complaints as provided for herein.

B. Customer Service Office.

- 1) The Service Provider's customer service office is located at 15519 Lee Road, Houston, Texas 77032.
- 2) The Service Provider's customer service office hours of operation are Monday through Friday from 8:00 a.m. to 12:00 p.m. and 1:00 p.m. to 5:00 p.m.

C. Customer Complaints.

- 1) The Service Provider will manage Customer complaints, including incoming phone calls and emails addressing concerns resolving issues.
- 2) All Customer complaints, received by the City, about services shall be promptly forwarded to the Service Provider and shall be given prompt and courteous attention. Service Provider shall resolve all complaints within twenty-four (24) hours of receipt of such complaint.

- 3) In the case of alleged missed Collection, the Service Provider shall make every effort to Collect the material on the same day; but it shall be Collected within one (1) business day after the complaint is received. Unless otherwise specified in this Agreement, should the Service Provider for any reason after being notified fail to make any Collections, then the City, without further notice, may cause the same to be picked up and disposed of and shall deduct or bill to the Service Provider the City's cost as well as bill or deduct the Service Provider's pro-rata charge or rate for providing the service.
- 4) Any complaint from a Customer that is not resolved to Customer's satisfaction shall be addressed by the City and the Service Provider.

SECTION 13. REPEATED NON-COLLECTION.

It is specifically understood and agreed that where the owner or occupant of a Commercial or Residential Unit repeatedly fails to timely place a Container as directed in Section 2 herein, or is otherwise in violation of the City's ordinances and regulations, the Service Provider's reasonable rules adopted hereunder or the provisions of this Agreement relating to the nature, volume or weight of Solid Waste Materials to be removed, the Service Provider may refrain from collecting all or a portion of such Solid Waste and will notify the City within eight (8) hours thereafter or the reason for such non-collection.

The Service Provider will also provide written notice to the Commercial or Residential Unit of the reason for such non-collection, unless such non-collection is the result of the Commercial or Residential Unit's failure to timely place the Containers, Bulky Items or Bundles out for collection. Such written notice shall be attached to the Container or the uncollected Solid Waste shall indicate the nature of the violation and shall indicate the correction required in order that such Solid Waste Materials may be collected.

SECTION 14. SERVICE PROVIDER'S UNDERSTANDING AND DUTY.

Service Provider acknowledges that this Agreement is subject to all requirements of the City of Stagecoach Home Rule Charter ("Charter"). The Service Provider, its employees, subcontractors, and agents shall comply with all applicable federal and state laws, the City Charter and ordinances of the City of Stagecoach, Texas, and all applicable rules and regulations promulgated by all local, state, and national boards, bureaus, and agencies. Service Provider shall further obtain and maintain all permits and licenses required, if any, for the performance of any services required.

Service Provider will be responsible for conducting criminal background checks and verifying employment eligibility on all employees employed in provided the Work required in this Agreement.

The failure or omission of the Service Provider to receive or examine any form, instrument, addendum, or other documents or to acquaint itself with conditions existing within the City shall in no way relieve the Service Provider from any obligations with respect to this Contract.

The Service Provider acknowledges that Service Provider is an independent contract of the City and is not an employee of the City.

SECTION 15. COLLECTION VEHICLES AND EQUIPMENT.

The Service Provider shall utilize Collection vehicles, Carts and Dumpsters sufficient to meet the service requirements set forth in this Agreement. Such Collection vehicles and equipment shall be substantially similar to those as provided for in Exhibit “B”, attached hereto as the Request for Proposal, dated August 24, 2020.

SECTION 16. DUE CARE.

The Service Provider shall exercise due care and caution in providing the Services so that the City’s public and private property, including streets and parking areas, will be protected, and preserved. Except in the case of Service Provider’s negligence or willful misconduct, Service Provider shall not be liable for damages to pavement, curbing, or other driving surfaces, provided that Service Provider’s equipment is being operated within normal industry standards for the type of vehicles used and type of street material and construction of such city streets.

SECTION 17. PERFORMANCE STANDARDS.

The Service Provider, its agents, servants, and employees shall perform the Services in a courteous, competent, and professional manner. During the term of this Agreement and any extension thereof, the Service Provider shall be responsible for the actions of its agents, servants, and employees while such agents, servants and employees are acting within the scope of their employment or agency.

SECTION 18. INSURANCE REQUIREMENTS.

- 1) **Insurance:** Service Provider shall at all times during the Contract maintain in full force and effect Employer’s Liability, Worker’s Compensation, Public Liability and Property Damage Insurance as provided for herein. All insurance shall be by insurers and for policy limits reasonably acceptable to the City and before commencement of work hereunder Service Provider agrees to furnish the City certificates of insurance satisfactory to the City to the effect that such insurance has been procured and is in force. The City shall be shown as additional insured during the initial term and any renewals. Proof of insurance shall be included in the form of **Exhibit “C”**. The certificates shall contain the following express obligation:

“This is to certify that the policies of insurance described herein have been issued to the insured for which this certificate is executed and are in force at this time. In the event of cancellation of a coverage required below affecting the certificate holder, thirty (30) days prior written notice will be given to the certificate holder and the City.”

- 2) All policies shall be written on a “per occurrence” and not “claims made” basis.
- 3) For this purpose of the Contract, the Service Provider shall carry the following types of insurance in at least the limits specified below:

Minimum Limits of Insurance:

Type of Coverage	Per Occurrence Minimum	Aggregate Minimum
Workers Compensation	As required by law and shall cover all employees including drivers.	As required by law
Comprehensive And General Public Liability	\$1,000,000	\$2,000,000
Property Damage	\$1,000,000	\$2,000,000
Comprehensive Auto Liability Bodily Injury	\$1,000,000	\$2,000,000
Comprehensive Auto Liability-Property Damage	\$500,000	\$1,000,000
Umbrella Liability/Each Occurrence		\$2,000,000.00
Excess Liability Aggregate		\$2,000,000.00

SECTION 19. RELEASE AND INDEMNIFICATION.

TO THE MAXIMUM EXTENT PERMITTED BY LAW, SERVICE PROVIDER HEREBY AGREES AND CONSENTS FOR ITSELF, INDIVIDUALLY, AND ON BEHALF OF THE BUSINESS ENTITY REPRESENTED, TO FULLY AND UNCONDITIONALLY RELEASE, INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CITY OF STAGECOACH, TEXAS, INCLUDING ITS OFFICERS, AGENTS AND EMPLOYEES, AND TO DEFEND AND HOLD IT HARMLESS FROM AND AGAINST ANY AND ALL COSTS, EXPENSES, ATTORNEY FEES, CLAIMS, SUITS, DEMANDS, LOSSES, OR LIABILITY FOR INJURIES TO REAL OR PERSONAL PROPERTY AND INJURIES TO PERSONS INCLUDING DEATH, INCLUDING SERVICE PROVIDER’S EMPLOYEES, AFFILIATES, REPRESENTATIVES, PARTNERS, AGENTS, OR THOSE WORKING ON SERVICE PROVIDER’S BEHALF, FROM ANY AND ALL OTHER COSTS, EXPENSES, ATTORNEY FEES, CLAIMS, SUITS, DEMANDS, LOSSES OR LIABILITIES OF ANY AND EVERY NATURE WHATSOEVER ARISING IN ANY MANNER, DIRECTLY OR INDIRECTLY, OUT OF OR IN CONNECTION WITH THIS AGREEMENT AND IN THE PERFORMANCE THEREOF, REGARDLESS OF CAUSE OR OF THE SOLE, JOINT, COMPARATIVE OR CONCURRENT NEGLIGENCE OR GROSS NEGLIGENCE OF SERVICE PROVIDER, ITS OFFICERS, AGENTS OR EMPLOYEES, SAVE AND EXCEPT THE SOLE AND EXCLUSIVE NEGLIGENCE OF THE CITY. THIS PROVISION SHALL APPLY TO ALL IMPUTED OR ACTUAL JOINT ENTERPRISE AND JOINT VENTURE LIABILITY, IF ANY.

SECTION 20. SEVERABILITY.

In the event that any term or provision of this Agreement shall be determined by a court of competent jurisdiction to be invalid or unenforceable, this Agreement shall, to the extent reasonably possible, remain in force as to the balance of its terms and provisions as if such invalid term or provision were not a part hereof.

SECTION 21. TERMINATION.

In the event of a failure by Service Provider to perform any material provision of this Agreement, City shall give written notice of such breach to Service Provider along with at least thirty (30) days to correct such breach (the “Cure Period”). In the event the Service Provider has not adequately corrected such breach in accordance with this Agreement, a hearing shall be held before the City Council. Upon completion of the Cure Period and the public hearing, the City may terminate this Agreement and shall notify the Service Provider in writing of such termination action. At such time, City shall pay Service Provider only all charges and fees for the services performed on or before such termination date. Following any such termination and the final payment from the City to Service Provider, neither party shall have any further obligation under this Agreement other than for claims for personal injuries or property damage as expressly provided in this Agreement and arising prior to such termination date.

SECTION 22. TERM OF AGREEMENT.

The Service Provider will provide services for the term of the Agreement, commencing on December 1st, 2020 at 12:00 AM, CST and ending on November 30th, 2025 at 12:00 AM, CST. The City and the Service Provider, by written mutual agreement prior to the expiration of the Agreement, may extend the Agreement for one (1) additional five (5) year terms; provided that upon the absence of written notice this Agreement shall continue on a month to month basis.

SECTION 23. ASSIGNMENT.

This Agreement will not be assignable or otherwise transferable by the Service Provider without the prior written consent of the City.

SECTION 24. FORCE MAJEURE.

The performance of this Agreement may be suspended, and the obligations hereunder excused in the event and during the period that such performance is prevented by a cause or causes beyond reasonable control of such party. The performance of this Agreement will be suspended, and the obligations hereunder excused only until the condition preventing performance is remedied. Such conditions shall include, but not be limited to, acts of God, acts of war, accident, explosion, fire, flood, riot, sabotage, acts of terrorists, unusually severe weather, lack of adequate fuel, or judicial or governmental laws or regulations.

SECTION 25. JURISDICTION AND VENUE.

This Agreement shall be governed by and construed in accordance with the laws of the State of Texas and is fully performable in the City of Stagecoach, Texas, and venue for any action related to this Agreement will be Montgomery County, Texas.

SECTION 26. WARRANTIES AND SERVICE.

The implied warranties of merchantability and fitness for a particular purpose shall not be waived under this Agreement except as expressly authorized, in writing by the City.

SECTION 27. INCORPORATION BY REFERENCE.

All the exhibits attached to this Agreement or referred to herein in and all documents such exhibits, when executed, are by this reference incorporated in and made a part of this Agreement, including the following:

- Exhibit “A” The Fee Schedule**
- Exhibit “B” the Collection Vehicle and Equipment List; and**
- Exhibit “C” Proof of Insurance**

SECTION 28. ATTORNEYS FEES.

The prevailing party in any dispute between the parties arising out of the interpretation, application or enforcement of any provision hereof shall be entitled to recover all its reasonable attorneys’ fees and costs whether suit be filed or not, including without limitation costs and attorneys’ fees related to or arising out of any trial or appellate proceedings.

SECTION 29. CONFLICTS BETWEEN AGREEMENT AND RFP.

In the event of any conflict between any of the provisions of this Agreement and the Request for Proposal, the provision that requires the highest standard of performance from the Service Provider shall prevail.

SECTION 30. NOTICE.

Any notice required or permitted to be delivered hereunder shall be in writing and shall be deemed to be delivered when deposited in the United States mail, postage paid, certified mail, return receipt requested, and addressed to the respective parties at the address set forth below:

If to the City: City of Stagecoach
 Attn: Mayor
 16930 Boot Hill Rd.
 Stagecoach, TX 77355

If to the Service Provider: USA Waste Solutions, LLC
 Attn: Joshua Garcia
 5614 W. Grand Parkway S. Suite 102 #113
 Richmond, Texas 77406

SECTION 31. TRANSITION PLANS.

Service Provider, at the termination of this Agreement, shall provide such services, and shall cooperate in a good faith manner with any future providers, to ensure a seamless and efficient transition.

SECTION 32. NO JOINT VENTURE CREATED.

Nothing in this Agreement shall be deemed to constitute a partnership or joint venture between the Parties or constitute any Party to be the agent of the other Party for any purpose.

SECTION 34. ACCEPTANCE.

PASSED AND APPROVED by the City of Stagecoach City Council Regular meeting at a time and place in complete conformity with the Open Meeting Laws of the State of Texas and all other applicable laws this ____ day of _____, 2020.

USA Waste Solutions, LLC
15519 Lee Road
Houston, Texas 77032

By: _____

Name: _____

Title: _____

CITY OF STAGECOACH
16930 Boot Hill Road
Stagecoach, Texas 77355

By: _____

Name: Galen Mansee

Title: City Manager

ATTEST:

Brenda Rutt
Title: City Secretary

Exhibit "A"

FEE SCHEDULE

STANDARD RESIDENTIAL SOLID WASTE RATES:	
One Time per week	\$15.85
Each additional 95-gallon Solid Waste Cart	\$5.00
COMMERCIAL SOLID WASTE COLLECTION RATES:	
CARTS:	
One Time per week – One 95-gallon Cart	\$24.00
Two Times per week – One 95-gallon Cart	\$36.00
Additional 95-gallon Cart	\$12.00
TWO YARD DUMPSTER:	
One Time per week	\$50.00
Two Times per week	\$100.00
THREE YARD DUMPSTER:	
One Time per week	\$77.00
Two Times per week	\$150.00
FOUR YARD DUMPSTER:	
One Time per week	\$99.00
Two Times per week	\$203.00
Three Times per week	\$300.00
Four Times per week	\$406.00
Five Times per week	\$503.00
Six Times per week	\$612.00
SIX YARD DUMPSTER:	
One Time per week	\$150.00
Two Times per week	\$305.00
Three Times per week	\$450.00
Four Times per week	\$610.00
Five Times per week	\$755.00
Six Times per week	\$910.00
EIGHT YARD DUMPSTER:	
One Time per week	\$203.00
Two Times per week	\$392.00
Three Times per week	\$593.00
Four Times per week	\$794.00
Five Times per week	\$990.00
Six Times per week	\$1,155.00
DUMPSTER EXTRA LIFTS	
Two Yard Dumpster	\$65.00
Three Yard Dumpster	\$70.00
Four Yard Dumpster	\$75.00
Six Yard Dumpster	\$80.00
Eight Yard Dumpster	\$90.00
Ten Yard Dumpster	\$100.00
Delivery Fee	\$105.00
Daily Rental Fee	\$4.00/day
20 Yard per Haul	\$371.00 plus \$28.00 per ton

ROLL-OFF RATES:	
Delivery Fee	\$115.00
Daily Rental Fee	\$5.00/day
20 Yard per Haul	\$371.00 plus \$28.00 per ton
30 Yard per Haul	\$371.00 plus \$28.00 per ton
40 Yard per Haul	\$371.00 plus \$28.00 per ton
Double Handle Fee	\$125.00
Overload Fee / Per Ton	\$125.00
TIRE DISPOSAL FEE (Per Tire)	\$9.95
BRUSH/BULKY COLLECTION FEE (per yard)	\$19.00
PORTABLE TOILETS	\$150.00/unit/service
POLY CART – REPLACEMENT	\$65.00
RATE ADJUSTMENT: Annual Rate Increase	
December 1, 2025	3.0%
December 1, 2026	3.0%
December 1, 2027	3.0%
December 1, 2028	3.0%
December 1, 2029	3.0%

Exhibit "B"

COLLECTION VEHICLE AND EQUIPMENT LIST

2017 Freightliner M2-106 /W Heil 25yd Durapack 5000 VIN: 3ALHCYCY5HDHT8977

2017 Freightliner M2-106 /W Heil 25yd Durapack 5000 VIN: 3ALHCYCY0HDJF3345