

Mt. Shasta City Council Special Meeting Agenda

Mt. Shasta City Hall, Above the Police Department

303 N. Mt. Shasta Blvd

Friday, March 22, 2019 1:00 p.m.

“Our mission is to maintain the character of our “small town” community while striking an appropriate balance between economic development and preservation of our quality of life. We help create a dynamic and vital City by providing quality, cost-effective municipal services and by forming partnerships with residents and organizations in the constant pursuit of excellence.”

Page	Item	STANDING AGENDA ITEMS
	1.	Call to Order
	2.	Roll call
	3.	<p>Solid Waste Contract <u>Background:</u> The current contract with Smith Sanitation, Inc. expires on March 31, 2019. The City of Mt. Shasta went out for requests for proposals back in October of 2018. The only interested party was Burney Disposal Inc. whom I’ve been working with since November to develop a Franchise agreement. We are very close to that agreement coming to fruition. We are looking at January 1, 2020 for that agreement to take place. This leaves us in a quandry as to how to provide services from April, 1, 2019 to December 31, 2019. We requested an extension of time from Smith Sanitation, Inc. which was countered with a proposal received earlier this month that was for ten (10) years, included an immediate 40% increase in fees, a signing bonus of \$23,509, and a termination clause that would pay John Smith Sanitation, Inc a 50% fee for any remaining contract. No other proposal would be acceptable to John Smith Sanitation, Inc.. This proposal was obviously unacceptable to the City and we immediately went into negotiations with Burney Disposal, Inc. to ask if they would be able to provide interim services from April 1, 2019 to December 31, 2019. Burney Disposal, Inc graciously accepted the challenge. The contract rate would be \$40,185 per month until December 31, 2019. Then as of January 1, 2020 we would enter into a ten (10) year franchise agreement with the specific agreement language occurring between now and December 31, 2019. The service beginning January 1, 2020 will include a 96 gallon roll out container that will be automated to pick up residential refuse. There will obviously be a few hurdles to get over to make this very quick response to occur. New bins will be provided to commercial users but will not be received until Mid April thus making commercial users can and/or bag their garbage until the bins are delivered. We will be making personal calls to each business that will be affected by this change. Recycling will not occur for the month of April but will begin the first full week of May. <u>Report By:</u> Muriel Howarth-Terrell, Finance Director <u>Recommended Council Action:</u> Approve Resolution CCR-19-XX</p>
	4.	<p>Adjourn Availability of Public Records: All public records related to an open session item on this agenda, which are not exempt from disclosure pursuant to the California Public Records Act, that are distributed to a majority of the legislative body will be available for public inspection at City Hall located at 305 North Mt. Shasta Blvd., Mt. Shasta, CA at the same time the public records are distributed or made available to the members of the legislative body. Agenda related writings or documents provided to a majority of the legislative body after distribution of the Agenda packet will be available for public review within a separate binder at City Hall at the same time as they are made available to the members of the legislative body. The City of Mt. Shasta does not discriminate on the basis of race, color, national origin, sex, religion, age or disability in employment or provision of services. In compliance with the Americans with Disabilities Act, persons requiring accommodations for a disability at a public meeting should notify the City Clerk or Deputy City Clerk at least 48 hours prior to the meeting at (530) 926-7510 in order to allow the City sufficient time to make reasonable arrangements to accommodate participation in this meeting.</p>

STAFF MEMO TO COUNCIL

Date: March 22., 2019
To: Mayor and City Council
From: Director of Finance
Subject: Proposed agreement with Burney Disposal, Inc.

Background & Summary:

The current contract with Smith Sanitation, Inc. expires on March 31, 2019. The City of Mt. Shasta went out for requests for proposals back in October of 2018. The only interested party was Burney Disposal Inc. whom I've been working with since November to develop a Franchise agreement. We are very close to that agreement coming to fruition. We are looking at January 1, 2020 for that agreement to take place. This leaves us in a quandry as to how to provide services from April, 1, 2019 to December 31, 2019.

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Financial Impact:

The financial impact in the interim results in no new fees for our customers but the increase in fees will come out of any surplus fund balance we currently have. Between now and the new franchise agreement we will be conducting a proposition 218 study to reset rates beginning January 1, 2020.

Attachments:

Agreement

Resolution

RESOLUTION CCR-19-XX

**A RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MT. SHASTA
APPROVING AN AGREEMENT WITH BURNEY DISPOSAL INC.
TO PROVIDE SOLID WASTE COLLECTION AND DISPOSAL SERVICES**

WHEREAS, on August 27, 2018 the City invited proposal for firms interested in providing collection and disposal services for the City; and

WHEREAS, on October 15, 2018, the City received from Burney Disposal Inc. ("Contractor") the only response to the request for proposal; and

WHEREAS, the City staff and Burney Disposal has been working together to establish new solid waste collection and disposal procedures that will offer economic and efficient services to the citizens and provide the City with a mechanism for adapting to new legislative mandates; and

WHEREAS, the City has been unable to confirm presently providing solid waste services to the City to extend the contract until contractual agreements can be finalized with the Contractor; and

WHEREAS, the contract for services with the present provider expires on March 31, 2019; and

WHEREAS, the health, sanitation and welfare of the City requires continued solid waste services after the expiration of the present agreement; and

WHEREAS, the Contractor has agreed to provide those services and to continue to work with City staff to finalize the details of a solid waste collection and disposal services agreement being currently worked on with Contractor and staff;

NOW, THEREFORE, BE IT RESOLVED, that the City agrees to enter into the contract attached, entitled Agreement Between the City of Mt. Shasta and Burney Disposal Inc. for Solid Waste Collection and Disposal Services"; and

BE IT FURTHER RESOLVED that the City Council authorizes the City Manager and Assistant City Manager to make changes to the attached agreement to further the purposes set forth in the agreement and to ensure that the City has continued solid waste collection and disposal services; and

BE IT FURTHER RESOLVED that after the interim period set forth in the agreement, the City staff will return to the City Council with agreement finalizing the details of the City's new solid waste collection and disposal program and establishing a rate schedule to be approved

by the City Council that will ensure the implementation of the program set forth in the agreement.

PASSED and ADOPTED this 22 day of March, 2019 by the following vote.

AYES: _____
NOES: _____
ABSENT: _____
ABSTAIN: _____

DATED: _____, 2019

CITY OF MT. SHASTA

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

John S. Kenny, City Attorney

**AGREEMENT BETWEEN THE CITY OF MT. SHASTA AND
BURNEY DISPOSAL, INC.
FOR SOLID WASTE COLLECTION AND DISPOSAL SERVICES**

THIS AGREEMENT is made and entered into this 25th day of March 2019 by and between the City of Mt. Shasta, hereinafter called “City”, and Burney Disposal, Inc., hereinafter called “Contractor”.

1. In exchange for the consideration set forth in this Agreement, Contractor agrees to collect, transport and dispose of all Garbage and Household Rubbish (as defined below) within the city limits of the City of Mt. Shasta in accordance with the provisions of Mt. Shasta Municipal Code Chapter 6.04, GARBAGE AND REFUSE, except as such provisions may be modified herein.

2. Definitions. For the purpose of this Agreement the following terms shall be defined as follows:

(A) "Garbage" means refuse, vegetable and animal matter from kitchens, markets or stores; offal of animals, fish or fowl; decayed fruits and vegetables; cans, bottles, jars or other waste matter that attends the preservation, preparation and consumption of food. The term Garbage shall not include liquids, dish water, or waste water.

(B) "Household Rubbish" consists of, woodenware, printed matter, paper, pasteboard, cardboard, plastics, rags, castoff clothing and all other decomposable or combustible matter not included under the terms “Garbage,” “Yard Waste,” or “Other Waste Matter” that is generated by normal household activities.

(C) “Yard Waste” consists of wood, leaves, dead trees or the branches thereof, chips, shavings, grass, straw, or other organic materials.

(D) "Other Waste matter" consists of natural soil, earth, sand, clay, gravel, loam, sod, stones, ashes, cinders, manure, shells, glass, metals and all other disposable material not included above.

(E) "Garbage receptacle" means watertight cans, or receptacles, with suitable bales or handles having a tight fitting cover, for receiving and holding Garbage, without leakage or escape of odors, and having a capacity of not to exceed thirty-five gallons.

3. Contractor agrees that Garbage and Household Rubbish collected pursuant to this Agreement shall be disposed of at the Black Butte Transfer Station, as long as it is feasible, and that recyclable materials placed in City supplied “Blue Bags” will be delivered to the Siskiyou Opportunity Center recycling facility. During the term of this Agreement, City shall be liable and pay directly the tipping fees charged for the disposal of any Garbage, Household Rubbish or other materials collected pursuant to this agreement.

4. Contractor agrees to collect Garbage and Household Rubbish in accordance with this Agreement as follows:

From restaurants, motels, hotels, food service and public eating-places: upon scheduled bin pickup, except Sundays, and those days when the Black Butte Transfer Station is not available for disposals. Any collection scheduled when the Black Butte Transfer Station is not available for disposal shall be made on the next available day.

From business establishments: Not less than once a week; but Contractor shall make collections more often should the business owner have contracted for regular additional collections with the City.

From private residences, multiple-unit dwellings and apartment houses: Once each calendar week on days designated on that certain map identified as “Garbage Collection Route”, and attached hereto as Exhibit “A.” The designated days as set forth in Exhibit “A” may be changed from time to time by City upon ten (10) days written notice to Contractor, and a revised Exhibit “A” shall be attached hereto.

From the City Hall, Police Department, and Library: twice each week.

5. Contractor agrees to furnish its own truck(s) and necessary equipment to collect such Garbage and Household Rubbish in a manner satisfactory to the City. Said equipment shall be of design appropriate for its use in the collection of garbage, and shall be water tight to prevent spilling or leakage of Garbage, Household Rubbish, or other waste material onto streets or highways in transporting the same. Contractors equipment shall be capable of attaching to, lifting and emptying trash and Garbage containers designed to fit a "Heil" container dumper system, or such other system as agreed to by the City.
6. Contractor agrees to have auxiliary trucks available in the event the Contractor's regular truck(s) or equipment are inoperable.
7. Except as otherwise provided in Paragraph 8 below, and recyclable materials properly placed in City supplied "Blue Bags," Contractor shall not be required to pick up Garbage or Household Rubbish that is not contained in proper Garbage Receptacles as defined in Paragraph 2.(E) of this Agreement.
8. Commercial establishments or multiple-unit dwellings may utilize containers designed to fit a "Heil" container dumper system, or such other system as agreed to by the City per Paragraph 5 above; and these shall be considered proper receptacles, so long as Contractor's trucks are provided unobstructed access to service said containers. Certain Rubbish such as cardboard boxes and dry waste, that is pertinent to the business establishment at that location, will be picked up, even though it is not within the prescribed containers. This type of waste shall not be required to be picked up if it is over thirty pounds in weight. Said pickups shall be considered extra Garbage for purposes of Paragraph 20.
9. The Contractor shall exercise due diligence to prevent Garbage, Household Rubbish, or other waste material collected from strewing along streets or highways. In the event such Garbage, Rubbish, or other waste material is spilled from the truck or strewn along streets or highways, the Contractor shall immediately collect and dispose of the same.
10. Contractor shall exercise due diligence to prevent damage to customers' Garbage Receptacles, and to replace same, with lid on, at its accessible location.
11. Contractor, its agent, or representative shall call City Hall every business day during business hours for information on complaints which may have been registered by any resident or business establishment. Contractor shall expeditiously collect any Garbage, Household Rubbish, or waste material that has been overlooked. Contractor, its agent, or representative shall furnish the City with a list, giving the name or street address of any residence or business establishment whose Garbage has not been picked up for the reason that it does not meet the requirements set forth in Paragraphs 7 and 8 of this agreement.
12. Contractor shall pay to the City as liquidated damages, one hundred dollars (\$100.00) per day for each calendar day that the Garbage is not collected as scheduled for reasons other than the closure or partial closure of streets, highways due to adverse weather conditions, or closure of the Black Butte Transfer Station, or due to other events outside the control of Contractor.
13. It is expressly understood and agreed that this Agreement shall not be deemed to create a partnership, a joint venture, or any type of agency between the parties. The parties hereto agree that their relationship is that of a Contracting Agency on the part of City and independent contractor on the part of Contractor. The City shall not be liable for any obligations or liabilities of any nature or kind whatsoever arising out of intentional or negligent acts of Contractor, its agents, or employees while performing services under this Agreement.

14. The Contractor agrees, to the fullest extent permitted by law, to indemnify and hold harmless the City, its elected and appointed officials, officers, agents and employees against all damages, liabilities or costs, including reasonable attorney's fees and costs, arising out of intentional or negligent acts of Contractor, its agents, or employees while performing services under this Agreement.
15. Without limiting Contractor's indemnification of City, Contractor shall procure and maintain at all times during the life of this Agreement, a program of insurance against claims for injuries to persons or damages to property which may arise from or in conjunction with performance of the services hereunder by Contractor, its agents, or employees. Said coverage shall be with a company authorized to do business in the state of California, and possess at least an A.M. Best's rating of A:V and be acceptable to the City. Contractor shall provide City with proof of insurance coverage upon request.
16. Insurance shall meet the following provisions:

Minimum Limits on Insurance

1. General Liability: \$1 Million per occurrence for bodily injury, personal injury, and property damage arising out of services performed by Contractor under this agreement.
2. Automobile Liability: \$1 Million per accident for bodily injury, death, and property damage insuring against liability arising out of the use of any vehicle in performing services under this agreement.
3. Workers' Compensation insurance as required by the State of California.

Other Insurance Provisions – Commercial General and Automotive Liability

The commercial general liability and automotive liability policies are to contain, or be endorsed to contain, the following provisions:

1. The City, its elected and appointed officials, officers, agents and employees are to be covered as additional insured with respect to liability arising out of operations performed by or on behalf of the Contractor; or automobiles owned, leased, hired or borrowed by the Contractor.
 2. For any claims related to Contractor's services rendered pursuant to this Agreement, the Contractor's insurance coverage shall be primary insurance as respects the City, its elected and appointed officials, officers, agents and employees. Any insurance or self-insurance maintained by the City, its elected and appointed officials, officers, agents and employees shall be excess of the Contractor's insurance and shall not contribute with it.
 3. Each insurance policy required by the clause shall be endorsed to state that coverage shall not be reduced or canceled by either party, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City's Risk Manager.
17. Contractor shall furnish the City with a good and sufficient bond in the amount of \$2,500.00 for the full and faithful performance of the terms of the Contract.
 18. In the event that Contractor fails to perform any of the covenants contained in this Agreement, Contractor shall be notified in writing by City. If said breach is not cured by Contractor within ten (10) days of receipt of notice of said breach, City shall have the right to terminate this Agreement and declare the bond forfeited. If City terminates the Agreement Contractor shall be paid within ten (10) days for all services performed prior to termination.

19. The City shall make payment to the Contractor on the last working day of each month during which service is rendered under this contract. The term of this interim contract is nine months from April 1, 2019 to December 31, 2019 at the end of such time a ten (10) year franchise agreement with optional two five (5) year extensions to be put into place with specifications regarding such franchise to occur during this nine month emergency interim agreement. The rate for each month during this nine month agreement will be \$40,185.00.

In addition to the refuse collection, the Contractor shall pick up "blue bag" recycling bags once per month during the first full week of each month except for April 2019. Each household may have up to three blue bags. Contractor shall replenish the blue bags to the customer. The blue bags are provided by the City to the Contractor. Collections will be delivered unsorted to the Siskiyou Opportunity Center recycling facility in Mt. Shasta.

20. The City shall also make payment to the Contractor on or before the 10th day of each month for occasional extra Garbage pickups. Such payment shall be a portion of the revenue derived from the sale of tags for the pickup of occasional extra Garbage during the prior month and a portion of the billing for any extra commercial bins or loose Rubbish reported as picked up by the contractor during the prior month. Payment shall be in the amount of \$1.85 for each tag sold by the City and \$6.75 for each extra bin reported to the City on or before the 25th day of the prior month.
21. The City agrees that Contractor shall have an exclusive contract for collection and hauling of Garbage, Household Rubbish and commercial Rubbish generated during normal activities for the term of this Agreement. The collection and transportation of construction or demolition debris, yard waste, or other waste matter are not included under this Agreement.
22. Unless otherwise terminated in accordance with this Agreement, the term of this Agreement shall be from April 1, 2019 through December 31, 2019 . The City declares to Contractor its intent to seek a franchise agreement for solid waste collection and disposal upon the expiration of this agreement.
23. Any dispute or claim in law or equity arising out of this Agreement or any transaction resulting from this Agreement shall be decided by binding arbitration in accordance with the rules of the American Arbitration Association or a mutually agreed upon private arbitrator. No exemplary damages may be awarded. Judgment upon the award may be entered into any court having jurisdiction. Each party shall have the right to discovery under California Code of Civil Procedure section 1283.05. Arbitration shall not be mandatory, however, on actions to protect confidential/proprietary information.
24. This agreement constitutes the entire understanding between the parties and supersedes all other previous understandings, written or oral.
25. The provisions of this Agreement may be waived, altered, amended, or repealed, in whole or in part, only on the written consent of all parties to this Agreement.
26. This Agreement shall not be assigned or transferred without the expressed written consent of the City.
27. All notices, requests, demands, and other communications under this Agreement shall be in writing and shall be given by personal delivery, by facsimile, or by mail (registered or certified mail, postage prepaid, return receipt requested) addressed to the party at his address set forth on the signature page of this Agreement, or any other address that any party may designate by written notice to the others.
28. This Agreement shall be construed in accordance with, and governed by, the laws of the State of California.

29. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

BURNEY DISPOSAL, INC.

CITY OF MT. SHASTA

By: _____

By: _____

Name/Title _____

Bruce Pope, City Manager

Address:
37484B Cornaz Drive
Burney, CA 96013

Address:
305 North Mt. Shasta Boulevard
Mt. Shasta, CA 96067

Approved as to Form:

John S. Kenny, City Attorney