

**FIRST AMENDMENT TO APRIL 1, 2009 AMENDED  
AND RESTATED SOLID WASTE FRANCHISE AGREEMENT**

**CITY OF FOWLER AND USA WASTE OF CALIFORNIA, INC.**

This First Amendment to April 1, 2009 Amended and Restated Solid Waste Franchise Agreement (“First Amendment”) is entered into effective July 1, 2014 (“Effective Date”) between the City of Fowler, a California general law city (“Fowler”) and USA Waste of California, Inc. a Delaware corporation registered to do business in California and a division of Waste Management (“Contractor”) with respect to the following recitals, which are a substantive part of this Agreement:

RECITALS

- A. On August 7, 2001, Fowler and Contractor entered into a 10 year Solid Waste Franchise Agreement (“2001 Franchise Agreement”) for Contractor to become the exclusive provider of solid waste service in the City of Fowler. A copy of the 2001 Franchise Agreement is on file with Fowler and Contractor.
- B. On April 7, 2009, Fowler and Contractor agreed to amend and extend the term of the franchise and entered into a 15 year Amended and Restated Solid Waste Franchise Agreement, effective as of April 1, 2009 (“2009 Franchise Agreement”). A copy of the 2009 Franchise Agreement is attached hereto as **Exhibit A** and incorporated by reference.
- C. The 2009 Franchise Agreement, section 18, required Fowler to perform billing and collection services.
- D. The Parties desire to amend the 2009 Franchise Agreement to require Contractor to perform billing and collection services. As part of that change, customer service standards need to be established in addition to other related changes. Further, Contractor has requested a rate increase to assist Contractor with the additional costs of performing the billing and collection services.

NOW, THEREFORE, in consideration of the mutual covenants, conditions, and releases set forth below, the Parties agree as follows:

1. Amendment to Section 3 Revenue to City. Section 3 of the 2009 Franchise Agreement is amended in its entirety to read as follows:
  3. REVENUE TO THE CITY.
    - 3.1. Contractor agrees to pay to City a franchise fee of ten percent (10%) of Gross Revenue per month from services to residential, commercial and industrial accounts, including temporary and special services.

- 3.2. Contractor shall remit the franchise fees to City on a quarterly basis on or before the 31st of the first month following the end of each calendar quarter.
- 3.3. If contractor is more than fifteen (15) days late in any payment, interest shall accrue at a rate of seven percent (7%) per year until paid.

2. Amendment to Sections 18.1, 18.2, and 18.4, and Addition of Section 18.1.1, Pertaining to Customer Billing and Collection. Sections 18.1, 18.2, and 18.4 of the 2009 Franchise Agreement are amended in their entirety, and Section 18.1.1 is added, to read as follows:

- 18.1. Invoicing. Beginning on the Effective Date, Contractor shall assume the responsibility for all billing and collection services required as a result of Contractor's performance hereunder. Contractor shall bill all customers for all services, whether regular, temporary, or special. Contractor shall provide itemized bills showing charges for all classifications of services, including the charges for late payment, service fees, rentals, rebates, etc. Billing shall be made monthly in advance for regularly scheduled services, and monthly in arrears for any temporary or special services, to all residential, commercial, and industrial customers. Contractor shall provide not less than thirty (30) days from the billing date for customer to pay an invoice before the account may be declared delinquent.
  - 18.1.1 Maximum Rates for Service. The maximum rates for service, incorporating all permissible rate adjustments effective as of July 1, 2013, are set forth in **Exhibit B**. The maximum rates for services shall be increased effective July 1, 2014, as follows: Residential rates, seven and fourteen tenths percent (7.14%); commercial and industrial seven and fourteen tenths percent (7.14%). The new maximum rates for service reflecting these adjusted rates are set forth in **Exhibit B**. The rates set forth in **Exhibit B** may be adjusted in accordance with Section 18.6.
- 18.2. Accounting. Contractor shall provide a monthly accounting of all customer accounts, services, charges, and delinquencies as set forth in Section 20.
- 18.4. Account Delinquency and Discontinuance of Service.
  - (a) Contractor may discontinue service for non-payment as follows: customers who have not remitted required payments within thirty (30) days after the billing date shall be notified in writing that services may be discontinued fifteen (15) days from the date of notice if payment is not made before that time. Contractor may discontinue service in accordance with such written notice until payment in full is received. Discontinuance of service for non-payment shall be deemed a failure to receive the

minimum basic service capacity as required by Fowler Municipal Code section 6-2.304(d).

- (b) Contractor may charge interest on any delinquent account up to the maximum annual rate allowed by law for such time as the bill remains unpaid after its due date, a late fee of the greater of two and one half percent (2.5%) of the amount owing or \$5.00 per delinquent billing per account, and a reactivation fee of \$25.00 for residential accounts and \$35.00 for commercial and industrial accounts upon recommencement of service, which shall be charged as a special fee. Contractor may also include as a special fee NSF bank charges and other reasonable fixed third party collection costs.

3. Amendment of Section 8 Pertaining to Customer Service. Section 8 of the 2009 Franchise Agreement is amended in its entirety to read as follows:

8. CUSTOMER SERVICE.

- 8.1. Customer Service Hours. Contractor shall sufficiently staff, operate, and maintain a local phone number to receive customer requests for service, accept payments, and handle customer complaints. Contractor's office hours shall be from 8:00 a.m. to 5:00 p.m. on Monday-Friday, and 8:00 a.m. to 12:00 p.m. on Saturdays. All changes in service levels shall be accompanied either by a written request from customer or followed up within one (1) business day by a written confirmation from Contractor. These records shall be kept as provided for in Section 20.3.
- 8.2. Telephone Access. Contractor shall maintain a telephone answering system capable of accepting at least fifteen (15) incoming calls at one time. Contractor shall record all calls including any inquiries, service requests and complaints into the service complaint log. All incoming calls will be answered within five (5) rings. Any call "on-hold" in excess of 1.5 minutes shall have the option to remain "on-hold" or to be switched to a message center where Customer can leave a message. Contractor's customer service representative shall return Customer calls. Contractor shall make a minimum of three (3) attempts within two (2) business days of the receipt of the call. If Contractor is unable to reach the Customer within two (2) business days, Contractor shall leave a voice message, and if no voice recording is available shall send a postcard to the Customer on the third business day after the call was received.
- 8.3. Emergency Telephone Number. Contractor shall maintain an emergency telephone number, for use by City personnel only, outside office hours identified in Section 8.1. Contractor shall have a representative, or an answering or call-forwarding service to contact such representative,

available at the emergency telephone number during all hours other than office hours.

- 8.4 Payment Centers. Contractor shall establish one (1) or more payment centers within City under which customers can make payments. The payment center shall be approved by the City Manager. The payment center hours shall be open to customers not less than the same as Contractor office hours. The date payment is made at a payment center shall be considered the date that payment is received by Contractor. City agrees to work with Contractor in contacting local businesses that could serve as a payment center. Unless otherwise agreed to between Contractor and the payment center, the following rules shall apply:
- Payment centers shall be solely for the receipt of checks or money orders. No cash or credit card payments will be accepted.
  - The payment center is not required to verify billing statements and amounts received.
  - Payment center shall be responsible for accurately and correctly recording payments and receiving and using remittance slip from customer.
  - Contractor may establish processing requirements for the making of payments, including the placement of payments in Contractor envelopes and payment boxes.
  - Contractor shall pick up payments at designated times, but not less than once per week.
  - All accounting shall be performed by Contractor.
  - Customers are responsible for following Contractor payment procedures when making payments at a payment center.
- 8.5 Service Complaints. All customer complaints shall be made directly to Contractor, or if made to City, shall be directed or referred to Contractor. Contractor shall maintain a complaint service, which during office hours shall be handled by staff and outside office hours may be handled by a telephone answering service. Contractor shall record all complaints, including date, time, complainant's name and address if the complainant is willing to give this information, and date and manner of resolution of complaint. Contractor shall maintain this information in a computerized daily Service Complaint Log. Any such calls received via Contractor's answering service after hours shall be recorded in the Service Complaint Log the following working day. This Service Complaint Log shall be

available for review by City during Contractor's office hours. Contractor is responsible for the prompt and courteous attention to, and prompt and reasonable resolution of, all customer complaints relating to service and billing. Complaints shall be initially responded to within one (1) business day, and if not resolved at that time, shall be resolved within a reasonable amount of time. Complaints not satisfactorily resolved shall be handled in accordance with Section 18.5.

8.6. Failure to Meet Standards. The parties recognize that quantified standards of performance are necessary and appropriate to ensure consistent and reliable service. The parties further recognize that if Contractor is in breach of its obligations under this Agreement, City and its residents will suffer damages and that it is and will be impracticable and extremely difficult to ascertain and determine the exact amount of damages that City will suffer. Therefore, without prejudice to City's right to treat an alleged breach as an event of default, the parties agree that the following liquidated damage amounts represent a reasonable estimate of the amount of such damages considering all of the circumstances existing on the date of this Agreement, including the relationship of the sums to the range of harm to City that reasonably could be anticipated and the anticipation that proof of actual damages would be costly or inconvenient. Contractor will pay (as liquidated damages and not as a penalty) the amount set forth below.

- For each failure to timely respond to a customer complaint: \$100.00.
- For each failure to meet the customer service center hours and payment center hours: \$500.00.
- For each failure to have available a complete and timely Service Complaint Log: \$500.00.

Prior to assessing liquidated damages, City will give Contractor notice of its intention to do so accompanied by a list of each incident giving the date and a brief description. Contractor may review (and make copies at its own expense) all information in the possession of City relating to incidents on the list. Contractor may, within ten (10) days after receiving the notice and list request a meeting with City held by the City Manager. Contractor may present evidence in writing and through testimony of its employees and others relevant to the incidents on the list. The City Manager will provide Contractor with a written explanation of his or her determination on each incident prior to authorizing City's Finance Department to invoice Contractor for the liquidated damages.

4. New Section 20 Regarding Accounting Reports. Section 20 is added to the 2009 Franchise Agreement to read as follows:

20. ACCOUNTING AND REPORTS; RESOLUTION OF DISPUTES.

- 20.1 Franchise Fees. Contractor shall provide City with a detailed accounting of franchise fees with each quarterly payment made pursuant to Section 3.3. The accounting shall be in a format easily enabling City to verify the correctness of the payments, and shall include a statement of the number of active, non-delinquent accounts during each month of the quarter and gross revenue for each month of the quarter. Contractor agrees to cooperate with City to develop any additional methodologies necessary to assure payment of all franchise fees owed.
- 20.2. Quarterly Meetings. City and Contractor shall meet on a quarterly basis to discuss the accuracy and completeness of the information and reports required by the 2009 Franchise Agreement and to resolve any disputes regarding implementation of the 2009 Franchise Agreement. City and Contractor shall make relevant books open for inspection during these meetings.
- 20.3. Records. Contractor shall maintain all records pertaining to its responsibilities under this 2009 Franchise Agreement for a period of not less than five (5) years from when the records are created. All of Contractor's records pertaining to its responsibilities under this 2009 Franchise Agreement, including all billing and collection records for the service rates, shall be available for inspection or audit by City at reasonable times and upon reasonable notice.
- 20.4 Disputes and Mediation. The parties agree to enter into mediation before initiating litigation to resolve any disputes regarding implementation of this 2009 Franchise Agreement. The parties shall mutually agree upon a mediator and each party shall pay one half (1/2) the cost of the mediator and bear their own costs for the mediation. The mediation shall be completed within ninety (90) days of notice of the intent to undergo mediation. If the mediation is not completed within ninety (90) days of notice, a party may initiate litigation. The parties shall act in good faith and with due diligence to timely complete the mediation.

5. All Other Terms Remain in Effect. Except as expressly set forth herein, all other terms of the 2009 Franchise Agreement shall remain unchanged and in full force and effect, including all terms defined in the 2009 Franchise Agreement unless otherwise defined in this First Amendment, and the 2009 Franchise Agreement shall be interpreted so as to give full force and effect to this First Amendment.

6. Binding Effect. This First Amendment shall inure to the benefit of and be binding on the successors and assigns of City and Contractor, and their respective representatives, grantees, successors, and assigns.

7. Cooperative Efforts. Contractor and City agree to work cooperatively in implementing the changes called for by this First Amendment, and in particular timely notifying customers of the changes.


WHEREFORE, Fowler and Contractor, by their signatures below, enter into this Agreement as of the Effective Date.

CITY OF FOWLER

By:   
David Elias, City Manager

June 23, 2014

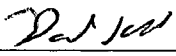
USA WASTE OF CALIFORNIA, INC.

By:   
~~President, Chairman, CEO or Vice-~~  
~~President - Southern California Area~~  
June 19, 2014

By:   
~~Chief Financial Officer, Secretary or~~  
~~Treasurer Vice President~~

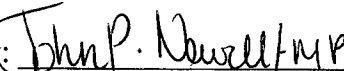
June 19, 2014

Approved as to form:

By:   
David J. Wolfe, City Attorney

June 23, 2014.

Approved as to form:

By:   
John. P. Newell, Corporate Counsel

June 20, 2014

**EXHIBIT A**  
To First Amendment

**AMENDED AND RESTATED  
SOLID WASTE  
FRANCHISE AGREEMENT**



**AMENDED AND RESTATED SOLID WASTE FRANCHISE AGREEMENT**

This Amended and Restated Franchise Agreement is made and entered into on this 7<sup>th</sup> day of April, 2009 ("Effective Date") by and between the City of Fowler ("City"), a municipal corporation, and USA Waste of California, Inc., a Delaware corporation registered to do business in California ("Contractor").

**WITNESSETH:**

The City and Contractor entered into a Solid Waste Franchise Agreement dated August 7, 2001 ("Prior Agreement").

The parties desire to provide for a change in service requirements, a longer term, and other mutually agreeable revisions to the Prior Agreement. This Agreement is intended to replace and supersede the Prior Agreement in its entirety, except for Contractor's indemnification of the City arising from matters occurring prior to the effective date of this Agreement.

In accordance with California Public Resources Code Section 40059(a)(2), the City has determined that the public health, safety, and welfare require that an exclusive franchise be awarded to a qualified solid waste enterprise for the collection, transportation, recycling, processing, and disposal of solid waste, and for other related services, to meet the goals and objectives of AB 939.

It is the intent of the parties hereto to provide for the exclusive right of collection of all solid waste from residential, industrial and commercial premises within the City, in accordance with the terms and conditions set forth herein.

NOW, THEREFORE, for good and valuable consideration, the receipt of which is acknowledged, the parties agree as follows:

1. **DEFINITIONS.** The following words and phrases used in this Agreement shall be defined in accordance with the definitions set forth herein. In the event of a conflict between these definitions and those set forth in the Fowler Municipal Code, the definitions set forth herein will prevail:

1.1. **AB939** means the California Integrated Waste Management Act of 1989, as amended (Public Resources Code §40000 et seq.), and implementing regulations of the California Integrated Waste Management Board.

1.2. **ACCOUNT** means premises located within the City receiving services pursuant to this Agreement, or the person arranging for services pursuant to this Agreement, as the case may be. The word "account" is used interchangeably with the word "customer" in this Agreement.

- 1.3. **AGREEMENT** means this Amended and Restated Solid Waste Franchise Agreement between the City and Contractor, including all exhibits and attachments, and any amendments.
- 1.4. **BIN** means a metal or rigid plastic container with a capacity of one to eight cubic yards, having a hinged lid and wheels, which is serviced by a front-end loading truck.
- 1.5. **BIN SERVICE** means collection services provided to accounts using bins provided by Contractor. Bin service may be provided to either residential premises, industrial premises or commercial premises on a permanent or temporary basis.
- 1.6. **BIOHAZARDOUS WASTE** means those materials defined as "biohazardous waste" in Health and Safety Code §117635.
- 1.7. **BULKY ITEMS** means discarded furniture (including but not limited to chairs, sofas, mattresses, and rugs); appliances (including but not limited to refrigerators, ranges, washers, dryers, water heaters, dishwashers, plumbing, small household appliances, and other similar items, commonly known as "white goods"); discarded stereos, televisions, computers, VCR's, and other similar items (commonly known as "e-waste"); wood waste, tree trunks, and large branches if more than six inches in diameter or four feet in length, scrap wood, rocks, sod and earth. Bulky items do not include construction and demolition waste, or large items such as car bodies, Jacuzzi tubs or spas, or other items that cannot be handled by two persons. In addition, bulky items do not include waste tires or universal waste.
- 1.8. **CART** means a plastic container with a capacity of no less than approximately 64 gallons and no greater than approximately 96 gallons, having a hinged lid and wheels, which is serviced by an automated side-loading truck.
- 1.9. **CART SERVICE** means collection services provided to accounts using carts provided by Contractor. Cart service may be provided to either residential premises, industrial premises or commercial premises on a permanent basis.
- 1.10. **CITY** means the City of Fowler.
- 1.11. **COMMERCIAL PREMISES** means property upon which a business activity is conducted, including but not limited to retail sales, services, or wholesale operations, but excluding businesses conducted upon residential premises that are permitted under applicable zoning regulations and that do not constitute the primary use of the property. Commercial Premises may receive bin service, roll-off service or cart service. Commercial premises also include multi-family complexes, apartment houses, condominiums, mixed condominiums and rental housing, senior citizen housing complexes, and mobile home parks receiving permanent bin service or roll-off service.

- 1.12. **CONSTRUCTION AND DEMOLITION WASTE** means used or discarded construction materials removed from premises during the construction, renovation or demolition of a structure or premises, including rocks, soil, tree remains, and other green waste which normally results from land clearing or land development operations.
- 1.13. **CONTRACTOR** means USA Waste of California, a Delaware corporation.
- 1.14. **CONTRACTOR'S TRANSFER STATION** means that solid waste and green waste transfer and processing facility owned and operated by Contractor, located at 4333 E. Jefferson Avenue, Fresno, CA 95370.
- 1.15. **DWELLING UNIT** means any single family premises, or any individual living unit in a multi family premises that includes a full kitchen and bathroom, intended for, or capable of being utilized for, residential living.
- 1.16. **E-WASTE** means discarded stereos, televisions, computers, VCR's, and other similar items, including but not limited to any "covered electronic device" as defined in Public Resources Code §42463(f).
- 1.17. **GREEN WASTE** means leaves, grass, weeds, and wood materials from trees and shrubs that fit within a cart, or tree trunks or limbs that are less than six inches in diameter of four feet in length. Materials not meeting these specifications are considered bulky items. Green waste does not include palm fronds.
- 1.18. **GROSS REVENUE** means all monetary amounts actually collected or received by Contractor for the collection of solid waste, green waste, and recyclable material pursuant to this Agreement. The term Gross Revenue, for purposes of this Agreement, shall include service fees, but shall not include special fees, revenues generated from the sale of recyclable material (including Department of Conservation rebates), or other revenues from state and local government accounts.
- 1.19. **HAZARDOUS WASTE** means any waste materials or mixture of wastes defined as such pursuant to the Resource Conservation and Recovery Act, 42 USC Section 6901 et seq., as amended or the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA"), 42 USC Section 9601 et seq., as amended. The term also means and includes any waste material defined as such by the California Environmental Protection Agency or the California Integrated Waste Management Board, or either of them. Where there is a conflict in the definitions employed by two or more agencies having jurisdiction over hazardous or solid waste, the term "Hazardous Waste" shall be construed to have a broader, more encompassing definition.

- 1.20. **INDUSTRIAL PREMISES** means property upon which manufacturing and industrial operations are conducted. Industrial Premises may receive bin service, roll-off service or cart service.
- 1.21. **PREMISES** means any land, building or structure in the City where solid waste, recyclable material or green waste is generated or accumulated.
- 1.22. **PRIOR AGREEMENT** means the Solid Waste Franchise Agreement between City and Contractor dated August 7, 2001.
- 1.23. **RECYCLABLE MATERIAL** means any material generated on or emanating from residential, industrial or commercial accounts that is no longer wanted and which is collected, transported and reused or processed into a form suitable for reuse through reprocessing or remanufacture, consistent with the requirements of AB 939, including paper, glass, cardboard, plastics, ferrous metal, aluminum, or other materials as determined from time to time by mutual agreement between City and Customer.
- 1.24. **RESIDENTIAL PREMISES** means all property which is used for residential purposes and which receive permanent cart service, including single-family premises, multi-family premises, condominiums, and mobile home parks.
- 1.25. **ROLL-OFF BOX** means an open-top metal container or closed compactor box with a capacity of 10 to 40 cubic yards that may be provided by either the account or Contractor, which is serviced by a roll-off truck.
- 1.26. **ROLL-OFF SERVICE** means collection, transportation, recycling, processing and disposal services that are provided using a roll-off box. Roll-off service may be provided to either residential premises, industrial premises, or commercial premises on a permanent or temporary basis.
- 1.27. **SERVICE FEES** means a charge for services provided by Contractor under this Agreement for which a rate is not provided in Exhibit 1. Examples include fees for service initiation, supplying additional carts, back yard collection, extra collections, roll-off services, and special waste collections.
- 1.28. **SOLID WASTE** means "solid waste" as defined in Public Resources Code §40191, including putrescible and non-putrescible refuse, special waste, and construction and demolition waste.
- 1.29. **SPECIAL FEES** means a charge imposed by Contractor in response to improper actions by accounts, including fees for contamination, cleanup, cart or bin repair or replacement arising from damage caused by the account, late payment, or interest.

- 1.30. **SPECIAL WASTE** means solid waste generated by a commercial or industrial premises that is a "designated waste" under applicable law, is required to be accompanied by a written manifest or shipping document describing the waste under applicable law, or requires special handling at any processing facility or disposal site.
- 1.31. **TEMPORARY SERVICE** means bin service or roll-off service provided to premises on a temporary, as-needed basis, such that no container remains on the premises or a service location on a premises for more than thirty (30) days at a time, or for more than sixty (60) days of any ninety (90) day period.
- 1.32. **UNIVERSAL WASTE** means all waste defined by Title 22, Subsections 66273.1 through 66273 of the California Code of Regulations, which typically include batteries, fluorescent tubes, and compact fluorescent bulbs.

## 2. SERVICES.

- 2.1. Contractor is hereby granted the exclusive right and privilege to collect, transport, recycle and dispose of all solid waste, recyclable material, and green waste (and construction and demolition waste) generated at residential premises, industrial premises and commercial premises, construction and demolition sites, and government facilities (to the extent permitted by law), now existing or hereafter constructed within the City during the term of this Agreement.
- 2.2. During the term of this Agreement, except as otherwise provided in Section 2.4, or as may otherwise be provided by federal or state law, the rights granted to Contractor under this Agreement will be exclusive to Contractor. The City will, where reasonable, protect Contractor's exclusive rights by considering the adoption of appropriate ordinances. In addition, the City authorizes Contractor to take administrative or legal action against any person who infringes on Contractor's exclusive rights, at no cost to the City.
- 2.3. The City agrees not to enter into any contract with any other person, firm or organization for the performance of the services required to be performed by Contractor except, in the event Contractor fails, refuses or neglects to uphold the terms of this Agreement in material breach thereof, the City may cause fulfillment of this Agreement by other methods or contractors.
- 2.4. The franchise granted to Contractor is exclusive, except for the categories of solid waste listed below. The granting of this franchise does not preclude the categories of solid waste listed below from being delivered to, collected, and transported by others, provided that no person is excused from obtaining from the City any authorization that is required by law.

- 2.4.1. Recyclable material that an account sells to, or otherwise receives compensation from, other persons in a manner resulting in a net payment to the account after consideration of collection, handling, or processing costs.
  - 2.4.2. Recyclable material donated to youth, civic, or charitable organizations.
  - 2.4.3. Containers delivered for recycling under the California Beverage Container Recycling Litter Reduction Act, Sections 14500, et seq., California Public Resources Code.
  - 2.4.4. Green waste removed from premises by a gardening, landscaping, or tree trimming company using its own equipment and employees as an incidental part of a total service offered by the company, as opposed to a hauling service.
  - 2.4.5. Construction and demolition waste that is incidentally removed by a duly licensed construction or demolition company, as part of a total service offered by such licensed company using its own equipment and employees.
  - 2.4.6. Animal waste and remains from any slaughterhouse or butcher shop for use as tallow.
  - 2.4.7. Grease and animal remains generated from food service providers.
  - 2.4.8. Dead animals.
  - 2.4.9. Agricultural waste, such as manure or bedding from poultry yards or stables.
  - 2.4.10. Waste tires.
  - 2.4.11. By-products of sewage treatment, including sludge, sludge ash, grit and screenings.
  - 2.4.12. Hazardous waste, biohazardous waste, universal waste or hazardous substances, regardless of its source.
  - 2.4.13. The casual or emergency collection, removal, disposal, or diversion of solid waste by the City through its officers or employees in the normal course of their employment.
- 2.5. Changes in Service. The City may direct Contractor to perform additional services or to modify the manner in which it performs existing services or bills for services. Pilot programs and innovative services that may entail new collection methods, different kinds of services or new requirements for customers, and alternative rate structures are included among the kinds of changes that the City may direct. Contractor will be entitled to an adjustment to the rate to reimburse its increased costs

if any for providing those additional or modified services, in accordance with Section 18.6.2 of this Agreement.

2.6. Delegation of Authority. The administration of this agreement shall be under the supervision of the Fowler City Manager's office, and the actions specified herein shall be taken by the City Manager or his or her designees unless otherwise stated or specified.

2.7. Incorporation by Reference. The Fowler Municipal Code, as it currently exists or may be amended, is hereby incorporated and made a part of this Agreement as though set forth in full herein. In the event of any conflict between this Agreement and the Fowler Municipal Code, the terms of this Agreement will prevail.

2.8. Ownership of Solid Waste. Except as otherwise provided in state law with respect to recyclable material, ownership and the right to possession of materials will transfer directly from the account to Contractor at the time of collection. Contractor has the right to retain, recycle, process, sell, dispose of or reuse, and otherwise use that solid waste, green waste, or recyclable material, or any part thereof, in any lawful fashion or for any lawful purpose. Contractor has the right to retain any benefit resulting from its right to retain, recycle, process, sell, dispose of, or reuse the solid waste, green waste, and recyclable material that it collects, including any funds received directly or indirectly from any state or local agency, such as the Department of Conservation recycling rebate.

### 3. REVENUE TO THE CITY.

3.1. Contractor agrees to pay to the City a franchise fee of Two Dollars (\$2.00) per month per residential account, payable on the 30<sup>th</sup> day of the month succeeding the month in which payment is received, either from the City or the customer.

3.2. Contractor agrees to pay to the City a franchise fee of ten percent (10%) of Gross Revenue per month from services to commercial and industrial accounts, including temporary services, payable on the 30<sup>th</sup> day of the month succeeding the month in which payment is received, either from the City or the customer.

3.3. Payment of the above franchise fees shall be made by the Contractor, or as an alternative and upon agreement of the parties, may be deducted from revenues collected by the City, prior to reimbursement to Contractor in accordance with Section 18.2. City and Contractor agree to cooperate to develop a methodology to reconcile the amounts to be either paid or deducted, and to assure payment of all franchise fees owed.

#### 4. TERM.

4.1. This Agreement shall be for a period of fifteen (15) years commencing on May 8, 2009 and ending on May 7, 2024. Thereafter, this Agreement may be renewed upon the terms and conditions and by mutual agreement of the parties.

4.2. On the Effective Date of this Agreement, the Prior Agreement is superseded in its entirety and is of no further force in effect, except for indemnity obligations arising under the Prior Agreement before the Effective Date of this Agreement.

#### 5. COMMERCIAL AND INDUSTRIAL COLLECTION.

5.1. Solid Waste Bin Service. Contractor shall provide permanent and temporary bin service to commercial and industrial accounts. Contractor shall collect and remove all solid waste that is placed in bins from every commercial and industrial account receiving bin service, at least once every week or more frequently if required to handle the waste stream of the commercial or industrial premises. Contractor shall deliver and collect temporary bins at the direction of the account, and shall notify the City prior to or immediately upon delivering a temporary bin placed in the street or public right of way.

#### 5.2. Solid Waste Roll-off Service.

5.2.1. Contractor shall provide permanent and temporary roll-off service to commercial and industrial accounts. Contractor shall collect and remove all solid waste that is placed in roll-off boxes from every commercial and industrial premises receiving roll-off service, at least once every week or more frequently if required to handle the waste stream of the commercial or industrial premises. Contractor shall deliver and collect temporary roll-off boxes at the direction of the account, and shall notify the City prior to or immediately upon delivering a temporary roll-off box placed in the street or public right of way.

5.2.2. Extra services, including container weight above five (5) tons, extra pickups, relocation of containers, trip charges where the account refuses service, and account-owned roll-off box hauling and disposal services, will be provided and shall be charged as service fees.

#### 5.3. Solid Waste Cart Service.

5.3.1. Contractor shall provide permanent cart service to commercial and industrial accounts where appropriate, based on space limitations and the amount of solid waste generated. Contractor shall collect and remove all solid waste that is



placed in carts from every commercial and industrial premises receiving cart service, at least once every week or more frequently if required to handle the waste stream of the commercial or industrial premises.

5.4. Other Bin-Related Services. Contractor shall provide other services desired by commercial and industrial accounts, including walk-in/push-out service where the container must be moved manually fifteen (15) feet or more to the collection point, use of containers with castors, hasps or locks. These services will be charged as a service fee.

#### 5.5. Recyclable Material.

5.5.1. Contractor shall provide for collection of recyclable material from commercial and industrial accounts, using bins, roll-off boxes or carts, depending upon the account's needs.

5.5.2. Contractor shall collect and remove all recyclable material placed in containers from every commercial and industrial premises receiving recyclable material collection service, at least once every week or more frequently if required to handle the materials generated by the commercial or industrial premises.

#### 5.6. Commercial and Industrial Service Requirements.

5.6.1. Access to Containers. If, at the time of collection at a commercial or industrial account, the container is not accessible to the collection vehicle, Contractor shall notify the account by telephone of the situation and request that access be provided. If the account is unavailable or unable to provide prompt access to the container, Contractor shall provide pickup a later time, but may charge an extra pickup fee, which will be charged as a special fee.

5.6.2. Missed Pick-ups. In the event that Contractor fails to provide collection service to a commercial or industrial account, where the containers had been timely and properly set out for collection, Contractor shall complete the collection from the commercial or industrial account no later than the next business day following notification of the missed pickup. A service fee shall not be charged.

5.6.3. Overfilling of Containers. Where Contractor identifies instances of overfilling of containers, it will document the overfilling through the use of film or digital photography. Contractor may charge a cleanup fee for cleaning up the container area and placing overfilled material into the collection vehicle, which will be charged as a special fee. In addition, Contractor will present evidence of the overfilling to both the City and the commercial or industrial account. Where such evidence was presented to the commercial or industrial account, and Contractor documents another instance of overfilling within one (1) year of such

presentation, Contractor is authorized to deliver the next larger-sized container to the commercial or industrial premises, and to adjust the service rate to the rate then in effect for the next larger-sized container.

5.6.4. Record of Non-Collection. When solid waste is not collected by Contractor, a tag shall be fastened to the container, which is the least 2-7/8", by 5-3/4" in size indicating the reason for non-collection. Reasons for non-collection may include the presence of hazardous waste, biohazardous waste, special waste (unless arrangements for the collection of this waste have been made with the customer), universal waste, or hazardous substances in the container, materials placed in plastic bags or otherwise not in the required containers, the commingling of recyclable material or green waste with solid waste, or overfilling of a roll-off box such that it would cause a violation of applicable weight restrictions. Contractor shall maintain a log containing the name and address of each commercial or industrial account where solid waste is tagged and the date of such tagging. The log shall be maintained for inspection by the City, upon request. Where there have been three or more instances of non-collection at a commercial or industrial account in any twelve (12) month period, Contractor may charge the commercial or industrial account a contamination fee, which will be charged as a special fee.

## 6. RESIDENTIAL SERVICES.

### 6.1. Solid Waste Cart Service.

6.1.1. Contractor shall collect solid waste delivered for collection at the curbside by residential accounts not less than once each calendar week. Contractor shall supply each residential account with one solid waste cart of approximately 96 gallons, but may provide a smaller 64-gallon cart where required by space limitations at a residential premises or at the request of the customer.

6.1.2. Accounts may obtain additional solid waste carts from Contractor, which will be charged as a service fee.

### 6.2. Solid Waste Bin and Roll-off Service.

6.2.1. Contractor shall provide temporary bin service and roll-off service to residential accounts that request these services. Contractor shall deliver and collect temporary bins and roll-off boxes at the direction of the account, and shall notify the City prior to or immediately upon delivering a temporary bin or roll-off box placed in the street or public right of way.

6.2.2. Extra services, including container weight above five (5) tons, extra pickups, relocation of containers, or trip charges where the account refuses service, will be provided and shall be charged as service fees.

6.3. Green Waste Cart Service.

6.3.1. Contractor shall provide weekly cart service for collection of green waste to all residential accounts, on the same day as solid waste collection. Contractor will supply each residential premises with one green waste cart of approximately 96 gallons.

6.3.2. Accounts may obtain additional green waste carts from Contractor, which will be charged as a service fee.

6.4. Recyclable Material Cart Service. Contractor shall provide weekly cart service for collection of recyclable material to all residential accounts, on the same day as solid waste collection. Contractor shall supply each residential premises with one recyclable materials cart of approximately 96 gallons.

6.4.1. Accounts may obtain additional recyclable material carts from Contractor, which will be charged as a service fee.

6.5. Residential Service Requirements; Other Residential Services.

6.5.1. Collection Location. All carts will be serviced at curbside along a public street. Alley service will not be provided. Accounts will be responsible for placing the carts at the proper location for collection. Transition to public street service will be completed based on an agreeable time frame between both parties.

6.5.2. Record of Non- Collection. When solid waste is not collected by Contractor, a tag shall be fastened to the container, which is the least 2-7/8", by 5-3/4" in size indicating the reason for non-collection. Reasons for non-collection may include the presence of hazardous waste, biohazardous waste, special waste, universal waste or hazardous substances in the container, materials placed in plastic bags or otherwise not in the required containers, placement of palm fronds or large tree trunks or limbs into the green waste cart, the commingling of recyclable material or green waste with solid waste, or the compacting of materials in such a manner that the contents of a container will not of their own weight fall out of the container when it is turned upside down. Contractor shall maintain a log containing the name and address of each account where solid waste is tagged and the date of such tagging. The log shall be maintained for inspection by representatives of the City upon request. Where there have been three or more instances of non-collection at a residential account in any twelve (12) month period, Contractor may charge the residential account a contamination fee, which shall be charged as a special fee.

- 6.5.3. Missed Pick-ups. In the event that Contractor fails to provide collection service to a residential account, where the containers had been timely and properly set out for collection, Contractor will complete the collection from the residential account no later than the next business day following notification of the missed pickup. No service fee shall be charged.
- 6.5.4. Holiday Tree Collection Program. Contractor shall collect holiday trees from all dwelling units which are cut up and placed into the green waste cart. In addition, Contractor shall accept holiday trees from all dwelling units at Contractor's Transfer Station for two weeks succeeding any December 25, at no charge to the customer. Contractor is not required to collect or accept artificial Christmas trees, trees containing decorations, ornaments, tinsel, debris, support stands or other foreign matter.
- 6.5.5. Sharps Mail-In Program. Within sixty days from the Effective Date of this Agreement, Contractor shall implement a mail-in sharps programs, available to all dwelling units, at no charge to the account.
- 6.5.6. Universal Waste. Within sixty days from the Effective Date of this Agreement, Contractor will implement its Lamptracker program, which will provide a mail-in service for used batteries, fluorescent tubes, compact fluorescent bulbs to assist the city and the community to properly dispose of Universal Waste. The annual cost to Contractor to provide this service shall not exceed five hundred dollars (\$500.00).
- 6.5.7. Bulky Items. On or before each July 1 during the term of this Agreement, each dwelling unit shall receive two vouchers, each of which will entitle the holder to a bulky items drop-off at Contractor's transfer station at no charge to the account. Additional bulky items drop-offs will be accepted, and will be charged as a service fee. The City's Public Works Department may also dispose of bulky items and other refuse at Contractor's transfer station at no charge.
- 6.5.8. Disabled Service. Upon authorization from the City, Contractor shall provide back-yard service, at no additional cost, for disabled or physically challenged customers who provide a doctor's statement certifying their disabled status and expected duration, along with a signed affidavit in a form provided by Contractor stating the no able-bodied person is available on the premises to bring carts to the curbside.

## 7. CITY FACILITIES.

- 7.1. City personnel may deliver green waste collected through City operations at Contractor's transfer station at no cost to City.

7.2. Contractor shall provide solid waste and recyclable material containers in sufficient numbers to serve City-sponsored events, at no cost to the City. City and Contractor will determine the events for which service will be provided by mutual agreement. Contractor may use cardboard containers for this service if authorized by the City.

## 8. CUSTOMER SERVICE AND EDUCATION

8.1. Office Hours. Contractor shall maintain a customer service office with assigned personnel accessible by a local phone number to receive customer requests directed to City. Contractor's office hours shall be from 8:00 a.m. to 5:00 p.m. on Monday-Friday, and 8:00 a.m. to 12:00 p.m. on Saturdays.

8.2. Emergency Telephone Number. Contractor shall maintain an emergency telephone number, for use by City personnel only, outside office hours identified in Section 8.1. Contractor shall have a representative, or an answering or call-forwarding service to contact such representative, available at the emergency telephone number during all hours other than office hours.

8.3. Service Complaints. All customer complaints shall be directed or referred to Contractor. During office hours, Contractor shall maintain a complaint service and a telephone answering system. Contractor shall record all complaints, including date, time, complainant's name and address if the complainant is willing to give this information, and date and manner of resolution of complaint. Contractor shall maintain this information in a computerized daily Service Complaint Log. Any such calls received via Contractor's answering service shall be recorded in the Service Complaint Log the following working day. This Service Complaint Log shall be available for review by the City during Contractor's office hours.

## 9. EDUCATION AND PUBLIC AWARENESS.

9.1. General. Contractor acknowledges that education and public awareness are essential elements of efforts to achieve AB 939 requirements. Accordingly, Contractor will implement a public education program to expand public and customer awareness concerning the necessity for methods of reducing, reusing, and recycling solid waste. Contractor must cooperate fully with City in this regard.

9.2. Waste Generation/Characterization Studies. Contractor acknowledges that the City may be required periodically to perform solid waste generation and disposal characterization studies to comply with AB 939 or other waste diversion requirements. Contractor agrees to participate in, and to cooperate with the City and its agents in the preparation of these studies at no additional cost to the City.

## 10. OPERATIONS.

10.1. Collections. Collection of solid waste, green waste and recyclable material

will occur on Monday through Saturday. Residential collection shall not begin prior to 6:00 am. All three containers used for residential service shall be collected on the same collection service day. Where the normal collection day falls on a holiday, collection service shall be provided on the next business day following the holiday, ending with Saturday of that week. Holidays are New Years Day, Thanksgiving Day, and Christmas.

## 10.2. Vehicles

10.2.1. General. Contractor must provide collection vehicles sufficient in number and capacity to efficiently perform the services required by this Agreement. Contractor must have available on collection days at least one (1) auxiliary vehicle to respond to any and all complaints and emergencies. All vehicles used to provide service must be registered in the State of California, and comply with all applicable federal, state and local requirements.

10.2.2. Vehicle Identification. Contractor's name, local telephone number, and a unique vehicle identification number selected by Contractor and approved by the City must be prominently displayed on all vehicles, in letters and numbers no less than three inches high.

10.2.3. Vehicle Maintenance. Contractor must inspect each vehicle daily to ensure that all equipment is operating properly. Vehicles that are not operating properly, or vehicles in such a condition as to be unsafe or excessively noisy, must be removed from service until repaired and operating properly. Contractor must keep accurate records of all vehicle maintenance, recorded according to date and mileage (or hours of operation), and must make those records available to the City upon request.

### 10.2.4. Vehicle Operation.

10.2.4.1. Vehicles must be operated in compliance with the California Vehicle Code, and all applicable local ordinances. Contractor may not intentionally load vehicles in excess of limitations on vehicles imposed by state or local weight restrictions.

10.2.4.2. Solid waste shall be covered at all times except when it is being loaded or unloaded or when a vehicle is moving along the collection route.

10.2.5. Minimization of Spills. Contractor must use due care to prevent solid waste or fluids from leaking or being spilled or scattered during the collection or transportation process. If any solid waste or fluids leak, or are spilled during collection, Contractor must promptly clean up those materials to the satisfaction of the City. Each collection vehicle must carry a broom and shovel at all times for this purpose.

10.3. Containers.

10.3.1. Container Ownership. All containers provided by Contractor under this Agreement shall remain the property of Contractor at all times.

10.3.2. Cart Specifications. Contractor shall utilize carts for collection of solid waste, green waste and recyclable material designed and manufactured in accordance with standard industry specifications. The design of any new carts proposed to be placed into service must be approved by the City Manager.

10.3.3. Cart Maintenance and Replacement Responsibilities. Contractor is responsible for cart repair and maintenance, graffiti removal, (within three (3) business days) and replacing lost, stolen or damaged carts within seven (7) business days from receipt of a request at no additional charge. Contractor may charge the account a special fee for repairing or replacing a cart if the damage is due to loss, negligence or abuse by the account. In no event may this charge be greater than the Company's actual cost for replacement parts or a new cart, and delivery. Each customer is entitled to one replacement of the solid waste, recyclable materials and green waste carts during the term of this Agreement, without charge, upon request.

10.3.4. Bin Specifications. Contractor will provide bin containers for collection of solid waste, and for the collection of recyclable material, as appropriate for individual residential, industrial or commercial accounts. Contractor must maintain its bins in a clean and sound condition, free from putrescible residue. Repairs or graffiti removal requested by an account must be completed within five (5) business days of Contractor's receipt of the request.

10.3.5. Bin Maintenance and Replacement Responsibilities. Contractor may charge the account a special fee for repairing or replacing a bin if the damage is due to loss, negligence or abuse by the account, or a service fee for cleaning a bin.

10.3.6. Roll-off Boxes Specifications. Contractor will provide clean roll-off boxes, free from graffiti and equipped with reflectors. Contractor must properly cover all open roll-off boxes during transport to the disposal site.

10.4. Personnel

10.4.1. Contractor must furnish such qualified drivers, mechanical, supervisory, clerical, management and other personnel as may be necessary to provide the services required by this Agreement in a satisfactory, safe, economical, and efficient manner. All drivers must be trained and qualified in the operation of vehicles they operate and must possess a valid license, of the appropriate class, issued by the California Department of Motor Vehicles.

- 10.4.2. Contractor must establish and vigorously enforce an educational program to train Contractor's employees in the identification of hazardous waste. Contractor's employees must not knowingly place any hazardous waste in the collection vehicles, nor knowingly dispose of any hazardous waste at a processing facility or disposal site.
- 10.4.3. Contractor must train its employees in customer courtesy, prohibit the use of loud or profane language, and instruct collection crews to perform all work quietly. Contractor must use its best efforts to assure that all employees present a neat appearance and conduct themselves in a courteous manner.
- 10.4.4. Contractor may not discriminate in the provision of service or the employment of persons engaged in the performance of this Agreement on account of race, color, religion, sex, age, physical handicap or medical condition in violation of any applicable federal or state law.
- 10.5. Transportation of Solid Waste. Contractor must transport all solid waste collected to a permitted transfer station, materials recovery facility or disposal site. Contractor shall be responsible for payment of all disposal and processing fees or charges. Contractor will use reasonable efforts to divert recyclable material and green waste from landfill disposal. Contractor will maintain complete, accurate and up-to-date records of the quantities of solid waste transported to the transfer station, materials recovery facility or disposal site and must cooperate with the City in any audits or investigations of those quantities.
11. REPORTING. Contractor shall report to the City each month the total tons of solid waste disposed of, total tons of each recyclable material collected, total tons of green waste collected, and total tons of construction and demolition waste collected and diverted. The monthly report shall be prepared to the best of Contractor's ability, in a format prescribed by the City. City is entitled to review Contractor's records during Contractor's office hours to the extent required to verify performance of Contractor's obligations under this Agreement, including the proper payment of franchise fees.
12. INSURANCE: Contractor shall obtain and keep in force during the term of this Agreement, public liability and property damage insurance issued by a company to be approved by the City in an amount of not less than \$5,000,000.00 public liability, and \$5,000,000.00 property damage, said policy or policies shall (1) provide that the City, its elected and appointed officials, officers, agents and employees are additional insureds with respect to the subject matter and performance of this Agreement, and (2) provide that the policy or policies shall not expire, terminate, or be cancelled, or the coverage reduced, unless and until after thirty (30) days written notice is given to the City (10-days notice for cancellation due to failure to pay premium). Sufficient Workers' Compensation Insurance, as required by State Law, and Employer's Liability Insurance in an amount of



not less than \$1,000,000.00, shall be carried by Contractor. Contractor shall cause a certificate of insurance to be filed with the City evidencing such coverages.

### 13. INDEMNIFICATION

13.1. **General Liability.** Contractor shall indemnify, defend, and save harmless the City, its officers, agents and employees (the "Indemnitees"), for and from any and all loss, liability, claim, demand, action or suit, of any and every kind and description, arising or resulting from or in any way connected with any operations of Contractor in performing the obligations required by this Agreement, or arising or resulting from the failure of Contractor to comply in all respects with the provisions and requirements of this Agreement, or arising or resulting from the failure of Contractor to comply with applicable law, except to the extent of the negligence, willful misconduct, or violation of applicable law by the indemnitees. Subject to the scope of this indemnification and upon demand of the City, Contractor shall appear in and defend the City and its officers, employees and agents in any claims or actions, whether judicial, administrative or otherwise arising out of the above. The obligations of Contractor to the Indemnitees which arise under this Section 13.1 shall not be restricted to any insurance proceeds, and shall survive the expiration or termination of this Agreement.

### 13.2. CERCLA Liability.

13.2.1. Contractor shall indemnify, defend and hold harmless the indemnitees for all claims, actual damages, natural resources damages, injuries, costs, response, remediation and removal costs, losses, liabilities, cause of action, interest and expenses (including but not limited to reasonable attorneys' and experts' fees) of any kind whatsoever paid, incurred, or suffered by or against the Indemnitees arising from or attributable to any repair, clean up, removal action or response action undertaken pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 et seq. (CERCLA), the California Health and Safety Code ("H&S Code") or other similar federal, state or local law or regulations, with respect to Contractor's collection, handling, or transportation of solid waste collected by Contractor from accounts pursuant to this Agreement. The indemnity contained in this Section 13.2 is intended to operate as an agreement of Contractor pursuant to Section 107(e) of CERCLA and the H&S Code Section 25364 to defend, protect, hold harmless and indemnify the Indemnitees. Subject to the scope of this indemnification and upon demand of any of the Indemnitees, Contractor shall appear in and defend the Indemnitees in any claims or actions, whether judicial, administrative or otherwise arising out of the above. The obligations of Contractor to the Indemnitees which arise under this Section 13.2 shall not be restricted to any insurance proceeds, and shall survive the expiration or termination of this Agreement.

13.2.2. The foregoing indemnity and defense obligations shall apply irrespective of the negligence or willful misconduct of Contractor or any affiliate of Contractor. However, the foregoing indemnity shall not apply to the extent any claims arise or result from the negligence, willful misconduct, or violation of applicable law by any indemnitee.

13.3. AB 939 Liability. Subject to the requirements of Public Resources Code §40059.1, Contractor shall indemnify, protect, defend and hold the City harmless against all fines and penalties imposed by administrative order of the California Integrated Waste Management Board (the "Board") against the City for failure to meet waste diversion requirements under AB939. The obligation of Contractor to indemnify, protect and defend the City shall include paying all reasonable legal fees and costs incurred by legal counsel designated by the City to represent the City in connection with any such administrative proceedings or litigation by the Board.

13.4. Road Surface Damage. Contractor shall be responsible for any extraordinary damage to City's driving surfaces, whether or not paved, resulting from and directly attributable to the illegally excessive weight of vehicles providing solid waste collection or the improper placement and removal of containers on public or private property, but shall not be responsible for normal wear and tear.

#### 14. BREACH AND TERMINATION.

14.1. In the event Contractor is in material breach of this Agreement; including but not limited to:

14.1.1. submitting false or fraudulent information to the City at the time of franchise award or during the term of this Agreement; or

14.1.2. becoming bankrupt; making an assignment of this contract for benefit of creditors' allow a receiver or other officer to be placed in charge of Contractor's office or equipment and not cause removal within ten (10) days;

and such material breach is not cured within thirty (30) days after notice in writing by the City to do so; City may cancel and terminate this Agreement and Contractor shall have no further rights under or with respect to this Agreement. Notwithstanding the above, the thirty (30) day period for a notice and opportunity to cure shall be extended where it is not reasonably possible to affect a cure within such thirty (30) day period, provided that Contractor implements corrective actions within such thirty (30) day period and thereafter diligently pursues their completion.

14.2. Upon written notice from the City terminating this Agreement, Contractor shall have the right, upon written request made within thirty (30) days of such order, to appeal such order to the City Council, to be heard at any regular Council meeting held within thirty (30) days after City's receipt of Contractor's appeal. The decision

of the City Council shall be final. Thereafter, Contractor may appeal any decision, order or action by the City Council under this Section 14, by filing a legal action with a Court having jurisdictional authority.

**15. EXCUSE FROM PERFORMANCE; FORCE MAJEURE.**

15.1. If either party is prevented from or delayed in performing its duties under this Agreement by circumstances beyond its control, whether or not foreseeable, including, without limitation, acts of terrorism, acts of God, landslides, lightning, forest fires, storms, floods, severe weather, freezing, earthquakes, other natural disasters, the threat of such natural disasters, pandemics, quarantines, civil disturbances, acts of the public enemy, wars, blockades, public riots, strikes, lockouts, or other labor disturbances, acts of government or governmental restraint or other causes, whether of the kind enumerated or otherwise, that are not reasonably within the control of the affected party, then the affected party shall be excused from performance hereunder during the period of such disability.

15.2. The party claiming excuse from performance shall promptly notify the other party when it learns of the existence of such cause and when such cause has terminated.

15.3. The interruption or discontinuance of services by a party caused by circumstances outside of its control shall not constitute a default under this Agreement.

**16. FAITHFUL PERFORMANCE BOND.** Upon execution of this Agreement Contractor shall furnish to City and shall file with the City a surety bond executed by Contractor as principal and by a corporate surety as surety, in the sum of Two Hundred Thousand Dollars (\$200,000), conditioned upon the faithful performance by Contractor.

**17. ASSIGNMENT.** Contractor's rights and obligations under this Agreement may not be assigned without the prior written approval of the City, except that the City's consent to an assignment to an affiliate of Contractor shall not be required.

**18. CUSTOMER BILLING AND PAYMENT; SERVICE RATES.**

18.1. **Invoicing.** City will invoice residential accounts, industrial accounts and commercial accounts on a monthly basis in advance for regularly-scheduled service provided under this Agreement, and monthly in arrears for any service fees and special fees. The initial maximum rates for residential service, industrial service and commercial service are set forth in Exhibit 1. Contractor will invoice residential accounts, industrial accounts and commercial accounts for temporary services provided, in arrears upon the completion of service.

18.2. City Reimbursement.

18.2.1. City will pay Contractor all amounts received from customers from invoicing by the 30<sup>th</sup> day of each month. City will also provide Contractor a list of all delinquent accounts. If agreed to by Contractor, the City may deduct franchise fees from the payment to Contractor, along with a statement detailing the basis for the deduction.

18.2.2. On or before the 30<sup>th</sup> of each month, Contractor shall provide City the following information, as required:

18.2.2.1. all service charges and special charges for the previous month, for billing by the City;

18.2.2.2. a listing of all account locations where service was initiated or canceled during the previous month;

18.2.2.3. all changes in the level of service provided to any account; or

18.2.2.4. any applicable changes to the rates for any account, such as the senior discount.

18.2.3. The City and Contractor shall conduct an account reconciliation on a quarterly basis, and any required additional charges or discounts will be reflected on the next month's invoicing by the City.

18.3. Senior Discount. Upon request, Contractor shall grant qualifying senior citizens (age 65 or older) receiving cart service a discount from the per month service rates otherwise applicable. The monthly senior discount shall be as follows: \$2.00 during the first 5 years of the term of this Agreement; \$2.50 during the second 5 years of the term of this Agreement; and \$3.00 during the final 5 years of the term of this Agreement. The City and Contractor will cooperate to establish reasonable standards for qualification for this discount.

18.4. Account Delinquency. City will provide Contractor with a list of all delinquent accounts on a monthly basis. Contractor will provide an account with a notice of delinquency in the event of non-payment after forty-five (45) days from the date of a billing for accounts receiving residential cart service, and after thirty (30) days from the date of a billing for all other accounts. If payment is not received within 30 days from the date of the notice of delinquency, Contractor may terminate collection service at the delinquent account until payment in full has been received, including any accrued interest, and reimbursement of any NSF bank charges or other costs of collection. Contractor may charge interest on any delinquent account at the maximum annual rate allowed by law for such time as the bill remains unpaid after its

due date, and a late fee of \$3.00 per delinquent billing per account, which shall be charged as a special fee. Contractor will provide the City a list of delinquent accounts upon request.

18.5. **Service and Rate Disputes.** Any disputes between Contractor and an account regarding the provision of services, including the size and location of containers, frequency of collections, or the amount of any service fees or special fees charged by Contractor, will be referred to the City Manager for determination. Thereafter, either Contractor or the account may appeal the City Manager's determination to the City Council, whose decision shall be final.

18.6. **Rate Adjustments.**

18.6.1. **Annual Adjustment.** Beginning July 1, 2010 and on each July 1 thereafter, the rates shall be adjusted in accordance with the rate adjustment methodology set forth below. Contractor shall submit to the City, not less than sixty (60) days prior to the effective date of the proposed adjustment, information in support of the adjustment. The City Manager, or his designee, shall review the information submitted by Contractor for completeness and accuracy, and the parties agree to negotiate in good faith regarding any dispute. Notwithstanding the above, no annual rate adjustment pursuant to this Section 18.6.1 shall exceed a total of five percent (5%). To the extent that a rate adjustment otherwise allowable is not granted due to this limitation, any excess above five percent (5%) shall be rolled over and applied to subsequent annual rate adjustments (provided that no subsequent annual rate adjustment would exceed five percent (5%)).

18.6.1.1. **Service Component.** The Service Component comprises sixty percent (60%) of the rate. The Service Component will be adjusted by the percentage increase in the Consumer Price Index ("CPI"), All Urban Consumers, for the West Urban Area (Series Id: CUUR0400SA0; CUUS0400SA0), as published by the United States Department of Labor, Bureau of Labor Statistics, for the March to March period immediately preceding the effective date of rate adjustment (or, with respect to the first rate adjustment on July 1, 2010, from the Effective Date through March 2010). The parties agree to substitute the CPI, All Urban Consumers, for the Central Valley, California as the index to be used for adjusting the service component in the event such an index is published by the United States Department of Labor, Bureau of Labor Statistics in the future.

18.6.1.2. **Fuel Component.** The Fuel Component comprises ten percent (10%) of the rate. The Fuel Component will be adjusted annually by the average of the monthly percentage increases or decreases in the annual Ultra-Low Sulfur Diesel (On Highway) price published in the Official Energy Statistics, as published by the United States Department of Energy for the March to March period immediately preceding the effective date of rate

adjustment (or, with respect to the first rate adjustment on July 1, 2010, the average of the monthly percentage increases or decreases from the Effective Date through March 2010).

18.6.1.3. Disposal Component. The Disposal Component comprises thirty percent (30%) of the rate. The Disposal Component shall be adjusted annually based on the percentage increase or decrease in the per ton tipping fee actually charged at the transfer stations, disposal facilities material recovery facilities, or green waste processing facilities used by Contractor, proportionately to their usage, for the March to March period immediately preceding the effective date of rate adjustment (or, with respect to the first rate adjustment on July 1, 2010, from the Effective Date through March 2010). The per ton tipping fee used for this calculation shall be assumed to include all federal, state, and local taxes, fees, and assessments levied on or applicable to the processing, transportation, or disposal of solid waste, green waste or recyclable material.

18.6.2. Extraordinary Adjustment. Contractor may request an adjustment to the rates at other times to provide for the reimbursement of unusual increased costs of providing service under this Agreement. Unusual increased costs may include changes in service mandated by the City, changes to the Fowler Municipal Code affecting Contractor's operations, changes in the cost of disposal or processing of solid waste, changes in state or local government solid waste fees and charges, changes in the law, or changes in fuel prices, but shall not include circumstances within the control of Contractor, such as changes in the purchase price of new equipment, or amounts reimbursed by the State, insurance companies, or rebates of any type. For each request, Contractor must prepare a schedule documenting the extraordinary costs. The request shall be prepared in a form acceptable to the City with support for all assumptions made by Contractor in preparing the estimate. The City Council shall review Contractor's request and, in its reasonable judgment, make the final determination on the appropriate amount of the adjustment, if any, within sixty (60) days of receipt of Contractor's request. A requested adjustment may not be denied in the case of changed or additional services requested by the City, any change in the Fowler Municipal Code of the City affecting the Contractor's operations, any increase in the franchise fees imposed by the City, or changes in state or local government solid waste fees, charges or surcharges.

## 19. OTHER AGREEMENTS OF THE PARTIES.

19.1. Relationship of Parties. The parties intend that Contractor shall perform the services required by this Agreement as an independent contractor engaged by the City and not as an officer or employee of the City, nor as a partner of or joint venturer with the City. No employee or agent of Contractor shall be deemed to be an employee or agent of the City. Except as otherwise expressly provided herein,

Contractor shall have exclusive control over the manner and means of conducting the services performed under this Agreement, and over all persons performing those services. Contractor is solely responsible for the acts and omissions of its officers, employees, subsidiaries, subcontractors, affiliates and agents. Neither Contractor nor its officers, employees, subsidiaries, subcontractors, affiliates and agents will obtain any rights to retirement benefits, workers' compensation benefits, or any other benefits that accrue to City employees by virtue of their employment with the City.

- 19.2. Compliance with Law. In providing the services required under this Agreement, Contractor must, at its sole cost, comply with all applicable laws and regulations promulgated by federal, state, regional, or local administrative and regulatory agencies, that are now in force and as they may be enacted or amended during the term of this Agreement. In connection with this Agreement, the City must, at its sole cost, comply with all applicable laws and regulations promulgated by federal, state, regional, or local administrative and regulatory agencies, that are now in force and as they may be enacted or amended during the term of this Agreement.
- 19.3. Governing Law. This Agreement is governed by, and will be construed and enforced in accordance with, the laws of the State of California.
- 19.4. Parties in Interest. Nothing in this Agreement, whether express or implied, is intended to confer any rights on any persons other than the parties to this Agreement and their representatives, successors, and permitted assigns.
- 19.5. Waiver. The waiver by either party of any breach or violation of any provisions of this Agreement shall not be deemed to be a waiver of any breach or violation of any other provision nor of any subsequent breach or violation of the same or any other provision. The subsequent acceptance by either party of any moneys that become due hereunder shall not be deemed to be a waiver of any pre-existing or concurrent breach or violation by the other party of any provision of this Agreement.
- 19.6. Notice. Notice under this Agreement shall be given by United States National Postage Prepaid, address as follows:

City:

City Clerk  
City of Fowler  
128 S. Fifth Street  
Fowler, CA 93625

Contractor:

District Manager  
USA Waste of California, Inc.  
4333 E. Jefferson Avenue  
Fresno, CA 93725

Copy to:

Waste Management – Western Group  
7025 N. Scottsdale Road  
Suite 200  
Scottsdale, AZ 85253  
Attention: Group Legal Counsel

- 19.7. THIS SECTION INTENTIONALLY DELETED AND LEFT BLANK.
- 19.8. Entire Agreement. This Agreement, including the exhibits, constitutes the entire agreement between the parties with respect to the matters covered. No verbal agreement or understanding with any officer, agent, or employee of the City, either before, during, or after the execution of this Agreement, will affect or modify any of the rights or obligations herein contained.
- 19.9. Section Headings. The section headings in this Agreement are for the convenience of reference only and are not intended to be used in construing this Agreement, nor are they intended to alter or affect any of its provisions.
- 19.10. References to Laws. All references in this Agreement to laws will be understood to include existing laws as they may be subsequently amended or recodified, unless otherwise specifically provided.
- 19.11. Interpretation. This Agreement, including the attached exhibits, will be interpreted and construed reasonably, and neither for nor against either party, regardless of the degree to which either party participated in their drafting.
- 19.12. Amendments. This Agreement may not be amended in any respect except by a writing signed by the parties.




19.13. Severability. If any provision of this Agreement is for any reason determined by a court of competent jurisdiction to be invalid or unenforceable for any reason, including but not limited to a change in applicable federal, state or local law, the invalidity or unenforceability of that provision will not affect any of the remaining provisions of this Agreement, which provisions will be enforced as if such invalid or unenforceable provision had not been included.

19.14. Non-Waiver Provision. Failure of either party to exercise any of the remedies set forth in this Agreement within the time periods specified will not constitute a waiver of any rights of that party with regard to an event of nonperformance, whether determined to be a breach, excused performance, or unexcused default by the other party.

TO EFFECTUATE THIS AGREEMENT, each of the parties has caused this Agreement to be executed by its duly authorized representative as of the date set forth below the authorized signature.

ATTEST

  
CITY CLERK

APPROVED AS TO FORM:

  
CITY ATTORNEY

CITY OF FOWLER

By: 

Title: City Manager

Date: 4-7-09

USA WASTE OF CALIFORNIA, INC.,  
a Delaware corporation

By: 

(Authorized Representative)  
Title: Area Vice President

Date: 4/21/09

**EXHIBIT B**  
To First Amendment

**SERVICE RATE SCHEDULE**

Updated Item 6A - Exhibit B

City of Fowler  
Service Rate Schedule  
Residential Rates (effective July 1, 2014)

July 1, 2014 Estimated Rates using Estimated March 2014 CPI Index and Billing Takeover Increase for One-Month Advance Residential, One-Month Advance Commercial, and Roll-Off Areas Billing (Rates not final until March CPI Index is published in April)

Service Type	Rate 2010	Rate 2011	Rate 2012	Rate 2013	Rate 2014
Standard Service offering - 3 96-gallon carts					
Trash, recycling, greenwaste)	\$21.82	\$22.91	\$24.06	\$24.34	\$26.08
2010 Senior Discount	\$2.00	\$2.00	\$2.00	\$2.00	\$2.50
Extra Trash Cart	\$8.24	\$8.65	\$9.08	\$9.19	\$9.85
Extra Green Waste Cart	\$6.03	\$6.33	\$6.65	\$6.73	\$7.21
Extra Pick Up per Cart	\$11.15	\$11.71	\$12.30	\$12.44	\$13.33

Takeover Billing 6.93% + forecasted CPI 0.21%  
10.76% Res (Cart)  
1.95% Com (Bin)  
6.93% Blend

Service Level	Monthly Fee	Extra Pick Up Charge per container	Monthly Fee	Extra Pick Up Charge per container	Monthly Fee	Extra Pick Up Charge per container
1 YD 1X/WK	\$55.60	\$39.36	\$51.30	\$36.78	\$42.01	\$37.21
1 YD 2X/WK	\$103.54		\$114.16		\$115.48	
1 YD 3X/WK	\$151.48		\$159.05		\$166.94	
1 YD 4X/WK	\$199.42		\$209.39		\$222.41	
1 YD 5X/WK	\$247.36		\$259.73		\$272.72	
1 YD 6X/WK	\$295.30		\$310.07		\$323.88	

Service Level	Monthly Fee	Extra Pick Up Charge per container	Monthly Fee	Extra Pick Up Charge per container	Monthly Fee	Extra Pick Up Charge per container
2 YD 1X/WK	\$66.92	\$40.15	\$73.77	\$44.27	\$74.65	\$44.78
2 YD 2X/WK	\$127.31		\$139.68		\$147.99	
2 YD 3X/WK	\$185.99		\$195.29		\$205.05	
2 YD 4X/WK	\$245.53		\$257.81		\$270.70	
2 YD 5X/WK	\$305.07		\$320.32		\$336.24	
2 YD 6X/WK	\$364.61		\$382.84		\$401.98	

Service Level	Monthly Fee	Extra Pick Up Charge per container	Monthly Fee	Extra Pick Up Charge per container	Monthly Fee	Extra Pick Up Charge per container
3 YD 1X/WK	\$110.68	\$66.41	\$116.21	\$73.22	\$122.02	\$74.44
3 YD 2X/WK	\$184.47		\$193.70		\$203.39	
3 YD 3X/WK	\$258.31		\$271.23		\$284.79	
3 YD 4X/WK	\$332.13		\$348.73		\$366.17	
3 YD 5X/WK	\$405.94		\$426.24		\$447.55	
3 YD 6X/WK	\$479.76		\$503.74		\$528.93	

Service Level	Monthly Fee	Extra Pick Up Charge per container	Monthly Fee	Extra Pick Up Charge per container	Monthly Fee	Extra Pick Up Charge per container
4 YD 1X/WK	\$153.11	\$79.86	\$159.76	\$83.86	\$166.75	\$86.07
4 YD 2X/WK	\$227.15		\$238.50		\$250.43	
4 YD 3X/WK	\$318.00		\$333.90		\$350.60	
4 YD 4X/WK	\$410.32		\$430.84		\$452.98	
4 YD 5X/WK	\$502.64		\$527.77		\$554.16	
4 YD 6X/WK	\$594.96		\$624.71		\$655.95	

Service Level	Monthly Fee	Extra Pick Up Charge per container	Monthly Fee	Extra Pick Up Charge per container	Monthly Fee	Extra Pick Up Charge per container
6 YD 1X/WK	\$161.95	\$97.18	\$170.05	\$107.14	\$178.55	\$108.38
6 YD 2X/WK	\$265.79		\$276.98		\$290.83	
6 YD 3X/WK	\$365.59		\$383.87		\$403.06	
6 YD 4X/WK	\$467.37		\$480.73		\$515.25	
6 YD 5X/WK	\$569.15		\$597.61		\$627.49	
6 YD 6X/WK	\$670.95		\$704.50		\$739.73	

Service Level	Monthly Fee	Extra Pick Up Charge per container	Monthly Fee	Extra Pick Up Charge per container	Monthly Fee	Extra Pick Up Charge per container
Roll-off Haul rate* 3 ton minimum	\$127.05		\$133.40		\$140.07	
Roll-off box rental	\$22.19		\$22.19		\$23.30	
Tilt boarder rental per month	\$39.53		\$41.51		\$43.59	

\*Price per ton equals the WMI Jefferson Transfer Station plus fee \$57.20

City of Fowler  
Service Rate Schedule  
Residential Rates (effective July 1, 2014)

Commingled Recycling Rates

	Monthly Fee	Extra Pick Up Charge per container	Monthly Fee	Extra Pick Up Charge per container	Monthly Fee	Extra Pick Up Charge per container	Monthly Fee	Extra Pick Up Charge per container	Monthly Fee	Extra Pick Up Charge per container
2 YD 1X/WMK	\$52.67	\$31.61	5%	\$55.30	\$33.19	5%	\$58.07	\$34.85	1.16%	\$59.42
2 YD 2X/WMK	\$98.04		5%	\$102.94		5%	\$108.09		1.16%	\$110.61
2 YD 3X/WMK	\$143.41		5%	\$150.58		5%	\$158.11		1.16%	\$161.80
2 YD 4X/WMK	\$188.78		5%	\$198.22		5%	\$208.13		1.16%	\$212.98
2 YD 5X/WMK	\$234.15		5%	\$245.86		5%	\$258.15		1.16%	\$264.17
2 YD 6X/WMK	\$279.52		5%	\$293.50		5%	\$308.18		1.16%	\$315.97
3 YD 1X/WMK	\$59.98	\$55.98	5%	\$62.87	\$37.78	5%	\$66.12	\$39.67	1.16%	\$67.67
3 YD 2X/WMK	\$109.69		5%	\$115.18		5%	\$120.94		1.16%	\$123.76
3 YD 3X/WMK	\$159.42		5%	\$167.39		5%	\$175.76		1.16%	\$179.86
3 YD 4X/WMK	\$209.14		5%	\$219.60		5%	\$230.58		1.16%	\$235.96
3 YD 5X/WMK	\$258.86		5%	\$271.80		5%	\$285.39		1.16%	\$291.05
3 YD 6X/WMK	\$308.58		5%	\$324.01		5%	\$340.21		1.16%	\$348.15
4 YD 1X/WMK	\$65.55	\$39.33	5%	\$68.83	\$41.30	5%	\$72.27	\$43.37	1.16%	\$73.96
4 YD 2X/WMK	\$119.60		5%	\$125.57		5%	\$131.85		1.16%	\$134.98
4 YD 3X/WMK	\$173.65		5%	\$182.33		5%	\$191.45		1.16%	\$195.92
4 YD 4X/WMK	\$227.70		5%	\$239.09		5%	\$251.04		1.16%	\$256.90
4 YD 5X/WMK	\$281.75		5%	\$295.84		5%	\$310.63		1.16%	\$317.88
4 YD 6X/WMK	\$335.80		5%	\$352.59		5%	\$370.22		1.16%	\$378.85
6 YD 1X/WMK	\$70.64	\$42.39	5%	\$74.18	\$44.51	5%	\$77.89	\$46.74	1.16%	\$79.70
6 YD 2X/WMK	\$130.47		5%	\$137.00		5%	\$143.85		1.16%	\$147.21
6 YD 3X/WMK	\$190.31		5%	\$199.83		5%	\$209.82		1.16%	\$214.71
6 YD 4X/WMK	\$250.15		5%	\$262.66		5%	\$275.79		1.16%	\$282.23
6 YD 5X/WMK	\$309.99		5%	\$325.49		5%	\$341.76		1.16%	\$349.79
6 YD 6X/WMK	\$369.83		5%	\$388.32		5%	\$407.74		1.16%	\$417.25
96 Gallon 1X/WMK	\$10.67		5%	\$11.20		5%	\$11.76		1.16%	\$12.04
96 Gallon 2X/WMK	\$20.27		5%	\$21.28		5%	\$22.34		1.16%	\$22.86
96 Gallon 3X/WMK	\$29.87		5%	\$31.36		5%	\$32.93		1.16%	\$33.70
96 Gallon 4X/WMK	\$39.47		5%	\$41.44		5%	\$43.51		1.16%	\$44.52
96 Gallon 5X/WMK	\$49.07		5%	\$51.52		5%	\$54.10		1.16%	\$55.36