

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

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

This Second Amendment to April 1, 2009 Amended and Restated Solid Waste Franchise Agreement ("First Amendment") is entered into effective July 1, 2016 ("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 on file with Fowler and Contractor and incorporated by reference.
- C. On June 17, 2014, Fowler and Contractor entered into a First Amendment to the 2009 Franchise Agreement to address billing and collection services, customer service standards, rate adjustments, and related issues, effective as of July 1, 2014 ("First Amendment"). A copy of the First Amendment is on file with Fowler and Contractor and incorporated by reference.
- D. The Parties desire to further amend the 2009 Franchise Agreement to address State requirements for mandatory organic waste recycling, change the consumer price index used to calculate annual rate adjustments, and lower the maximum annual rate adjustment from 5% to 4%.

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

1. Amendment to Section 1 Definitions. Section 1.20.1 is hereby added to the Definitions section of the 2009 Franchise Agreement to read as follows:

1.20.1. ORGANIC WASTE means food waste, green waste, landscape and pruning waste, nonhazardous wood waste, and food-soiled paper waste that is mixed in with food waste.

2. Amendment to Section 1 Definitions. Section 1.23 is hereby amended in its entirety to read as follows:

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. Recyclable material includes organic waste as defined in this Agreement and AB 1826 (Chapter 727, Statutes of 2014).

3. Amendment to Section 18.1.1 Maximum Rates for Service. Section 18.1.1 is hereby amended in its entirety to read as follows:

18.1.1 Maximum Rates for Service. The maximum rates for service, incorporating all permissible rate adjustments effective as of July 1, 2016, are set forth in **Exhibit A**. The rates set forth in **Exhibit A** may be adjusted in accordance with Section 18.6.

4. Amendment to Section 18.6.1 Annual Rate Adjustments. Section 18.6.1 is hereby amended in its entirety to read as follows:

18.6.1. Annual Adjustment. Beginning July 1, 2017, 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 or her 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 four percent (4%). To the extent that a rate adjustment otherwise allowable is not granted due to this limitation, any excess above four percent (4%) shall be rolled over and applied to subsequent annual rate adjustments (provided that no subsequent annual rate adjustment would exceed four percent (4%)).

5. Amendment to Section 18.6.1.1 Annual Rate Adjustments Service Component. Section 18.6.1.1 is hereby amended in its entirety to read as follows:

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"), CPI-U US Average Garbage and Trash Collection, 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.

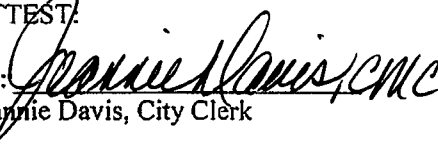
6. All Other Terms Remain in Effect. Except as expressly set forth herein, all other terms of the 2009 Franchise Agreement, as amended by the First Amendment, shall remain unchanged and in full force and effect.

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

ATTEST:

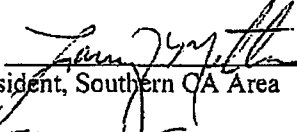
By:   
Jeanie Davis, City Clerk  
June 30, 2016

Approved as to form:

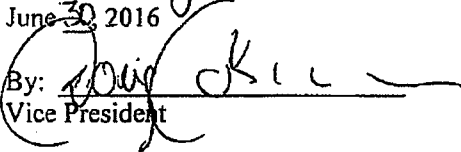
By:   
David J. Wolfe, City Attorney

July 13  
June   , 2016.

USA WASTE OF CALIFORNIA, INC.

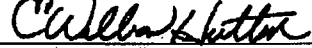
By:   
President, Southern CA Area

June 30, 2016

By:   
Vice President

June 30, 2016

Approved as to form:

By:   
E. William Hutton  
Counsel for USA Waste of CA, Inc.

June 30, 2016



**RESOLUTION NO. 2347**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FOWLER  
APPROVING A SECOND AMENDMENT TO THE CONTRACT FOR THE  
COLLECTION OF SOLID WASTE IN THE CITY AND REVISING THE RATES  
FOR SUCH SERVICE**

WHEREAS, the City of Fowler currently contracts with USA Waste of California, Inc. (USA Waste) by way of an exclusive franchise for waste collection, disposal, and recycling services; and

WHEREAS, the City approved the current contract with USA Waste in 2009 effective April 1, 2009, titled Amended and Restated Solid Waste Franchise Agreement ("2009 Franchise Agreement"); and

WHEREAS, the City approved a First Amendment to the 2009 Franchise Agreement effective July 1, 2014 ("First Amendment"); and

WHEREAS, the collection and disposal of solid waste is necessary for the protection of the public health, safety, and welfare; and

WHEREAS, the City and USA Waste desire to enter into a Second Amendment to the 2009 Franchise Agreement as set forth in **Attachment 1** ("Second Amendment"), which amends the 2009 Franchise Agreement to address State requirements for mandatory organic waste recycling, change the consumer price index used to calculate annual rate adjustments, lower the maximum annual rate adjustment from 5% to 4%, and include a commercial organics service rate; and

WHEREAS, the proposed new service rates reflecting permissible adjustments as of July 1, 2016 and the addition of an Commercial Organic Rate category are set forth in **Exhibit A**; and

WHEREAS, the City Council held a public hearing at a special meeting held on June 14, 2016 to discuss and consider the proposed Second Amendment and new Service Rate Schedule. A copy of the notice of the public hearing, which was published in the Fresno Business Journal on June 3, 2016, is attached hereto as **Exhibit B**; and

WHEREAS, the City Council has reviewed the proposed Second Amendment and the proposed adjusted service rates, and finds that the Second Amendment and service rates are proper and consistent with the purposes of Chapter 2, of Title 6, of the Fowler Municipal Code and State law.

NOW THEREFORE, the City Council of the City of Fowler does hereby resolve as follows:

1. The Second Amendment to the 2009 Franchise Agreement is hereby approved.

2. The service rates set forth in **Exhibit A** hereto are hereby approved, effective as of July 1, 2016.

3. The service rates set forth in **Exhibit A** hereto shall be adjusted from time to time as called for in the 2009 Franchise Agreement.

PASSED AND ADOPTED by the City Council of the City of Fowler at a special meeting held on June 14, 2016, by the following votes:

AYES: Cardenas, Parra, Hammer, Monis & Simonian

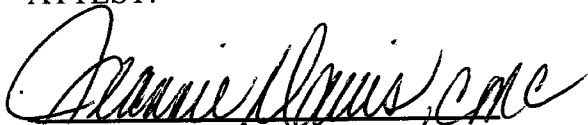
NOES: None

ABSENT: None

ABSTAIN: None

  
DAVID CARDENAS, MAYOR

ATTEST:

  
JEANNIE DAVIS, CITY CLERK

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6. All Other Terms Remain in Effect. Except as expressly set forth herein, all other terms of the 2009 Franchise Agreement, as amended by the First Amendment, shall remain unchanged and in full force and effect.

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

CITY OF FOWLER

USA WASTE OF CALIFORNIA, INC.

By: \_\_\_\_\_  
David Elias, City Manager

By: \_\_\_\_\_  
President, Chairman, CEO or Vice  
President

June \_\_, 2014

June \_\_, 2016

ATTEST:

By: \_\_\_\_\_  
Chief Financial Officer, Secretary or  
Treasurer

By: \_\_\_\_\_  
Jeannie Davis, City Clerk

June \_\_, 2016

June \_\_, 2016

Approved as to form:

Approved as to form:

By: \_\_\_\_\_  
David J. Wolfe, City Attorney

By: \_\_\_\_\_  
Catherine Riegler Corporate Legal Counsel

June \_\_, 2016.

June \_\_, 2016



# THE BUSINESS JOURNAL

FRESNO | KINGS | MADERA | TULARE

P.O. Box 126  
Fresno, CA 93707  
Telephone (559) 490-3400

(Space Below for use of County Clerk only)

IN THE COUNTY OF FRESNO, STATE OF CALIFORNIA

CITY OF FOWLER  
NOTICE OF HEARING TO DISCUSS AND CONSIDER A  
PROPOSED SECOND AMENDMENT TO THE CONTRACT  
FOR THE COLLECTION OF SOLID WASTE IN THE CITY AND  
REVISING THE RATES FOR SUCH SERVICE

DATE AND TIME OF PUBLIC  
HEARING:  
JUNE 14, 2016 AT 7:00 P.M.

### DECLARATION OF PUBLICATION (2015.5 C.C.P.)

MISC. NOTICE

STATE OF CALIFORNIA

COUNTY OF FRESNO

I am a citizen of the United States and a resident of the County aforesaid; I am over the age of eighteen years, and not a party to or interested in the above entitled matter. I am the principal clerk of **THE BUSINESS JOURNAL** published in the city of Fresno, County of Fresno, State of California, Monday, Wednesday, Friday, and which newspaper has been adjudged a newspaper of general circulation by the Superior Court of the County of Fresno, State of California, under the date of March 4, 1911, in Action No.14315; that the notice of which the annexed is a printed copy, has been published in each regular and entire issue of said newspaper and not in any supplement thereof on the following dates, to wit:

JUNE 3, 2016

**CITY OF FOWLER**  
**NOTICE OF PUBLIC HEARING**  
**TO DISCUSS AND CONSIDER**  
**A PROPOSED SECOND**  
**AMENDMENT TO THE CONTRACT**  
**FOR THE COLLECTION OF**  
**SOLID WASTE IN THE CITY AND**  
**REVISING THE RATES FOR SUCH**  
**SERVICE**  
On June 14, 2016, at 7:00 p.m. at the City Council Chambers located at 128 South 5th Street, Fowler, California, the City Council of the City of Fowler will discuss and consider the following item:  
To: A proposed Second Amendment to the April 1, 2009 Amended and Restated Solid Waste Franchise Agreement with USA Waste of California ("2009 Franchise Agreement") to provide solid waste collection services in the City.  
a. The proposed Second Amendment adds a State mandatory commercial organic waste recycling component and sets the commercial organic service rate at \$17.00 per 64 gallon 1x/wk.  
b. The proposed Second Amendment also changes the consumer price index ("CPI") used for annual rate adjustments from Western Urban All Items to US Average Garbage and Trash Collection to more accurately track changes in industry costs. The Second Amendment will also lower the maximum annual rate adjustment from 5% to 4%.  
Any person interested may appear and be heard at the public hearing. Copies of the proposed Second Amendment and the updated service rates may be obtained by contacting the City Clerk at 559-834-3113.  
06/03/2016

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed at Fresno, California,

JUNE 3, 2016

ON .....

