

**AMENDMENT NO. 2 TO THE  
AMENDED AND RESTATED  
EXCLUSIVE FRANCHISE AGREEMENT  
BETWEEN THE CITY OF CORONA  
AND USA WASTE OF CALIFORNIA, INC.  
FOR SOLID WASTE HANDLING SERVICES**

This AMENDMENT NO. 2 TO THE AMENDED AND RESTATED EXCLUSIVE FRANCHISE AGREEMENT BETWEEN THE CITY OF CORONA AND USA WASTE OF CALIFORNIA, INC. FOR SOLID WASTE HANDLING SERVICES ("Amendment") is dated as of June 5, 2009, 2009 and is entered into by and between USA WASTE OF CALIFORNIA, INC., a Delaware corporation ("Contractor") and the CITY OF CORONA, a municipal corporation organized and existing under the laws of the State of California ("City"). Contractor and City are sometimes referred to in this Agreement, individually as "Party" and, collectively as "Parties."

RECITALS

WHEREAS, Contractor and the City entered into an "Amended and Restated Exclusive Franchise Agreement Between the City of Corona and USA Waste of California, Inc. For Solid Waste Handling Services" ("Agreement") dated July 5, 2006, wherein the Parties contracted for Contractor to provide exclusive solid waste handling services to the City; and

WHEREAS, Contractor has requested that the City consider the creation of additional enforcement tools to help reduce the incidence of illegal waste hauling in Corona by third-party haulers in violation of the Agreement and the City's Municipal Code; and

WHEREAS, City's City Council has adopted Ordinance No. 2984, which amends Chapter 8.20 of the Corona Municipal Code to create additional enforcement tools to address illegal waste hauling; and

WHEREAS, Section 8.20.085 of the Corona Municipal Code authorizes the City's City Manager to delegate to Contractor authority to issue notices for the removal of third-party waste collection containers and to impound such containers, provided that certain conditions are met, including the execution of an agreement to indemnify the City against any claims arising out of Contractor's exercise of such delegated authority and amending the Agreement to reflect that misuse of the delegated authority shall be deemed a violation of the Agreement; and

WHEREAS, Contractor has indicated that it would like the City to delegate to Contractor authority under the terms and conditions specified in Section 8.20.085;

NOW, THEREFORE, the Parties hereto agree as follows:

1. The City hereby delegates to Contractor the non-exclusive authority to provide notice of illegally placed bins, containers, and receptacles, and to impound such bins, containers, and receptacles, in strict compliance with the provisions of Section 8.20.085 of the Corona Municipal Code. Contractor acknowledges that this delegation of authority does not authorize Contractor to enter upon private property at any time. Contractor shall provide notice in a form determined by the City, which may be amended by the City at any time.

2. Contractor shall promptly dispose of the contents of any bin, container, or receptacle it impounds under its delegated authority at a permitted disposal facility, at no charge to the City. Contractor shall store any bin, container, or receptacle it impounds at a legally permitted storage facility that complies with all applicable local land use regulations.

3. Contractor further acknowledges that this delegation of authority may be unilaterally revoked and rescinded by the City's City Manager at any time in the City Manager's sole discretion, effective immediately upon notice to Contractor. Contractor further acknowledges that no such revocation or rescission shall constitute a breach of the Agreement, and Contractor hereby waives any right to claim that a revocation or rescission of this delegated authority constitutes a breach of the Agreement, or to invoke any appeal or hearing rights under the Agreement, including but not limited to those of Sections 11 and 12 therein.

4. To the fullest extent permitted by applicable law, Contractor shall protect, defend (with counsel approved by the City), indemnify and save the City, its agents, officials, commission members, employees, servants, including volunteers, any firm, company, organization or individual, or their contractors or subcontractors with whom Contractor may be contracted, harmless from and against any and all claims, demands, fines, liabilities, damages, including incidental, special, and actual, judgments, losses, costs, expenses, suits, actions, and causes of action of every kind and character, including, but not limited to, claims based on negligence, strict liability, and absolute liability (collectively, "Claims") which may arise in favor of any person or persons resulting from Contractor's exercise of the authority delegated to it under this agreement, regardless whether others may be wholly, concurrently, partially or solely negligent, or strictly liable, or absolutely liable or otherwise at fault, except damages arising out of negligence or willful misconduct of the City, its agents, officials, commissioners, employees, servants, including volunteers, any firm, company, organization or individual, or their contractors or subcontractors with whom the City may be contracted. Claims shall include, but not be limited to, allegations of trespassing by Contractor, theft of impounded bins, containers, or receptacles, misrepresentation, violations of civil rights, harassment, and deprivation of due process. Further, Contractor hereby agrees to indemnify the City for all reasonable expenses and attorney's fee incurred by or imposed upon the City in connection with any Claims arising out of Contractor's exercise of its delegated authority. In the event Contractor challenges the City's right to indemnity hereunder and the City prevails, Contractor further agrees to pay all reasonable expenses and attorney's fees incurred by the City in establishing the right to indemnity.

5. The Agreement is hereby amended by adding a new Section 26, to read as follows:

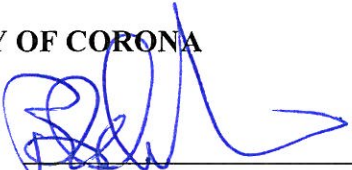
**SECTION 26. ENFORCEMENT ACTIONS AGAINST ILLEGAL HAULERS**

To the extent that Grantee exercises authority delegated to it by the City pursuant to Section 8.20.085 of the Corona Municipal Code, Grantee's failure to comply strictly with the requirements of Section 8.20.085 and any agreement entered into by the City and Grantee concerning such authority shall constitute a violation of this Agreement, and shall be subject to the imposition of liquidated damages under Section 11 G herein, and to all other remedies set forth in Section 11, provided that the City shall not be required to provide any time for correction of such violations.

6. The amendments effected by this Amendment shall supersede any term or provision of the Agreement to the contrary, and in the event of a conflict between this Amendment and the Agreement, this Amendment shall control.

7. All other provisions of the Agreement shall remain in full force and effect and shall apply as applicable to this Amendment. This Amendment shall not be given retroactive effect.


**CITY OF CORONA**

By:   
Bradley L. Robbins,  
City Manager

ATTEST:

By:   
Victoria Wasko,  
City Clerk

APPROVED AS TO LEGAL FORM:  
BEST BEST & KRIEGER LLP

By:   
City Attorney

**USA WASTE OF CALIFORNIA, INC.**

By: 

**ORDINANCE NO. 2984**

**AN ORDINANCE OF THE CITY OF CORONA,  
CALIFORNIA, AMENDING CHAPTER 8.20 OF THE  
CORONA MUNICIPAL CODE REGARDING COLLECTION  
AND DISPOSAL OF SOLID WASTE AND CHAPTER 3.02  
REGARDING FEES FOR CITY SERVICES**

**WHEREAS**, Chapter 8.20 of the Corona Municipal Code constitutes the City's solid waste ordinance, establishing requirements and restrictions on the collection and disposal of solid waste (including recyclable materials) within the city; and

**WHEREAS**, pursuant to Chapter 8.20 and applicable state law, the City has awarded an exclusive franchise for the collection and disposal of solid waste within Corona; and

**WHEREAS**, state law requires each city to divert 50% of its solid waste stream from landfills, and cities that fail to meet this threshold are subject to penalties of up to \$10,000 per day imposed by the California Integrated Waste Management Board; and

**WHEREAS**, the City's franchise agreement with the franchised solid waste hauler requires the hauler to divert from landfills as much of the waste stream as possible, but the City has no control over diversion and disposal practices of solid waste haulers operating illegally in the City; and

**WHEREAS**, the City's franchise agreement with the franchised solid waste hauler requires the hauler to perform extensive recordkeeping and reporting to assist the City in monitoring its compliance with the state diversion requirements, but the City has no means of ensuring that solid waste haulers operating illegally in the City accurately report their waste collection or keep records of any kind; and

**WHEREAS**, the City has made efforts to educate solid waste customers and illegally operating haulers concerning diversion requirements and the necessity of having only the City's franchised solid waste hauler collect and dispose of solid waste in Corona; and

**WHEREAS**, it appears that various solid waste haulers continue to operate illegally in Corona, and that some solid waste customers continue to contract for services from illegal solid waste haulers; and

**WHEREAS**, the City Council wishes to provide for the City to recover from owners of impounded bins the costs incurred by the City in impounding the bins, including but not limited to removing, transporting, disposal of contents, storage, and administration.



**NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF CORONA,  
CALIFORNIA, DOES ORDAIN AS FOLLOWS:**

**SECTION 1.** Section 8.20.080 of the Corona Municipal Code is hereby amended to read as follows:

**8.20.080           Collection – Prohibited except by franchised solid  
waste hauler.**

(A) Except as provided by this section, no person shall collect any solid waste from any commercial premises or residential premises within the city, place a refuse bin, container, or other receptacle for refuse at any premises within the city, or collect, transfer, or remove refuse (including, but not limited to, solid waste and recyclable materials) within the city, unless that person holds a franchise or contract with the city for such collection or receptacle placement. Each day any person shall collect any refuse from any commercial premises or residential premises within the city, place a refuse bin, container, or other receptacle for refuse at any premises within the city, or collect, transfer, or remove refuse within the city without holding a franchise or contract with the city for doing so shall constitute a separate offense.

(B) The prohibitions in subsection (A) shall not apply to a person who hauls solid waste or recyclable materials generated from that person's own residence, to a properly licensed landfill, material recovery facility, transfer station, or other facility permitted to accept such material.

(C) The prohibitions in subsection (A) shall not apply to any person or entity collecting recyclable material sold or donated to it by the person or entity that generated such recyclable material, provided that if the generator of the recyclable material is required to pay the collector of the recyclable materials any monetary or non-monetary consideration relating in any way, directly or indirectly, to the collection, transportation, transfer, or processing of the recyclable material, or for the lease or use of containers, this exclusion shall not apply.

**SECTION 2.** A new Section 8.20.085 is hereby added to the Corona Municipal Code, to read as follows:

**8.20.085 Placement of unauthorized containers prohibited.**

(A) The city shall provide written notice to any person or business violating Section 8.20.080 that the prompt and permanent removal of such bin, container or other receptacle from its location within the city is required. The form of notice shall be determined by the City Manager or his or her designee. The city shall provide such written notice by posting a copy of the notice prominently upon the bin, container or receptacle, provided that if the bin, container, or receptacle is not in the driveway of a residential property or in an area open to the public of a commercial or industrial property, the written consent of the owner or occupant of any private property where a bin, container, or receptacle is placed shall be obtained prior to going on the property to give notice. If the bin, container, or receptacle is identified with the name and telephone number of the solid waste enterprise servicing or owning it, the city shall endeavor to contact such enterprise by telephone. However, failure to notify the owner telephonically shall not invalidate the notice. If notice is provided by the city's solid waste franchisee under a delegation of authority pursuant to subsection (D), the franchisee shall promptly provide the city with a copy of the notice, and shall not enter onto private property to provide such notice. Where the notice cannot be physically delivered or placed on the container due to the inability to enter onto private property or the refusal of consent by the owner, the notice may be given to the owner or occupant by certified mail, return receipt requested.

(B) The city may impound or cause to be impounded any such bin, container, or receptacle located on city property or located on private property with the written consent of the owner or occupant of the property where the receptacle is located, if the same is not permanently removed from its location within the time set forth in the notice, which time shall not be less than twenty-four (24) hours after posting of the notice, or receipt of notice if notice is provided by certified mail, or not less than six (6) business hours after telephonic notification, if such notification is provided. If the bin, container, or receptacle is impounded by the city's solid waste franchisee under a delegation of authority pursuant to subsection (D), the franchisee may not enter upon private property, and the franchisee shall immediately inform the City in writing of the impoundment, promptly dispose of

the contents of the bin, container, or receptacle at a permitted disposal facility, and shall store the bin, container, or receptacle in a legally permitted storage area that complies with all applicable local land use regulations. If the bin, container, or receptacle has no markings identifying the owner or setting forth the owner's telephone number, and if identification of such owner thereof cannot be provided by the business owner or operator on whose premises the bin, container, or waste receptacle is located, then the city shall be authorized to immediately remove and impound it. For purposes of this section, "business hours" shall mean the hours of 7:00 a.m. to 5:30 p.m., Monday through Friday, and Saturday 7:00 a.m. to 3:00 p.m. Any person who violates this section shall be liable to the city for all fees and charges established by resolution of the City Council and levied in connection with the collection, transportation, storage and handling of the bin, dumpster or waste receptacle by the City.

(C) The bin, container, or receptacle impounded shall be retrieved by the owner or representative thereof immediately after any applicable fees and charges established pursuant to Chapter 3.02 of this Code have been paid. Such fees and charges may include, among other things, reimbursement of costs incurred for towing, transportation, disposal of contents, storage and administration. If the bin, container, or waste receptacle is not claimed within thirty-five (35) days after removal and notice to the owner, or thirty (30) days after removal if the identity of the owner is unknown, the bin, container, or waste receptacle shall be deemed abandoned property and may be disposed of in any manner authorized by law.

(D) The City Manager may delegate to the City's solid waste franchisee the authority to provide the notice required by subsection (A), impound and/or store unauthorized bins, containers, and/or waste receptacles, in accordance with the provisions of this section, and to collect the fees and charges levied by the city pursuant to subsection (B). Where the franchisee is unable to deliver the notice due to the inability to enter onto private property, it is authorized to provide the notice to the owner or occupant by certified mail, return receipt requested. Prior to the franchisee's exercise of any such delegated authority, the franchisee shall provide the city with a written agreement in a form satisfactory to the city indemnifying and holding harmless the city against all claims and causes of action arising out of the franchisee's actions to impound and/or store bins, containers, and waste receptacles, and amending the solid waste franchise agreement to reflect that impoundments performed without full compliance with

this section, and failures to provide notice as required by this section, shall be deemed violations of the franchise agreement. The City Manager may revoke this delegation of authority at any time in his or her sole discretion, and the agreement provided by the franchisee shall acknowledge that any such revocation shall not be deemed a breach of the franchise agreement.

(E) Upon posting of a written notice of violation upon an unauthorized bin, container, or waste receptacle, the customer using the same shall immediately cease placing solid waste therein.

(F) For purposes of this section, the terms "bin," "container" and/or "receptacle" shall mean and include any form of solid waste or recyclable materials receptacle which is placed for collection upon any public or private property within the city by any person or entity that does not hold a franchise or contract from or with the city for collection and disposal of solid waste.

(G) Each and every person, firm, partnership, or corporation shall be deemed guilty of a separate offense for each and every day or any portion thereof during which any violation of any of the provisions of this section is committed, continued or permitted by such person, firm, partnership or corporation, and shall be deemed punishable therefore as provided in this section.

(H) The violation of any of the provisions of this section shall constitute a nuisance and may be abated by the city through civil process by means of restraining order, preliminary or permanent injunction or in any other manner provided by law for the abatement of such nuisances.

**SECTION 3.** Section 8.20.100 of the Corona Municipal Code is hereby amended by adding a new subsection (D) to read as follows:

(D) Except as otherwise determined by the City Council, no person owning or occupying a residential unit, or owning or occupying any business establishment or property of any type and for any purpose shall contract with, or pay any sum to, any person or entity other than the City's contractor for the collection, disposal, and/or recycling of refuse.



**SECTION 4.** Section 8.20.220 of the Corona Municipal Code is hereby amended to read as follows:

**8.20.220 Violations – Penalty and enforcement.**

(A) Any person, firm or corporation violating any of the provisions of this chapter, except §§ 8.20.100 and 8.20.110, is guilty of a misdemeanor. Any person, firm or corporation violating §§ 8.20.100 or 8.20.110 is guilty of an infraction. Any subsequent violation of § 8.20.100 or § 8.20.110 within two years of the first violation of the same section shall be a misdemeanor.

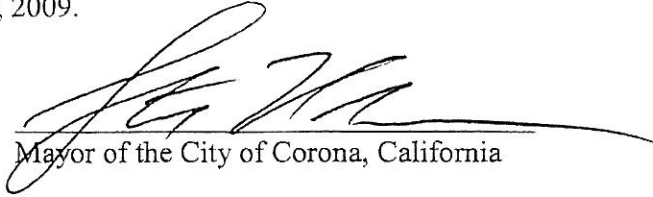
(B) Any holder of an exclusive franchise or contract for the collection and disposal of solid waste awarded by the City may bring a private action to enjoin and prevent violations of §§ 8.20.080, 8.20.085, and/or 8.20.100, to the fullest extent allowed under California law, including but not limited to actions alleging that such violations constitute unfair competition within the meaning of the law.

**SECTION 5.** Section 3.02.040 of the Corona Municipal Code is hereby amended by amending subsection (A) to add a new category of fee in the Public Works category, entitled “Illegal solid waste bin – impoundment, storage, disposal of contents”, as shown in Exhibit A, attached hereto and incorporated herein by reference.

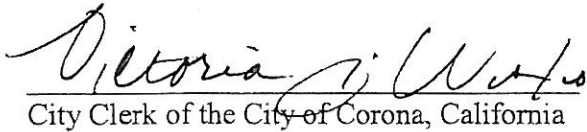
**SECTION 6.** Based on the entire record before the City Council, and all written and oral evidence presented to the City Council, the City Council hereby finds that this Ordinance is exempt from review under the California Environmental Quality Act (“CEQA”), as outside the definition of a “project” under Section 15378 of the CEQA Guidelines and Section 21065 of the Public Resources Code. City Staff is hereby directed to prepare a Notice of Exemption and file it with the County of Riverside.

**SECTION 7.** The Mayor shall sign this Ordinance and the City Clerk shall attest thereto and shall within fifteen (15) days of its adoption cause it, or a summary of it, to be published in the Press Enterprise, a newspaper published and circulated in the City of Corona, and thereupon and thereafter this ordinance shall take effect and be in force according to law.

**ADOPTED** this 6th day of May, 2009.

  
Mayor of the City of Corona, California

**ATTEST:**


  
City Clerk of the City of Corona, California

**CERTIFICATION**

I, VICTORIA J. WASKO, City Clerk of the City of Corona, California, do hereby certify that the foregoing Ordinance was regularly introduced at an adjourned regular meeting of the City Council of the City of Corona, California, duly held the 15th day of April, 2009, and thereafter at a regular meeting held on the 6th day of May, 2009, it was duly passed and adopted by the following vote of the Council:

<b>AYES:</b>	<b>MONTANEZ, NOLAN, SCOTT, SKIPWORTH, SPIEGEL</b>
<b>NOES:</b>	<b>NONE</b>
<b>ABSENT:</b>	<b>NONE</b>
<b>ABSTAINED:</b>	<b>NONE</b>

**IN WITNESS WHEREOF**, I have hereunto set my hand and affixed the official seal of the City of Corona, California, this 6th day of May, 2009.

  
City Clerk of the City of Corona, California

(SEAL)

**EXHIBIT "A"**  
to  
**Ordinance No. 2984**

[The new fee category authorized by this ordinance is shown in **bold text** below.]

<i><b>PUBLIC WORK SERVICES</b></i>			
Cost Center	Regulation, Product or Service	Percentage of Costs Reasonably Borne to be Recovered	Review Schedule
PW-30	Block party processing service	25%	Annual
<b>PW-60</b>	<b>Illegal solid waste bin – impoundment, storage, disposal of contents</b>	<b>100%</b>	<b>Annual</b>
PW-500	Storm water pollution abatement program	100%	Annual

## SUMMARY

On May 6, 2009, the Corona City Council will consider adopting an Ordinance to create additional remedies and enforcement tools for the City to use against solid waste haulers operating illegally in Corona. A certified copy of the full text of this proposed Ordinance is posted in the City Clerk's Office.

The City Council meets at 7:00 p.m. in the Council Chambers in the Corona City Hall, located at 400 South Vicentia Avenue. The City Clerk's office is located in City Hall near the Council Chambers.