

AGENDA ITEM NO. 2H
COUNCIL MEETING 11/27/07
APPROVED BY

DEPARTMENT DIRECTOR

CITY MANAGER

November 27, 2007

FROM: RENE A. RAMIREZ, Director *lu*
Department of Public Utilities, Administration

BY: BILL O'BRIEN, Assistant Director
Department of Public Utilities, Solid Waste Management

Presented to City Council
Date 11-27-07
Disposition Approved, Res
2007-398 adopted

SUBJECT: APPROVE FIRST AMENDMENT TO AGREEMENT WITH ORANGE AVENUE DISPOSAL COMPANY, INC. (OAD) IN THE AMOUNT OF \$173,000.00 THROUGH SEPTEMBER 2007, A GO FORWARD FUEL SURCHARGE FORMULA FOR THE TRANSPORTATION OF THE CITY'S SOLID WASTE TO THE AMERICAN AVENUE LANDFILL TO REFLECT AN INCREASE IN THE PROCESSING FEE DUE TO FUEL COSTS AND ADOPT THE 53rd AMENDMENT TO THE ANNUAL APPROPRIATION RESOLUTION (AAR) NO. 2007-214 TO APPROPRIATE FUNDS

KEY RESULT AREA

Public Safety

RECOMMENDATION

Approve the first amendment to the agreement with Orange Avenue Disposal Company, Inc. (OAD) in the amount of \$173,000.00 through September 2007, a go forward fuel surcharge formula for the transportation of the City's solid waste to the American Avenue Landfill to reflect an increase in the contractual fee due to increasing fuel costs, and adopt the 53rd amendment to the AAR No. 2007-214 to appropriate funds.

EXECUTIVE SUMMARY

On February 25, 2004, the City entered into a 20-year agreement with OAD to provide the "transfer of materials" or transportation of the City's solid waste to the County landfill located along American Avenue southwest of Kerman. Representatives from the OAD formally requested a contract amendment to adjust the contractual fee addressing the increasing fuel expense. The rise in diesel fuel has increased OAD operational costs well above an annual Consumer Price Index (CPI) adjustment provided in the contract. The transfer of materials to the landfill requires transfer trailer trucks to travel 58 miles roundtrip, with as many as 35 trailer-loads hauled per day. This transfer agreement saves the Division's fleet of some 130 vehicles from having to drive an additional 1.2 million miles annually. Reducing driving by 1.2 million miles reduces fuel expenses, vehicle wear and tear, the loss of productive time because individual refuse trucks do not have to make a roundtrip to the landfill, and the need for more trucks to make up for the time driving to the landfill. When the original agreement was signed in February 2004, retail market for diesel fuel was approximately \$1.809 per gallon. The current retail market for diesel fuel is \$3.594 per gallon. This 99% increase in fuel costs since the contract was executed is not adequately compensated through the annual CPI increase offered through the current agreement.

*SUBJECT TO MAYOR'S VETO

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Staff met with OAD officials and negotiated a "fuel surcharge formula", to be added to the contractual fee. The proposed fuel surcharge is a formula-driven calculation using a base fuel index, the diesel market rates found in the U. S. Department of Energy California No. 2 Diesel Retail Sales by all Sellers published by the government, and the quantity of solid waste transported, less the CPI adjustment in the agreement. The fuel surcharge is recommended to be retroactive to January 2006 would cost the Division \$173,000.00 now and approximately \$8,500 per month depending on the price of diesel and the amount of solid waste.

KEY OBJECTIVE BALANCE

The proposed first amendment balances the three key objectives by continuing to save our customer's costs by maximizing time and effort on routes, employees are able to spend more time servicing customers, and the negotiated formula provides an appropriate level of financial management.

BACKGROUND

The City executed a 20-year agreement with OAD on February 25, 2004, for the purpose of having OAD receive the City-hauled solid waste, process this waste, and long-haul to the American Avenue landfill near Kerman. This agreement saves the Division's fleet of some 130 vehicles from having to drive an additional 1.2 million miles annually, vehicle wear and tear, and the loss of productive time because individual refuse trucks do not have to make a roundtrip to the landfill. The agreement calls for a \$27.96 per ton fee in FY08, a "contractual fee", composed of an American Avenue landfill gate rate of \$21.25 per ton and an OAD processing and transportation fee of \$6.71 per ton. At the beginning of each fiscal year the contractual fee is automatically amended to reflect the tipping fee at the County's American Avenue Landfill and an increase in the processing and transportation fee by the CPI. The CPI adjustment in the agreement is based on 80% of the change in the CPI for Urban Wage Earners and Clerical Workers for the Los Angeles-Anaheim-Riverside area. It is the intent for the contractual fee paid by the City to cover all associated expenses related to the receipt of City solid waste, operation of the transfer facility, the transportation of wastes to the American Avenue Landfill, and final landfill gate rate.

However, the rise in diesel fuel has increased OAD operational costs well above the annual CPI adjustment provided in the contract. The transfer of wastes to the landfill requires transfer trailer trucks to travel 58 miles roundtrip, with as many as 35 trailer-loads hauled per day. Since the signing of the original agreement in February 2004, diesel fuel has risen from \$1.809 gallon to the current November 2007 average price of \$3.594 per gallon. This 99% increase in fuel costs over the last three years is not adequately compensated through the annual CPI increase offered through the current agreement.

Staff met with OAD officials and negotiated a "fuel surcharge formula", to be added to the contractual fee. The proposed fuel surcharge is a formula-driven calculation using a base fuel index, the diesel market rates found in the U. S. Department of Energy California No. 2 Diesel Retail Sales by all Sellers published by the government, and the quantity of solid waste transported, less the CPI adjustment. The fuel surcharge is recommended to be retroactive to January 2006 and begin with a base fuel index of \$2.160 per gallon.

The base fuel index was derived from the U. S. Department of Energy Administration's database on California No. 2 Diesel Retail Sales by all Sellers going back nine (9) years of published data. An average rise or fall in diesel fuel prices was placed into a spreadsheet until such time the contract with OAD was executed, to develop a diesel fuel inflation factor. The diesel fuel inflation factor, calculated to be 6.8% per year, was then applied to the \$1.809 per gallon price of diesel fuel at the time of contract execution in February 2004 and extrapolated to January 2006, or the agreed upon start date for this proposed fuel surcharge, to derive the base fuel index of \$2.160 per gallon. The fuel surcharge formula also then takes the average of the California

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No. 2 Diesel Retail Sales by all Sellers for a month and subtracts the base fuel index. The resulting figure is then multiplied by an agreed upon 45% factor yielding a fuel increase factor. If this fuel increase factor is positive, then the City is to pay a fuel surcharge for the month and conversely if this figure is negative, then OAD reduces its invoice to the City to account for the reduction in fuel costs in the transportation of the solid waste. The fuel increase factor is multiplied by the number of tons of solid waste delivered by the City to the OAD transfer facility. A one time payment retroactive to January 2006 derived from the base fuel index, the U. S. Department of Energy California No. 2 Diesel Retail Sales by all Sellers and the actual tons of solid waste delivered to OAD calculates to \$173,000.00 in fuel surcharges. Going forward a fuel surcharge calculation will be made, and if appropriate a payment made to OAD to account for diesel fuel costs beyond the base fuel index.

The first amendment also recognizes if OAD uses an alternative fuel source, then the two parties will enter into negotiations for a modified fuel rate, and that the City wants OAD to provide the City with a waste and recycling composition study at least twice per year demonstrating a five-percent diversion requirement. The remainder of the provisions in the 20-year contract remains in full force and effect.

This first amendment was approved as to form by the City Attorney's Office.

FISCAL IMPACT

The fiscal impacts are composed of two parts. Part one is a one-time payment to OAD for fuel increases from January 2006 through September 2007, in the amount of \$173,000.00. The second part is a recurring monthly fuel surcharge as long as the price of fuel exceeds \$2.160 per gallon. It is anticipated that the average monthly fuel surcharge will be approximately \$8,500 per month and a function of fuel price and quantity of waste material delivered to the OAD facility.

Attachment:

Agreement Amendment
AAR No. 2007-214, 53rd amendment

FIRST AMENDMENT TO AGREEMENT

THIS FIRST AMENDMENT TO AGREEMENT ("Amendment"), dated Nov 27, 2007 ("Effective Date"), amends the Agreement heretofore entered into between the CITY OF FRESNO, a municipal corporation, hereinafter referred to as "CITY", and Orange Avenue Disposal Company, Inc., a California corporation, hereinafter referred to as "CONTRACTOR".

RECITALS

WHEREAS, CITY and CONTRACTOR entered into an agreement, dated February 25, 2004, for the transfer, processing and disposal of municipal solid waste, construction and demolition, and asphalt and concrete generated by the City of Fresno Solid Waste Division residential and commercial customers ("Agreement"); and

WHEREAS, the parties agreed to a certain compensation level based on a fee per ton of Material (as defined in the Agreement) received by CONTRACTOR, adjusted for certain increases/decreases in tipping fee and further adjusted (increased) for certain changes in the Consumer Price Index (CPI); and

WHEREAS, the parties acknowledge and agree that, given the unique nature of the bundled services proposed and provided by CONTRACTOR, related market dynamics and the fixed price/long term pricing required in the Agreement, the above fee adjustments do not adequately and equitably adjust CONTRACTOR's compensation for the dramatic increase in diesel fuel prices incurred by CONTRACTOR from and after January 1, 2006; and

WHEREAS, such increase in diesel fuel prices was not reasonably foreseeable by the parties at the time the Agreement was entered; and

WHEREAS, the parties now desire to modify the Compensation Adjustments provision, therein, retroactively effective to January 1, 2006, by establishing a fuel surcharge adjustment, to be applied monthly, to fairly compensate CONTRACTOR for extraordinary swings in the price of diesel fuel.

AGREEMENT

NOW, THEREFORE, the parties agree that the aforesaid Agreement be amended as follows:

1. The following paragraph shall be added to the end of Section 4.2, Compensation Adjustments, of the Agreement:

"Beginning January 1, 2006, the monthly cost per Ton balance paid to CONTRACTOR shall be adjusted by CITY to recognize extraordinary swings in diesel fuel pricing. The U.S. Department of Energy California No. 2 Diesel Retail Sales by all Sellers (Diesel Retail) monthly average shall be the source for all computations of diesel fuel pricing. The fuel adjustment will be calculated using an Index Rate of 216.0 cents per gallon. Each month that the Diesel Retail exceeds or is less than the Index Rate, and in addition to the above adjustment computation, the cost per Ton balance of every Ton of Material

delivered by CITY to the processing facility for shipping by CONTRACTOR to the Landfill will be:

Increased or decreased, respectively, by 45% of the difference between the actual monthly average Diesel Retail rate and the Index Rate, and then decreased by 3% of the above Consumer Price Index adjustment.

This diesel fuel rate adjustment applies only to the extent that diesel fuel is used by CONTRACTOR. In the event CONTRACTOR utilizes alternative fuel, the parties shall enter into negotiations for a modified fuel rate."

2. Based upon the above modification of Section 4.2 of the Agreement, the parties have recalculated the compensation to CONTRACTOR for the period of January 1, 2006 through September 30, 2007. Within thirty (30) days following the Effective Date of this Amendment, CITY shall make a lump sum payment to CONTRACTOR in the amount of \$172,951.00, as the amount due for the period of January 1, 2006 through September 30, 2007, prorated for portions thereof.

3. The following paragraph shall be added to the end of Section 3.3 of the Agreement:

"CONTRACTOR shall provide CITY with a waste and recycling composition study at least twice per year demonstrating that CONTRACTOR is meeting the five percent (5%) diversion requirement in this section."

4. Except as otherwise provided herein, the Agreement entered into by CITY and CONTRACTOR, dated February 25, 2004, remains in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment at Fresno, California, the day and year first above written.

CITY OF FRESNO,
a municipal corporation

By: 
Andrew T. Souza
City Manager

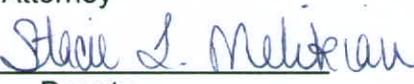
ORANGE AVENUE DISPOSAL COMPANY,
INC., a California corporation

By: 
Richard Caglia II
President

ATTEST:
REBECCA E. KLISCH
City Clerk

By: 
Deputy 12/19/07

APPROVED AS TO FORM:
JAMES C. SANCHEZ
City Attorney

By: 
Deputy

November 28, 2007

Council Adoption: 11/27/07

RECEIVED

Mayor Approval:

TO: MAYOR ALAN AUTRY

Mayor Veto:

FROM: REBECCA E. KLISCH, CMC
City Clerk

REK 2007 DEC 10 PM 2: 23

Override Request:

CITY CLERK, FRESNO CA

SUBJECT: TRANSMITTAL OF COUNCIL ACTION FOR APPROVAL OR VETO

At the Council meeting of 11/27/07, Council took legislative action entitled **Appv 1st amndnt to agrmnt w/Orange Ave Disposal Company, Inc., in the amount of \$172,951**, Item No. 2H, by the following vote:

Ayes	:	Calhoun, Dages, Duncan, Sterling, Westerlund, Xiong, Perea
Noes	:	None
Absent	:	None
Abstain	:	None

Please indicate either your formal approval or veto by completing the following sections and executing and dating your action. Please file the completed memo with the Clerk's office on or before December 10, 2007. In computing the ten day period required by Charter, the first day has been excluded and the tenth day has been included unless the 10th day is a Saturday, Sunday, or holiday, in which case it has also been excluded. Failure to file this memo with the Clerk's office within the required time limit shall constitute approval of the ordinance, resolution or action, and it shall take effect without the Mayor's signed approval.

Thank you.

APPROVED:

VETOED for the following reasons: (Written objections are required by Charter; attach additional sheets if necessary.)


Alan Autry, Mayor

Date: 12/10/07

COUNCIL OVERRIDE ACTION:

Date: _____

Ayes	:
Noes	:
Absent	:
Abstain	: