

**Services Agreement
Transfer, Processing and Disposal of Municipal Solid Waste,
Construction & Demolition, and Asphalt & Concrete
City of Fresno, California**

THIS Services AGREEMENT for Transfer, Processing and Disposal of Municipal Solid Waste, Construction & Demolition and Asphalt & Concrete Materials ("Agreement") is made and entered into this 25th day of February, 2004, between the CITY OF FRESNO, a municipal corporation ("CITY"), and Orange Avenue Disposal Company, Inc., a California corporation ("CONTRACTOR"). CITY and CONTRACTOR are sometimes hereinafter referred to individually as a "Party" and collectively as the "Parties."

RECITALS

WHEREAS, CITY issued a Request for Proposals (Proposal No. 8519) for the Transfer, Processing and Disposal of Municipal Solid Waste ("MSW"), Construction & Demolition ("C&D"), Asphalt & Concrete ("A&C"), and Household Hazardous Waste ("HHW") Materials generated by City of Fresno Solid Waste Division residential and commercial customers; and

WHEREAS, CONTRACTOR submitted a proposal, dated April 18, 2003, representing itself to be qualified to perform such services for the Transfer, Processing and Disposal of MSW, C&D, A&C, and HHW Materials; and

WHEREAS, on August 26, 2003, the City Council awarded CONTRACTOR the contract for the Transfer, Processing and Disposal of MSW, C&D and A&C Materials; and

WHEREAS, on August 26, 2003, the City Council did not make any award for the Transfer, Processing and Disposal of HHW Materials.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises hereinafter enumerated, the Parties agree as follows:

SECTION 1. DEFINITIONS

Asphalt & Concrete – shall mean petroleum by-products, mixed asphalt and crushed stone, gravel or sand, used in paving, roofing and waterproofing; as well as, a mixture of conglomerate gravel, pebbles, broken stone or slag in a mortar or cement matrix.

CITY's Representative – shall mean and refer to the CITY's Director of Public Utilities or his/her designee.

City Manager – shall mean and refer to the City Manager of the City of Fresno.

Construction & Demolition – shall mean building materials and solid waste from construction, deconstruction, remodeling, repair, cleanup, or demolition operations that do not constitute "hazardous waste" as defined in California Public Resources Code Section 40141. This term includes, but is not limited to: asphalt, concrete, Portland cement, brick, lumber, wallboard, roofing material, ceramic tile, plastic pipe, and associated packaging.

Council – shall mean and refer to the Council of the City of Fresno.

Dispose and Disposal – shall each mean the method by which CONTRACTOR handles the Materials after Transferring and Processing including, but not limited to, shipment, sale, storage, and/or delivery to Landfill.

Effective Date – shall mean February 25, 2004.

Hazardous Waste - shall mean (i) all waste defined or characterized as hazardous by the Federal Solid Waste Disposal Act (42 U.S.C. §§3251 et seq.), and all future amendments thereto, or regulations promulgated thereunder and (ii) all waste defined or characterized as hazardous by the principal agencies of the State of California having jurisdiction (including, without limitation, the Department of Toxics, the Department of Health Services, the Regional Water Quality Control Board and the Integrated Waste Management Board).

Holiday(s) – shall mean Christmas Day, Thanksgiving Day and New Year's Day.

Landfill – shall mean the County of Fresno's American Avenue Landfill, or other permitted Disposal site designated in writing by CITY with such site's amount of tipping fees subject to approval by CITY.

Materials – shall mean MSW, C&D and A&C or any other waste stream matter that the Solid Waste Collector may intentionally or unintentionally deliver to CONTRACTOR in the course of operating under this Agreement.

Municipal Solid Waste – shall mean refuse, garbage, trash, Organic Material, inorganic Materials, and any Materials not suitable for composting; provided such item(s) of MSW has not been separated for an alternative recycling waste stream. MSW may include Materials appropriate for an alternative recycling waste stream but that has not been, for whatever reason, separated from the balance of other items mentioned in this definition.

Organic Material – shall mean organic waste stream matter such as vegetables, fruits, grain, dairy, meat, fish, and food trimmings, including all waste that has been prepared for or intended to be used as food, or has resulted from the preparation of food from residential, industrial and commercial generators.

Process(ing) – shall mean the method by which CONTRACTOR prepares the Materials for separation, storage, shipment, sale, transportation or Disposal.

Processing Facility – shall mean the primary location(s) where CONTRACTOR Transloads, stores and Transfers the delivered Materials prior to storage, shipment, sale or transportation to the Landfill; whereby the facility is a "station" as defined in Section 40200 of the California Public Resources Code and one which receives, handles, separates, converts, or otherwise processes solid waste, and whose activities are governed by the Registration Permit tier or Full Solid Waste Facility Permit requirements. The facility typically transfers solid waste directly from one container to another, or from one vehicle to another for transport, or temporarily stores solid waste prior to final Disposal at a Board-permitted landfill or transformation facility in accordance with Title 14, California Code of Regulations, sections 17400 et seq. The location, for purposes of this Agreement, is at the address of 3457 South Cedar Avenue, Fresno, CA. The phone number at the Processing Facility is (559) 650-1175, and the fax number at the Processing Facility is (559) 650-1111.

Prohibited Material – shall mean (i) explosives with the exception of surface flares; (ii) biological wastes, with the exception of syringes; (iii) reactive wastes, unless listed in the first column of Exhibit B; and (iv) radioactive materials.

Recyclable Material(s) – shall mean Materials that would otherwise become solid waste, but can be sorted, cleansed, treated, reconstituted and returned to the economic mainstream in the form of raw material for new, reused, or reconstituted products that meet the quality standards necessary to be used in the marketplace. Such Materials include, but are not limited to, the various grades of waste paper, newsprint, magazines, envelopes, telephone books, corrugated cardboard, chipboard, glass (colorless, green or brown), metal, rigid beverage containers, thermoplastics (#1 through #7), milk and juice containers (aseptic packages), tires, and white goods. Recyclable Material shall not include any container, which contains or has contained any Hazardous Waste or hazardous substance as defined in the California Health and Safety Code.

Related Party - all businesses (including corporations, limited and general partnerships, and sole proprietorships) which are directly or indirectly related to CONTRACTOR by virtue of direct or indirect Ownership interest or common management shall be deemed to be “related to” CONTRACTOR and included within the term “Related Party” as used herein. A Related Party shall include a business in which CONTRACTOR has a direct or indirect Ownership interest, a business which has a direct or indirect Ownership interest in CONTRACTOR, and a business which is also owned, controlled or managed by any business or individual which has a direct or indirect Ownership interest in CONTRACTOR. For the purposes of this definition, “Ownership” means ownership as defined in the constructive or indirect ownership provisions of Section 318(a) of the Internal Revenue Code of 1986, as in effect on February 1, 2002 and as set forth in Exhibit A, provided that ten percent (10%) shall be substituted for fifty percent (50%) in Section 318(a)(2)© and in Section 318(a)(3)© thereof; and Section 318(a)(5)© shall be disregarded. For purposes of determining Ownership under this paragraph and constructive or indirect ownership under Section 318(a), Ownership interest of less than ten percent (10%) shall be disregarded and percentage interests shall be determined on the basis of the percentage of voting interest or value which the Ownership interest represents, whichever is greater.

Residuals – shall mean any Materials that cannot be composted or otherwise recycled or reused.

Solid Waste Collector – shall mean CITY or its designee. Any designee shall be that person or entity named in a written notice to CONTRACTOR from CITY’s Representative and approved by Council as CITY’s designee hereunder.

Ton – shall mean 2,000 pounds avoirdupois.

Transfer(ring) – shall mean the process or processes by which CONTRACTOR relocates Materials from the Solid Waste Collector’s vehicles to other loads, or redirects any Materials from the Solid Waste Collector’s vehicles to alternate waste streams.

Transload(ing) – shall mean the receipt by the Processing Facility of delivery by the Solid Waste Collector onto grounds of Processing Facility, CONTRACTOR’s moving floor or other dumpable transport vehicle operated by CONTRACTOR.

Universal Waste – shall mean lower risk hazardous wastes that are generated by a wide variety of people rather than the industrial businesses that primarily generate other hazardous wastes.

White Good Materials – shall mean discarded enameled household appliances such as refrigerators, stoves, washers, water heaters, microwave and convection ovens, and similar items discarded by Residential premises.

Working Day(s) – shall mean Monday through Saturday, 5:00 a.m. to 12:00 midnight, with the exception of Holidays; subject to CITY's right to include Sunday, except Holidays, upon advance notice to CONTRACTOR in accordance with Subsection 3.2.

SECTION 2. TERM OF CONTRACT

2.1 Term and Extension(s)

The initial term of this Agreement shall be for a period beginning on February 25, 2004 and ending February 25, 2024, unless terminated earlier as provided in this Agreement. This Agreement may be extended, in the discretion of and at the sole option of CITY, for up to two (2) five-year periods with price increases/decreases in accordance with the provisions set forth in Subsection 4.2, all other terms and conditions specified herein remaining the same. If CITY elects not to extend the Agreement, or the final five-year extension period expires, CONTRACTOR shall aid CITY in continuing, uninterrupted, the requirements of the Agreement, by continuing to perform on a temporary basis, when specifically requested to do so in writing by CITY's Representative, for a specified period not to exceed twelve months. Such continuance shall be subject to price increases/decreases in accordance with the provisions set forth in Subsection 4.2, and all other terms and conditions remaining the same as if the Agreement had been extended for such a temporary period by an amendment hereto.

SECTION 3. SCOPE OF SERVICES

3.1 Non-exclusive Agreement

On a timely basis, CONTRACTOR shall Transfer, Process and Dispose of MSW, C&D and A&C, generated by City of Fresno Solid Waste Division's residential and commercial customers, and caused to be directly hauled to Processing Facility by CITY. CITY may, at its option, include additional Materials generated by other CITY programs and CONTRACTOR agrees to Transfer, Process and Dispose of such Materials in accordance with this Agreement.

CONTRACTOR understands and agrees that this is a non-exclusive Agreement and CITY is not obligated by this Agreement to deliver to the Processing Facility **all** Materials generated by City of Fresno Solid Waste Division's residential and commercial customers; except CITY will cause its Solid Waste Collector, including a commercial franchisee for collection of CITY's MSW from its Solid Waste Division commercial customers, to deliver all MSW to the Processing Facility that CITY would otherwise dispose of at the Landfill, provided that such MSW now, or in the future, is not subject to source separation (in the sole discretion of CITY) and CITY has not now, or in the future, contracted for that source separated material to be delivered to, or acquired by, a separate facility. CITY makes no guarantee on tonnages of Materials or levels of Residuals to be anticipated by CONTRACTOR now or in the future.

CONTRACTOR further understands and agrees that notwithstanding the preceding paragraph and Sections 13 and 14 herein, CITY is not obligated by this Agreement to deliver **any** Materials collected by the Solid Waste Collector to the Processing Facility in the event that

CONTRACTOR fails to perform or is restricted from performing. In such event, CITY's Representative may immediately direct delivery of **any** Materials collected by the Solid Waste Collector to an alternate site as CITY deems suitable.

3.2 Transfer of Materials

CONTRACTOR shall make the Processing Facility available for deliveries of MSW, C&D and A&C Materials between the hours of 5:00 a.m. to 7:00 p.m., Monday through Saturday, except Holidays. However, CITY reserves the right to deliver regularly on Sunday, except Holidays, upon 48-hours advance notice to CONTRACTOR. CONTRACTOR shall allow CITY reasonable access to the Processing Facility in the event of an emergency.

CONTRACTOR will accept the Materials "as is" and will assume all risks in handling such Materials. Materials delivered to the Processing Facility by the Solid Waste Collector, shall be Transloaded by CONTRACTOR's employees and equipment onto grounds of Processing Facility, CONTRACTOR's moving floor or other dumpable transport vehicle. CONTRACTOR shall provide all necessary equipment and personnel to Transload Materials. CONTRACTOR shall ensure that the Solid Waste Collector's vehicles will not be unreasonably detained during deliveries. The average turnaround time for Solid Waste Collector's vehicles delivering such Materials shall not exceed twelve (12) minutes from the time the Solid Waste Collector's vehicle arrives at the Processing Facility until the time it is unloaded and cleared to depart.

CONTRACTOR shall weigh every vehicle entering and exiting the Processing Facility with CITY's Materials. CONTRACTOR shall provide weight tickets from a State of California registered and certified scale. Weight tickets are to be signed by the delivering Solid Waste Collector's employee. CONTRACTOR shall electronically transmit data of all weight tickets to CITY for each Working Day, by the following Working Day. CONTRACTOR shall sort the original hard copy weight tickets by date, and mail or deliver to CITY's Solid Waste Management Division office on a daily basis. This requirement may be satisfied by giving such hard copies to a CITY delivery vehicle driver to transport to such Division office. The electronic format is to be compatible with Access, DBase, FoxPro, Excel or ASCII. CONTRACTOR shall develop a format and electronic transfer process satisfactory to CITY with assistance of CITY's information systems specialist. CONTRACTOR shall prepare each weight ticket by assigning each a unique control number, identifying thereon the Processing Facility by name, and including thereon the following printed information:

- Inbound Date and Time, and Weighmaster
- Outbound Date and Time, and Weighmaster
- Solid Waste Collector's Truck Number
- Vehicle License Plate Number
- Description of Materials and price per Ton
- Gross Weight in pounds
- Gross Truck Tare Weight in pounds
- Net Weight in pounds
- Conversion of Net Weight to Tons
- Material Total in dollars
- Total Amount due in dollars
- Driver Signature line
- Driver Route # line

CONTRACTOR shall comply with all federal, state and local agency regulations.

3.3 Processing of Materials

CONTRACTOR shall be responsible for the Transloading, storage, Processing, Transfer and sale of CITY's Materials at the Processing Facility in a manner ensuring compliance with permits issued by federal, state or local governmental bodies or agencies for the site of the Processing Facility. All Processing of CITY's Materials by CONTRACTOR will be performed at a properly licensed and permitted facility pursuant to state and local regulations. Final end-use of Processed Materials shall conform to California Integrated Waste Management Board ("CIWMB") Assembly Bill 939 ("AB939") requirements to enable CITY to receive maximum diversion credits. CONTRACTOR shall comply with the applicable provisions of the plan adopted by the CIWMB for CITY to meet such AB939 requirements including, but not limited to, reporting and end use provisions.

CONTRACTOR shall provide management and end use plans that shall ensure CITY receives maximum diversion credits for any diverted materials. The management plan shall include all applicable Materials generated within the incorporated limits of the City of Fresno including, but not limited to, Materials generated by City of Fresno Solid Waste Division's residential and commercial customers. Final end-use of materials must conform to California Integrated Waste Management Board (CIWMB) AB939 requirements to enable CITY to receive maximum diversion credits. CONTRACTOR shall adhere to the guidelines set forth by AB939 to ensure that CITY receives maximum diversion credit for materials Processed at Contractor's Facility.

A minimum diversion requirement will be established by CITY based on CONTRACTOR'S end-use plan approved by CITY. The minimum diversion requirement for purposes of this Agreement is five percent (5%). However, due to AB939, diversion programs may, over time, decrease the amount of divertible material delivered to the Processing Facility. CONTRACTOR may elect, at CONTRACTOR'S expense, to conduct periodic waste characterization studies for the purpose of determining whether a revised minimum diversion requirement and end use plan is appropriate. Any such revision would be subject to negotiation, and mutual agreement, between CITY and CONTRACTOR based on significant change in waste character. In no event will such revision be made more frequently than once every twelve months. Any waste characterization study relied upon for this purpose must be (i) pre-approved by CITY, and (ii) subject to a CITY audit during and following the study.

CONTRACTOR shall sort, by both mechanical and manual means, the Materials delivered by the Solid Waste Collector, into separate product lines. CONTRACTOR shall sort, Process and market these Materials in a manner consistent with the best industry practice(s) to optimize the economic value of Recyclable Materials. CONTRACTOR shall make a reasonable effort to sell all products from the Processing Facility at the highest price. To demonstrate this effort, CONTRACTOR shall solicit written or oral bids from independent third parties and document in writing the results of such solicitation, which shall be maintained for review by CITY at anytime upon its request. CONTRACTOR shall select that bid which represents the best economic value. CONTRACTOR shall not sell such products to itself or a Related Party or third parties with which it may have any economic interest(s) including, without limitation, any loan(s).

CONTRACTOR must meet all federal, state and local laws, as well as California Integrated Waste Management Board regulations and standards, for the methods of Processing of Materials.

CONTRACTOR acknowledges that CITY plans to separate and divert tonnages of materials from the MSW waste stream as alternative processes and markets become available.

All Materials separated and diverted by CONTRACTOR including, but not limited to, Recyclable Materials and Universal Waste are to be marketed and/or delivered to a licensed, permitted facility for proper reuse or disposal.

CONTRACTOR shall weigh every vehicle exiting the Processing Facility with products from Materials on scales certified for commercial use by the County of Fresno Department of Weights and Measures and operated by a licensed weigh master. CONTRACTOR shall document the name of the product recipient or transport contractor, the vehicle number and license number, the date and time of exit, the type of product, and the gross, tare and net Tons shipped. This weight record shall be matched to documents (numbered bill of lading, invoice, etc.) identifying: the date, name and address of the product recipient, the description of the product, the vehicle number and license number of the truck transporting the product, the quantity of products, the unit price of the product, and the extended value of the product.

CONTRACTOR shall ensure that all Materials charged to CITY are those generated by City of Fresno Solid Waste Division's residential and commercial customers within the incorporated limits of the City of Fresno. CONTRACTOR shall assist CITY in developing and implementing a method for surveying City of Fresno Solid Waste Division's residential and commercial customers to determine and track the origin of such Materials.

3.4 Disposal of Materials

CONTRACTOR shall weigh every vehicle exiting the Processing Facility with Residuals on scales certified for commercial use by the County of Fresno Department of Weights and Measures and operated by a licensed weigh master. CONTRACTOR shall document the destination of the Residuals and shall match its documents to the invoice from the respective receiving disposal facility. Except for Prohibited Material as provided in Subsection 3.7, CONTRACTOR's or its subcontractor's vehicles will deliver Residuals and any other **non-diverted** Materials to the Landfill. CONTRACTOR will ensure that deliveries of CITY's Materials to the Landfill by CONTRACTOR or its hauling subcontractor will be coordinated with the hours of operations at the Landfill.

3.5 Workmanship Guarantee

The workmanship of the services to be performed for CITY by CONTRACTOR will be in accordance with that as specified in this Agreement, and where not expressly specified, in accord with generally accepted standards.

3.6 Federal Immigration Reform and Control Act of 1986

CONTRACTOR shall comply with all of the provisions of the Federal Immigration Reform and Control Act of 1986 (S.B.1200; H.REP.99-1000). This requirement includes compliance with all of the employee documentation provisions. Furthermore, CONTRACTOR will make any employee documentation required to comply with the Act immediately available to CITY, upon its request, for each individual employee performing services hereunder.

3.7 Performance and Working Conditions

CONTRACTOR agrees that it shall assume sole and complete responsibility for all performance, working conditions and its employees/equipment/subcontractors during the provision of services under this Agreement, including safety of all persons and property and appropriate use of equipment and that this requirement shall apply continuously and not be limited to normal working hours.

CONTRACTOR shall not accept Prohibited Material at the Processing Facility and shall install a Geiger counter to avoid accepting Prohibited Material. If any private citizen, business or public agency brings any Prohibited Material to the Processing Facility, CONTRACTOR shall assess whether those in proximity are in any imminent danger from the Prohibited Material and if so, will inform such person(s), evacuate the area if necessary and contact the appropriate emergency response agency(ies). If CONTRACTOR accepts any Prohibited Material inadvertently, CONTRACTOR shall immediately notify CITY's Representative upon its discovery. CONTRACTOR shall exercise due diligence to determine the source of the Prohibited Material and shall promptly inform CITY's Representative thereof. CONTRACTOR shall Dispose of such Prohibited Material using a licensed and qualified subcontractor acceptable to CITY's Representative. If any person's material is rejected as being Prohibited Material, CONTRACTOR shall provide such person with a listing of permitted facilities that will accept such Prohibited Material.

CONTRACTOR shall operate and maintain in good condition the weigh scales, associated computer equipment, and record keeping equipment located at the Processing Facility. CITY shall have the right to inspect the scales at any time during any Working Day. CONTRACTOR, at its expense, will test and recalibrate the weigh scales as required by state and local laws. CITY may request more frequent calibration of the scales at CITY's expense.

CONTRACTOR shall use, for all reporting purposes, the curbside and community service (commercial/multi family) certification program numbers issued the by the State of California, Department of Conservation to the City for identification of its recycling programs.

CONTRACTOR shall provide a safe environment for CITY representatives, Solid Waste Collector's employees and the public at all times while they are on premises of the Processing Facility.

CONTRACTOR shall provide and implement the following plans, subject to the prior approval of CITY:

1. A plan for employee training program and operator certification compliance.
2. A plan for traffic management within the facility.
3. A plan for on-site litter control and daily off-site litter control.
4. A plan for vector control programs to address odors, noise, rodents, birds, etc.
5. A plan for inspection and maintenance of storm water management system.

CONTRACTOR shall provide CITY a detailed description of the site's screening/diversion and processes.

SECTION 4. COMPENSATION

4.1 Compensation

CONTRACTOR's sole compensation for performance of all the services required or rendered pursuant to this Agreement during the life of this agreement shall be a fee per Ton of Materials received by CONTRACTOR at Processing Facility.

Until July 1, 2005, the amount of the fee shall be \$35.00 per Ton of Materials received. Beginning July 1, 2005, the amount of the fee will be the cost per Ton as determined in Subsection 4.2.

In the event the Landfill increases or decreases its tipping fee, any dollar amount adjustment in such tipping fee shall result in an immediate dollar-for-dollar adjustment (increase or decrease respectively) in the amount of the fee set forth in the preceding paragraph. On the Effective Date of this Agreement, the Landfill tipping fee is \$28.80 per Ton.

CONTRACTOR shall invoice the City of Fresno on a form acceptable to CITY in order to initiate the payment process. Invoices shall be submitted in a timely manner no later than the end of each calendar month following the month in which the services were provided. Invoices shall conspicuously display CITY's purchase order number and shall be submitted to:

City of Fresno
Solid Waste Management Division
1325 East El Dorado, Bldg. S2
Fresno, California 93706-2014

Except as otherwise provided herein, payments shall be made to CONTRACTOR no later than forty-five (45) calendar days from receipt of an invoice and proper documentation of weight tags for each Ton of CITY's Materials delivered by the Solid Waste Collector to the Processing Facility, and any other documentation as may be required from time-to-time by CITY's Representative. However, if the amount of payment is in dispute, then payment shall be made no later than forty-five (45) days from the resolution of the dispute.

CITY will review invoices and inform CONTRACTOR of any disputed amounts. CITY and CONTRACTOR shall meet to resolve any disputed amounts.

Payment for service shall be made by CITY to CONTRACTOR, in lawful money of the United States, by warrant of CITY issued and delivered to CONTRACTOR in the ordinary course of CITY business provided the specified service has been rendered by CONTRACTOR and accepted by CITY.

CONTRACTOR hereby agrees it will not assign the payment of any monies due it from CITY under the terms of this Agreement to any other individual(s), corporation(s) or entity(ies). CITY retains the right to pay any and all monies due CONTRACTOR directly to CONTRACTOR.

4.2 Compensation Adjustments

Beginning July 1, 2005 and annually on each July 1 thereafter, the cost per Ton (or pound, as applicable) baseline figure after deduction of the Landfill tipping fee component (the "cost per Ton balance") shall be adjusted by 80% of the change in the U.S. Bureau of Labor Statistics Consumer Price Index (Urban Wage Earners and Clerical Workers for the Los Angeles-Anaheim-Riverside area) for the period from April 1 of the preceding calendar year to March 31 of the current calendar year. This adjustment computation shall be annually accomplished by CITY, and a copy of such computation shall be provided to CONTRACTOR within ten (10) calendar days following the completion thereof so as to cause the new rate to go into effect on the date provided above, of the year during which said computation shall be completed. In no event shall the cost per Ton balance be increased by more than 7.5 percent in any one year. In the event the percentage increase in the cost per Ton in any year exceeds 7.5 percent, such excess shall be carried forward to the next and succeeding years and applied toward an increase in the cost per Ton balance, but only to the extent that any percentage increase in the cost per Ton balance in that later year is less than 7.5 percent. This provision shall be effective in this manner, as long as the index mentioned above is published by government authorities in the same form and based on the same type data being used on the

Effective Date of the Agreement and shall be redefined by CITY in the event of any change in form and/or basis of indices, to a reasonably comparable standard. Each annual adjustment computation by CITY is hereby incorporated by reference herein.

4.3 Limitations on CITY's Obligations

CITY's obligations to pay CONTRACTOR are subject to availability of revenue from solid waste utility fees levied on CITY's customers, and this obligation is subordinate to the pledge of these revenues to any and all bonded indebtedness of CITY. In no event is CITY pledging or obligating under this Agreement any other revenues, including CITY's General Fund, or any real and personal property taxes, sales taxes or any other tax revenues. Further, neither the full faith and credit nor the taxing power of CITY is pledged to the funding of any obligations under this Agreement. The obligations of CITY in this Agreement does not constitute a liability or obligation of CITY for which CITY is obligated to levy or pledge any form of taxation or for which CITY has levied or pledged any form of taxation.

4.4 Residuals

CONTRACTOR shall be responsible for all costs related to, and Disposal of, Residuals (including, without limitation, Prohibited Material).

SECTION 5. LABOR, COSTS, EQUIPMENT INSPECTION AND PERFORMANCE BOND

CONTRACTOR shall, at its sole cost and expense, furnish all labor, materials and equipment required for CONTRACTOR to perform the services pursuant to this Agreement. All new equipment must be available for inspection by CITY no less than two (2) weeks prior to the commencement of operations by CONTRACTOR.

Throughout the life of this Agreement, CONTRACTOR shall pay for and maintain in full force and effect a "Faithful Performance Bond." This bond is to be issued by a corporate surety, admitted by the California Insurance Commissioner to do business in the State of California, in a form acceptable to CITY (substantially in the form contained in Exhibit B) and renewed annually. The amount of the bond for each year of the initial five years of the Agreement shall be in the amount of 10% of \$10,000,000 (estimated annual amount payable under this Agreement for purposes of this paragraph). Thereafter, the amount of the bond for each year of any subsequent five-year period of this Agreement shall be in the amount of 10% of the actual annual amount payable under this Agreement for the immediately preceding one-year period of the respective five-year period. In lieu of this bond, CITY may allow CONTRACTOR to provide an "Irrevocable Standby Letter of Credit" issued by a party acceptable to CITY, and in a form acceptable to CITY (substantially in the form contained in Exhibit C) and renewed annually. This letter of credit shall comply with the same amounts and terms as required of the bond and described in this paragraph.

SECTION 6. INDEPENDENT CONTRACTOR

In the furnishing of the services provided for herein, CONTRACTOR is acting as an independent contractor. Neither CONTRACTOR, nor any of its officers, associates, agents or employees shall be deemed an employee, partner or agent of CITY for any purpose. However, CITY shall retain the right to verify that CONTRACTOR is performing its respective obligations in accordance with the terms of the Agreement.

SECTION 7. CONTRACTOR'S RECORDS

7.1 Maintenance and Inspection of Documents and Records

CONTRACTOR shall maintain all documents and records related to performance of services under this Agreement for a period of three years after final payment and for the period of time required by law. CONTRACTOR shall engage in accounting and reporting practices satisfactory to CITY. These include, but are not limited to, financial information, billing, volume by commodity, load and flow data, electronic transfer of data, AB939/SB1066 compliance and reporting, audit processes, and verification procedures.

Records of CONTRACTOR pertaining to the services hereunder shall be kept on a generally recognized accounting basis and shall be available to CITY and its authorized representatives, during regular business hours within forty-eight (48) hours of written request by CITY's Representative, throughout the life of the Agreement and for a period of three years after final payment and for the period of time required by law. In addition, all books, documents, papers, and records of CONTRACTOR pertaining to the Agreement shall be available for the purpose of making audits, examinations, excerpts, and transcriptions for the same period of time. Said records and documents shall be available at CONTRACTOR's local address indicated for receipt of notices in this Agreement, unless an alternate location is mutually agreed upon by the Parties.

Any record or document required to be maintained by CONTRACTOR, pursuant to this Agreement and related to any matter that is the subject of Sections 13 or 14 of this Agreement, shall be made immediately available for CITY inspection upon CITY's decision that access is needed because of the insufficiency of CONTRACTOR's response to CITY's written notice to CONTRACTOR. Said written notice shall specify CITY's concerns about CONTRACTOR's lack of performance or compliance with the terms and conditions of this Agreement and shall advise CONTRACTOR that it has twenty-four (24) hours to respond to said notice.

This subsection shall survive expiration or termination of the Agreement.

7.2 Reporting Requirements

7.2.1 Monthly Reports. CONTRACTOR shall submit to CITY written Monthly Reports that will include at least all of the following:

1. Tonnage summaries by respective Materials of all Materials received; and
2. Daily disposition of CITY's Materials by end product, end use and weight; and
3. A discussion of highlights and other noteworthy experiences.

The Monthly Report is due to CITY no later than thirty (30) calendar days following the end of each calendar month.

7.2.2 Annual Reports. CONTRACTOR shall submit to CITY written Annual Reports that will include at least all of the following:

1. A collated summary of the information contained in the Monthly Reports, and a summary of the tonnages of the respective Materials received, used or Processed; and the use and final disposition of end products and Residuals by month and weight; and
2. A discussion of highlights and other noteworthy experiences.

A year will be July through June for purposes of preparing Annual Reports. The Annual Report is due to CITY within sixty (60) calendar days after the last day in the month of June.

7.2.3 Reports and Records Required by Other Governmental Agencies. CONTRACTOR shall procure, maintain and provide to CITY, with the next Monthly Report, copies of any and all records or information which are required of CONTRACTOR and/or CITY by any other governmental or regulatory agency including, but not limited to, licenses, permits, manifests and any similar documentation required to handle, store, transport, recycle, sell, clean up and/or Dispose of any Residuals.

7.2.4 All reports shall be submitted to:

City of Fresno
Solid Waste Management Division
ATTN: Recycling Coordinator
1325 East El Dorado Street
Fresno, California 93706-2014

7.2.5 Subsection 7.2 shall survive termination or expiration of this Agreement.

SECTION 8. NON-ASSIGNMENT

The Agreement is personal to CONTRACTOR and there shall be no assignment, transfer, sale, or subcontracting by CONTRACTOR of its rights or obligations under the Agreement without the prior written approval of CITY. Any attempted assignment, transfer, sale or subcontracting by CONTRACTOR, its successors or assigns, shall be null and void unless approved in writing by CITY.

SECTION 9. PERMITS AND LICENSES

CONTRACTOR, at its sole cost and expense, shall obtain and maintain through the initial term of this Agreement, and any extensions thereof, all permits, licenses and approvals necessary or required for CONTRACTOR to perform the work and services described herein, including but not limited to the operation of the Processing Facility.

In providing the services required by this Agreement, CONTRACTOR notify CITY of any operational problems with the Processing Facility, revocation of permits, issuance of documents requesting the "Cease and Desist" of the operation or any other regulatory agency's notices within two (2) hours of the respective occurrence of said problem, revocation or other notification by said agency(ies).

SECTION 10. INSURANCE

Throughout the life of this Agreement, CONTRACTOR shall pay for and maintain in full force and effect all policies of insurance required hereunder with an insurance company(ies) either (I) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A- VII" in Bests Insurance Rating Guide, or (ii) authorized by the CITY's Risk Manager. The following policies of insurance are required:

- (1) **COMMERCIAL GENERAL LIABILITY** insurance which shall include contractual, products and completed operations coverages, bodily injury and property damage liability insurance with combined single limits of not less than \$1,000,000 per occurrence.

- (2) **COMMERCIAL AUTOMOBILE LIABILITY** insurance, endorsed for "any auto," with combined single limits of liability of not less than \$1,000,000 per occurrence.
- (3) **WORKERS' COMPENSATION** insurance as required under the California Labor Code.

The above-described policies of insurance shall be endorsed to provide an unrestricted 30-day written notice in favor of CITY, of policy cancellation, change or reduction of coverage, except for the Workers' Compensation policy that shall provide a 10-day written notice of such cancellation, change or reduction of coverage. In the event any policies are due to expire during the term of this Agreement, CONTRACTOR shall provide a new certificate evidencing renewal of such policy not less than fifteen (15) calendar days prior to the expiration date of the expiring policy(ies). Upon issuance by the insurer, broker, or agent of a notice of cancellation, change or reduction in coverage, CONTRACTOR shall file with CITY a certified copy of the new or renewal policy and certificates for such policy.

The General Liability and Automobile Liability insurance policies shall be written on an occurrence form and shall name the City of Fresno, its officers, officials, agents, employees and volunteers as an additional insured. Such policy(ies) of insurance shall be endorsed so CONTRACTOR's insurance shall be primary and no contribution shall be required of CITY. CONTRACTOR shall furnish CITY with the certificate(s) and applicable endorsements for ALL required insurance prior to CITY's execution of the Agreement. CONTRACTOR shall furnish CITY with copies of the actual policies upon the request of the CITY's Risk Manager at any time during the life of the Agreement or any extension.

If at any time during the life of the Agreement or any extension, CONTRACTOR fails to maintain the required insurance in full force and effect, all work under this Agreement shall be discontinued immediately, and all payments due or that become due to CONTRACTOR shall be withheld until notice is received by CITY that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to CITY. Any failure to maintain the required insurance shall be sufficient cause for CITY to terminate this Agreement.

If CONTRACTOR should subcontract all or any portion of the work to be performed under this Agreement, CONTRACTOR shall require each subcontractor to provide insurance protection in favor of CITY, its officers, officials, employees, agents and volunteers in accordance with the terms of each of the preceding paragraphs, except that the subcontractor's certificates and endorsements shall be on file with CONTRACTOR and CITY prior to the commencement of any work by the subcontractor.

Such evidence of the insurance coverage specified in this Section 10 shall be provided to CITY at the address for CITY set forth on the signature page of this Agreement and at the following address:

City of Fresno
Risk Management Division
2600 Fresno Street
Fresno, California 93721-3612

SECTION 11. INDEMNIFICATION

Except with regard to hauling services as provided in the paragraph below, CONTRACTOR

shall indemnify, hold harmless and defend CITY and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by CITY, CONTRACTOR or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly out of performance of this Agreement. CONTRACTOR's obligations under the preceding sentence shall apply regardless of whether CITY or any of its officers, officials, employees, agents or volunteers are actively or passively negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused solely by the active negligence or by the willful misconduct of CITY or any of its officers, officials, employees, agents or volunteers.

Specifically regarding hauling services, CONTRACTOR shall indemnify, hold harmless and defend CITY and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by CITY, CONTRACTOR or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly out of performance of this Agreement. CONTRACTOR's obligations under the preceding sentence shall apply regardless of whether CITY or any of its officers, officials, employees, agents or volunteers are actively or passively negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused by the sole negligence or willful misconduct of CITY or any of its officers, officials, employees, agents or volunteers, except when such officers, officials, employees, agents or volunteers are under the direct supervision and control of CONTRACTOR.

If CONTRACTOR should subcontract all or any portion of the work to be performed under this Agreement, CONTRACTOR shall require each subcontractor to indemnify, hold harmless and defend CITY and each of its officers, officials, employees, agents and volunteers in accordance with the terms of the preceding paragraph.

This section shall survive termination or expiration of this Agreement.

SECTION 12. LIQUIDATED DAMAGES

12.1 From the nature of the services to be rendered, CITY and CONTRACTOR agree that it is extremely difficult to fix actual damages that may result from failure on the part of CONTRACTOR to perform any of its obligations herein and a resulting loss to CITY. Therefore, both Parties agree that CONTRACTOR's liability shall be limited to the fixed amount stated in this section, as liquidated damages and not as a penalty, that may be deducted automatically by CITY from CONTRACTOR's compensation for the period following the period in which liquidated damages are assessed. The decision of CITY is final with respect to any assessment of liquidated damages. CITY may rely on information supplied by CONTRACTOR, by the public or by staff, as well as by other means in determining assessment of liquidated damages.

12.2 Liquidated damages may be assessed at the rate of thirteen thousand dollars (\$13,000.00) per day for each MSW incident of "no service" occurring through the fault of CONTRACTOR, and at the rate of one thousand dollars (\$1,000) per day for each C&D and A&C incident of "no service" occurring through the fault of CONTRACTOR. Additionally, without limiting other grounds for termination, CITY may terminate this Agreement for default when the total number of "no service" days equals three (3) calendar days within any ten (10) calendar

day period. CITY shall notify CONTRACTOR, by telephone followed up in writing or as otherwise provided in this Agreement, of each Subsection 12.2 "no service" day within one (1) Working Day of said incident. CITY's decision as to the occurrences of a "no service" incident shall be final. CITY may rely on information supplied by CONTRACTOR, the public, staff, or by other means, in determining if an incident has occurred. Provisions of this section shall not prevent CITY from terminating the Agreement for default pursuant to the provisions of Sections 13 and 14 of this Agreement. An incident of "no service" shall not have occurred if such "no service" is caused by, or is the result of, forces beyond CONTRACTOR's reasonable control, including without limitation, earthquakes, floods, and acts of nature.

12.3 Failure of CITY to assert any right which it has under this Agreement, or to assess any liquidated damage as provided herein, shall not act as a waiver as to CITY's rights to enforce the provisions of this Agreement, or to assess liquidated damages in the future, or otherwise except as specified herein.

12.4 The assessment of liquidated damages and/or deductions as provided under this Agreement shall in no way relieve CONTRACTOR of its obligation to provide sufficient service, or to meet any of the terms of this Agreement.

SECTION 13. EVENTS OF DEFAULT

The occurrence of any of the following events, except Subsection 13.7, shall constitute an immediate and material default and breach of the Agreement by CONTRACTOR:

13.1 The over-commitment of capacity; failure to maintain local, state or federal required permits; or the abandonment, vacation or discontinuance of the Transfer and Disposal of Materials by CONTRACTOR, as required by the Agreement, for a period in excess of twenty-four (24) consecutive hours after written notice by CITY, provided that such abandonment, vacation or discontinuance is not caused by forces beyond CONTRACTOR's reasonable control, including without limitation, earthquakes, floods and acts of nature.

13.2 CONTRACTOR's becoming insolvent, or the making by CONTRACTOR of any general arrangement or any assignment for the benefit of creditors.

13.3 The filing by or against CONTRACTOR of a petition to have CONTRACTOR adjudged bankrupt or a petition or reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against CONTRACTOR, the same is dismissed within sixty (60) calendar days).

13.4 Transfer of the majority controlling interest of CONTRACTOR to persons other than those who are in control at the time of the execution of this Agreement without prior written approval thereof by CITY.

13.5 The discovery by CITY that any weight tags or invoices required by this Agreement to be submitted to CITY by CONTRACTOR, contains a material misrepresentation of facts.

13.6 The failure by CONTRACTOR to obtain, pay for, and maintain in full force and effect at all times during the life of this Agreement, without any lapse in coverage, such insurance as shall be required of CONTRACTOR under this Agreement.

13.7 The failure of CONTRACTOR to keep, perform and observe all other promises, covenants, conditions and terms set forth in this Agreement, when such failure continues for

more than one (1) calendar day after written notice from CITY for correction thereof; provided that where such failure cannot be cured within such one (1) calendar day, this shall not constitute breach of this Agreement, if CONTRACTOR shall have commenced such action required to cure the particular default within the one (1) calendar day after such notice, and continues such performance diligently until completed.

SECTION 14. FAILURE TO CORRECT DEFAULT/TERMINATION

14.1 If CONTRACTOR defaults pursuant to Subsections 13.1, 13.2, 13.3, 13.4, 13.5 or 13.6 or fails to correct a default as provided above in Subsection 13.7, CITY, without further notice, shall immediately have all, but not limited to, the following rights and remedies which CITY may exercise solely or in combination:

14.1.1 The right to declare that this Agreement, together with all rights granted CONTRACTOR hereunder, is terminated effective upon such date as CITY shall designate.

14.1.2 The right to license others to perform the services required of CONTRACTOR hereunder, or to perform such services itself.

14.2 Within thirty (30) calendar days of termination of this Agreement, CONTRACTOR shall submit to CITY a final invoice for the period from the last immediately preceding monthly invoice to the date of termination. CITY shall pay to CONTRACTOR or CONTRACTOR shall pay to CITY, whichever is applicable, the following net amount: (1) any remaining unpaid compensation under Section 4 of this Agreement, prorated to the date of termination for services satisfactorily performed; (2) less any damages suffered by CITY because of CONTRACTOR's default. Where CONTRACTOR is paying CITY, CONTRACTOR shall pay to CITY any unpaid amount including liquidated damages assessed.

14.3 Remedies available to CITY under this section shall be cumulative of all rights/remedies available to CITY in law or equity.

SECTION 15. DELIVERY OF SERVICES

If CONTRACTOR is delayed providing services by (i) any acts or neglect of CITY or its employees, or others acting under authority of CITY by contract or otherwise, (ii) acts of God which CONTRACTOR could not reasonably have foreseen and provided for, (iii) illegal strikes, boycotts or like illegal obstructive action by employee or labor organizations, or (iv) any illegal general lockouts or other defensive action by employers, whether general or by organizations of employers; CONTRACTOR shall have no claim for damages against CITY for any such cause of delay, but shall be entitled to an extension of time occasioned thereby, upon application to the CITY's City Manager for such extension; provided that CONTRACTOR had previously notified the CITY's Purchasing Manager, in writing, within one week after the commencement or occurrence of the condition or event expected to cause a delay in delivery and the actual or estimated number of days of delay anticipated on account thereof. The decision of said City Manager as to the number of additional days, if any, to be allowed for completion of delivery of services on account of such condition or event, shall be given in writing to CONTRACTOR.

SECTION 16. NOTICES

Any notice required or intended to be given to either Party under the terms of this Agreement shall be in writing and shall be deemed to be duly given if delivered personally, by facsimile confirmed by telephone, or deposited into the United States registered or certified mail, return receipt requested, with first class postage prepaid, addressed to the Party to which notice is to

be given at the Party's address set forth on the signature page of this Agreement or at such other address as the Parties may from time to time designate by written notice.

SECTION 17. GENERAL PROVISIONS

17.1 Governing Law and Venue

This Agreement shall be governed and interpreted, and the rights and duties of the Parties (both procedural and substantive) shall be determined by the laws of the State of California. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this Agreement and any rights and duties hereunder shall be Fresno County, California.

17.2 Titles and Captions

Titles and captions are for convenience only and shall not constitute a portion of this Agreement.

17.3 Waivers

The waiver by CITY of any breach by CONTRACTOR of any term, covenant, or condition contained herein shall not operate as a waiver of any subsequent breach of the same or any other term, covenant or condition contained herein.

17.4 Modifications

CITY reserves the right to add to, modify, or delete requirements from, the Agreement. Any alterations, change or modification of or to this Agreement, in order to become effective, shall be made in writing and in each such instance shall be executed by or on behalf of each Party hereto.

17.5 Severability

If any term, provision, condition or covenant of this Agreement shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

17.6 Binding

Once this Agreement is signed by all Parties, it shall be binding upon, and shall inure to the benefit of, all Parties, and each Party's respective heirs, successors, assigns, transferee, agents, servants, employees and representatives.

17.7 Compliance With Law

In providing the services required under this Agreement, CONTRACTOR shall at all times comply with all applicable laws of the United States, the State of California and CITY, and with all applicable regulations promulgated by Federal, State, regional, or local administrative and regulatory agencies, now in force and as they may be enacted, issued, or amended during the life of this Agreement.

17.8 Attorney's Fees

If either Party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of this Agreement, the prevailing Party in such proceeding or action shall be entitled to recover from the other Party its reasonable attorney's fees and legal expenses.

17.9 Interpretation

IN WITNESS WHEREOF, the Parties hereto have executed by their duly authorized representatives this Agreement on the day and year first above written.

CITY OF FRESNO,
a municipal corporation

By *Martin McIntyre*
Martin McIntyre, Director
Department of Public Utilities

ORANGE AVENUE DISPOSAL COMPANY,
INC., a California corporation

By *R M Caglia*
Name *R M CAGLIA*
Title *Pres.*

ATTEST:
REBECCA E. KLISCH
City Clerk

By *Edna Sommeville*
Deputy

By *Sally M. Caglia*
Name *Sally M Caglia*
Title *Corp. Sec.*

APPROVED AS TO FORM:
HILDA CANTÚ MONTOY
City Attorney

By *[Signature]*
Deputy

TO CITY:
City of Fresno
Attn: Don Smith, Manager
Solid Waste Management Division
1325 East El Dorado
Fresno, California 93706-2014
Telephone: (559) 621-1801
Facsimile: (559) 266-1009

** CW*
TO CONTRACTOR:
Orange Avenue Disposal Company, Inc.
Attn: Richard Caglia II
253 Fulton Street
Fresno, California 93721
Telephone: (559) *650-1175*
Facsimile: (559) *650-1111*

Attachments:

- Exhibit A - Section 318(a) of Internal Revenue Code of 1986
- Exhibit B - Performance Bond Form
- (MW)* Exhibit C - Irrevocable Standby Letter of Credit Form

ATTACHMENT TO AGREEMENT
EXHIBIT A

SECTION 318(A) OF THE INTERNAL REVENUE CODE OF 1986

(a) General rule

For purposes of those provisions of this subchapter to which the rules contained in this section are expressly made applicable -

(1) Members of family

(A) In general an individual shall be considered as owning the stock owned, directly or indirectly, by or for -

- (i)** his spouse (other than a spouse who is legally separated from the individual under a decree of divorce or separate maintenance), and
- (ii)** his children, grandchildren, and parents.

(B) Effect of adoption

For purposes of subparagraph (A)(ii), a legally adopted child of an individual shall be treated as a child of such individual by blood.

(2) Attribution from partnerships, estates, trusts, and corporations

(A) From partnerships and estates

Stock owned, directly or indirectly, by or for a partnership or estate shall be considered as owned proportionately by its partners or beneficiaries.

(B) From trusts

- (i)** Stock owned, directly or indirectly, by or for a trust (other than an employees' trust described in section 401(a) which is exempt from tax under section 501(a)) shall be considered as owned by its beneficiaries in proportion to the actuarial interest of such beneficiaries in such trust.
- (ii)** Stock owned, directly or indirectly, by or for any portion of a trust of which a person is considered the owner under subpart E of part I of subchapter J (relating to grantors and others treated as substantial owners) shall be considered as owned by such person.

(C) From corporations

If 50 percent or more in value of the stock in a corporation is owned, directly or indirectly, by or for any person, such person shall be considered as owning the stock owned, directly or indirectly, by or for such corporation, in that proportion which the value of the stock which such person so owns bears to the value of all the stock in such corporation.

(3) Attribution to partnerships, estates, trusts, and corporations

(A) To partnerships and estates

Stock owned, directly or indirectly, by or for a partner or a beneficiary of an estate shall be considered as owned by the partnership or estate.

(B) To trusts

- (i)** Stock owned, directly or indirectly, by or for a beneficiary of a trust (other than an employees' trust described in section 401(a) which is exempt from tax under section 501(a)) shall be considered as owned by the trust, unless such beneficiary's interest in the trust is a remote contingent interest. For purposes of this clause, a contingent interest of a beneficiary in a trust shall be considered remote if, under the maximum exercise of discretion by the trustee in favor of such beneficiary, the value of such interest, computed actuarially, is 5 percent or less of the value of the trust property.

- (ii)** Stock owned, directly or indirectly, by or for a person who is

considered the owner of any portion of a trust under subpart E of part I of subchapter J (relating to grantors and others treated as substantial owners), shall be considered as owned by the trust.

(C) To corporations

If 50 percent or more in value of the stock in a corporation is owned, directly or indirectly, by or for any person, such corporation shall be considered as owning the stock owned, directly or indirectly, by or for such person.

(4) Options

If any person has an option to acquire stock, such stock shall be considered as owned by such person. For purposes of this paragraph, an option to acquire such an option, and each one of a series of such options, shall be considered as an option to acquire such stock.

(5) Operating rules

(A) In general

Except as provided in subparagraphs (B) and (C), stock constructively owned by a person by reason of the application of paragraph (1), (2), (3), or (4), shall, for purposes of applying paragraphs (1), (2), (3), and (4), be considered as actually owned by such person.

(B) Members of family

Stock constructively owned by an individual by reason of the application of paragraph (1) shall not be considered as owned by him for purposes of again applying paragraph (1) in order to make another the constructive owner of such stock.

(C) Partnerships, estates, trusts, and corporations

Stock constructively owned by a partnership, estate, trust, or corporation by reason of the application of paragraph (3) shall not be considered as owned by it for purposes of applying paragraph (2) in order to make another the constructive owner of such stock.

(D) Option rule in lieu of family rule

For purposes of this paragraph, if stock may be considered as owned by an individual under paragraph (1) or (4), it shall be considered as owned by him under paragraph (4).

(E) S corporation treated as partnership

For purposes of this subsection -

(i) an S corporation shall be treated as a partnership, and

(ii) any shareholder of the S corporation shall be treated as a partner of such partnership. The preceding sentence shall not apply for purposes of determining whether stock in the S corporation is constructively owned by any person.

**ATTACHMENT TO AGREEMENT
EXHIBIT B
PERFORMANCE BOND**

KNOW ALL MEN BY THESE PRESENTS: That Orange Avenue Disposal Company, Inc. as Principal (herein called "Principal") and _____ as Surety (herein called "Surety") are held and firmly bound onto the City of Fresno (herein called "Obligee") in the just and full sum of ONE MILLION DOLLARS AND NO CENTS (\$1,000,000.00) lawful money of the United States of America (said sum being equal to 10 percent of the estimated amount payable by the terms of the hereinafter described contract), for the payment of which, well and truly to be made, we hereby bind ourselves and ours, and each of our, heirs, executors, administrators, successors, and assigns, jointly and severally firmly by these presents.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, That

WHEREAS, Principal has been awarded a contract for the following described work and is required by Obligee to give this bond in connection with the execution of the written contract therefore:

Transfer, Processing and Disposal of Municipal Solid Waste,
Construction & Demolition and Asphalt & Concrete Materials
(Request for Proposal No. 8519)

NOW, THEREFORE, if Principal shall well and truly do and perform each and all of the covenants, conditions, and agreements of said contract on the Principal's part to be done and performed, at the time and in the manner therein specified, and shall indemnify and save harmless the Obligee, its officers, officials, agents, employees and volunteers, as therein stipulated, then this obligation shall be null and void; otherwise, it shall remain in full force and effect.

No extension of time granted to the Principal and no change or alteration in any of the terms of the contract or any of the contract documents or the work to be performed thereunder, whether made after notice or not, shall release or otherwise affect the obligations of the Surety hereunder, and the Surety waives notice of any such extension, change or alteration. The Surety, by the execution of this bond, represents and warrants that this bond has also been duly executed by the Principal and proper authority, and the Surety hereby waives any defense which it might have by reason of any failure of the Principal to execute or properly execute this bond.

SIGNED AND SEALED the _____ day of February _____, 2004.

Orange Avenue Disposal Company, Inc. _____

PRINCIPAL

SURETY

APPROVED AS TO FORM:
Hilda Cantú Montoy
City Attorney

APPROVED:
City Manager, or his/her designee

By: _____

By: _____

Title: _____

Title: _____

Date: _____

ATTACHMENT TO AGREEMENT
EXHIBIT C

IRREVOCABLE STANDBY LETTER OF CREDIT

Irrevocable Standby Letter of Credit No. (BANK USE ONLY)

SOUTHERN CALIFORNIA
TRADE SERVICE OPERATIONS
1980 Saturn Street, V01-519
Monterey Park, California 91755-7417
Attention: Standby Letter of Credit Section

Date: (BANK USE ONLY)

BENEFICIARY

CITYOF FRESNO, a municipal corporation
Attn: Mr. Patrick Wiemiller, Manager
Solid Waste Management Division
1325 East El Dorado
Fresno, CA 93706-2014

APPLICANT

Orange Avenue Disposal Company, Inc.
Mr. Richard Caglia II
253 Fulton Street
Fresno, CA 93721

Currency USD
Amount 1,000,000.00 (One Million and 00/100 U.S. Dollars)
Available by Payment at this office as herein set forth.
Expiry Date February 25, 2005, or any automatically extended date as herein set forth at the close of business of this office in Monterey Park, California.

Ladies/Gentlemen:

We hereby issue our Irrevocable Standby Letter of Credit ("Letter of Credit") in your favor. This Letter of Credit is available by sight payment with ourselves only against presentation at this office of the following documentation:

1. Your sight draft drawn on us purportedly signed by an authorized representative or official of the Beneficiary marked: "Drawn under Union Bank of California, N.A., Irrevocable Standby Letter of Credit No. [BANK USE ONLY], dated [BANK USE ONLY]."
2. A dated statement purportedly signed by an authorized representative or official of the Beneficiary stating:

"The undersigned, being a duly authorized representative or official of the City of Fresno, a municipal corporation ("Beneficiary") hereby represents and warrants that Orange Avenue Disposal Company, Inc. has not faithfully performed its obligations under that certain Services Agreement for Transfer, Processing and Disposal of Municipal Solid Waste, Construction & Demolition and Asphalt & Concrete Materials ("Agreement") dated as of February 25, 2004; all required notices of default (if any) have been given and all cure periods (if any) have lapsed without cure; and that the amount of the accompanying draft represents the damage suffered by Beneficiary as a result thereof, after applying all payments, credits, and recoveries pursuant to the terms of that Agreement."

Partial Drawings are permitted.

This Letter of Credit shall be deemed automatically extended without an amendment for a one year period beginning on the present expiration date hereof February 25, 2005 and upon each anniversary of such date, unless at least one hundred and eighty (180) days prior to any such expiration date we have sent you written notice by courier service or overnight mail that we elect not to permit this Letter of Credit to be so extended beyond its then current expiration date. No presentation made under this Letter of Credit after such expiry date will be honored.

This Letter of Credit shall finally expire on February 25, 2024, if it has not previously expired in accordance with the preceding sentence.

The date this Letter of Credit expires in accordance with the above provision is the "Final Expiry Date". Upon the occurrence of the Final Expiry Date this Letter of Credit shall fully and finally expire and no presentations made under this Letter of Credit after such date will be honored.

This Letter of Credit sets forth in full the terms of our undertaking, and such terms shall not be modified, amended or amplified by any document, instrument or agreement referred to in this Letter of Credit, in which this Letter of Credit is referred to or to which this Letter of Credit relates.

Except as stated herein, this Letter of Credit is not subject to any condition or qualification and is our individual obligation which is in no way contingent upon reimbursement.

SPECIAL INSTRUCTIONS:

The original of this Letter of Credit must be presented together with the above documents in order to endorse the amount of each drawing on the reverse side, and will be returned back to the Beneficiary unless it is fully utilized.

All banking charges under this Letter of Credit are for the account of the Applicant.

We hereby agree with you that drafts drawn under and in compliance with the terms of this credit will be duly honored upon presentation and delivery to Union Bank of California, N.A., at the address above. Documents are to be sent in one lot by courier service, overnight mail or hand delivery.

This Letter of Credit is subject to and governed by the laws of the State of California and the "Uniform Customs and Practice for Documentary Credits (1993 Revision)," International Chamber of Commerce Publication No. 500 (the "UCP").