

9:30 am - 7/28/2011

SECOND AMENDMENT TO AGREEMENT

CITY OF FRESNO
City Clerk's Office (Original)

THIS SECOND AMENDMENT TO AGREEMENT ("Amendment") made and entered into as of this 28th day of July, 2011, 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 the 25th day of February, 2004 for the transfer, processing and disposal of municipal solid waste, construction and demolition waste, asphalt, concrete and household hazardous waste, and amended on the 27th day of November, 2007 to establish a fuel surcharge adjustment, hereinafter referred to as "Agreement;" and

WHEREAS, CITY now desires to modify the amount of compensation; and

WHEREAS, CITY and CONTRACTOR originally agreed to a certain compensation level based upon the ton of material; and

WHEREAS, the reduction in tipping fees at the American Avenue Landfill, reduction in the amount of waste tonnages caused by the success of the City's recycling program and the downturn in the economy have been cited by the Contractor as reasons why it is not possible to continue operating under the original terms of the agreement and as amended.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and of the covenants, conditions, and premises hereinafter contained, to be kept and performed by the respective parties, the parties agree that the aforesaid Agreement be amended as follows:

1. Beginning on July 28, 2011, CONTRACTOR shall be provided additional compensation by a tipping fee adjustment per ton of Solid Waste as described in Attachment "A", attached hereto and incorporated herein by reference. The additional compensation shall be paid monthly and calculated on a twelve (12) month rolling average beginning April 1, 2012. There will be an initial lump sum payment in the amount of \$807,362.00 representing the amount of additional compensation due hereunder for the period of July 28, 2011 through March 31, 2012 which shall be paid within 30 calendar days from the execution of this amendment.

2. In the event of any conflict between the body of this Amendment and any Exhibit or Attachment hereto, the terms and conditions of the body of this Amendment shall control and take precedence over the terms and conditions expressed within the Exhibit or Attachment.

3. This amendment will remain in effect until March 15, 2015 unless terminated with the consent of both parties. This provision applies to this Second Amendment and does not apply to the agreement dated February 25, 2004 and amended November 27, 2007.

4. The term of this second amendment expires prior to the end of the original agreement. The parties agree that they shall work together in good faith to identify additional services and/or contractual provisions to assure Contractor sufficient revenue hereunder to meet its cost of performance plus a reasonable margin, provided that nothing in this second amendment obligates the City to extend the duration of the rates established hereunder beyond March 15, 2015.

5. Except as otherwise provided herein, the Agreement entered into by CITY and CONTRACTOR, dated February 25, 2004, as amended November 27, 2007, 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 
Name PATRICK NIEMILLER
Title DIRECTOR

ORANGE AVENUE DISPOSAL
COMPANY, INC. , a California
Corporation

By 
Name William Caglia
Title Corp. Dev.

ATTEST:

YVONNE SPENCE, CMC
City Clerk

By: 
Deputy 4/16/2012

APPROVED AS TO FORM:
JAMES C. SANCHEZ
City Attorney

By: 
Deputy

REVIEWED BY:

By: 
Robert N. Andersen
Assistant Director

Attachment:
Exhibit "A" – Adjusted Rate Table Summary

Exhibit A

Adjusted Rate table Summary (Subject to CPI Adjustment)

| Annual Tons | Base Rate as of 7/1/2011 | Increase | Adjusted Rate/Ton |
|-------------|-----------------------------|----------|-------------------|
| 150,000 | \$29.57 | \$8.05 | \$37.62 |
| 160,000 | \$29.57 | \$7.53 | \$37.10 |
| 170,000 | \$29.57 | \$7.08 | \$36.65 |
| 180,000 | \$29.57 | \$6.68 | \$36.25 |
| 190,000 | \$29.57 | \$6.31 | \$35.88 |
| 200,000 | \$29.57 | \$5.99 | \$35.56 |
| 210,000 | \$29.57 | \$5.70 | \$35.27 |
| 220,000 | \$29.57 | \$5.43 | \$35.00 |
| 230,000 | \$29.57 | \$5.18 | \$34.75 |
| 240,000 | \$29.57 | \$4.96 | \$34.53 |
| 250,000 | \$29.57 | \$4.76 | \$34.33 |
| 260,000 | \$29.57 | \$4.57 | \$34.14 |
| 270,000 | \$29.57 | \$4.39 | \$33.96 |
| 280,000 | \$29.57 | \$4.23 | \$33.80 |
| 290,000 | \$29.57 | \$4.08 | \$33.65 |
| 300,000 | \$29.57 | \$3.93 | \$33.50 |
| 310,000 | \$29.57 | \$3.80 | \$33.37 |
| 320,000 | \$29.57 | \$3.68 | \$33.25 |
| 330,000 | \$29.57 | \$3.56 | \$33.13 |
| 340,000 | \$29.57 | \$3.45 | \$33.02 |
| 350,000 | \$29.57 | \$3.34 | \$32.91 |

| |
|---|
| AGENDA ITEM NO. <u>9:30 A.M. I</u> |
| COUNCIL MEETING <u>July 28, 2011</u> |
| APPROVED BY _____ |
|  |
| DEPARTMENT DIRECTOR _____ |
| CITY MANAGER  |

July 28, 2011

FROM: PATRICK N. WIEMILLER, Director
Department of Public Utilities

SUBJECT: APPROVE SECOND AMENDMENT TO AGREEMENT WITH ORANGE AVENUE DISPOSAL COMPANY, INC. (OAD) DATED FEBRUARY 25, 2004, TO INCREASE THE AMOUNT PAID BY THE CITY TO OAD BY \$4.39 PER TON FOR THE TRANSFER, PROCESSING AND DISPOSAL OF MUNICIPAL SOLID WASTE

RECOMMENDATION

Staff recommends Council approve this Second Amendment, to be developed with the assistance of and approved as to form by the City Attorney's Office, and authorize the Director of Public Utilities to execute the completed documents.

EXECUTIVE SUMMARY

In 2004, the City entered into an Agreement with Orange Avenue Disposal Company, Inc. (OAD) for the transfer, processing and disposal of the City's municipal solid waste.

Over the last year, OAD management has voiced the increasing difficulty that they are experiencing in providing services to the City under the Agreement. The reduction of tipping fees at the American Avenue Landfill, rising fuel prices, reductions in the amount of waste tonnages caused by the success of the City's recycling program and the downturn in the economy, have all been cited by OAD management as being the reasons why it is not possible to continue operating under the Agreement's original terms.

The proposed Second Amendment would provide a tipping fee adjustment that would enable OAD to return to a reasonable level of profitability, while still maintaining its service levels to the City, and to provide for OAD's continued investment in capital improvements required to support and/or enhance operations and processes that benefit the City. The proposed adjustment is an increase of \$4.39 per ton that the City will pay to OAD for material delivered to OAD's Cedar Avenue Recycling and Transfer Station (CARTS) and is based on a sliding scale that is reduced as the amount of waste material delivered to the CARTS facility increases.

In addition, changes in market conditions, specifically the value of recyclables and possibly other waste materials, has created an opportunity in which the City may want to consider entering into some form of public/private partnership with OAD and the operations of the CARTS facility. The amended tipping fee rate of \$4.39 per ton will terminate on March 15, 2015, or sooner if negotiations regarding joint ventures result in subsequent amendments or new agreements. The projected increase in costs will be absorbed using the Division's operating reserve.

Presented to City Council
Date 7/28/11
Disposition Approved

BACKGROUND

In 2004, the City entered into an Agreement with Orange Avenue Disposal Company, Inc. (OAD) for the transfer, processing and disposal of the City's municipal solid waste. Prior to the Agreement, the City's solid waste collection trucks delivered municipal solid waste to the American Avenue Landfill. Under the Agreement, the City's solid waste collection trucks now deliver collected loads of refuse to OAD's Cedar Avenue Recycling and Transfer Station (CARTS), thereby reducing the distance travelled by approximately 50 miles round trip for every load. As a result, the total cost of operations is reduced, as the amount paid to OAD for its tipping fee is less than the combined vehicle, fuel, labor, and tipping fee costs for the City to haul directly to the American Avenue Landfill.

The initial tipping fee proposed by and awarded to OAD in 2004 was \$35.00 per ton. At the time of the execution of the Agreement, the City was in negotiations with the County of Fresno (operators of the American Avenue Landfill) over a reduction in the tipping fee at the American Avenue Landfill to more closely reflect the true cost of the County to operate the landfill. Accordingly, the Agreement contained a provision that there would be a dollar-for-dollar adjustment, up or down, of the tipping fee paid by the City to OAD relative to the tipping fee to be charged at the American Avenue Landfill. In 2005, the American Avenue Landfill tipping fee was reduced by \$7.55 per ton, from \$28.80 per ton down to \$21.25 per ton. Accordingly, consistent with the Agreement, the amount paid by the City to OAD was reduced by \$7.55 per ton, from \$35.00 per ton down to \$27.45 per ton.

In 2007, the City entered into a First Amendment to the Agreement with OAD, wherein a fuel price adjustment was adopted to recognize the impact of fuel prices on the Agreement's viability. That amount this adjustment fluctuates based upon a fuel price index, but currently equates to about \$0.40 per ton surcharge.

The Agreement does contain a Consumer Price Index (CPI) based adjustment to hedge some of the inflationary impacts to OAD. The accumulated value of those CPI adjustments is currently \$1.72 per ton. In total, the current tipping fee paid by the City to OAD is \$29.17 per ton (the sum of the reduced tipping fee of \$27.45 per ton and the \$1.72 CPI adjustments), plus approximately \$0.40 per ton in fuel surcharges.

Over the last year, OAD management has voiced the increasing difficulty that they are experiencing in providing services to the City under the Agreement. The reduction of tipping fees at the American Avenue Landfill, rising fuel prices, the success of the City's recycling program and the downturn in the economy, which has led to a decrease in the waste tonnage, have all been cited by OAD management as being reasons why it is not possible to continue to operate under the Agreement's original terms.

As a result of the request by OAD management for the City to consider the current price adjustment, the City retained the services of HFH Consultants, LLC (HFH) to review and evaluate OAD's operating and financial data to ensure that OAD's costs and processes are consistent with industry standard practices. This measure was taken to ensure that the City would not be paying for inefficiencies or poor business practices. HFH's review did not discover any operating or financial practices by OAD that were out of line with the range of typical industry practices. HFH's report also indicated that the increase being requested by OAD was reasonable when compared to the profitability of comparable transfer station operations.

The proposed Second Amendment would provide a tipping fee adjustment that would enable OAD to return to a reasonable level of profitability, while still maintaining its service levels to the City, and to provide for OAD's continued investment in capital improvements required to support and/or enhance operations and processes that benefit the City. The proposed adjustment is an increase of \$4.39 per ton that the City will pay to OAD for material delivered to OAD's Cedar Avenue Recycling and Transfer Station (CARTS) and is based on a sliding scale that is reduced as the amount of waste material delivered to the CARTS facility increases. In addition, in

REPORT TO THE CITY COUNCIL

Approve Second Amendment to Agreement with Orange Avenue Disposal Company, Inc. (OAD)

July 28, 2011

Page 3

the event that the City directs any future volume of recyclable materials to an OAD facility, OAD will credit back to the City an amount of \$8.00 per ton of recyclable material, with no offset for residual material contained within that recyclable volume.

Staff recognizes the value to the City for having sustained and viable business relationships, especially with those businesses that are locally owned and operated. In addition, changes in market conditions, specifically the value of recyclables and possibly other waste materials, has created an opportunity in which the City may want to consider entering into some form of public/private partnership with OAD and the operations of the CARTS facility. Therefore, the amended tipping fee increase will terminate on March 15, 2015, or sooner if negotiations regarding joint ventures result in subsequent amendments or new agreements. If no new agreement is reached with OAD by March 15, 2015, then this proposed Second Amendment would terminate and the Agreement would revert to its current terms, or the Agreement would be terminated by mutual consent.

ENVIRONMENTAL FINDINGS

Categorically exempt under California Environmental Quality Act Section 15301 for existing facilities.

FISCAL IMPACT

Current annual tonnage of solid waste materials delivered by the City to OAD's CARTS facility is estimated to be 270,000 tons. At \$4.39 per ton, the total annual fiscal impact is approximately \$1,185,000. As approximately 45% of the total volume is residential (approximately 110,500 customers), the potential impact on a typical residential solid waste customer may be approximately \$0.40 per month.

No immediate customer rate adjustment is proposed, as immediate increases would be paid out of existing cash reserves. If approved, this item will be included as part of other utility rate considerations to be brought before Council later this summer.