

THIRD AMENDMENT TO AGREEMENT

THIS THIRD AMENDMENT TO AGREEMENT ("Third Amendment") made and entered into as of this 16th day of March, 2015, 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 waste, asphalt, concrete, and household hazardous waste ("2004 Agreement") and amended the Agreement first on November 27, 2007 ("First Amendment"), and again on July 28, 2011 ("Second Amendment"), all of which are hereinafter collectively referred to as "Agreement;" and

WHEREAS, the Second Amendment, which permitted CONTRACTOR to assess a Transfer Station Surcharge on each ton of solid waste delivered to CONTRACTOR, expired March 15, 2015; and

WHEREAS, CITY and CONTRACTOR desire to modify the terms of the Agreement in this Third Amendment, the terms of which were presented and approved by the Council of the City of Fresno on April 9, 2015.

AGREEMENT

NOW, THEREFORE, in consideration of the above recitals, the mutual promises herein contained, and for other good and valuable consideration hereby acknowledged, the parties agree as follows:

1. Section 4.2 of the 2004 Agreement is amended so that the annual adjustment factor for the base fee shall be limited to not less than zero percent and not greater than three percent during any year. The calculation methodology for the base rate shall otherwise remain as specified in the 2004 Agreement.
2. The fuel surcharge added to Section 4.2 of the 2004 Agreement by Paragraph 1 of the First Amendment is eliminated in its entirety.
3. The transfer station surcharge initiated by the Second Amendment shall be reduced from its current rate of \$5.36 per ton to \$4.73 per ton, which dollar amount shall remain fixed for the remainder of the term of the Agreement, through February 25, 2024. The rate shall not be based on a sliding scale or subject to the Consumer Pricing Index or other adjustments.
4. All material delivered to the Orange Avenue Disposal Transfer Station from the City of Fresno, including the City's Operation Cleanup materials, shall be

disposed of at the American Avenue Landfill, and located at 18950 W American Ave, Kerman, CA 93630.

5. The diversion rate specified in the third paragraph of Section 3.3 of the 2004 Agreement is amended to read as follows, "The **maximum** allowable diversion requirement for purposes of this Agreement shall be five percent (5%)". No changes to this diversion rate shall be allowed without: 1) prior written approval of the City, or 2) a documented waste exchange executed by CONTRACTOR to replace the additional diverted tons on a ton-for-ton basis.
6. This Third Amendment will remain in effect through the term of the 2004 Agreement, unless terminated with the consent of both parties.
7. Except as otherwise provided, the Agreement remains in full force and effect.

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

CITY OF FRESNO,
a California municipal corporation

ORANGE AVENUE DISPOSAL COMPANY,
a California corporation

By: 

JERRY L. SCHUBER, SR.,
Assistant Director
Department of Public Utilities

By: 

Richard Caglia, President

By: 

Secretary

ATTEST:
YVONNE SPENCE, CMC
City Clerk

By: 

Deputy

 6/17/15

Date

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

By: 

AMANDA B. FREEMAN
Deputy City Attorney

Addresses:

CITY:
City of Fresno

Attention: Jerry Schuber

Orange Avenue Disposal Company, Inc.:
Attention: Richard Caglia, Director of Corporate
Development
3457 S Cedar Ave,
Fresno, CA 93725

1325 El Dorado St.

Fresno, CA 93706