

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