

FOURTH AMENDMENT TO AGREEMENT

THIS FOURTH AMENDMENT TO AGREEMENT (Fourth Amendment) made and entered into as of this ___ day of _____, 2018, amends the Services Agreement heretofore entered into between the CITY OF FRESNO, a municipal corporation, (CITY), and Orange Avenue Disposal Company, Inc., a California corporation (CONTRACTOR).

RECITALS

WHEREAS, CITY and CONTRACTOR entered into a Services Agreement, dated February 25, 2004, for the transfer, processing, and disposal of municipal solid waste, construction and demolition waste, and asphalt and concrete (2004 Agreement) and amended the 2004 Agreement first on November 27, 2007 (First Amendment), again on July 28, 2011 (Second Amendment), and most recently on March 16, 2015 (Third Amendment), all of which are hereinafter collectively referred to as "Agreement;" and

WHEREAS, the First Amendment added a fuel surcharge to the 2004 Agreement and agreed the CITY would pay \$173,000 to CONTRACTOR for retroactive fuel costs; and

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

WHEREAS, the Third Amendment limited the CPI-based adjustments to CONTRACTOR's compensation to a range of 0-3% annually; deleted the Fuel Surcharge of the First Amendment; and capped the diversion rate of materials delivered to CONTRACTOR's facility at 5%; and

WHEREAS, CITY and CONTRACTOR now desire to further modify the terms of the Agreement with this Fourth Amendment, to allow CONTRACTOR to adjust its rates to capture unforeseeable costs due to change in law and economic conditions.

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. A Fuel Surcharge shall be added to Section 4.2 of the 2004 Agreement as follows:
Effective July 1, 2018, and annually on each July 1 thereafter, the cost per ton shall be adjusted by 80% of the change in the average monthly cost of fuel as

determined by the US Energy Administration's California No. 2 Diesel Retail Price Index ('Fuel Index'), for the previous 12 months from April through March, compared to a base fuel cost of \$2.96/gallon. (Example: Average Monthly Price per the Fuel Index for the previous 12 months from April 1 through March = \$3.25/gallon. $\$3.25 - \$2.96 = \$0.29/\text{gallon} \times 80\% = \$0.23/\text{ton}$ increase to go into effect 11/1/18).

This Fuel Surcharge applies to the extent CONTRACTOR uses only diesel fuel for delivery of City-produced materials to American Avenue Landfill. In the event CONTRACTOR utilizes alternative fuel, or delivers to an alternative disposal site, the surcharge shall not apply. CONTRACTOR shall maintain, and upon requested shall provide CITY or its franchisees, documentation substantiating mileage for which the Fuel Surcharge is applied.

2. The Transfer Station Surcharge of \$4.73 per ton, initiated by the Second Amendment and revised with the Third Amendment, shall be further revised to reflect changed circumstances and changes in law.
 - a. The Transfer Station Surcharge shall be increased by \$1.49 per ton on July 1, 2018, to reflect increases minimum wages in California. Thereafter the Transfer Station Surcharge shall increase by an additional \$0.75 on each of July 1, 2019, July 1, 2020, July 1, 2021, and July 1, 2022
 - b. The Transfer Station Surcharge shall be further increased by \$0.97 per ton to reflect costs to CONTRACTOR related to reduced operational hours at the Landfill (\$.67/ton) and closure of biomass plants in the region (\$.30/ton).
 - c. The Transfer Station Surcharge shall not be based on a sliding scale or subject to a Consumer Price Index adjustment.
3. Paragraph 5 of the Third Amendment, limiting allowable diversion to 5% for purposes of the Agreement, is deleted in its entirety, such that Section 3.3 of the 2004 Agreement is restored as though never amended.
4. CONTRACTOR understands and agrees any further requests by CONTRACTOR to materially alter this Agreement, or to increase costs to CITY under this Agreement, shall result in CITY, at the CITY's sole discretion, (1) issuing a Request for Proposals for these services; or (2) entering into an agreement with another service provider operating a Processing Facility in Fresno County with which the City has an agreement, to perform the balance of the term of this Agreement; either of which shall result in termination of this Agreement upon CITY award to another service provider. A request to exercise extensions of this agreement as defined in section 2.1 of the 2004 contract does not constitute a material alteration.
5. This Fourth Amendment shall be inapplicable to the CITY's residential solid waste disposal rates and the 2004 Agreement shall be effective without regard to this the Fourth Amendment if the Council of the City of Fresno does not approve

revised Solid Waste rates reflecting this Fourth Amendment due to the Proposition 218 majority protest process.

6. This Fourth Amendment shall remain effective through the term of the 2004 Agreement.
7. Except as otherwise provided, the Agreement remains in full force and effect.

[Signatures follow on the next page.]

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

CITY OF FRESNO,
a California municipal corporation

By: 

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

ORANGE AVENUE DISPOSAL COMPANY,
a California corporation

By: 

Richard Caglia, President

By: 

Secretary

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

By: 

Brandon M. Collet
Senior Deputy City Attorney

9/13/18
Date

By: _____

By: _____

ATTEST:
YVONNE SPENCE, CRM MMC
City Clerk

By: _____

Deputy

Date

Addresses:

CITY:

City of Fresno

Attention: Jerry Schuber

1325 El Dorado St.

Fresno, CA 93706

CONTRACTOR:

Orange Avenue Disposal Company, Inc.:

Attention: Richard Caglia, Director of

Corporate Development

3457 S Cedar Ave,

Fresno, CA 93725

Attachment:

Exhibit A – Estimated Adjustment to Per-Ton Disposal Costs with Revised Transfer Station Surcharge and Addition of a Fuel Surcharge

EXHIBIT A

Estimated Adjustment to Per-ton Disposal Costs with Revised Transfer Station Surcharge and Addition of a Fuel Surcharge

	07/1/2018	7/1/2019	7/1/2020	7/1/2021	7/1/22 - 24
Minimum Wage Increase	\$ 1.49	\$ 0.75	\$ 0.75	\$ 0.75	\$ 0.75
American Ave. Hours Restrictions	\$ 0.67				
Biomass Plant Closures	\$ 0.30				
Subtotal Total Transfer Station Surcharge Increase/Year	\$ 2.46	\$ 0.75	\$ 0.75	\$ 0.75	\$ 0.75
Fuel Surcharge <i>estimate</i>	\$0.50	TBD	TBD	TBD	TBD
Per-ton Increase in Disposal Cost = Transfer Station Surcharge (TSS) + Fuel Surcharge (FS)	\$ 2.46 + \$.50 (FS) = \$ 2.96	\$ 3.71 + FS	\$ 4.46 + FS	\$ 5.21 + FS	\$5.96 + FS