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**Title:** Actions related to the Fourth Amendment to the Services Agreement with Orange Avenue Disposal Company, Inc.:

1. Adopt a finding of Class 1/Existing Facilities Categorical Exemption pursuant to Section 15301of the California Environmental Quality Act.
2. Approve a Fourth Amendment to the Services Agreement with Orange Avenue Disposal Company, Inc., to increase per-ton charges for transfer, processing, and disposal of waste, capturing unforeseeable costs due to change in law and economic conditions (Citywide)

**Sponsors:** Department of Public Utilities

**Indexes:**

**Code sections:**

**Attachments:** 1. Attachment 1 - Proposed Fourth Amendment.pdf, 2. Attachment 2 - 2004 Agreement.pdf, 3. Attachment 3 - First Amendment.pdf, 4. Attachment 4 - Second Amendment.pdf, 5. Attachment 5 - Third Amendment.pdf

Date	Ver.	Action By	Action	Result
10/25/2018	1	City Council	approved	Pass

**REPORT TO THE CITY COUNCIL**

**October 25, 2018**

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Department of Public Utilities

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Department of Public Utilities - Solid Waste Management Division

**SUBJECT**

Actions related to the Fourth Amendment to the Services Agreement with Orange Avenue Disposal Company, Inc.:

1. Adopt a finding of Class 1/Existing Facilities Categorical Exemption pursuant to Section 15301of the California Environmental Quality Act.
2. Approve a Fourth Amendment to the Services Agreement with Orange Avenue Disposal Company, Inc., to increase per-ton charges for transfer, processing, and disposal of waste, capturing unforeseeable costs due to change in law and economic conditions (Citywide)

**RECOMMENDATION**

Staff recommends the City Council 1) adopt a finding of Class 1/Existing Facilities Categorical Exemption pursuant to Section 15301 of the California Environmental Quality Act; and 2) approve a Fourth Amendment to the Services Agreement with Orange Avenue Disposal Company, Inc. (OAD), modifying the Services Agreement to increase per-ton rates to capture unforeseeable costs due to change in law and economic conditions.

## **EXECUTIVE SUMMARY**

City Council entered into a Services Agreement with OAD, dated February 25, 2004, for the transfer, processing, and disposal of municipal solid waste, construction and demolition waste, and asphalt and concrete (2004 Agreement). The City and OAD 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."

The First Amendment added a fuel surcharge to the 2004 Agreement and agreed the City would pay \$173,000 to OAD for retroactive fuel costs. The Second Amendment permitted OAD to assess a Transfer Station Surcharge on each ton of solid waste delivered to OAD, which expired March 15, 2015. The Third Amendment limited the CPI-based adjustments to OAD'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 OAD's facility at 5%.

The proposed Fourth Amendment would allow OAD to adjust rates to capture increased costs due to change in law and economic conditions. Within this Fourth Amendment, effective July 1, 2018, and annually on each July 1 thereafter, a Fuel Surcharge would be added so that the cost per ton would 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, compared to a base fuel cost of \$2.96/gallon. This Fuel Surcharge would only apply to the extent that OAD uses diesel fuel for delivery of City-produced materials to American Avenue Landfill. The Transfer Station Surcharge of \$4.73 per ton, agreed upon in the Third Amendment, would be increased by \$2.46 per ton to reflect increases in the minimum wage, and costs to OAD related to reduced operational hours at the landfill and closure of biomass plants in the region. An Additional \$0.75 increase will be added to the Transfer Station Surcharge July 1, 2019, July 1, 2020, July 1, 2021, and July 1, 2022 to account for minimum wage increases. The Fourth Amendment would also delete paragraph 5 of the Third Amendment in its entirety, removing a cap on the percentage of materials OAD may divert from the landfills.

This Fourth Amendment shall be automatically repealed for the residential solid waste disposal rates and the Agreement shall be effective as though the Fourth Amendment had not occurred if the City Council does not approve the Solid Waste rates reflecting this Fourth Amendment that will be a part of the Proposition 218 majority protest process. In addition, any further requests by OAD to amend the Agreement would result in the City issuing a Request for Proposal for the services and potentially entering into an agreement with another service provider operating a transfer station in Fresno County to perform the balance of the Agreement. A request to exercise extensions of this agreement as defined in section 2.1 of the 2004 contract does not constitute a material alteration.

## **BACKGROUND**

### **2004 Agreement**

The compensation terms for the 2004 Agreement between the City and OAD are based on two components. One component is the landfill tipping fee at the American Avenue Landfill, and the other component is the cost for transfer station operations and hauling the City's municipal solid waste from the OAD Transfer Station to the American Avenue Landfill. The first component is a pass-through cost based on tipping fee charges assessed by Fresno County for the American Avenue Landfill (currently \$28.80 per ton). The second component started with a base rate of \$6.20 per ton when the 2004 Agreement was executed, and includes provisions for annual increases based on changes in the Consumer Price Index (CPI - Urban Wage Earners and Clerical Workers for the Los Angeles-Anaheim-Riverside area). The current landfill tipping fee charge is \$28.80 per ton, and the Base Fee for Transfer Station Operation and Hauling is \$6.20 per ton, for a combined unit charge of \$35.00 per ton for the 2004 Agreement.

The 2004 Agreement stipulates that the City makes no guarantees regarding the tonnages of materials to be delivered to the OAD Transfer Station.

### **First Amendment to 2004 Agreement**

On November 27, 2007, the City entered into a First Amendment to the 2004 Agreement with OAD, wherein a fuel price adjustment ("Fuel Surcharge") was approved to reflect fluctuations in fuel prices occurring in the market. The Fuel Surcharge fluctuates monthly based upon a mutually-agreed upon calculation using a fuel price index (Index = U.S. Department of Energy California NO.2 Diesel Retail Sales by all Sellers - Diesel Retail) and the Consumer Price Index. The current Fuel Surcharge rate is \$0.43 per ton.

### **Second Amendment to 2004 Agreement**

On July 28, 2011, the City entered into a Second Amendment to the 2004 Agreement when OAD asserted that changed conditions required additional compensation from the City for services provided at the OAD Transfer Station. The Second Amendment provided OAD with the opportunity to assess a Transfer Station Surcharge to the City to ensure OAD maintained some level of profitability and allowed OAD to recover outlays for capital investments it had undertaken at the OAD Transfer Station to meet the City's service level needs. The Transfer Station Surcharge approved by the Fresno City Council in July 2011 was based on a sliding-scale that increased as tonnage quantities fell and decreased as tonnage quantities rose. The Transfer Station Surcharge rate started at \$4.39 per ton when the Second Amendment was executed, and included provisions for annual increases based on changes in the Consumer Price Index. The Second Amendment to the 2004 Agreement was effective through March 15, 2015. As of March 14, 2015, the Transfer Station Surcharge rate was \$5.36 per ton.

Since the Second Amendment terminated on March 15, 2015, no Transfer Station Surcharge rate is effective at this time.

### **OAD Transfer Station Charges - Prior to March 15, 2015**

Prior to the expiration of the Second Amendment on March 15, 2015, the City's costs for base transfer station operations and hauling; fuel surcharges; transfer station surcharges; and disposal at the American Avenue Landfill was \$31.81 per ton.

### **Third Amendment to 2004 Agreement**

On March 16, 2015, the City entered into a third amendment to the 2004 Agreement when OAD communicated to City staff that returning to a compensation plan based solely on the 2004 Agreement and the First Amendment is not financially viable for its business operations. OAD

claimed that it would be unable to recover its capital expenditures at the OAD Transfer Station incurred to meet the City's service level needs through 2024. Accordingly, OAD requested that the City enter into a Third Amendment to the 2004 Agreement for a revised Transfer Station Surcharge. The terms and conditions set forth by the Third Amendment were as follows:

1. Landfill Tipping Fee will remain a pass-through cost item based on fees charged by Fresno County for solid waste disposal at the American Avenue Landfill Tipping Fee. Set at \$18.50 per ton.
2. The Base Fee for Transfer Station Operations and Hauling remained as specified in the 2004 Agreement. Set at \$7.52 per ton.
3. The calculation methodology for the annual adjustment factor for the Base Fee for Transfer Station Operations and Hauling shall remain as specified in the 2004 Agreement, but shall be limited in the annual rate of change to not less than zero percent and not greater than three percent during any year.
4. The Fuel Surcharge associated with the First Amendment to the 2004 Agreement was eliminated entirely.
5. The Transfer Station Surcharge rate was reduced from \$5.36 per ton to \$4.73 per ton. The Transfer Station Surcharge rate shall no longer be based on a sliding scale and shall remain fixed (i.e. not subject to annual CPI or other adjustments) during the remaining initial term of the 2004 Agreement.
6. All material delivered to the OAD Transfer Station from the City of Fresno, including the City's Operation Cleanup materials, shall be disposed of at the American Avenue Landfill. The diversion rate specified in Article 3.3 of the 2004 Agreement shall be changed 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 prior written approval of the City or a documented waste exchange is executed by OAD to replace the additional diverted tons on a ton-for-ton basis.

#### **Fourth Amendment to 2004 Agreement**

The proposed terms of the Fourth Amendment requested by OAD are 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 March through April, compared to a base fuel cost of \$2.96/gallon.

This Fuel Surcharge applies to the extent OAD uses only diesel fuel for delivery of City-produced materials to American Avenue Landfill. In the event OAD utilizes alternative fuel, or delivers to an alternative disposal site, the surcharge shall not apply. OAD shall maintain, and upon requested shall provide the 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 OAD 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. OAD understands and agrees any further requests by OAD to materially alter this Agreement, or to increase costs to the City under this Agreement, shall result in the 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 the City's award to another service provider.
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 City Council does not approve the Solid Waste rates reflecting this Fourth Amendment that will be a part of the Proposition 218 majority protest process.
6. This Fourth Amendment shall remain effective through the term of the 2004 Agreement.

## **ENVIRONMENTAL FINDINGS**

Staff has performed a preliminary environmental assessment of this project and has determined that it falls within the Class 1/Existing Facilities Categorical Exemption set forth in CEQA Guidelines, section 15301 as this amendment involves using existing disposal and transfer facilities, which will involve no expansion of the facilities. Furthermore, none of the exceptions to Categorical Exemptions set forth in the CEQA Guidelines, section 15300.2 apply to this project.

## **LOCAL PREFERENCE**

Local preference is not considered because this rate increase is not an award of a construction or services contract.

## **FISCAL IMPACT**

The City currently delivers approximately 250,000 tons of municipal solid waste materials annually to the OAD Transfer Station. The revised total cost for base transfer station operations and hauling; transfer station surcharge; and disposal at the American Avenue Landfill represents a \$2.96 per ton increase in total charges compared to the current rate. This will result in annual cost increase of approximately \$740,000.

The Solid Waste Management Division currently provides service to approximately 110,000 single-family residential accounts, and, therefore the expected increase on a typical residential solid waste account will be approximately \$0.30 per month on a current monthly charge of \$25.37 per month (~1.2 percent increase). These cost increases will not become effective unless a residential rate adjustment is approved through the Proposition 218 process and adopted by the City Council.

Attachments:

- Attachment 1 - Proposed Fourth Amendment
- Attachment 2 - 2004 Agreement
- Attachment 3 - First Amendment
- Attachment 4 - Second Amendment
- Attachment 5 - Third Amendment