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Title: Approve the substantive terms of a recommended Third Amendment to the Agreement with Orange Avenue Disposal Company, Inc. ("OAD") dated February 25, 2004 ("2004 Agreement"), for a Transfer Station Surcharge of \$4.73 per ton for transfer station operations and hauling of the City's municipal solid waste.

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4/9/2015	1	City Council	approved	Pass

REPORT TO THE CITY COUNCIL

April 9, 2015

FROM: THOMAS C. ESQUEDA, Director
Department of Public Utilities

SUBJECT

Approve the substantive terms of a recommended Third Amendment to the Agreement with Orange Avenue Disposal Company, Inc. ("OAD") dated February 25, 2004 ("2004 Agreement"), for a Transfer Station Surcharge of \$4.73 per ton for transfer station operations and hauling of the City's municipal solid waste.

RECOMMENDATION

Staff recommends Council approve a Third Amendment to the 2004 Agreement with OAD, to be developed with the assistance of, and approval as to form by, the City Attorney's Office, and authorize the Director of Public Utilities to execute the completed documents.

EXECUTIVE SUMMARY

On August 26, 2003, the Fresno City Council awarded an Agreement to OAD to receive, process, transfer, and dispose of the City's municipal solid waste at the American Avenue Landfill using the OAD Transfer Station. The initial 20-year term of the Agreement is February 25, 2004, through February 25, 2024. Subsequent to awarding the 2004 Agreement to OAD, Council approved two amendments. The First Amendment allows OAD to assess a Fuel Surcharge on each ton of solid

waste delivered to the OAD Transfer Station. The Second Amendment, which expired March 15, 2015, allowed OAD to assess a Transfer Station Surcharge on each ton of solid waste delivered to the OAD Transfer Station.

The Transfer Station Surcharge rate associated with the Second Amendment is no longer in effect at this time. As specified in the Second Amendment, the City is not obligated to extend the duration of the Transfer Station Surcharge rate beyond March 15, 2015. Accordingly, the current rate for OAD to receive, process, transfer, and dispose of the City's municipal solid waste at the American Avenue Landfill using the OAD Transfer Station is \$26.45.

OAD has communicated to City staff that returning to a compensation plan based solely on the 2004 Agreement (which results in a charge of \$26.02 per ton of solid waste received) and the First Amendment (providing an additional \$0.43 per ton) is not financially viable for its business operations. OAD claims that it will be unable to recover the capital expenditures made at the OAD Transfer Station to meet the City's service level needs associated with the initial 20-year term of the 2004 Agreement. Accordingly, OAD has requested that the City enter into a Third Amendment to the 2004 Agreement, providing a revised Transfer Station Surcharge. City staff has reviewed OAD's request and current market conditions in the area, and recommends that a Third Amendment be executed based on the recommended terms and conditions negotiated with OAD and presented in this Staff Report. Based on these recommended terms and conditions, if approved the Third Amendment to the 2004 Agreement will result in expected savings on a typical residential solid waste account of approximately \$0.20 per month on a current monthly charge of \$25.37 per month (~0.8 percent savings). These savings will be used by the Solid Waste Management Division to hold the monthly charge for solid waste services at its current rate of \$25.37 per month through June 30, 2019.

. The City's costs for base transfer station operations and hauling; transfer station surcharge; and disposal at the American Avenue Landfill would be \$30.75 per ton, inclusive of the proposed new Transfer Station Surcharge rate of \$4.73 per ton. The new Transfer Station Surcharge Rate shall remain fixed at \$4.73 per ton, until the termination of the 20-year term on February 25, 2024.

The proposed revised total cost for base transfer station operations and hauling; transfer station surcharge; and disposal at the American Avenue Landfill represents a \$1.06 per ton reduction in total charges for the ratepayers versus the prior year rate, which translates to annual savings of approximately \$265,000 for the Solid Waste Management Division. Staff recommends Council approve a Third Amendment to the Agreement with OAD, to be developed with the assistance of, and approval as to form by, the City Attorney's Office, and authorize the Director of Public Utilities to execute the completed documents.

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 \$18.50 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 \$18.50 per ton, and the Base Fee for Transfer Station Operation and Hauling is \$7.52 per ton, for a combined unit charge of \$26.02 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 calculated as follows:

\$18.50 per ton for American Avenue Landfill Disposal
\$7.52 per ton for Base Fee for Transfer Station Operations and Hauling
\$0.43 per ton for Fuel Surcharge
\$5.36 per ton for Transfer Station Surcharge (Eliminated March 15, 2015)
\$31.81 per ton - TOTAL Prior Effective Rate (Prior to March 15, 2015)

Recommended Third Amendment to 2004 Agreement

OAD has 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 claims that it will 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 has requested that the City enter into a Third Amendment to the 2004 Agreement for a revised Transfer Station Surcharge. City staff has

reviewed OAD's request and current market conditions in the area, and recommends a Third Amendment be executed based on the following recommended terms and conditions:

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. Currently set at \$18.50 per ton.
2. The Base Fee for Transfer Station Operations and Hauling shall remain as specified in the 2004 Agreement. Currently 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 will be eliminated in its entirety.
5. The Transfer Station Surcharge rate shall be reduced from its current rate \$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..

Based on these recommended terms and conditions, if approved, the Third Amendment to the 2004 Agreement will result in reduced costs for the City's solid waste ratepayers. The City's costs for base transfer station operations and hauling; transfer station surcharge; and disposal at the American Avenue Landfill will be \$30.75 per ton calculated as follows:

\$18.50 per ton for American Avenue Landfill Disposal
\$7.52 per ton for Base Fee for Transfer Station Operations and Hauling
\$4.73 per ton for Transfer Station Surcharge
\$30.75 - TOTAL Proposed Rate Effective Rate

The revised total cost for represents a \$1.06 per ton reduction in total charges for the City's solid waste ratepayers, which translates to an annual savings of approximately \$265,000 for the Solid Waste Management Division.

ENVIRONMENTAL FINDINGS

This is not a "project" for the purposes of CEQA pursuant to CEQA Guidelines § 15378(b)(4), as it is a fiscal governmental action that will not result in direct or indirect physical changes to the

environment.

LOCAL PREFERENCE

Local preference was not considered because this amendment to an existing agreement does not include a bid or 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 \$1.06 per ton reduction in total charges for the City's solid waste ratepayers compared to the prior year rate, resulting in annual savings of approximately \$265,000 for the Solid Waste Management Division.

The Solid Waste Management Division currently provides service to approximately 108,000 single-family residential accounts, and, therefore the expected savings on a typical residential solid waste account will be approximately \$0.20 per month on a current monthly charge of \$25.37 per month (~0.8 percent savings). These savings will be used by the Solid Waste Management Division to hold the monthly charge for solid waste services at its current rate of \$25.37 per month through June 30, 2019.