



## Legislation Details (With Text)

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**Title:** Approve the substantive terms of a Fifth Amendment to the Services Agreement with Orange Avenue Disposal Company, Inc., (OAD) to include three weekends in the Spring and Fall for free dump events to customers and to exercise two five-year extensions as part of the original agreement to extend the agreement duration from February 25, 2004 to February 25, 2034. (Citywide)

**Sponsors:** Department of Public Utilities

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**Attachments:** 1. Attachment 1 - 2004 Agreement.pdf, 2. Attachment 2 - First Amendment.pdf, 3. Attachment 3 - Second Amendment-.pdf, 4. Attachment 4 - Third Amendment-.pdf, 5. Attachment 5 - Fourth Amendment-.pdf, 6. Attachment 6 - Fifth Amendment.pdf

Date	Ver.	Action By	Action	Result
11/5/2020	1	City Council	approved	Pass

## REPORT TO THE CITY COUNCIL

**November 5, 2020**

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Department of Public Utilities

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Department of Public Utilities - Solid Waste Management Division

## SUBJECT

Approve the substantive terms of a Fifth Amendment to the Services Agreement with Orange Avenue Disposal Company, Inc., (OAD) to include three weekends in the Spring and Fall for free dump events to customers and to exercise two five-year extensions as part of the original agreement to extend the agreement duration from February 25, 2004 to February 25, 2034. (Citywide)

## RECOMMENDATION

Staff recommends City Council approve the substantive terms of a Fifth Amendment to the Services Agreement with Orange Avenue Disposal Company, Inc. (OAD), modifying the Services Agreement to allow utility customers to dump materials at the transfer station for free twice a year on "Free Dump

Weekends” and extend the current agreement to include both two (2) five-year extensions provided in the original agreement extending the original agreement duration from February 25, 2004 to February 25, 2034.

## **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 have amended the 2004 Agreement four times first on November 27, 2007 (First Amendment), again on July 28, 2011 (Second Amendment), again on March 16, 2015 (Third Amendment), and most recently on September 13, 2018 (Fourth Amendment) all of which are hereinafter collectively referred to as “Agreement”.

The proposed Fifth Amendment would allow for the two (2) five-year extensions available to OAD in the original agreement. The proposed Fifth Amendment also creates a new program for utility customers. The program will allow utility customers within the City of Fresno to bring waste to the transfer station for free twice a year for three weekends in the Spring and in the Fall.

## **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**

On September 13, 2018 the City entered into a Fourth Amendment which incorporated costs associated with change in the minimum wage law and challenges facing the industry related to the recycling markets. The terms and conditions set forth by the Third Amendment were 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.

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 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, and July 1, 2021.

- 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 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 Agreement does not constitute a material alteration.
- 5. This Fourth Amendment shall be inapplicable regarding the residential solid waste disposal rates and the Agreement shall be effective as though it had not occurred 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.

This Fourth Amendment shall remain effective through the term of the 2004 Agreement.

### **Fifth Amendment to 2004 Agreement**

The proposed terms of the Fifth Amendment requested by OAD are as follows:

- 1. Under the current 2004 agreement two (2) five year extensions were allowed. Both terms would be added to the original agreement deadline extending the agreement to February 25, 2034.
- 2. The Transfer Station Surcharge will initiate a new "Free Dump" program for the remaining term of the agreement which will:
  - a. Open the transfer station to the utility customers twice a year for three weekends a month. The allotted time for the events will coincide with the operating hours set forth in the Fifth Amendment.
  - b. The transfer station will allow vehicles with a weight rating of one ton or less with or

without a trailer to use the facility during those operating hours at OAD expense.

- c. The transfer station will allow for a traffic plan to accommodate all incoming traffic while maintaining operations in a safe manner.
- d. The Transfer Station will record outgoing weights for billing purposes which will be reimbursed by the Solid Waste Management Division within 45 days of the event.

## **ENVIRONMENTAL FINDINGS**

Pursuant to CEQA Guidelines section 15378, this is not a project for purposes of CEQA.

## **LOCAL PREFERENCE**

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

## **FISCAL IMPACT**

The total cost for solid waste ratepayers will depend on tonnage totals delivered to the transfer station for this program. City Staff estimates potential tonnage of 1,000 tons of trash per event. The addition of tonnage charges should be offset in part by the need for City staff to collect materials from illegal dumping or through larger Operation Clean Up loads. There will be no fiscal impact to the General Fund associated with the new program. The costs associated with the new program will be offset by Solid Waste Management Enterprise funds. This project will benefit citywide.

Attachments:

- Attachment 1 - 2004 Agreement
- Attachment 2 - First Amendment
- Attachment 3 - Second Amendment
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