

RESOLUTION NO. 13-150

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL PASO DE ROBLES
APPROVING AMENDMENT No. 4 TO THE AGREEMENT WITH
PACIFIC WASTE SERVICES, INC. FOR OPERATION OF SOLID WASTE LANDFILL

WHEREAS, the City and Pacific Waste Services, Inc. ("Operator") entered into a landfill operations agreement in August 2000 (the "Original Agreement"); and

WHEREAS, the City and Contractor have entered into previous amendments in 2005, 2006, and 2009 to address a leachate liner breach, to clarify responsibilities for costs associated with adopted regulations, and to modify obligations related to monitoring wells; and

WHEREAS, the Original Agreement provided that the Operator would receive a guaranteed 2.5% increase in the Annual Contractor Retention; and

WHEREAS, the Original Agreement also provided that if the average annual growth in gross revenues received the landfill operations is less than 2.5% over three consecutive years, the parties may renegotiate the allocation of revenues; and

WHEREAS, due to various factors, revenues at the landfill have declined steadily since 2007; and

WHEREAS, the City had conducted a "Solid Waste Franchise Contracts Financial and Operational Audit for Pacific Waste Services," dated July 26, 2011, which recommended that the parties renegotiate revenue allocations set forth in the Agreement so that parties are receiving the intended relative proportions; and

WHEREAS, the parties acknowledge that the average annual growth in gross revenues received from the operations has been less than 2.5% since fiscal year 2007; and

WHEREAS, the parties have met and conferred in good faith and agree to adjust the allocation of revenues as set forth in Amendment No. 4; and

WHEREAS, the parties also wish to clarify which party shall be responsible for paying certain regulatory fees that arise during the term of the Agreement;

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of El Paso de Robles does hereby approve Amendment No. 4 to the Original Agreement, attached hereto as Attachment A and incorporated herein by reference and authorizes the City Manager to execute Amendment No. 4, subject to any technical, minor or clarifying changes approved by the City Attorney, on behalf of the City.

PASSED AND ADOPTED by the City Council of the City of El Paso de Robles at a regular meeting of said City Council held on the 5th day of November, 2013, by the following vote:

AYES: Hamon, Steinbeck, Strong, Martin, Picanco

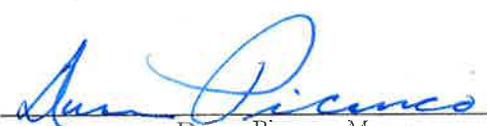
NOES:

ABSENT:

ABSTAIN:

ATTEST:


Caryn Jackson, Deputy City Clerk


Duane Picanco, Mayor

**FOURTH AMENDMENT TO AGREEMENT
FOR OPERATION OF SOLID WASTE LANDFILL
PASO ROBLES MUNICIPAL LANDFILL**

THIS FOURTH AMENDMENT (the “Fourth Amendment”) is made and entered into this ____ day of _____ 2013, by and between the CITY OF EL PASO DE ROBLES, a municipal corporation, (“City”) and PACIFIC WASTE SERVICES, INC., a California corporation (“Contractor”).

Recitals

- A. The City and Contractor entered into an Agreement for Operation of Solid Waste Landfill, Paso Robles Municipal Landfill, commencing August 1, 2000, (the “Original Agreement”) providing for the terms and conditions for the operation of the City’s landfill (the “Landfill”) by Contractor.
- B. The City and Contractor have previously entered into amendments dated April 5, 2005, (First Amendment”); April 5, 2006 (“Second Amendment”); and April 29, 2009 (“Third Amendment”). The Original Agreement, First Amendment, Second Amendment and Third Amendment are referred to collectively herein as the “Agreement”.
- C. The City commissioned a “Solid Waste Franchise Contracts Financial and Operational Audit for Pacific Waste Services” dated July 26, 2011, in which it was recommended, among other things, that the parties renegotiate the revenue allocations set forth in the Agreement in order that they more accurately reflect the relative allocations the parties intended at the time the Original Agreement was executed.
- D. Since fiscal year 2007, the average annual growth in gross revenues received from the operations at the Site has been less than two and one-half percent (2.5%), whereas the amount of the Annual Contractor Retention, as defined in Section (6)(a) of the Agreement, has increased each year.
- E. The parties met and conferred in good faith and agree to make adjustments in the allocation of revenues as set forth in this Fourth Amendment.
- F. In addition, the parties wish to clarify and modify certain other provisions of the Agreement.

Agreements

Section 1 Paragraph (j) is hereby added to “Section (2) – Scope of Services” to read as follows:

“(j) Each party’s responsibility for payment of recurring permit filing fees are set forth in Exhibit F, attached hereto and incorporated herein by reference.”

Section 2 In “Section (2) – Scope of Services”, paragraph (a) is hereby revised in its entirety to read as follows:

“(a) The City hereby grants to Contractor the right and authority to operate and maintain the Site for use as a Class III solid waste disposal Site throughout the term of this Agreement. The Contractor agrees to operate and maintain the Site in accordance with the provisions of this Agreement, including the rules and regulations and the specifications attached hereto as Exhibit C and Exhibit D, respectively, which Exhibits are incorporated into and made a part of this Agreement by this reference. Notwithstanding the foregoing, the City shall have the right and authority to lease portions of the Site during the term of this Agreement to third parties so long as any such lease, or the activities permitted thereunder, does not unreasonably interfere with Contractor’s ability to perform its obligations under this Agreement.”

Section 3 In “Section (2) – Scope of Services,” a new paragraph (j) is hereby added to read as follows:

“Contractor shall, at its sole cost and expense, set up and operate a construction and demolition debris (“C&D) recycling area at the landfill entrance to sort recoverable materials upon entry to the landfill. The C&D recycling area shall be situated with access, signage, and traffic signals to direct incoming C&D loads, both roll-offs and commercial/public loads, identified as higher content recyclables. Site work and existing improvement relocation shall be the responsibility of the Contractor. The C&D recycling area shall rest on a concrete pad with masonry containment suitable for housing containers for separated recyclables. Full containers shall be rotated off-site within 48-hours or within the terms stated in landfill permits then in effect. Contractor shall keep record of recycled/diverted tonnage and provide such records both to the City and to appropriate regulators. The Parties agree that the C&D facility as described herein shall be operational by January 1, 2014, and that compensation to the Contractor already

provided for in this Agreement is sufficient compensation for capital, operations, maintenance, transportation, reporting, and labor costs associated with the C&D facility.

“In the event that the Contractor fails to have the C&D facility operational by the date stated above, the City reserves the right to contract with an outside party for such services, which services may be provided on the Site so long as such activities do not unreasonably interfere with Contractor’s ability to perform its obligations under this Agreement.”

Section 4 In “Section (6) – Distribution of Revenues,” paragraph (a) is hereby revised in its entirety to read as follows:

“(a) During each of the first two (2) years of this Agreement, in accordance with the procedure set forth herein, Contractor shall be entitled to retain a portion of annual revenues (the “Annual Contractor Retention”) in the amount of nine hundred seventy seven thousand dollars (\$977,000), and all revenues above that amount and up to the Revenue Sharing Point as defined in paragraph (c) below, shall be remitted to City. Beginning on August 1, 2002, and on each August 1st thereafter, the amount of the Annual Contractor Retention shall be increased by Two and One-half Percent (2.5%) per year; however, Contractor voluntarily waived the annual increase beginning August 1, 2010 such that as of August 1, 2013 the parties agree that the Annual Contractor Retention amount shall be One Million Two Hundred Fifty Five Thousand Four Hundred and Thirty Nine Dollars (\$1,255,439) and thereafter shall increase each August 1st by One and One-half Percent (1.5%) per year.

Section 5 In “Section (6) - Distribution of Revenues,” paragraph (c) is hereby deleted in its entirety.

Section 6 A revised “Exhibit E, Tipping Fees and Charges,” attached hereto and incorporated herein by reference, shall replace the Exhibit E attached to the Original Agreement.

Section 7 A new “Exhibit F, Allocation of Permit Fees,” attached hereto and incorporated herein by reference, is hereby added as part of this Fourth Amendment.

Section 8 Except as modified by this Fourth Amendment, all other terms and provisions of the Agreement shall remain in full force and effect.

This Fourth Amendment shall be effective as of the date hereinabove written.

CITY OF EL PASO DE ROBLES,
A municipal corporation

By: _____
James L. App, City Manager

Attest:

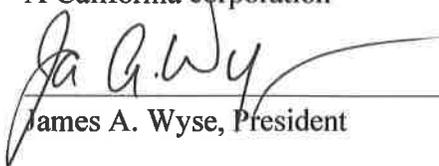
Dennis Fansler, City Clerk

Approved as to Form:

Iris P. Yang, City Attorney

“City”

PACIFIC WASTE SERVICES, INC.
A California corporation



James A. Wyse, President

“Contractor”

Revised Exhibit E
Tipping Fees and Charges

Exhibit E									
									9/27/2013
LANDFILL TIPPING FEES									
Material Type	Current Rate per Reso 02-081		Proposed Rates, Effective July 1st						
	Effective 1/1/02		2014	2015	2016	2017	2018		
Refuse - franchise or contract hauler									
Compacted	\$ 38.85	per ton	\$ 43.50	\$ 45.00	\$ 47.00	\$ 49.00	\$ 51.00		per ton
Uncompacted	\$ 46.85	per ton	\$ 52.50	\$ 54.50	\$ 57.00	\$ 59.00	\$ 61.00		per ton
Residential self-haul, non-franchise, contracted commercial haulers									
Loads up to 1,000 lbs	\$ 20.00	flat rate	\$ 25.00	\$ 25.00	\$ 25.00	\$ 28.00	\$ 28.00		flat rate
Loads over 1,000 lbs	\$ 46.85	per ton	\$ 52.50	\$ 54.50	\$ 57.00	\$ 59.00	\$ 61.00		per ton
Tires									
Auto/Pickup Tires ¹	\$ 2.50	each	\$ 3.00	\$ 3.00	\$ 3.00	\$ 3.25	\$ 3.25		each
Commercial Truck Tires ¹	\$ 5.25	each	\$ 6.00	\$ 6.00	\$ 6.00	\$ 6.25	\$ 6.25		each
Tractor Tires ¹	N/A		\$ 50.00	\$ 50.00	\$ 50.00	\$ 55.00	\$ 55.00		each
Bulky Items / Special Charge									
Asphalt/Concrete suitable for road base (no wire, rebar, dirt, or trash) ²	N/C		N/C	N/C	N/C	N/C	N/C		
Appliances with Freon	\$ 20.00	each	\$ 25.00	\$ 25.00	\$ 25.00	\$ 28.00	\$ 28.00		each
Other Appliances	\$ 12.00	each	\$ 14.00	\$ 14.00	\$ 14.00	\$ 15.00	\$ 15.00		each
Mattress / Box Springs / Sofas / Large Furniture	\$ 10.00	each	\$ 12.00	\$ 12.00	\$ 12.00	\$ 13.00	\$ 13.00		each
Oversize Items 3' x 3'	\$ 25.00	each	\$ 28.00	\$ 28.00	\$ 28.00	\$ 30.00	\$ 30.00		each
Oversize Items 5' x 5'	\$ 50.00	each	\$ 57.00	\$ 57.00	\$ 57.00	\$ 60.00	\$ 60.00		each
Over 5' x 5' and Tree Stump (plus tonnage fee)	\$ 75.00	each plus tonnage fee	\$ 85.00	\$ 85.00	\$ 85.00	\$ 90.00	\$ 90.00		each plus tonnage fee
Special Burial Charge/Untarped Loads	Double the Required Fee		Double the required fee						
Other Special Loads	At discretion of landfill staff		At discretion of landfill staff						

¹ Tires on rims accepted at double the stated fee

² Suitability up to discretion of landfill staff

Exhibit F

Allocation of Permit Fees

Responsibility for Payment of Recurring Permit Filing Fees					
					9/27/2013
Agency	Fee	Frequency	Amount		Responsible Party
RWQCB	Waste Discharge Requirements	Annual	\$	15,817	City
SWRCB	Industrial Storm Water Permit	Annual	\$	1,359	City
CalRecycle	Solid Waste Facilities Permit	Annual	\$	7,500	City
SLO County Health	Environmental Business Plan and Permit	Annual	\$	850	PWS
SLO APCD	Title V Permit	Annual	\$	4,500	PWS
SLO APCD	5-yr Permit Review/Issuance	Every 5 Yrs	\$	13,588	City
Board of Equalization	Integrated Waste Management Fee (\$1.40/landfilled ton)	Quarterly	\$	47,600	City
				per yr	

Amount listed is estimated as of September 2013. It is understood that subsequent to the effective date of this Amendment No. 4, the responsible party listed will pay actual fee amount as established by the agency listed through the Term of this Agreement.