

**TO:** James L. App, City Manager  
**FROM:** Doug Monn, Public Works Director  
**SUBJECT:** **Agreement with Pacific Waste Services for  
Operation of Solid Waste Landfill -- Amendment No. 4**  
**DATE:** November 5, 2013

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**NEEDS:** For the City Council to consider an amendment of its agreement with the City's landfill operator to adjust revenue allocations.

**FACTS:**

1. In August 2000, the City entered into a 20-year agreement with Pacific Waste Services, Inc. for the operation of the Paso Robles Landfill.
2. The City and Pacific Waste Services have entered into previous amendments in 2005, 2006, and 2009 to resolve issues relating to the March 2000 leachate liner breach, to clarify responsibilities for costs associated with adopted Federal, State, and local regulations, and to modify obligations related to gas and water monitoring wells.
3. The City completed the "Solid Waste Franchise Contracts Financial and Operational Audit for Pacific Waste Services" dated July 26, 2011, in which it was recommended that the parties renegotiate revenue allocations set forth in the Agreement so that parties are receiving the intended relative proportions.
4. The 2011 audit and subsequent financial studies reveal that the City's annual share in revenue has declined from nearly \$1 million in Fiscal Year 2006 to just over \$200,000 in Fiscal Year 2012. The decline in City's share is attributable to a combination of declining tonnage and the guaranteed annual 2.5% increase in payments to the landfill operator.
5. The 2000 Agreement anticipated that changes in circumstance could warrant a reallocation of revenues between the parties. Both the City and Pacific Waste Services, Inc. acknowledge that a reallocation of revenues is warranted.
6. The Council's Solid Waste Ad Hoc Committee (Councilmen Hamon and Steinbeck) met and conferred in good faith with Pacific Waste Services and

recommend adjustments in the allocation of revenues as set forth in proposed Amendment No. 4.

7. Further, the parties wish to clarify which party shall be responsible for paying certain regulatory fees arising during the term of this Agreement.
8. On a related matter, City Council will consider adoption of new landfill tipping fees as a separate business item.

**ANALYSIS AND**

**CONCLUSION:** Key aspects of Amendment No. 4 are that the annual increase in the Annual Contractor Retention paid to Pacific Waste Services will be reduced from 2.5% to 1.5%, retroactive to August 1, 2013.

The amount of the agreed-upon Annual Contractor Retention for August 1, 2013 is \$1,255,439.

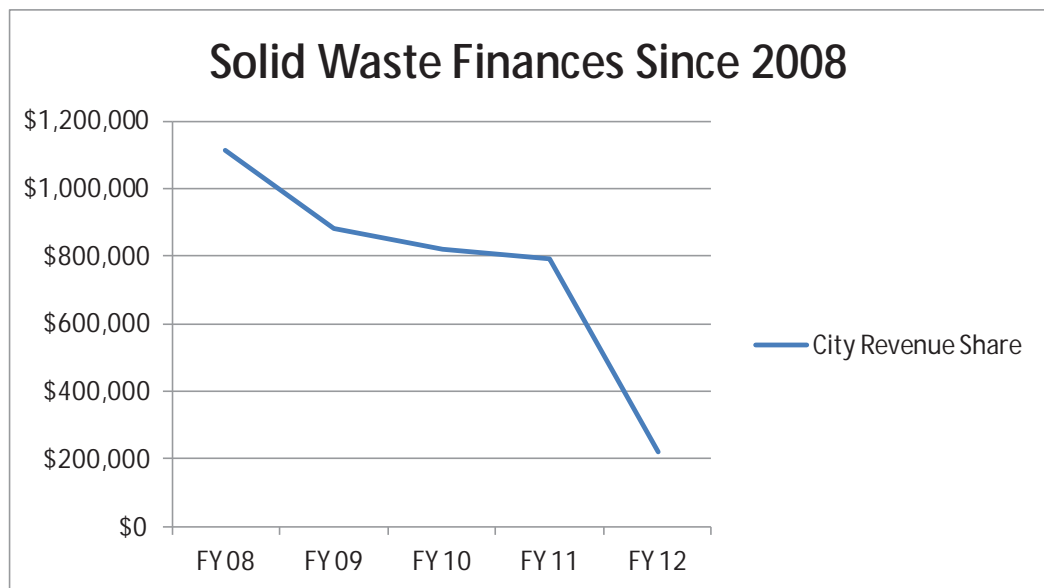
The term of the agreement remains the same, i.e. through July 31, 2020.

**POLICY**

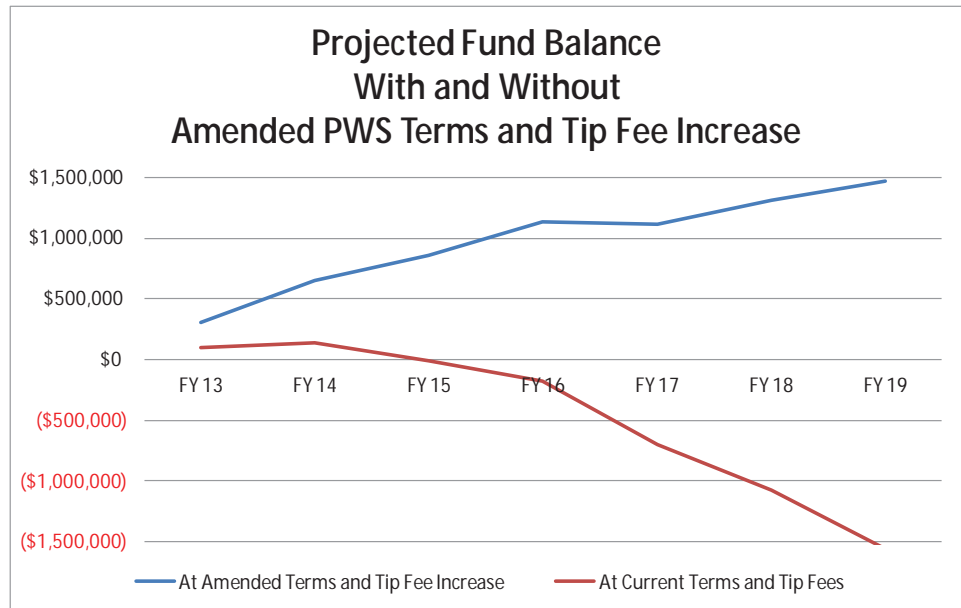
**REFERENCE:** Economic Strategy; 2009 Landfill Master Plan; 2011 Solid Waste Franchise Contracts Financial and Operational Audit.

**FISCAL**

**IMPACT:** The City's share of tipping fees, after paying Pacific Waste Services and Integrated Waste Management Authority dues, has declined sharply since 2008.



Under current agreement terms and at current tipping fees, the City would receive no revenue from landfill operations beginning as early as Fiscal Year 2017 (by 2015 if recycling increases). Proposed Amendment No. 4 combined with the recommended tipping fee increase will ensure that the City will be able to meet its solid waste management costs.



The City's solid waste management costs include regulatory compliance, landfill maintenance, cell integrity, groundwater protection, methane gas collection and flaring, and funding of future landfill closure costs, among other responsibilities. Reallocating revenues as provided in Amendment No. 4 and increasing tipping fees are intended to cover the City's foreseeable solid waste program costs.

- OPTIONS:**
- a. Approve Resolution No. 13-xxx approving Amendment No. 4 to the Agreement with Pacific Waste Services for Operation of Solid Waste Landfill and authorize the City Manager to execute Amendment No. 4.
  - b. Amend, modify, or reject the above option.

\* \* \*

**ATTACHMENT:** Resolution No. 13-XXX

RESOLUTION NO. 13-xxx

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

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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 5<sup>th</sup> day of November, 2013, by the following vote:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

ATTEST:

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Duane Picanco, Mayor

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Caryn Jackson, Deputy City Clerk

**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 1<sup>st</sup> 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 1<sup>st</sup> 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:

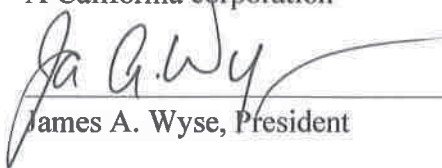
\_\_\_\_\_  
Dennis Fansler, City Clerk

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		
<b>Refuse - franchise or contract hauler</b>									
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	
<b>Residential self-haul, non-franchise, contracted commercial haulers</b>									
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	
<b>Tires</b>									
Auto/Pickup Tires <sup>1</sup>	\$ 2.50	each	\$ 3.00	\$ 3.00	\$ 3.00	\$ 3.25	\$ 3.25	each	
Commercial Truck Tires <sup>1</sup>	\$ 5.25	each	\$ 6.00	\$ 6.00	\$ 6.00	\$ 6.25	\$ 6.25	each	
Tractor Tires <sup>1</sup>	N/A		\$ 50.00	\$ 50.00	\$ 50.00	\$ 55.00	\$ 55.00	each	
<b>Bulky Items / Special Charge</b>									
Asphalt/Concrete suitable for road base (no wire, rebar, dirt, or trash) <sup>2</sup>	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						
<sup>1</sup> Tires on rims accepted at double the stated fee <sup>2</sup> 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	per yr City

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.