

Second Amendment to the Solid Waste and Recycling Franchise Agreement
Between the
Malaga County Water District
And
Industrial Waste and Salvage
For Solid Waste Collection,
Green Waste Collection,
Recycling Services
Effective August 1,2016

WHEREAS, Malaga County Water District, (“District”) and Orange Avenue Disposal Company, a California Corporation, dba Industrial Waste and Salvage (the “Contractor”) or (the “Parties”) entered into a Franchise Agreement for solid waste collection, green waste collection, and recycling services on or about the 23rd day of August, 2016 with an effective date of August 1, 2016, (the “Agreement”); and

WHEREAS, Section 13.5 of the Agreement allows the Agreement to modified or amended of the Agreement provided that the Amendment is in writing and signed by the Parties; and

WHEREAS, the Franchise Agreement contains a provision at section 7.3 for an annual rate increase, effective August 1 of each year, based on the California consumer price index (“CPI”) change as measured year over year based on the published June CPI; and

WHEREAS, in January 2018, the United States Bureau of Labor Statistics made certain changes to the way the CPI is calculated resulting in a change of reporting dates of the California CPI by the California Department of Industrial Relations; and

WHEREAS, as a result of the changed reporting dates, the California CPI for June each year will not be available until mid-August of each year; therefore section 7.3 of the Franchise Agreement needs to be amended to reflect that the annual CPI adjustment will be based on the published April CPI year over year which will be published in mid-June each year and a corresponding change in the method the 2018 rate year CPI adjustment to account for the change in index months; and

WHEREAS, the Parties desires to amend section 7.3 of the Franchise Agreement as set forth below.

NOW, THEREFORE, THE PARTIES AGREE as follows:

1. That the foregoing recitals are true and correct and are incorporated by this reference herein as though fully set forth at this point.

2. The Agreement be amended by amending Section 7.3 of the Agreement as follows:

“7.3 Annual Rate Adjustment

An annual rate adjustment will be made each year starting on the 1st anniversary of the agreement and shall be conducted strictly in accordance with the following formula. For each succeeding year, beginning with the Rate Year beginning August 1, 2017, the rates set forth in the Service Rates shall be calculated by multiplying the prior year's rate by one (1) plus one hundred percent (100%) of the percentage change in the “California Consumer Price all urban consumers (1982-1984 =100) as published by the California Office of Policy, Research, and Legislation” (or some other mutually agreed-upon index, if phased out), between the index value published the previous June and the corresponding index published twelve (12) months earlier. Due to a change in the reporting dates in 2018, the CPI adjustment for the rate year beginning August 1, 2018, the CPI will be based on the change in index value from June 2017 (262.286) to April 2018 (271.21) resulting in a 3.4% CPI rate adjustment. Subsequent rate years CPI rate adjustment will be based on the year to year change of the April published index value.

In no event shall Contractor be entitled to a CPI rate increase which exceeds ten percent (10%). If the CPI exceeds ten percent (10%) inflation for a given annual period, Contractor may request a commensurate rate adjustment if and only if Contractor submits cost information demonstrating that its variable costs subject to CPI adjustment have increased more than ten percent (10%). The District may consider such a request based on the information submitted by Contractor or, at its option, may require an audit of financial data relevant to Contractor's request. If the District elects to have an audit performed, the auditor shall be selected by mutual agreement of the parties, and the Contractor shall pay the cost of the audit. If the audit confirms that Contractor's CPI-variable costs have increased ten percent (10%) or more, District shall consider a greater rate adjustment commensurate with the actual increase in such costs, up to but not to exceed the CPI inflation rate, and provided the rate increase may be implemented consistent with applicable law. If the audit reveals that such costs have increased less than ten percent (10%), District shall consider granting a rate adjustment commensurate only with the actual increase in CPI-variable costs. Conversely, if CPI deflation exceeds ten percent (10%) for a given annual period, Contractor may demonstrate to District that its variable costs have deflated less than ten percent (10%), in which case the rate adjustment, if approved, shall be commensurate with the actual deflation in that portion of the Contractor's costs. In the event that Contractor is granted a CPI rate increase that exceeds ten percent (10%), then said rate increase maybe subject to and not effective until the District complies with the requirements of Article 13D of the California Constitution more commonly referred to as Proposition 218. If Contractor requests a CPI rate increase in excess of ten percent (10%), then Contractor will pay the District's costs including, but not limited to, the preparation and mailing of Proposition 218 Notices.”

3. Effective Date.

The Effective Date of this Second Amendment to the Agreement shall be July 24, 2018.

4. Counterparts.

This Second Amendment to the Agreement may be executed in counterparts, each of which shall be considered an original.

5. Authority.

Authority to Execute. The signatories to this Amendment No. 1 represent that they have the proper Authority to execute this Agreement on behalf of the Party they represent.

IN WHITNESS WHEREOF, the Parties have executed this Second Amendment to the Solid Waste and Recycling Franchise Agreement between the Malaga County Water District and Industrial Waste and Salvage for Solid Waste Collection, Green Waste Collection, and Recycling Services.

DISTRICT:

MALAGA COUNTY WATER DISTRICT

CONTRACTOR:

ORANGE AVENUE DISPOSAL
DBA: INDUSTRIAL WASTE AND
SALVAGE

By _____
Charles Garabedian, Jr. President
Board of Directors of the
Malaga County Water District

By _____
(Name and Title)

APPROVED AS TO FORM:

Neal E. Costanzo, Legal Counsel