

First 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") the "Parties") entered into a Franchise Agreement for solid waste collection, green waste collection, and recycling services on or about the 23<sup>rd</sup> 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**, Section 4.1(C) of the Agreement permits the Parties to negotiate an Amendment to the Agreement for the Contractor to provide industrial or Commercial solid waste collection within the boundaries of the District. Should the District elect to contract for such services; and

**WHEREAS**, the District has determined that it has in the best interests of the Malaga Community that Commercial and Industrial Roll-Off solid waste collection services be provided through an exclusive Franchise Agreement by a single hauler to: provide for a for the consolidation of solid waste, sewer, and water billing; to insure uniform service levels for solid waste collection throughout the District; to insure uniform rates for service throughout the District's boundaries; and insure that solid waste collected in the District is disposed of in a manner that complies with all diversion, recycling, and environmental regulations; and

**WHEREAS**, District desires to amend the Agreement and Contract with Contractor for Contractor to be the District's exclusive provider for roll-off solid waste collection and disposal provider.

**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 to add Section 1.69 to the Agreement as follows:

**“1.69 Roll-Off/Roll-Off Service**

“Roll-Off” or “Roll-Off Service” or “R/O” means industrial, commercial, or temporary debris, including construction debris, solid waste collection and disposal utilizing large open containers, Drop Box or Bin, Debris Box or Bin, Compactor or dumpsters with volume equal to or greater than ten cubic yards which are delivered to an industrial or commercial premises, or construction or project site, by the Contractor, which Contractor collects refuse from on demand, or pursuant to a schedule with the Customer.”

3. The Agreement is hereby amended by amending Section 1.61 to read as follows:

**“1.61 Solid Waste**

“Solid Waste” shall have the same meaning as Public Resources Code §40191 as it is now or as it may be amended.”

4. The Agreement is hereby amended by adding Section 1.70 as follows:

**“1.70 Pull**

“Pull” means the collection of solid waste from a Roll-Off Container or compactor as requested or scheduled by a Customer.”

5. The Agreement is hereby amended to add Section 1.71 to read as follows:

**“1.71 Tipping Fee**

“Tipping Fee” means a fee paid for the disposal of solid waste which may also be referred to as a “Disposal Fee.”

6. The Agreement is hereby amended to add Section 1.72 to read as follows:

**“1.72 Container Rental/Container Rental Fee/Rental Fee**

“Container Rental” or “Container Rental Fee” or “Rental Fee” means a fee paid for the rental of a roll-off container, compactor, or other container.”

7. Section 4.1 (C) of the Agreement is hereby amended to read as follows:

Article 4 Section 4.1 ...“C. Commercial, Industrial, Multi-Family Residential and Commercial and Industrial Roll-Off collection and disposal.

Commercial and Industrial collection within the District includes Residential Customers who are operating a commercial/industrial enterprise or Multi-Family

Residential complex on their property in and consistent with applicable uses permitted within the zoning designation for the property and commercial and industrial roll-off container collection disposal. For Residential Customers operating an commercial/industrial enterprise or multi-family enterprise as described above if the solid waste produced by these commercial/industrial uses constitutes an Overage, Contractor may request that the District bill the Customer in accordance with the billing procedure set forth in Article 5 or Exhibit 1 of this Agreement. For Industrial and Commercial Customers within the District who request, utilize, or require roll-off collection and disposal services, including solid waste generated from industrial compactors, Contractor shall be the exclusive provider of such Roll-Off Services for the District within the District's boundaries. Roll-Off Service is further described in Section 4.1(E)."

8. Section 4.1(E) is hereby amended to read as follows:

Article 4 Section 4.1 "...E. Roll-Off Service /Temporary bins.

Contractor shall be the exclusive provider of Roll-Off Service for Industrial and Commercial Users within the District and, with the exclusion of certain construction and demolition debris as set forth in Section 6.2(F), the exclusive provider of temporary bins/roll-off service for the purpose of collection and disposal of non-hazardous solid waste. Contractor shall deliver and collect at the direction of the Customer. Bins shall be free of graffiti and in good repair. Contractor may charge rent on said bins, a Pull Fee for collection of solid waste a Delivery Fee for said bins, and a Tipping Fee for the disposal of solid waste collected from those bins in an amount set by the District in accordance with rate adopted by the District in accordance with Article 7 of this Agreement and Article 13(D) of the California Constitution (Proposition 218). Bins must be clearly marked and identifiable as belonging to Contractor. Special consideration shall be given when determining the pickup area for temporary bins/roll-offs service accounts to insure that the flow of traffic is not impeded, it does not result in aesthetic degradation of the area or it in violation of any District Ordinance or County Ordinance relating to the placement of such containers. The designated pickup area, if disputed by Customer or Contractor, shall be determined by the District. Additionally, if in District's opinion the location of an existing area is inappropriate, District may require Customer or Contractor to relocate the pickup area. Contractor and Customer will determine the appropriate container size and frequency of pulls. Roll-Off Service includes the collection and disposal of solid waste from a compactor owned by Customer or from someone other than Contractor." Contractor shall coordinate transition of service with each Customer to avoid any interruption in service including, but not limited to, the assumption, acquisition, or termination of any existing compactor lease and/or the lease or sale of a compactor to any Customer who has or requires a compactor as deemed necessary by the Contractor unless such accommodation cannot be made or will result in the Customer being liable for termination fees or other costs in which case, Customer may continue to lease

compactor from another provider for the unexpired term of that lease. Nothing in this Section or this Agreement will prevent any Customer of the District from acquiring and owning its own compactors or Drop Box.

9. Section 4.2(C) of the Agreement is hereby amended to read as follows:

Article 4 Section 4.2... "C. Commercial/Industrial Recycling.

Contractor shall develop for the District's approval a program to strongly encourage Commercial/Industrial Recycling for all Customers within the District's boundary served by Contractor which conforms to any and all state or local diversion or recycling requirements. District shall promptly notify Contractor of its approval or disapproval of such program. In the event the District does not approve such program, District shall provide a written explanation of the reasons for its failure to approve such program. Contractor shall collect and process recyclables from all Commercial/Industrial Customers served by Contractor as scheduled by and between the Customer and Contractor."

10. The Title of Section 5.1(A) is hereby amended from "Customer List" to "Residential Customer List."

11. Section 5.1(B) of the Agreement is hereby amended to read as follows:

Article 5 Section 5.1 "...B. Non-Residential Billing.

District shall perform the billing and collection for service all Non-Residential Customers within the District Boundaries receiving services including, but not limited to, Roll-Off and Temporary and Bulky Item Service, subject to this Agreement. Said billings shall be based upon information provided to District from Contractor on or before the fifteenth (15<sup>th</sup>) day of each month for services provided the prior month as set forth in Section 6.4(B). After the District has made a good-faith effort to collect amounts due from a Non-Residential Customer, if the bill remains unpaid, the Contractor shall suspend collection service after written notice/authorization from/by the District. Further collection action shall be taken, as the District sees fit, including, but not limited to, the imposition of a lien on the Customer's real property pursuant to Water Code Section 31700 et. seq. or other applicable statute. Any funds collected from a delinquent Customer by the District less the District's costs of collection, including all costs relating to the imposition of the lien, and any amounts owing to the District under this Agreement shall be surrendered by the District to the Contractor or credited to the Contractor's account against any sums owed by the Contractor to the District."

12. The Title of Section 5.1(C) of the Agreement is hereby amended from "Residential customers" to read "Residential Customer Billing."

13. Section 5.1(D) of this Agreement is hereby amended to read as follows:

Article 5 Section 5.2... "D. Temporary Service/Front Load/Bulky Items

Whenever a Customer requests, on a temporary basis, Roll-Off, Front Load bin, or Bulky Item collection and disposal service Contractor shall be the exclusive provider for the services within the District's boundaries. Billing for such services shall be in the same manner as Commercial/Industrial Roll-Off Service."

14. The Agreement is hereby amended to add Section 5.1(F) to read as follows:

"Article 5 Section 5.2... "F. Service Rates-Roll-Off Service.

Serve Rate for Roll-Off Services provided pursuant to this Agreement amended by Amendment No.1 effective November 19, 2017, shall be adopted by Resolution of the Board of Directors of the District pursuant to applicable law including, but not limited to, Article 13 D of the California Constitution (Proposition 218). The service rates are discussed in more particularity in Article 7 of this Agreement."

15. Section 6.3 of the Agreement is hereby amended to read as follows:

Article 6... "**6.3 Administrative / Franchise Fee**

A. Residential Service. There will be no Franchise Fee for Residential Service associated with this Franchise Agreement, However, the District will add an Administration Fee to cover the costs of billing and other Administrative expenses related to this Agreement. The Administrative Fee amount will be determined by the District and added to the Service Rates and will be billed together with the Service Rates. The District will deduct the Administrative Fee collected and pay to Contractor the Service Rate. The amount of the Administrative Fee will be adjusted for inflation in the same manner as the Service Rate described in Section 7.3.

B. Commercial/Industrial Roll-Off Franchise Fee.

There will be a ten percent (10%) percent Franchise Fee added to the Service Rates for Industrial/Commercial Roll-Off services Pull-Fee and Tipping Fee. There will be no Franchise Fee added to the delivery fee or the bin/container rental fee. The ten percent (10%) Franchise Fee will be included in the initial Service Rates and any adjustments to those rates due to inflation as described in Section 7.3."

The initial rates for Roll-Off Service including, where applicable, the Franchise Fee, for Roll-Off Service pursuant to this Amendment No.1 are attached to this Amendment No. 1 incorporated by this reference herein as Exhibit No.1.

16. Section 6.4 of the Agreement is hereby amended to read as follows:

Article 6... "6.4 Time and Method of Payment

A. Residential

District shall calculate the amount due Contractor for Residential Service based on the number of accounts to which service is provided times the applicable rate for each Customer and will include adjustments for service suspended or terminated within each billing month. The amount paid to the Contractor will not include the Administrative/Franchise Fee as set forth in Section 6.3.

To determine the number of Customers, District will provide Contractor with a list of Customers, via email, on Wednesday of each week, for the following week's service. The list will include all accounts suspended or terminated so that Contractor may collect the solid waste and then pick-up the containers. Contractor will not be paid for those Customers whose service is suspended or terminated for subsequent pick-ups unless and until District informs Contractor that service that Customers address is to be resumed.

For additional charges, such as overages, additional Container, additional pick-ups, or pick-up or delivering of Containers for service which has been terminated or suspended and then resumed, Contractor will provide District with an invoice for said charges by the fifteenth (15<sup>th</sup>) day of each month for the prior month so that those charges may be included on the District's Water, Sewer, and Solid Waste bills. The District will include those charges, as collected, to Contractor within sixty (60) days after District has billed its Customers.

B. Roll-Off Service.

By the fifteenth (15<sup>th</sup>) day of each month Contractor will provide District with all data necessary for the District to bill Customers for the prior month's service including, but not limited to, Customers served, number of days to be charged rent, number of Pulls, units, (tons) of Tipping Fee and delivery fees to be charged. Contractor and District will coordinate to determine what data, and in what format the data will be received, is necessary for the District to properly bill Customers for services rendered by Contractor. District will use the data provided by Contractor to calculate the amount each Customer is to be billed based on the applicable Service Rates including the Franchise Fee as set forth in Section 6.3(B) and will bill for said services to be included on the District's Customers regular monthly Water and Sewer bills. District will then remit to Contractor,

within sixty (60) days of mailing its bills for services provided, payments for Roll-Off Services provided by Contractor minus the Franchise Fee as set forth in Section 6.3(B), as collected, to Contractor.”

17. The Agreement is hereby amended to add Section 8.6 to read as follows:

**Article 8... “8.6 Compliance Reporting**

Throughout the term of this Agreement, Contractor will prepare and submit any and all reports necessary for Compliance with the Act, AB939, AB34, and/or AB1826 or any other Federal, State, or Local Act requiring the District to prepare and submit such reports on behalf of the District.

18. Effective Date.

The Effective Date of this Amendment No. 1 shall be November 19, 2017.

19. Counterparts.

This Amendment No. 1 may be executed in counterparts, each of which shall be considered an original.

20. 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 First 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

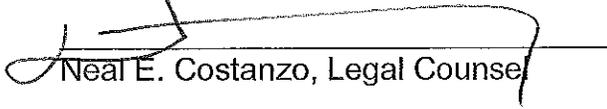
By   
Charles Garabedian, Jr. President  
Board of Directors of the  
Malaga County Water District

**CONTRACTOR:**

ORANGE AVENUE DISPOSAL  
DBA: INDUSTRIAL WASTE AND  
SALVAGE

By  Corp. Dev.  
(Name and Title)

APPROVED AS TO FORM:

  
Neal E. Costanzo, Legal Counsel