

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

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**SOLID WASTE AND RECYCLING FRANCHISE AGREEMENT  
FOR SOLID WASTE COLLECTION, GREEN WASTE  
COLLECTION, AND RECYCLING SERVICES**

**RECITALS**

This Agreement ("Agreement") is made and entered into as of the 23<sup>rd</sup> day of August, 2016, by and between the Malaga County Water District (the "District"), a County Water District duly formed and existing pursuant to California Water Code Section 3000 et. seq. and Orange Avenue Disposal Company, a California Corporation DBA Industrial Waste and Salvage (the "Contractor"), the ("Parties") for Solid Waste Collection, Recyclable Materials Collection, Green Waste Collection, Recyclable Materials processing, and Green Waste processing services.

**WHEREAS**, District is a County Water District duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California and the Malaga Ordinance Code; and

**WHEREAS**, the Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989 (AB 939), has declared that it is within the public interest to authorize and require local agencies to make adequate provisions for solid waste handling within their jurisdictions; and

**WHEREAS**, pursuant to California Public Resources Code Section 40059(a)(1) and (2), the District has determined that public health, safety, and well being require that an exclusive franchise be awarded to a qualified contractor for the collection, transfer, transportation, recycling, processing and disposal of solid waste collected in the District and other services related to other requirements of the California Integrated Waste Management Act; and

**WHEREAS**, the Board of Directors declares its intention of maintaining reasonable rates and high quality service for the collection, transfer and/or transportation, recycling, processing and disposal of solid waste and other related services; and

**WHEREAS**, the District's current solid waste agreement with Contractor expired on May 31, 2016; and

**WHEREAS**, District conducted a public bid for solid waste, green waste, and recycling collection and disposal as required by Water Code §31140; and

**WHEREAS**, District received bids for solid waste, green waste, and recycling collection and disposal services and conducted a Public Hearing in accordance with

applicable statutes and selected Contractor's bid as the preferred bid and entered into negotiations with Contractor for a new Solid Waste and Recycling Franchise Agreement; and

**WHEREAS**, Contractor agrees to and acknowledges that it shall arrange for the proper disposal of all solid waste and the processing of recyclable materials included in said solid waste collected within the District pursuant to this Agreement, in accordance with all applicable laws, statutes and regulations and the District is not directing Contractor on how to collect, process or dispose of these solid wastes; and

**WHEREAS**, this Agreement has been developed by the parties.

**NOW, THEREFORE**, the parties agree as follow:

## **ARTICLE 1**

### **DEFINITIONS**

#### **1.1 AB 939**

"AB 939" means the California Integrated Waste Management Act of 1989 (California Public Resources Code Section 40000, et seq.) as it may be amended from time to time.

#### **1.2 Agreement**

"Agreement" means this Exclusive Franchise Agreement between District and Contractor for Collection, transportation, Recycling, processing and Disposal of Refuse, Recyclables Materials and Yard Waste, Organic Waste and other services related to meeting the goal and requirements of AB 939, including all exhibits and attachments, and any amendments thereto.

#### **1.3 Billings**

"Billings" means any and all statements of charges for services rendered, howsoever made, described or designated by District or Contractor, or others for District or Contractor, to owners or occupants of property, including Residential Property and Commercial and Industrial Property, served by Contractor for the Collection of Solid Waste.

#### **1.4 Bulky Waste**

"Bulky Waste" means, but is not limited to, discarded materials, such as large and small household appliances (including the removal of refrigerants), furniture, carpets, mattresses, white goods (i.e., discarded enameled household appliances), brown goods (i.e., discarded electronic equipment), clothing, tires, and oversized yard waste, such as tree trunks and large branches, and similar large items produced as refuse, excluding Construction and Demolition Debris.

### **1.5 California Integrated Waste Management Act**

"California Integrated Waste Management Act" means Public Resources Code, Section 40000, et seq.

### **1.6 CIWMB**

"CIWMB" means California Integrated Waste Management Board the State of California governing board that sets the State waste and recycling regulations.

### **1.7 Change in Law**

"Change in Law" means any of the following occurring after the effective date of this Agreement: (1) the adoption, promulgation, or modification or change in the interpretation of any federal, state, or local rule, law, regulation, ordinance, or administrative agency guidelines promulgated officially in writing for uniform application, and (2) the failure or refusal of any federal, state or local agency to issue, modify or renew a permit necessary to the performance of any obligation under this Agreement, if such failure or refusal is the result of a Change in Law described in clause (1) above occurring after the Effective Date of this Agreement; and in the case of each of (1) and (2), to the extent that the effect of such Change in Law could not be reasonably predicted or provided for and such Change in Law has a material adverse effect on the rights or obligations of any party to this Agreement. Notwithstanding the foregoing, Change in Law does not include any (1) change in laws, regulations, or ordinances, or (2) the suspension, termination, interruption or failure to provide or renew any permit, license, consent, authorization or approval relating to: (a) the taxation of income of Contractor, or (b) the failure of Contractor to comply with any legal requirement. Notwithstanding other provisions of this definition, Change in Law shall not include such changes enacted or adopted prior to the Effective Date but which take effect after the Effective Date.

### **1.08 Collect/Collection**

"Collect" and/or "Collection" means to take physical possession, transport, and remove Solid Waste within and from District.

### **1.09 Commercial and Industrial Premises**

"Commercial and Industrial Premises" means property upon which business activity is conducted including, but not limited to, retail sales, wholesale operations, manufacturing and industrial operations, but excluding business conducted upon Residential Premises which is permitted under applicable zoning regulations and is not the primary use of the property.

### **1.10 Commercially Generated Recyclable Materials**

"Commercially Generated Recyclable Materials" means Recyclable materials generated at Commercial and/or Industrial Property and separated by the Waste Generator for Collection in a manner different from Garbage or Refuse.

**1.11 Compactor**

"Compactor" means a mechanical apparatus that compresses Solid Waste.

**1.12 Contractor**

"Contractor" means Orange Avenue Disposal, Inc., a California Corporation, DBA Industrial Waste and Disposal or its successors or assigns.

**1.13 Contractor Compensation**

"Contractor Compensation" means the revenue received by Contractor from District in return for providing services in accordance with this Agreement and any amendments to this Agreement.

**1.14 Construction/Demolition Debris**

"Construction/Demolition Debris" means used or discarded construction materials removed from a Premises during the construction, renovation, or razing of a structure.

**1.15 Containers**

"Containers" means any and all types of Solid Waste receptacles.

**1.16 Debris Box**

"Debris Box" means a container for the placement of large volumes of Solid Waste that may or may not have a Compactor attached and may also be known as a "drop box" or "roll-off box."

**1.17 Delivery**

"Delivery" of Solid Waste or Recyclable Materials by a Waste Generator shall be deemed to occur when Solid Waste or Recyclable Materials are deposited in a receptacle or at a location that is designated for collection pursuant to the Malaga Ordinance Code.

**1.18 Designated Waste**

"Designated Waste" means non-hazardous waste which may pose special disposal problems because of its potential to contaminate the environment and which may be disposed of only in Class II disposal sites, or Class III disposal sites pursuant to a variance issued by the Cal EPA, Department of Toxic Substances Control. Designated Waste consists of those substances classified as designated waste by the State or California, in Title 23, California Code of Regulations, Section 2522.

**1.19 Disposal**

"Disposal" means the final disposition of Solid Waste collected by the Contractor at a Landfill or other facility approved by the District.

**1.20 Disposal Site(s)**

"Disposal Site(s)" means the Solid Waste facility or facilities approved by the District for the ultimate disposal (by Contractor) of Solid Waste collected by the Contractor.

**1.21 District**

"District" means the Malaga County Water District, a County Water District duly formed and existing pursuant to §30000 et. seq. of the California Water Code.

**1.22 District General Manager**

"District General Manager" or "General Manager" means the General Manager of the Malaga County Water District.

**1.23 Drop Box**

"Drop Box" means a container for the placement of large volumes of Solid Waste that may or may not have a Compactor attached and may also be known as a "debris box" or "roll-off box."

**1.24 Effective Date**

"Effective Date" means August 1, 2016.

**1.25 Facility**

"Facility" means any plant or site, owned or leased and maintained, operated or used by Contractor for purposes of performing under this Agreement.

**1.26 Fiscal Year**

"Fiscal Year" means the period commencing January 1 of one year and concluding December 31 of that same year for Contractor. For District, it means the period commencing July 1 of one year and concluding June 30 of the subsequent year.

**1.27 Force Majeure**

"Force Majeure" means any acts of God, such as landslides, lightning, fires, storms, floods, pestilence, freezing, and earthquakes; explosions, sabotage, civil disturbances, acts of a public enemy, wars, blockades, riots, eminent domain, condemnation or other taking, or other events of a similar nature, not caused or maintained by the District or Contractor, which event is not reasonably within the control of the party claiming the excuse from its obligations due to such event, to the extent such event has a material adverse effect on the ability of a party to perform its obligations thereunder. Force Majeure shall include a Change in Law if such Change in Law substantially affects a party's performance hereunder. Notwithstanding the foregoing, (i) no event relating to the Primary Disposal Facility or the delivery of Solid Waste and/or other materials to that Facility shall constitute a Force Majeure under this Agreement unless (and then only to the extent) that such event prevents the delivery of Solid Waste to that Facility; (ii) no failure of performance by any subcontractor of the Contractor shall be a Force Majeure unless such failure was itself caused by a Force Majeure; (iii) no event which merely increases Contractor's cost of performance shall be a Force Majeure if such increased cost is eligible for recovery through Special Interim Rate Review and recovering the increased cost is approved by District; and (iv) no event, the effects of which could have

been prevented by reasonable precautions, including compliance with agreements and applicable laws, shall be a Force Majeure.

### **1.28 Franchise**

"Franchise" means the special right granted by District to operate a public utility for Solid Waste services within the District.

### **1.29 Franchise Fee**

"Franchise Fee" means the fee paid by Contractor to District for the right to hold the Franchise for Solid Waste services granted by this Agreement.

### **1.30 Full Regulatory Compliance**

"Full Regulatory Compliance" means compliance with all applicable permits for any facility utilized by Contractor, such that the Contractor will at all times maintain the ability to fully comply with its obligations under this Agreement.

### **1.31 Garbage**

"Garbage" means putrescible animal, fish, food, fowl, fruit or vegetable matter (excluding green waste), or any portion thereof, resulting from the preparation, storage, handling or consumption of such substances.

### **1.32 Green Waste**

"Green Waste" means untreated and unpainted wood, prunings, brush, leaves, or grass clippings, Christmas trees and such other types of Waste that may be specified by District in its reasonable discretion for collection and processing.

### **1.33 Gross Revenues**

"Gross Revenues" means any and all revenue including Recyclable Materials sales revenue or compensation in any form of Contractor or subsidiaries, parent companies or other affiliates of Contractor, for the Collection and transportation of Solid Waste pursuant to this Agreement, in accordance with Generally Accepted Accounting Principles, including, but not limited to, monthly customer fees for Collection of Solid Waste, without subtracting Franchise Fees or any other cost of doing business.

### **1.34 Hazardous Waste**

"Hazardous Waste" means all substances defined as Hazardous Waste, acutely Hazardous Waste, or extremely Hazardous Waste by the State of California in Health and Safety Code Sections 25110.02, 25114, and 25117 or in future amendments to or recodifications of such statutes, or identified and listed as Hazardous Waste by the U.S. Environmental Protection Agency, pursuant to the Federal Resource Conservation and Recovery Act (42 USC Section 6901, et seq.), and all future amendments thereto.

**1.35 Household Hazardous Waste (HHW)**

"Household Hazardous Waste" means Hazardous Waste generated at residential Premises within the District and delivered by the Owner or occupant of such Premises to a drop-off site, to be specified by the District.

**1.36 Industrial and Commercial Property**

See Section 1.9 hereof.

**1.37 Infectious Waste**

"Infectious Waste" means biomedical Waste generated at hospitals, public or private medical clinics, dental offices, research laboratories, pharmaceutical industries, blood banks, mortuaries, veterinary facilities and other similar establishments which are identified in Health and Safety Code Section 25117.5.

**1.38 Landfill**

"Landfill" means the American Avenue Landfill in Fresno County or such other landfill site approved by Contractor and District.

**1.39 Legislation**

"Legislation" means any code, ordinance, resolution, or any other formal enactment of the governing body of District, which now exists or which may hereafter be adopted, which constitutes law or regulation governing the operation of the Contractor.

**1.40 Malaga Code**

"Malaga Code" means the Ordinance Code of the Malaga County Water District.

**1.41 Material Recovery Facility**

"Material Recovery Facility" (MRF) means any plant or site used for the purpose of sorting, cleansing, treating or reconstituting Recyclable Materials and returning them to the economy.

**1.42 Multi-Family Residential Premises**

"Multi-Family Residential Premises" means a complex of three or more dwelling units, the residents of which place their Solid Waste in a container or containers of at least one (1) cubic yard capacity, with a lid, that is serviced by a truck with a hydraulic lifting device as of the Effective Date of this Agreement.

**1.43 Organic Materials**

"Organic Materials" means those discarded materials that will decompose and/or putrefy and that the District and/or State regulators require to be separated from Solid Waste and Recyclable Material.

**1.44 Overage**

"Overage" means an amount of Solid Waste in excess of the capacity of the Solid Waste containers for which a Solid Waste customer has subscribed, and set out by single-family dwelling Solid Waste customers in accordance with requirements for the collection of Overages.

**1.45 Owner**

"Owner" means the Person holding the legal title to the real property constituting the Premises to which Solid Waste Collection service is to be provided under this Agreement or the person holding legal title to the Disposal Site.

**1.46 Person**

"Person" means any individual, firm, association, organization, partnership, corporation, business trust, joint venture, the United States, the State of California, the County of Fresno, towns, cities, and special purpose districts.

**1.47 Premises**

"Premises" means any land or building in the District where Solid Waste is generated or accumulated.

**1.48 Processing Facility**

"Processing Facility" means a permitted Facility where Green Waste is sorted, mulched or separated for the purpose of Recycling, reuse or composting.

**1.49 Processing Residue**

"Processing Residue" means materials remaining after the processing of Recyclables and/or Green Waste, which cannot be recycled, composted, marketed, or otherwise utilized.

**1.50 Rate Year**

"Rate Year" means the twelve (12)-month period, commencing August 1, of one year and concluding July 31 of the subsequent year, for which Contractor Compensation is calculated.

**1.51 Recyclable**

"Recyclable" means a material which can be processed into a form suitable for reuse through reprocessing or re-manufacture consistent with the requirements of the California Integrated Waste Management Act.

**1.52 Recyclable Materials**

"Recyclable Materials" means domestic, commercial or industrial by-products of economic value separated, set aside, handled, packaged or offered for collection by the Waste Generator in a manner different from Solid Waste and specifically includes, but is not limited to, glass, paper, plastic, metal and Green Waste.

### **1.53 Recycled**

"Recycled" means the act of having processed Recyclable Materials into a form suitable for reuse and having marketed those processed materials for use consistent with the requirements of the California Integrated Waste Management Act for Recycled materials. The act of marketing does not require that revenue is generated from the processed materials.

### **1.54 Recycling**

"Recycling" means the process of collecting, sorting, cleansing, treating and reconstituting Recyclable Materials which might otherwise be disposed of in a Landfill and returning them to the economy in the form of raw materials for new, reused or reconstituted products. The collection, transportation or disposal of Solid Waste not intended for, or capable of, reuse is not Recycling.

### **1.55 Refuse**

"Refuse" includes both Garbage and Rubbish and means putrescible and non-putrescible Solid Waste or debris, except sewage, whether combustible or non-combustible.

### **1.56 Residential Premises**

"Residential Premises" means property used for residential purposes, irrespective of whether such dwelling units are rental units or are owner-occupied. Multi-family units with three or more units are considered commercial and will be serviced and billed directly by the contractor.

### **1.57 Residual**

"Residual" means any Solid Waste remaining after the processing of Recyclable Materials which is to be disposed of by Contractor.

### **1.58 Rubbish**

"Rubbish" means all waste wood, wood products, printed materials, paper, pasteboard, rags, straw, used and discarded clothing, packaging materials, ashes, floor sweepings, glass, and other Waste materials not included in the definition of Garbage, Designated Waste, Hazardous Waste, Green Waste, or Recyclable Materials.

### **1.59 Service Rate**

"Service Rate" means the rates for services provided by Contractor to be collected and paid by District pursuant to this Agreement as set forth in Article 7 of this Agreement and Exhibit 1 to this Agreement.

### **1.60 Single-Family Residence**

"Single-Family Residence" means a detached or attached residence designed or used for occupancy by one family, which may include a part of a condominium complex, or a townhouse complex, provided that such residence can be serviced feasibly as a single unit, based on historical Waste collection practices in the District.

### **1.61 Solid Waste**

"Solid Waste" means all putrescible and non-putrescible solid, semi-solid and liquid Waste accumulated or delivered for collection and disposal within the District and includes but is not limited to Garbage, Construction Debris, Demolition Debris, Organic Materials, Rubbish, and Bulky Waste. Solid Waste does not include Hazardous Waste or Household Hazardous Waste, Designated Waste, Infectious Waste, Recyclable Materials when recycled, sewage, or abandoned automobiles. Materials shall be deemed "solid waste" within the meaning of California Public Resources Code §40101, and for the purposes of this agreement shall be regarded by the District as such, whether or not they may potentially be recyclable, if the material is mixed or co-mingled with other types of solid waste.

### **1.62 Source Reduction Program**

"Source Reduction Program" means any program that reduces the amount of Refuse that would otherwise be disposed of in a landfill, including without limitation Recycling, processing, salvaging and waste-to-energy projects.

### **1.63 Source Separation**

"Source Separation" means the segregation into separate Containers by the Waste Generator of individual components of material which otherwise would become Refuse or Garbage, such as glass bottles, metal cans, newspapers, plastic containers, etc., for the sole purpose of Recycling, to be picked up by Contractor.

### **1.64 State**

"State" means State of California.

### **1.65 Term**

"Term" means the term of this Agreement, as provided for herein.

### **1.66 Transfer Station**

"Transfer Station" means the site/location where collection vehicles authorized/owned by Contractor consolidate or reload/unload for purposes of effecting transfer of initially Collected Solid Waste to effect more efficient and/or economical disposal at a final location other than the Transfer Station.

### **1.67 Waste**

"Waste" means the useless, unused, unwanted, or discarded material resulting from normal community activities, or materials which by their presence may injuriously affect the health, safety and comfort of persons and depreciated property values in the vicinity thereof.

### **1.68 Waste Generator**

"Waste Generator" means the owner or occupant of premises, including businesses, which initially produce Solid Waste.

## ARTICLE 2

### REPRESENTATIONS AND WARRANTIES OF CONTRACTOR

#### 2.1 Corporate Status

Contractor is a corporation duly organized, validly existing and in good standing under the laws of the State of California. It is qualified to transact business in the State of California and has the corporate power to own its properties and to carry on its business as now owned and operated and as required by this Agreement.

#### 2.2 Corporate Authorization

Contractor has the authority to enter into and perform its obligations under this Agreement. The Board of Directors of Contractor (or the shareholders, if necessary) have taken all actions required by law, its articles of incorporation, its bylaws or otherwise to authorize the execution of this Agreement. The person(s) signing this Agreement on behalf of Contractor have authority to do so.

#### 2.3 Agreement Duly Executed

The person(s) signing this Agreement on behalf of Contractor have been authorized by Contractor to do so, and this Agreement has been duly executed and delivered by Contractor in accordance with the authorization of its Board of Directors or shareholders, if necessary, and enforceable against Contractor in accordance with its terms.

#### 2.4 No Conflict with Applicable Law or Other Documents

Neither the execution and delivery by Contractor of this Agreement nor the performance by Contractor of its obligations hereunder:

A. conflicts with, violates or will result in a breach or default under any term or condition of any existing judgment, order or decree of any court, administrative agency or other governmental authority, or of any existing agreement or instrument to which Contractor is a party, or by which Contractor or any of Contractor's properties or assets is bound; or

B. will result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the properties or assets of Contractor which will interfere materially with Contractor's performance hereunder.

#### 2.5 No Litigation

There is no action, suit, proceeding or action at law or equity, or to the best of Contractor's knowledge, any investigation before or by any court or governmental entity, pending or threatened against Contractor or otherwise affecting Contractor, wherein an unfavorable decision, ruling or finding, in any single case or in the aggregate, would materially adversely affect Contractor's performance hereunder, or which, in any way, would adversely affect the validity or enforceability of this Agreement, or which would

have a material adverse effect on the financial condition of Contractor or its parent company.

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## ARTICLE 3

### TERM OF AGREEMENT

#### 3.1 Effective Date

The Effective Date of this Agreement shall be August 1, 2016 ("Effective Date");

#### 3.2 Term

The initial term of this Agreement shall be ten (10) years commencing August 1, 2016, through July 31, 2026. This Agreement will be automatically extended for five (5) years from August 1, 2026 through July 31, 2031 unless either party gives the other party notice of intent to not renew and terminate the Agreement effective August 1, 2026 on or before February 1, 2026. Thereafter, the Agreement may be extended for an additional five (5) years from August 1, 2031 through July 31, 2036, unless either party gives the other party Notice of Intent to Not Renew and Terminate the Agreement effective August 1, 2036, on or before February 1, 2031. This Agreement shall not be renewed for any additional period and shall terminate on August 1, 2036, unless terminated earlier.

Any such notice, properly given, shall serve to terminate the automatic five (5) year renewal and this Agreement shall remain in effect for the balance of the term then outstanding. In the event that either party exercises its right to terminate the automatic renewal provision under this paragraph, the parties may subsequently reinstate the automatic extension and renewal provision by mutual written agreement.

The foregoing notwithstanding, this Agreement remains terminable for cause in accordance with the procedures elsewhere provided herein.

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## ARTICLE 4

### WASTE COLLECTION AND RECYCLING SERVICES

#### 4.1 Solid Waste - General

The work to be done by Contractor pursuant to this Agreement shall include the furnishing of all labor, supervision, equipment, materials, supplies, and all other items necessary to perform the services required. The enumeration of, and specification of requirements for, particular items of labor or equipment shall not relieve Contractor of the duty to furnish all others, as may be required, whether enumerated or not. The work to be done by Contractor pursuant to this Agreement shall be accomplished in a thorough and professional manner so that the residents and businesses within the District are provided reliable, courteous and high-quality Solid Waste and Recyclable Collection at all times. The enumeration of, and specification of requirements for, particular aspects of service quality shall not relieve Contractor of the duty of accomplishing all other aspects in the manner provided in this section, whether such other aspects are enumerated elsewhere in the Agreement or not. In the performance of its duties pursuant to the provisions of this Agreement, Contractor shall apply with all applicable laws, including but not limited to the Malaga Code and regulations adopted by the General Manager or Board of Directors pursuant to State and Federal law. The provisions of the Malaga Code, as they exist on the Effective Date of this Agreement, shall be deemed to be a part of this Agreement as if set forth in full.

##### A. Residential Solid Waste Collection Services

Contractor shall collect and dispose of all solid waste generated at Single-Family Residences within the District from the Contractor-Provided 96 gallon Containers delivered for Collection by the Waste Generator at curbside or in an approved alley, not less than once per week. Standard Collection service shall be automated Collection unless another method is approved by the District. Smaller Containers may be requested and may be eligible for a discount. The size of the small Container and discount will be set forth in the Service Rates, Exhibit 1.

Special handling (walk in service) shall be provided to elderly or handicapped persons who have obtained certification from the District or Contractor that they are incapable of participating in the automated curbside/alley collection program. Customers may request special handling by contacting either the Contractor or the District. Such requests may be approved or certified by either the District or Contractor and such service shall not be denied unless the requests is deemed unreasonable by both the District and Contractor.

District and Contractor have established and maintain a regular collection schedule for solid waste, green waste and recyclable collection services with respect to single family residences within the District as follows:

**Collection Time & Day of Week**  
**Tuesday 6:00 a.m. - 6:00 p.m.**

Any modification to the foregoing schedule must be approved by the District. District may increase or expand the area covered by the solid waste contract due to new developments or annexations to the District. District will notify Contractor in writing of any such increase.

The Contractor may provide extra collection for Residential Premises at the customer's request to be paid by customer based on the applicable rate set forth in the Service Rates.

**B. Commercial, Industrial and Multi-Family Residential Collection Services**

Contractor shall Collect Solid Waste from Contractor-provided Solid Waste Containers and customer-provided Compactor Containers of a size and shape acceptable to Contractor, not less than once per week. Special consideration shall be given when determining the pickup area for Commercial, Industrial, and/or Multi-Family accounts to ensure that the flow of traffic is not impeded and that it does not result in aesthetic degradation of an area. The designated pick up area, if disputed by customer or Contractor, shall be determined by District. Additionally, if in the District's opinion the location of an existing pickup area is inappropriate, District may require the customer or Contractor to relocate the pickup area.

Contractor shall collect and dispose of all waste generated at Commercial and Industrial Premises within the District and delivered for collection to a bin or debris box as scheduled with each generator.

**C. Future Commercial, Industrial or Multi-Family Residential Collection**

Commercial and Industrial collection within the District is currently limited to residential customers who are operating a commercial/industrial enterprise on their property in and consistent with applicable uses permitted within the zoning designation for the property. If the solid waste produced by these commercial/industrial users constitute an Overage, Contractor may request the District bill the customer in accordance with the billing procedures set forth in Article 5 or Exhibit 1 of this Agreement. In the event that the District elects to contract for industrial and or commercial solid waste collection within its boundaries, than District and Contractor may negotiate an Amendment to this Agreement to provide those services pursuant to this Agreement.

**D. District Facilities Collection of Solid Waste**

Contractor shall collect and dispose of all Solid Waste generated at Premises owned and/or operated by District at no charge to District. Contractor shall make collections from cans Monday through Friday or on Saturdays following non-working holidays. Commercial (bin) and Industrial (debris box) collections shall be scheduled at a time mutually agreed upon by Contractor and District. The facilities to be provided service initially, together with the type and frequency of service, are listed on Exhibit 2, which may be modified or expanded by District. Contractor shall also provide, maintain, and replace all containers and receptacles required for the District Facilities Collection service.

Contractor shall provide, at the District's direction, additional waste Collection and Disposal and consulting services entailing:

- Collection of Solid Waste from all sidewalk litter containers;
- Collection of Solid Waste from District-sponsored special events listed in Exhibit 2;
- Collection of Solid Waste from litter containers in District parks;
- Drop box or container services to the District; and
- Review of plans for new development with regard to Solid Waste service issues.

The services required by this section, except as otherwise indicated, shall be provided at no charge to the District. However, the District shall reimburse to Contractor the full amount of any charge incurred by contractor in disposing of material collected from any of the foregoing District facilities.

E. Temporary Bins/Roll-off Service

Contractor shall provide temporary bins/roll-off service for the purpose of Collection of non-hazardous Solid Waste. Contractor shall deliver and Collect bins at the direction of the customer. Bins shall be free of graffiti and in good repair. 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-off service accounts to ensure that the flow of traffic is not impeded and that it does not result in aesthetic degradation of an area. The designated pick up area, if disputed by customer or Contractor, shall be determined by District. Additionally, if in District's opinion the location of an existing pickup area is inappropriate, District may require the customer or Contractor to relocate the pickup area.

F. Community Cleanup Days

Contractor to provide two (2) bi-annual community cleanup events per year, one in the spring and one in the fall. District and Contractor will determine the precise date for each Community cleanup each year approximately ninety (90) days prior to the bi-annual Community cleanup. Community cleanup will be curbside pickup using front loaders or other equipment deemed reasonable by Contractor consistent with industry practice and standards provided to similar or nearby communities and will include items normally picked up in similar or nearby Communities including, but not limited to, the following: green waste, tree trimmings, tree trunks, tree stumps, palm fronds, lumber and wood doors; bulk items (such as refrigerators, furniture, appliances, stoves, water heaters, swing sets, and metal lawn furniture; and other debris such as mattresses, furniture, carpet and padding, bagged and boxed debris, and paint cans, open dry and empty only). Contractor will coordinate with District to provide an appropriate flier or other educational materials to be mailed to customers by the District prior to each Community cleanup day. The educational materials will include instructions to customers as to what items will be picked up, how those items are to be placed in the street, and what items cannot be placed out for collection.

G. Bulky Item Pick-up

Contractor will pick up Bulky Items from Customers on an individual basis when requested by Customer. The Bulky Items pick up can either be curbside pick up or in a bin provided by Contractor. Customers will pay for Bulky Item pick up at a rate set forth in the Service Rates.

H. Monthly Street Sweeping and Gutter Cleaning

Contractor will provide street sweeping services monthly (in addition to street sweeping provided after Community Clean up days) and will remove weeds and other debris from gutters within the District at no charge. Monthly Street Sweeping shall be the first Wednesday of each month unless the District and Contractor agree in writing to a different day.

I. Pot-Hole Repair

Contractor will provide pot-hole repairs at the District's Community Center at no charge to the District.

J. Tire Clean up

Contractor will work with District to obtain grant monies or other methods for removing used tires discarded within the District. The goal of this service is to improve the Community by removing discarded tires that collect in alleyways or other area within the District, without cost to the District or Contractor.

K. Bio-Solids Consulting

Contractor will provide consulting services at no charge to the District related to disposing of bio-solids produced by the District's Wastewater Treatment Facility.

**4.2 Recycling – General**

Contractor shall Collect and remove all Recyclable Materials placed in Recycling Containers at the designated Collection locations for Single- Family Residences, Multi-Family Residential Premises and commercial accounts. Contractor shall keep separate records on all Recyclable Materials Collected from Single-Family and Multi-Family residences separately from Commercial and Industrial Premises. Such records shall be made available for inspection by District upon request during normal hours of operation.

A. Single-Family Residential Recycling

Contractor shall provide a single-family curbside Recycling program. Contractor shall supply each Single-Family Residence with a 96-gallon roll-out Container (or other Container approved by District), for mixed Recyclables. The Contractor shall also provide, maintain, and replace all Containers and receptacles required for the provision of Recyclable Collection services. Contractor shall collect all Recyclable Materials once each week on the regularly scheduled Solid Waste Collection day from each participating residence. Contractor shall transport Recyclable Materials to a Materials Recovery Facility (MRF) and none of this material may be disposed of at a Landfill, Transfer Station, or any other location in lieu of Recycling the material without the

express written approval of the General Manager, except for Processing Residue. Recyclable Containers shall be collected from curbside or alleys, as appropriate, except that walk-in Collection shall be provided for "disabled" individuals with physical limitations (at no additional charge).

The following type of Recyclables Materials shall include, but not be limited to, for collection, processing and marketing under this Agreement: unless prohibited by law.

1. Newspaper (including inserts, coupon and store advertisements).
2. Mixed paper (including, but not limited to, junk mail, magazines, catalogs, craft bags and paper, paperboard, egg cartons, office ledger, phone books, brown paper grocery bags, colored paper, computer paper, construction paper, envelopes, legal back binding backing and shoe boxes).
3. Glass containers (including brown, clear and green glass bottles and jars).
4. Aluminum and tin cans.
5. Narrow neck plastics.
6. Corrugated cardboard.

**B. Multi-Family Residential Recycling**

Contractor shall provide a multi-family Recycling program that involves the same list of recyclables as the single-family program. Contractor shall supply each trash enclosure area in participating multi-family complexes in the District with two (2) 96-gallon Containers or other larger Containers as agreed upon with the complex manager. Contractor shall also provide Christmas tree Recycling to multi-family complexes who choose the optional Green Waste Collection program. The cost of said Christmas tree Recycling is to be borne by the Contractor.

Contractor shall instruct multi-family residential managers and multi-family residents as to any necessary preparation, separation, and placement of Recyclable Materials. Contractor shall instruct multi-family residential complex managers as to the placement of Containers and shall notify the District of such managers who fail, or whose residents fail to follow those instructions.

Contractor shall collect all Recyclable Materials once each week from each participating multi-family complex. The Contractor shall transport Recyclable Materials to an MRF and none of this material may be disposed of in a Landfill, Transfer Station, or any other location in lieu of an MRF without the express written permission of the General Manager or his/her designee, except Processing Residue. The written permission of

the General Manager to transport to other than an MRF shall not be unreasonably withheld.

C. Commercial/Industrial Recycling (as Applicable)

Contractor shall develop for the District's approval a program to strongly encourage commercial/industrial Recycling. District shall promptly notify Contractor of its approval or disapproval of such program. In the event that 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 subscribing businesses as scheduled with the customer.

D. District Facilities Collection of Recyclables

Contractor shall Collect and process Recyclables from the Premises owned and/or operated by the District as listed in Exhibit 2. Contractor shall also provide, maintain, and replace all Containers and receptacles required for the provision of Recyclable Collection service. All Recyclables shall be Collected and processed by the Contractor.

E. Warning Notice

Contractor may refuse to Collect Recyclable Materials and shall not be obligated to continue to provide any Recycling Container to any Waste Generator in any Recycling program who, after reasonable warning, fails to sort properly and set out Recyclable Materials. Contractor shall report monthly to District any warning notices issued.

**4.3 Green Waste Program - General**

Contractor agrees to develop, implement, operate and participate (locally and regionally) in mulching, composting, alternative daily cover, transformation or other programs to achieve District's Green Waste diversion requirements. In particular, Contractor agrees to accomplish the programs set out in this Agreement and to be aggressive in the pursuit of new opportunities to divert Green Waste from Disposal.

A. Residential Green Waste

Contractor shall provide weekly curbside Collection of Green Waste on the same day and on the same terms as Refuse Collection from District's Single-Family Residences utilizing 96-gallon Containers provided by Contractor.

B. Multi-Family and Commercial Green Waste

Contractor shall provide similar Green Waste Collection service for Multi-Family and commercial customers, upon request of such accounts, as is provided to Single-Family Residential customers.

C. Christmas Tree Collection Program

Contractor shall operate an annual Christmas tree Collection program. The program shall include curbside and drop-off (if necessary) Collection and target all Residential Properties in the District. Contractor shall reasonably cooperate with District in the scheduling and operation of the Christmas tree Collection program.

D. End Uses for Green Waste

Contractor shall divert Green Waste materials Collected through curbside Collection, Christmas tree Collection and mixed waste processing (if applicable) from Disposal. Contractor must use its best efforts to provide end uses for Green Waste that maximize diversion credits for District according to regulations established by CIWMB.

**4.4 Removal of Hazardous Waste**

If Contractor determines that Waste placed in any Container for Collection or delivered to any Facility of the Contractor is Hazardous Waste, Designated Waste, or other Waste that may not legally be disposed of at the Disposal Site or Material Recovery Facility or presents a hazard to Contractor's employees, the Contractor shall have the right to refuse to accept such Waste. The Waste Generator will be contacted by the Contractor and requested to arrange proper Disposal. If the Waste Generator cannot be reached immediately, the Contractor shall, prior to leaving the Premises, leave a tag at least 2" x 6" which lists the phone number for the Fresno County Household Hazardous Waste program, indicating the reason for refusing to collect the Waste. If the Waste could possibly result in imminent danger to people or property, the Contractor shall notify the District as soon as possible.

The Contractor will notify the District of any Hazardous Waste left at any premises for fourteen (14) days or more. If the Waste is delivered to the Disposal Site before its presence is detected and the Waste Generator cannot be identified or fails to remove the Waste after being requested to do so, the Contractor shall arrange for its proper Disposal.

**4.5 Transportation of Solid Waste**

Contractor shall transport all Solid Waste collected under the terms of this Agreement to the Disposal Site approved by the District. Contractor agrees to make all reasonable efforts to separate Recyclable Materials from Refuse for diversion from Landfill Disposal. Contractor shall maintain accurate records of the quantities of Solid Waste transported to the Disposal Site and will cooperate with District in any audit or investigations of such quantities.

**4.6 Vehicles**

A. General

Contractor shall provide a fleet of Collection vehicles sufficient in number and capacity to efficiently perform the work required by the Agreement in strict accordance with its terms. Contractor shall have available on Collection days sufficient back-up vehicles for each type of Collection vehicle used (i.e., rear loader, front loader, and roll-off) to respond to complaints and emergencies.

B. Specifications

All vehicles used by Contractor in providing Solid Waste and Recyclables Collection services shall be registered with the California Department of Motor Vehicles. All such vehicles shall have water-tight bodies designed to prevent leakage, spillage or overflow. All such vehicles shall comply with U.S. Environmental Protection Agency noise remission regulations and other applicable noise control regulations.

C. Vehicle Identification

Contractor's name, local telephone number, and a unique vehicle identification number designed by Contractor for each vehicle shall be prominently displayed on all vehicles, in letters and numbers no less than two and one-half (2 1/2) inches high. Contractor shall not place the District's logo on its vehicles.

D. Equipment Inventory

Contractor shall furnish sufficient equipment to provide all service required under this Agreement.

E. Operation

Vehicles shall be operated in compliance with the California Vehicle Code, and all applicable safety and local ordinances. Contractor shall not load vehicles in excess of the manufacturer's recommendations or limitations imposed by State or local weight restrictions on vehicles.

#### **4.7 Solid Waste and Recycling Containers**

A. Residential Containers

Container sizes for Single-Family Residential solid waste service shall be 96 gallons. Customers may request a 64-gallon (or similar) Container at a reduced rate. A 96-gallon Recycling Container shall also be provided to each Single-Family Residence for Green Waste service and Contractor shall supply each Single-Family Residence with a 96-gallon Container for all other Recyclables. Additional bins and/or Containers shall be provided by the Contractor to Single-Family Residential customers, at the customer's expense, where the bin and/or Containers overflow on a consistent basis. Contractor shall also provide Solid Waste and Recycling Containers to Multi-Family complexes as determined through separate negotiations with each of those complexes. The color of both Solid Waste and Recycling Containers shall be subject to the review and approval of the Board of Directors. Customers who wish to have 64-gallon Container for solid waste service may make such request to Contractor or District. Upon request, Contractor will provide the smaller 64-gallon Container which will be billed at the lower rate. If Customer has an Overage Customer will be billed at the regular (96-gallon) service rate for that month. If Customer has more than one (1) Overage in any 12 month period (Overages occurring more once every 12 months) than Contractor will pick up the 64-gallon Container and replace it with a 96-gallon Container and inform District that Customer will be billed at the regular 96-gallon Container rate.

B. Non-Residential Containers (as Applicable)

Contractor shall provide bins and Drop Boxes for storage of Solid Waste and Recyclables. Front load bins shall be designed and constructed to be water tight so as to prevent the leakage of liquids. All Containers with the capacity of one cubic yard or more shall meet applicable federal regulations regarding Solid Waste bin safety. All Containers shall be painted the Contractor's standard color (subject to Board of Directors approval) and shall prominently display the name and telephone number of the Contractor. All Recycling Containers shall be clearly marked to indicate what specific items are contained within.

C. Cleaning, Painting and Maintenance

Contractor shall steam clean and repaint all Containers (other than Containers for Single-Family Residential services) on a regular basis so as to present a clean appearance. All Containers shall be maintained in a functional condition.

D. Repair and Replacement

Contractor shall provide and maintain Containers in good repair for use by customers. Contractor shall repair or replace all Containers damaged by Collection operations.

District and Contractor also acknowledge that from time to time Containers may be stolen from the customer. When notified of such occurrence, Contractor shall replace the stolen Container(s), at no charge to the customer, not more than one (1) time within any twelve (12) month period.

**4.8 Processing Residue; End-Uses**

Contractor is solely responsible for the proper and lawful Disposal of all Processing Residue. In no event shall Contractor's selection of a Facility for the Disposal of Processing Residue result in the imposition of a host fee, or otherwise cause a higher rate to be charged to Customers than would be charged were Processing Residues disposed of at the originally agreed upon Disposal Site.

District shall have no responsibility for the availability of markets for recycled products, nor shall it have any liability associated with or resulting from the markets for, or end-uses of, recycled products, and Contractor shall indemnify and hold District harmless from same.

**4.9 Inspection by District**

The designated representatives of the District shall have the right to observe and review Contractor operations and enter premises for the purposes of such observation and review at all reasonable business hours with reasonable notice.

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## ARTICLE 5

### OTHER COLLECTION RELATED SERVICES, STANDARDS AND AGREEMENTS

#### 5.1 Billing

District has established, by resolution, rates for the various types of services provided by Contractor. The District will process as soon as practicable a rate increase or adjustment resolution. Controller or District shall bill and collect at the rates established by latest resolution establishing rates as follows:

##### A. Customer List

The District shall provide Contractor with, by the third Wednesday of each month, a list of all current solid waste, green waste, and recycling services Customers within the District for pickup the following Month. This Customer list will include an identification of all new Customers, existing Customers, and Customers whose account has been suspended or closed. Contractor will pick-up Containers from any suspended/closed account and pro-rate (if necessary) said account for billing purposes to the District. Contractor will deliver Containers to new or resumed account and bill the District at a pro-rated amount for services to that Customer for the billing month. Said billing may include a charge for picking up or delivering Containers as set forth in this Agreement and/or Exhibit 1.

##### B. Non-residential billings (as applicable)

District shall perform the billing and collection service to all non-residential customers within the District's boundaries receiving services subject to this Agreement. After the District has made a good faith effort to collect a bill from a non-residential customer, if the bill is still not paid, the Contractor shall suspend Collection service after written authorization 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 that customer's real property. Any funds collected from a customer by the District less the District's costs of collection, including all costs related 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.

##### C. Residential customers

District shall perform the billing and collection service to all residential customers within the District's boundaries. District may, but is not required to, place the Solid Waste Collection fee due from each residential customer as a special assessment charge on their real property tax bill or a lien against the Property where service is provided. In that event, the billing information shall be given to the Fresno County Auditor's Office annually for placement on the Fresno County Property Tax Roll or a lien recorded on the Customer's real Property. Contractor shall not be responsible for or participate in the

collection of charges for these services. Any funds collected from a residential customer by the District, less the District's costs of collection, including all costs related to the calculation of the rate and less the Franchise Fee payable to the District, 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.

D. Roll Off/Front Load/ Bulky Items

Contractor shall arrange for and perform the billing and collection service for all solid waste and recycling for customers requesting service by roll off bin/front load container or Bulky Items. Contractor shall be the exclusive provider for these services in the District.

E. Service Rates

Service Rates for services provided pursuant to this Agreement will be established by Resolution of the Board of Directors of the District. Said Service Rate shall be adopted pursuant to applicable law including, but not limited to, Article 13D of the California Constitution (Proposition 218). The Service Rates in effect at the effective date of this Agreement are attached hereto and incorporated by this reference herein as Exhibit 1. The Proposed Rates for this Agreement are attached hereto and incorporated by this reference herein as Exhibit 3 to this Agreement. The Proposed Service Rates will be adopted, as soon as practicable, by the District in accordance with the requirements of Article 13D of the California Constitution or other applicable statute. The Service Rates are discussed in more particularity in Article 7 of this Agreement.

## **5.2 Public Customer Service and Accessibility**

A. Office Location

Contractor shall maintain an office location within fifty (50) miles of the District office and insure that calls to and from its office location are either "local" or "toll free" to accept calls within the Malaga service area.

B. Office Hours

Contractor's office shall be open to the public as below:

Administrative Offices      8:00 a.m. - 5:00 p.m. (M-S)

The office may be closed on Sundays and those holidays listed on Exhibit 3.

C. Availability of Representatives

A representative of Contractor shall be available at a local site during office hours to communicate with the public in person and by telephone.

D. Telephone

Contractor shall maintain a telephone system in operation at its office during business hours. Contractor shall install telephone equipment sufficient to handle the volume of calls typically experienced on the busiest days. Contractor shall have a representative, answering or message providing/receiving (voice-mail) service available at said number for after-hours calls.

E. Consumer Information/Education

Contractor will assist District in informing/educating Customers in solid waste collection, green waste collection, and recycling policies and procedures, ways to improve recycling, and methods to increase diversion rates in order to meet AB341 and AB1826 mandates.

**5.3 Service Complaints**

Contractor shall be responsible for the prompt and courteous attention to, and prompt and reasonable solution of, all customer complaints. Contractor shall notify customers in writing of its complaint procedure at the time customers apply for or are provided service.

**5.4 Non-Discrimination**

Contractor shall not discriminate in the provision of service or the employment of persons engaged in performance of this Agreement on account of race, color, religion, sex, age, physical handicap or medical condition in violation of any applicable federal or State law.

**5.5 Change in Collection Schedule**

Contractor shall notify District forty-five (45) days prior to, and residential customers not later than thirty (30) days prior to, any change in residential Collection operation which results in a change in the day on which Solid Waste or Recyclables Collection occurs for twenty percent (20%) or more of the residents on a route on a day. Contractor will not permit any customer to go more than seven (7) days without service in connection with a Collection schedule change. District's approval of any change in Residential Collection is required prior to such change, and such approval will not be withheld unreasonably.

**5.6 Report of Accumulation of Solid Waste: Unauthorized Dumping**

Contractor shall direct its drivers to note (1) the addresses of any Premises at which they observe that Solid Waste is accumulating and is not being delivered for Collection; and (2) the address, or other location description, at which Solid Waste has been dumped in an apparently unauthorized manner. Contractor shall deliver the address or description to District within five (5) working days of such observation.

**5.7 Emergency Services**

Contractor shall provide emergency services (i.e., special Collections, transport, processing) at District's request in the event of major accidents, disruptions, or natural

calamities. Contractor shall be capable of providing emergency services within twenty-four (24) hours of notification by District or as soon thereafter as is reasonably practical in light of the circumstances.

### **5.8 Community Events**

At the direction of District, Contractor shall participate in and promote Recycling and other diversion techniques at community events and local activities. Such participation shall include providing, without cost, Collection, education and publicity information promoting the goals of the District's Solid Waste program.

### **5.9 Waste Generation/Characterization Studies**

Contractor acknowledges that District must perform Solid Waste generation and Disposal characterization studies periodically to comply with AB 939 requirements. Contractor agrees to participate and cooperate with District and its agents and to accomplish studies and data collection and prepare reports, as needed, to determine weights and volumes of Solid Waste and characterize Solid Waste generated, disposed, transformed, diverted or otherwise handled/processed to satisfy AB 939 requirements.

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## ARTICLE 6

### FRANCHISE

#### 6.1 Scope

Subject to Section 6.2, the Franchise granted to Contractor shall be exclusive for Residential Solid Waste, except where otherwise precluded by State law or where other current programs provide for Collection and Disposal of HHW. Recyclables and Green Waste shall be Collected by Contractor as described in this Agreement under the limitations described in Section 6.2.

#### 6.2 Limitations to Scope

Subject to the requirements and conditions of this Agreement, District hereby grants Contractor the exclusive franchise, privilege and duty during the term of this Agreement to collect and transport to the Solid Waste facilities or MRF designated under this Agreement all Solid Waste and Recyclables that are required to be accumulated and set out for Collection by customers in accordance with District legislation, or which is otherwise legally set out for Collection by the customers. The granting of this franchise shall not preclude the following from being delivered to and/or collected by third parties, other than Contractor:

A. Recyclable Materials Sold

Recyclable materials separated from Solid Waste by the Waste Generator and which Waste Generator sells, donates or is otherwise compensated for by a collector in a manner resulting in a net payment to the Waste Generator for such Recycling or related services.

B. Recyclable Materials Transported

Recyclable materials which are separated at any premises and which are transported personally by the owner or occupant of such premises (or by his or her employee) to a processing or Disposal Facility.

C. Recyclable Materials Donated

Recyclable materials which are source separated at any premises by the Waste Generator and donated to youth, civic, or charitable organizations.

D. Recycling Containers

Recycling containers delivered for Recycling under the California Beverage Container Recycling Litter Reduction Act, Section 14500, et. seq., California Public Resources Code.

E. Green Waste

Green Waste removed from Premises by a gardening, landscaping, or tree trimming Company as an incidental part of a total service offered by that Company rather than as a hauling service.

F. Construction and Demolition debris

Inert construction and demolition debris generated during the construction, renovation or razing of structures and removed by the owner or his construction contractor, but not a subcontractor, and provided the construction contractor is not a hauling service or a solid waste enterprise, does not separately or additionally charge for the incidental service of removing, transporting, recycling or otherwise disposing of the materials, and utilizes only his or her own employees and equipment to collect, transport and recycle or dispose of same.

G. Animal waste

Animal waste and remains from slaughterhouse or butcher shops for use as tallow.

H. By-products

By-products of sewage treatment, including sludge, sludge ash, grit and screenings.

I. Hazardous Waste

Hazardous Waste and Designated Waste regardless of its source.

Paragraphs A through I of this Section 6.2 describe exceptions to the exclusive franchise granted to Contractor hereunder. As such, the parties acknowledge that Persons other than Contractor may engage in limited collection activities of the sort described above without infringing upon Contractor's franchise rights. However, in no event shall any Person be authorized to engage in "fee-for-service" recycling, whether alone or in combination with others, and regardless of the form of consideration exchanged.

This grant to Contractor of an exclusive Franchise, right and privilege to Collect, transport, or process and Dispose of Solid Waste shall be interpreted to be consistent with State and federal laws, now and during the term of the Franchise, and the scope of this exclusive Franchise shall be limited by current and developing State and federal laws with regard to Solid Waste handling, exclusive Franchise, control of Recyclables, Solid Waste flow control, and related doctrines. In the event that future interpretations of current law, enactment or developing legal trends limit the ability of District to lawfully provide for the scope of Franchise services as specifically set forth herein, Contractor agrees that the scope of the Franchise will be limited to those services and materials which may be lawfully provided for under this Agreement, and that District shall not be responsible for any lost profits claimed by Contractor to arise out of such limitation of the scope of the Agreement set forth herein. In such an event, it shall be the responsibility of Contractor to minimize the financial impact to other services being provided as much as possible.

### **6.3 Administrative Fee**

There will be no Franchise Fee associated with this Franchise agreement. However, the District will add an administrative 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 as described in Section 7.3

#### **6.4 Time and Method of Payment**

District shall calculate the amount due Contractor based on the number of accounts to which service is provided times the applicable rate for each Customer and will include adjustments for services suspended or terminated within each billing month. The amount paid to Contractor will not include the 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. This list will include all accounts suspended or terminated so that the 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 at that Customer's address is to be resumed.

For addition charges, such as Overages, additional Containers, additional pick-ups, or picking up or delivering Containers for service which was terminated or suspended and then resumed, Contractor will provide District with an invoice for said charges by the fifteenth (15) day of each month for the prior month so those charges may be included on the District's water, sewer, and solid waste bills. District will include those charges, as collected, to Contractor with its regular payments.

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## ARTICLE 7

### SERVICE RATES AND REVIEW

#### 7.1 Contractor's Rates/Service Rates

Contractor shall perform the responsibilities and duties described in this Agreement in consideration of the right to charge and collect from Waste Generators for Solid Waste Collection and Disposal and Recyclable Collection, processing and marketing services rendered, at rates fixed by the District from time to time.

The rates are those established by the District's Resolution No.7-26-2016C, unless amended in accordance with this Agreement. Unless and until the rates set forth on Exhibit 1 are adjusted by the District, Contractor shall provide the services required by this Agreement, charging no more and no less than the rates authorized by Exhibit 1. The rates contain all costs associated with the provision of Solid Waste and/or Recycling Collection, processing and marketing, including but not limited to, disposal costs on Saturdays, Sundays and holidays.

In addition to the revenues authorized by the rates on Exhibit 1, Contractor may charge and receive fees for performing special services for which rates are not set by Exhibit 1, as agreed upon in separate contracts between Contractor and each customer requesting such special services.

#### 7.2 Amendment of Service Rates

The District may amend, from time to time, by Resolution, the Rates set forth in Exhibit 1 and established by Resolution 7-26-2016C. The Proposed Service Rates attached hereto and incorporated by this reference herein as Exhibit 3 are the Proposed Service Rates to take effect as soon as adopted by District. District will attempt to adopt said Proposed Rates as soon as practicable in accordance with the requirements of Article 13D of the California Constitution (Proposition 218). It is the intent of the Parties that the Proposed Service Rates (Exhibit 3) supersede the current Service Rates (Exhibit 1) as used and defined in this Agreement immediately upon adoption. In the event that District is unable to or does not enact the Proposed Service Rates as set forth in Exhibit 3 to this Agreement on or before November 1, 2016, Contractor may terminate this Agreement.

#### 7.3 Annual Rate Adjustment

An annual rate adjustment will be made each year starting on the 1<sup>st</sup> 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 Index all items (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 published the previous June and the corresponding index published twelve (12) months earlier.

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.

### **7.3.1 Fuel Cost Adjustment.**

In addition to any adjustments to the approved rates as previously stated, an adjustment for the annual average change in fuel costs shall be applied to the approved rates each year beginning with the contract date of August 1, 2017. The prior Year Service Rate shall be adjusted by multiplying the percentage change of the relevant Fuel Index as indicated below by 20%. Example: If the Fuel Index has an annual increase of 5%.  $5\% \times 20\% = 1\%$  increase in the approved rates based upon the annual Fuel Index change.

The relevant period for determining the change in the Fuel Index will be the most recent 12 months ending prior to August 1st of each year for which the Fuel Index is published. The index used to adjust the rates annually is the Department of Labor, Bureau of Labor Statistics, Producer Price Index – Commodities, No. 2 Diesel Fuel (the 'Fuel Index').

The annual adjustment of the approved rates due to a change in the Fuel Index is not limited, but in no event will the Annual Rate Adjustment (Section 7.3) and the Fuel Cost Adjustment (Section 7.3.1) together exceed 15% in any year. In the event that the Annual Rate Adjustment (Section 7.3) and the Fuel Cost Adjustment (Section 7.3.1) together exceed 15% in any year than Contractor may request a commensurate rate adjustment as described in Section 7.3 or a Special Interim Rate Review as described in Section 7.4. In the event that the Fuel Index shall be discontinued or materially modified during the term of this contract period, the parties shall use their best efforts to substitute a replacement index, so as to replicate as nearly as possible the mutual intention of the parties to rely on the results of the Fuel Index in effect on the contract date.

#### **7.4 Special Interim Rate Review**

Contractor may apply to the District for consideration of a special interim rate review should an event or circumstance arise, as listed hereinafter, which jeopardizes the economic operation of Contractor (e.g., operating at a loss or significantly below a reasonable rate of return by industry standards). Such special interim rate review will be considered if:

- A. It is necessary for the Contractor to make a substantial change in its operation, or substantial capital investment in order to perform its obligations under this Agreement; or
- B. Changes to operations are mandated as provided for in this Agreement; or
- C. Changes in law, regulations or taxes affecting Disposal costs or sites occur which were not finalized sufficiently at the time of execution of this Agreement to allow definitive consideration hereunder.

District may initiate a special interim rate review at its option. Any rate review, whether initiated by the District or the Contractor, will follow the format specified for a regular rate review. If initiated by the Contractor, the complete application must be submitted at least one hundred and twenty (120) days prior to the date it may become effective. If initiated by the District, the Contractor shall submit requested data within ninety (90) days of the date that notice is provided to the Contractor. The parties acknowledge that there may infrequent extraordinary events which, although they do not prevent either party from performing, and thus do not implicate the force Majeure provisions hereof, nevertheless, increase the cost of providing service such that contractor's compensation and the rate adjustment mechanism elsewhere provided in this agreement results in contractor's suffering losses which are substantially outside the commercially reasonable expectations of the parties. The obligation of the parties in such event is to act reasonably toward each other and arriving at an appropriate adjustment in rates, or in rescission of this agreement. Accordingly, at his option, contractor may apply to the

District at any time, but not more frequently than once annually, for an extraordinary rate increase should an event or circumstance arise that is the result of a change in law or which negatively impacts the economic operation of contractor in which is in excess of the rate adjustment resulting from application of the annual rate adjustment formula expressed at Section 7.3 above. An interim adjustment in rates will be deemed justified if it is necessary for the contractor to make a substantial change in its operations, or substantial capital expenditure or investment in order to perform its obligations under this agreement due to the occurrence of an event or circumstance which is beyond the reasonable control of contractor. In the event of such application by contractor for an extraordinary rate increase, contractor shall have the burden of demonstrating to the reasonable satisfaction of the District, the basis for the request.

Any determination by the District shall be based on findings by the Board of Directors upon hearing with not less than forty-five (45) days notice of the hearing date in writing after data is submitted as provided hereinabove and shall be final.

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 or other applicable statute. 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.

#### **7.5 Variances from Projections**

Contractor shall retain any income from actual costs being less, or Recyclable Materials sale revenue being greater than projected but shall not be compensated for actual costs being more, or Recyclable Materials sales revenues being less than projected except as described in Section 7.3 and Section 7.4 above. In addition, calculations for Contractor's compensation shall not be adjusted for past variances of actual cost from those projected.

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## ARTICLE 8

### RECORDS, REPORTS AND INFORMATION REQUIREMENTS

#### 8.1 General

Contractor agrees to conduct data collection, information and record keeping, and reporting activities needed to comply with applicable laws and regulations and to meet the reporting and Solid Waste program management needs of District as required by existing or hereinafter enacted ordinances of the District.

#### 8.2 Records

Contractor shall maintain records required to conduct its operations, to support requests it may make to District, and to respond to requests from District in conduct of District business. Adequate record security shall be maintained to preserve records from events that can be reasonably anticipated such as fire, theft and earthquake. Electronically maintained data/records shall be protected and backed up.

##### A. Financial Records

Financial records shall be maintained and cost and revenue information for District shall be segregated from other areas served by Contractor.

##### B. Solid Waste Records

Records shall be maintained by Contractor for District relating to:

1. Customer services and billing.
2. Character, weight and volume of Solid Waste, especially as related to reducing and diverting Solid Waste. Information is to be separated between Single-Family and Multi-Family Residential Premises from Commercial and Industrial Premises.
3. Special annual cleanup event results.
4. Routes.
5. Facilities, equipment and personnel used.
6. Facilities and equipment operations, maintenance and repair.
7. Processing and Disposal of Solid Waste
8. Complaints.
9. Missed pick ups.

C. Recycling and Green Waste Records

Records shall be maintained for District that relate to:

1. Records described in Section 8.2.B, above.
2. Recycling and Green Waste participation - especially as related to determining participation rates and implementing programs to increase existing participation and to expand diversion (name, addresses, contacts made, etc.).
3. Weight of each material by type of program.
4. Sales - quantity sold (in tons) and net sales.

D. Disposal Records

Contractor shall maintain records of Disposal of all Solid Waste Collected in District for the period of this Agreement and all extensions to this Agreement or successor Agreements. In the event Contractor discontinues providing Solid Waste services to District, Contractor shall provide all records of Disposal or processing of all Solid Waste Collected in District within thirty (30) days of discontinuing service. Records shall be in chronological and organized form and readily and easily interpreted.

### **8.3 Annual Reports**

A. State Required Disposal and Recycling Report

At least annually, and more frequently, if required by the State, Contractor shall report to District Solid Waste Collection and Disposal and Recyclable Material Collection and processing information and data that District deems to be required as the result of current or future local, State or federal law, regulation, orders or permits. District shall provide Contractor with reasonable notice of such required statements and reports. All such statements and reports shall be submitted not later than thirty (30) calendar days following the end of the calendar year.

B. Activity Report

Annually, Contractor shall provide District with a report on the measures taken during the year related to Contractor's public awareness and promotion campaign describing measures taken during the year and the status of each component of the campaign in a format approved by District. All such statements and reports shall be submitted not later than thirty (30) calendar days following the end of Contractor's annual accounting period.

### **8.4 Right to Inspect Records**

District shall have the right to inspect or review specific documents or records required pursuant to this Agreement, or any other similar records or reports of Contractor necessary to evaluate annual reports, provided for in this Agreement and Contractor's performance provided for in this Agreement.

### **8.5 Retention of Records**

Contractor shall retain all records and data required to be maintained by this Agreement for the period of at least three (3) years after each renewal of this Agreement for the prior five (5) year term (for example, for the period of August 1, 2016 – July 31, 2021, all records for that period would be retained until August 1, 2024) or a period of time that similar records are maintained under Contractor’s general corporate policy of record retention, whichever is greater. In addition, District may, within ninety (90) calendar days after its receipt of the annual reports required by this Agreement, direct that specified records be retained until a further review has been completed and Contractor shall comply with such direction.

If Contractor fails to retrieve, within the period of time prescribed in this Agreement, or, if no such period is specified, within a commercially reasonable period of time, following a written request by District, records and data that have been retained, District may make a reasonable assumption regarding what those records and data would contain and such assumptions may be used, as though they were facts, in whatever action District takes.

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## ARTICLE 9

### INDEMNITY, INSURANCE, BOND

#### 9.1 Indemnification

Contractor shall indemnify and hold harmless District, its Board Members, officers, employees, volunteers, and agents (collectively "indemnitees") from and against any and all loss, liability, penalty, forfeiture, claim, demand, action, proceeding or suit of any and every kind and description (including, but not limited to, injury to and death of any person and damage to property, or for contribution or indemnity claimed by third parties) arising or resulting from and in any way connected with (1) the negligence or willful misconduct of Contractor, its officers, employees, agents and/or subcontractors in performing services under this Agreement; (2) the failure of Contractor, its officers, employees, agents and/or subcontractor to comply in all material respects with the provisions of this Agreement, applicable laws and regulations, and/or applicable permits and licenses; (3) the acts of Contractor, its officers, employees, agents and/or subcontractors in performing services under this Agreement for which strict liability is imposed by law. The foregoing indemnity shall apply regardless of whether such loss, liability, penalty, forfeiture, claim, demand, action, proceeding, suit, injury, death or damage is also caused in part by any of the indemnitee's negligence, except this indemnity shall be limited to exclude coverage for wrongful acts and gross negligence of indemnitees. This provision shall not apply to matters caused by District's (or any other indemnitee's) sole negligence, willful misconduct or breach of this Agreement. Contractor further agrees to and shall, upon demand of District, at Contractor's sole cost and expense, defend (with attorneys acceptable to District) the District, its Council Members, officers, employees, and agents against any claims, actions, suits or other proceedings, whether judicial, quasi-judicial or administrative in nature, arising or resulting from any matter as to which Contractor is obliged to indemnify District pursuant to this Article 9.

Contractor's duty to indemnify and defend shall survive the expiration or earlier termination of this Agreement.

District shall indemnify and hold harmless Contractor from and against any and all loss, liability, penalty, forfeiture, claim, demand, action, proceeding or suit of any and every kind and description (including, but not limited to, injury to and death of any person and damage to property, or for contribution or indemnity claimed by third parties) arising or resulting from District's sole negligence, willful misconduct, or breach of this Agreement.

#### 9.2 Insurance

A. Minimum Scope of Insurance. Coverage shall be at least as broad as:

1. The most recent editions of Insurance Services Office forms number GL 0002 covering Comprehensive or Commercial General Liability; and

Insurance Services Office form number GL 0404 covering Broad Form Comprehensive or Commercial General Liability; or Insurance Services Office Commercial General Liability coverage or other forms as approved by District ("occurrence" form CG 0001).

2. The most recent editions of Insurance Services Office form number CA 0001 (Ed.1/78) covering Automobile Liability, code 1 "any auto" and most recent endorsement or other forms as approved by District.

3. Workers' Compensation insurance as required by the Labor Code of the State of California and Employers Liability insurance.

B. Minimum Limits of Insurance. Contractor shall maintain limits no less than:

1. Comprehensive General Liability: Five Million Dollars (\$5,000,000) combined single limit per occurrence for bodily injury, personal injury and property damage.

2. Automobile Liability: Five Million Dollars (\$5,000,000) combined single limit per accident for bodily injury and property damage.

3. Workers' Compensation and Employers Liability: Workers' Compensation limits as required by the Labor Code of the State of California and Employers Liability limits of One Million Dollars (\$1,000,000) per accident.

C. Deductibles and Self-Insured Retention. Any deductibles or self-insured retention must be declared to and approved by the District. At the option of the District, either: the insurer shall reduce or eliminate such deductibles or self-insured retention as respects the District, its officials and employees; or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

D. Other Insurance Provisions  
The policies are to contain, or be endorsed to contain, the following provisions:

1. General Liability and Automobile Liability Coverage:

a. District, its officials, Board Members, employees and volunteers are to be covered as additional insured as respects: liability arising out of activities performed by or on behalf of Contractor; products and completed operations of Contractor; premises owned, leased or used by Contractor; or automobiles owned, leased, hired or borrowed by Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the District, its officials, Council Members, employees or volunteers.

b. Contractor's insurance coverage shall be primary insurance as respects the District, its officials, Board Members, employees and volunteers. Any insurance or self-insurance maintained by the District, its officials, Board Members, employees or volunteers shall be excess of Contractor's insurance and shall not contribute with it.

c. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the its officials, Council Members, employees or volunteers.

d. Coverage shall state that Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

## 2. Workers' Compensation and Employers Liability Coverage

The insurer shall agree to waive all rights of subrogation against District, its officials, employees and volunteers for losses arising from work performed by Contractor for District.

## 3. All Coverages

Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to District.

### E. Acceptability of Insurers

The insurance policies required by this section shall be issued by an insurance company or companies authorized to do business in the State of California and with a rating in the most recent edition of Best's Insurance Reports of size category VII or larger and a rating classification of A or better.

### F. Verification of Coverage

Contractor shall furnish District with certificates of insurance and with original endorsements affecting coverage required by this clause as shown in Exhibit 5. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are to be on forms provided by District and are to be received and approved by District before work commences. The District reserves the right to require complete, certified copies of all required insurance policies, at any time.

### G. Subcontractors

Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

H. Required Endorsements

1. The Workers' Compensation policy shall contain an endorsement in substantially the following form:

a. "Thirty (30) days prior written notice shall be given to the Malaga County Water District in the event of cancellation, reduction in coverage, or non-renewal of this policy. Such notice shall be sent to:

General Manager  
Malaga County Water District  
3580 South Frank Avenue  
Fresno, California 93725

2. The Public Liability policy shall contain endorsements in substantially the following form:

a. "Thirty (30) days prior written notice shall be given to the District in the event of cancellation, reduction in coverage, or non-renewal of this policy. Such notice shall be sent to:

General Manager  
Malaga County Water District  
3580 South Frank Avenue  
Fresno, California 93725

b. "The Malaga County Water District, Board Members, employees, and agents are additional insured on this policy."

c. "This policy shall be considered primary insurance as respects any other valid and collectible insurance maintained by the District, including any self-insured retention or program of self-insurance, and any other such insurance shall be considered excess insurance only."

d. Inclusion of District as an insured shall not affect District's rights as respects any claim, demand, suit or judgment brought or recovered against Contractor. This policy shall protect Contractor and District in the same manner as though a separate policy had been issued to each, but this shall not operate to increase Contractor's liability as set forth in the policy beyond the amount shown or to which Contractor would have been liable if only one party had been named as an insured."

I. Delivery of Proof of Coverage.

Simultaneously with the execution of this Agreement, Contractor shall furnish District certificates of each policy of insurance required hereunder, in form and substance

satisfactory to District. Such certificates shall show the type and amount of coverage, effective dates and dates of expiration of policies and shall have all required endorsements. If District requests, copies of each policy together with all endorsements shall also be promptly delivered to District.

Renewal certificates will be furnished periodically to District to demonstrate maintenance of the required coverages throughout the Term.

J. Other Insurance Requirements

1. In the event any services are delegated to a subcontractor, Contractor shall require such subcontractor to provide statutory workers' compensation insurance and employer's liability insurance for all of the subcontractor's employees engaged in the work in accordance with this Agreement. The liability insurance required by this Agreement shall cover all subcontractors or the subcontractor must furnish evidence of insurance provided by it, meeting all of the requirements of this Agreement.

2. Contractor shall comply with all requirements of the insurers' issuing policies. The carrying of insurance shall not relieve Contractor from any obligation under this Agreement. If any claim exceeding the amount of any deductibles or self-insured reserves is made by any third person against Contractor or any subcontractor on account of any occurrence related to this Agreement, Contractor shall promptly report the facts in writing to the insurance carrier and to District.

If Contractor fails to procure and maintain any insurance required by this Agreement, District may take out and maintain, at Contractor's expense, such insurance as it may deem proper and deduct the cost thereof from any monies due Contractor.

The public liability insurance required by this Agreement shall be written on an "occurrence," rather than a "claims made" basis, if such coverage is obtainable. If it is not obtainable, Contractor must arrange for "tail coverage" to protect District from claims filed after the expiration or termination of this Agreement relating to incidents which occurred prior to such expiration or termination.

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## ARTICLE 10

### DISTRICT'S RIGHT TO PERFORM SERVICE

#### 10.1 General

In the event that Contractor, for any reason whatsoever, fails, refuses or is unable to collect, transport or dispose of any or all Solid Waste and/or collect, and process and market Recyclable Materials which it is required by this Agreement to collect and transport, at the time and in the manner provided in this Agreement, for a period of more than forty-eight (48) hours, and if, as a result thereof, Solid Waste and/or Recyclable Materials should accumulate in the District to such an extent, in such a manner, or for such a time that General Manager should find that such accumulation endangers or menaces the public health, safety or welfare, then District shall have the right, but not the obligation, upon twenty-four (24) hour prior written notice to Contractor during the period of such emergency as determined by General Manager to: (1) perform, or cause to be performed, such services itself with its own or other personnel without liability to Contractor; and/or (2) take possession of any or all of Contractor's land, equipment and other property used in the Collection and transportation of Solid Waste and Recyclable Materials in the District, and to use such property to collect and transport any Solid Waste generated within the District which Contractor would otherwise be obligated to collect and transport pursuant to this Agreement.

Notice of Contractor's failure, refusal or neglect to collect and transport Solid Waste or Recyclable Material shall be given in writing to Contractor at its principal office and shall be effective immediately.

Contractor further agrees that in such event:

A. It will fully cooperate with District to effect the transfer of possession of property and equipment to the District for District's use.

B. It will, if District so requests, keep in good repair and condition all of such property, provide all motor vehicles with fuel, oil and other service, and provide such other service as may be necessary to maintain said property in operational condition.

C. District may immediately engage all or any personnel necessary or useful for the collection and transportation of Solid Waste and Recyclables, including, if District so desires, employees previously or then employed by Contractor; Contractor further agrees, if District so requests, to furnish District the services of any or all management or office personnel employed by Contractor whose services are necessary for Solid Waste and Recyclables collection and transportation operations and for the billing and collection of fees for these services.

District agrees that it assumes complete responsibility for the proper and normal use of such equipment and facilities while in its possession.

If the interruption or discontinuance in service is caused by any of the reasons identified in Section 11.5 of this Agreement, District shall pay to Contractor the reasonable rental value of the equipment and facilities, possession of which is taken by District, for the period of District's possession, if any, which extends beyond the period of time for which Contractor has rendered bills in advance of service, for the class of service involved.

Except as otherwise expressly provided in the previous paragraph, District's exercise of its rights under this Article: (1) does not constitute a taking of private property for which compensation must be paid; (2) does not exempt Contractor from the indemnity provisions of this Agreement, which are meant to extend to circumstances arising under this Section, provided that Contractor is not required to indemnify District against claims and damages arising from the acts and omissions of District officers, employees and agents in the operation of Collection vehicles during the time the District has taken possession of such vehicles.

### **10.2 Duration of District's Possession**

District has no obligation to maintain possession of Contractor's property and/or continue its use in collecting and transporting Solid Waste for any period of time and may, at any time, in its sole discretion, relinquish possession to Contractor.

District's right to retain temporary possession of Contractor's property, and to provide Solid Waste and Recyclables Collection services, shall continue until Contractor can demonstrate to District's reasonable satisfaction that it is ready, willing and able to resume such services or the expiration of one-hundred eighty (180) days, whichever occurs first.

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## ARTICLE 11

### DEFAULT AND REMEDIES

#### 11.1 Events of Default

Each of the following shall constitute an event of default ("Event of Default") hereunder:

A. Contractor fails to perform its obligations under this Agreement, or future amendment to this Agreement, and: (1) if the failure or refusal of Contractor to perform as required by this Agreement is material and is not cured within two (2) business days after receiving notice from District specifying the breach; or (2) in the case of any other breach of the Agreement, the breach continues for more than thirty (30) calendar days after written notice from District for the correction thereof, provided that where such breach cannot be cured within such thirty (30) day period, Contractor shall not be in default of this Agreement if Contractor shall have commenced such action required to cure the particular breach within ten (10) calendar days after such notice, and it continues such performance diligently until completed.

B. Any representation or disclosure made to District by Contractor in connection with or as an inducement to entering into this Agreement or any future amendment to this Agreement, proves to be false or misleading in any material respect as of the time such representation or disclosure is made, and materially damages the District, whether or not any such representation or disclosure appears as part of this Agreement;

C. There is a lawful seizure or attachment (other than a prejudgment attachment) of, or levy affecting possession on, the operating equipment of Contractor, including without limit its vehicles, maintenance or office facilities, or any part thereof of such proportion as to substantially impair ("substantially impair" shall mean that service becomes intermittent and/or Section 10.1 hereof is invoked) Contractor's ability to perform under this Agreement and which cannot be released, bonded, or otherwise lifted within forty-eight (48) hours, excluding weekends and holidays;

D. Contractor files a voluntary petition for debt relief under any applicable bankruptcy, insolvency, debtor relief, or other similar law now or hereafter in effect, or shall consent to the appointment of or taking of possession by a receiver, liquidator, assignee (other than as a part of a transfer of equipment no longer useful to Contractor or necessary for this Agreement), trustee (other than as security for an obligation under a deed of trust), custodian, sequestrator (or similar official) of the Contractor for any part of Contractor's operating assets or any substantial part of Contractor's property, or shall make any general assignment for the benefit of Contractor's creditors, or shall fail generally to pay Contractor's debts as they become due or shall take any action in furtherance of any of the foregoing;

E. A court having jurisdiction shall enter a decree or order for relief in respect of Contractor, in any involuntary case brought under any bankruptcy, insolvency, debtor relief, or similar law now or hereafter in effect, or Contractor shall consent to or shall fail to oppose any such proceeding, or any such court shall enter a decree or order appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of Contractor or for any part of Contractor's operating equipment or assets, or orders the winding up or liquidation of the affairs of Contractor;

F. Contractor fails to provide reasonable assurances of performance as required under this Agreement.

### **11.2 Right to Terminate Upon Default**

Upon a default by Contractor, District shall have the right to terminate this Agreement upon a further ten (10) days' notice, but without the need for any hearing, suit or legal action. Unless Contractor files prior to expiration of said ten (10) days' notice, a request for hearing and appeal as to the Event of Default. District shall notify Contractor of the time and date said hearing shall be held within thirty (30) days of receipt of Contractor's request. Such hearing shall be held within sixty (60) days of receipt of Contractor's request unless extended by agreement of both parties. Contractor shall present its position and all relevant facts. District staff shall thereafter make its presentation. Contractor shall be notified of District's ruling in writing within fourteen (14) days of the administrative hearing.

If Contractor is not in agreement with the ruling issued by District in connection with the administrative hearing, it shall have the right to appeal this ruling to the Board of Directors members. This appeal shall be made in writing to District no later than fourteen (14) days after receipt of the administrative hearing ruling. District shall notify Contractor of the time and date the Board of Directors will review Contractor's appeal. Contractor shall present its position and all relevant facts after staff has made its presentation. Contractor shall be notified in writing within thirty (30) days of the Board of Directors ruling. The Board of Directors ruling shall be final, and Contractor shall have no further rights of appeal to the District.

### **11.3 Possession of Property Upon Termination**

In the event of termination for default, District shall have the right to take possession of any and all of Contractor's land, equipment, and other property used in the collection and transportation of Solid Waste and Recyclables and the billing and collection of fees for these services and to use such property. District shall have the right to retain the possession of such property until the earlier of ninety (90) days after taking possession and the time other suitable arrangements can be made for the provision of Solid Waste and Recyclables Collection services, which may include the award of an agreement to another waste hauling company. If District retains possession thereof after the period of time for which Contractor has already been paid by means of bills issued in advance of providing service for the class of service involved, Contractor shall be entitled to the

reasonable rental value of such property (which shall be offset against any damages due the District for Contractor's default).

Contractor shall furnish District with immediate access to all of its business records related to its billing of accounts for services.

Contractor agrees that it will fully cooperate with District to effect the transfer of possession of property for District's use. If District so requests, Contractor shall keep in good repair all such property, provide all motor vehicles with fuel, oil, and other service, and provide such other services as may be necessary to maintain property in operational condition. District may immediately engage all or any personnel necessary for the provision of services, including, if District so desires, employees previously employed by Contractor. Contractor further agrees, if District so requests, to furnish District the services of any or all management or office personnel employed by Contractor whose skills are reasonably necessary for the continuation of services. District agrees that it assumes complete responsibility for the proper, normal use of such equipment and facilities while in its possession.

Contractor covenants that it shall not create or impose any lien, charge or encumbrance on its facilities or equipment during the Term of this Agreement that will prevent the District's exercise of rights under this Agreement. Contractor agrees that the District's exercise of its rights under this Section: (a) does not constitute a taking of private property for which compensation must be paid; (b) will not create any liability on the part of District to Contractor other than the payment of reasonable rental value as provided for in this subsection; (c) does not exempt Contractor from the indemnity provisions of this Agreement which are meant to extend to circumstances arising under this Section. District has no obligation to maintain possession of Contractor's property for continued use for any period of time and may at any time at its sole discretion relinquish possession to Contractor.

#### **11.4 District's Remedies Cumulative: Specific Performance**

District's right to terminate the Agreement under this Agreement and to take possession of Contractor's properties under this Agreement are not exclusive, and District's termination of the Agreement shall not constitute an election of remedies. Instead, they shall be in addition to any and all other legal and equitable rights and remedies which District may have.

By virtue of the nature of this Agreement, the urgency of timely, continuous and high quality service, the lead time required to effect alternative service, and the rights granted by District to Contractor, the remedy of damages for a breach hereof by Contractor is inadequate and District shall be entitled to injunctive relief.

## **11.5 Excuse from Performance**

### **A. Force Majeure.**

Neither Contractor nor the District shall be excused from the performance of its obligation under this Agreement except where a party's failure to perform is due to an event of Force Majeure, as defined by this Agreement.

### **B. Obligation to Mitigate Damages.**

Any suspension of performance by a party pursuant to this Agreement shall be only to the extent, and for a period of no longer duration than required by the nature of the event and the party claiming excuse from obligation shall use its best efforts in an expeditious and commercially reasonable manner to remedy its inability to perform, and mitigate damages that may occur as a result of the event.

### **C. Recovery of Cost.**

Subject to the limitations of this Agreement, Contractor shall be entitled to recover, through a special interim rate review as provided for herein, the incremental costs reasonably necessary and prudently incurred by it in responding to an event of Force Majeure; provided, however, that Contractor shall have complied fully with all of the other provisions of this Agreement, including without limitation the notice provisions under this Agreement.

### **D. Notice Requirement.**

Contractor shall file with District a written notice of intent to claim excuse from performance under this Agreement by reason of an event of Force Majeure if, at any time after execution of this Agreement, Contractor reasonably believes that such an event has occurred and will materially prevent Contractor's performance of one or more of its obligations hereunder. Notice required by this Section shall be filed with the District promptly in light of the circumstances but in any event not later than thirty (30) calendar days after Contractor learned or should have learned of the event of Force Majeure. Such notice shall describe in detail the event of Force Majeure claimed, the services impacted by the claimed event of Force Majeure; a description of any remedial work required to be undertaken to enable Contractor to resume full operations under this Agreement; an itemized breakdown of the projected incremental costs for such remedial work; an itemized description of the changes to then current rates which would be needed to recover costs for the implementation of the remedial work; and such other information as District reasonably requests.

### **E. District's Right in the Event of Force Majeure.**

The partial or complete interruption or discontinuance of Contractor's service caused by an event of Force Majeure shall not constitute an event of default under this Agreement. Notwithstanding the foregoing: (a) District shall have the right to assume possession of Contractor's property and facilities in accordance with the provisions of the Agreement in the event of Force Majeure; (b) if Contractor's excuse from performance for reason of Force Majeure continues for a period of thirty (30) days or more, District shall have the

right in its sole discretion to terminate this Agreement by giving ten (10) days notice, in which case District still shall have the right to assume possession of Contractor's property in accordance with this Agreement.

F. District's Right in the Event of Change in Law.

In the event of a material Change in Law which substantially alters District's duties to provide for waste diversion, Collection and Disposal, or other aspects of integrated waste management, District shall have the right to modify this Agreement to curtail or increase the services affected by the Change in Law, or to terminate the Agreement entirely. District's right to terminate the Agreement shall be limited to circumstances under which a material Change in Law (excluding a material Change in Law undertaken or initiated by District) obviates the District's need to provide the services provided hereunder; provided, however, that in the event of termination the value of Contractor's investment in this Agreement shall be reviewed and, as appropriate, compensated in accordance with the provisions of this Agreement.

**11.6 Right to Demand Assurance of Performance**

If Contractor: (a) is subject of any labor unrest including work stoppage or slow down, sick out, picketing, or other concerted job actions; (b) appears in the reasonable judgment of the District to be unable to regularly pay bills as they become due; or (c) is the subject of a civil or criminal judgment or order entered for violations of environmental laws; and District believes in good faith that Contractor's ability to perform has been placed in substantial jeopardy, District may at its option, in addition to all of the remedies that it may have, demand from Contractor reasonable assurances of timely and proper performance of this Agreement, in such form and substance that District believes is reasonably necessary in the circumstances.

**11.7 Notice, Hearing and Appeal of District Breach**

Should Contractor contend that District is in breach of this Agreement, it shall file with the General Manager a written request for an administrative hearing before the General Manager or his/her designee. Said request shall be made within ninety (90) days of the event or incident, which allegedly gave rise to the breach. District shall notify Contractor of the time and date said hearing shall be held within (30) days of receipt of Contractor's request. Contractor shall present its position and all relevant facts after District staff has made its presentation. Contractor shall be notified of District's ruling in writing within fourteen (14) days of the administrative hearing.

If Contractor is not in agreement with the ruling issued by District in connection with the administrative hearing, it shall have the right to appeal this ruling to the Board of Directors. This appeal shall be made in writing to District no later than fourteen (14) days after receipt of the administrative hearing ruling. District shall notify Contractor of the time and date the Board of Directors will review Contractor's appeal. Contractor shall present its position and all relevant facts after staff has made its presentation. Contractor shall be notified in writing within thirty (30) days of the Board of Directors

ruling. The Board of Director's ruling shall be final, and Contractor shall have no further rights of appeal.

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## ARTICLE 12

### OTHER AGREEMENTS OF THE PARTIES

#### **12.1 Relationship of Parties**

The parties intend that Contractor shall perform the services required by this Agreement as an independent contractor and not as an officer or employee of District nor as a partner of or joint venturer with District. No employee or agent of Contractor shall be deemed to be an employee or agent of the District. Except as expressly provided herein, Contractor shall have the exclusive control over the manner and means of conducting the Solid Waste and Recyclables Collection and Disposal services performed under this Agreement, and all persons performing such services. Contractor shall be solely responsible for the acts and omissions of its officers, employees, subcontractors and agents. Neither Contractor nor its officers, employees, subcontractors and agents shall obtain any rights to retirement benefits, workers' compensation benefits, or any other benefits which accrue to District employees by virtue of their employment with the District including payroll deductions of any kind.

#### **12.2 Compliance with Law**

In providing the services required under this Agreement, Contractor shall at all times, at its sole cost, comply with all applicable laws, permits and licenses of the United States, the State of California and the District and with all applicable regulations promulgated by federal, State, regional or local administrative and regulatory agencies now in force and as they may be enacted, issued or amended during the Term.

#### **12.3 Governing Law**

This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California.

#### **12.4 Jurisdiction**

Any lawsuits between the parties arising out of this Agreement shall be brought and concluded in the courts of the State of California, which shall have exclusive jurisdiction over such lawsuits.

With respect to venue, the parties agree that this Agreement is made in and will be performed in Fresno County.

#### **12.5 Assignment**

Except as otherwise provided in this Agreement, neither party shall assign its rights nor delegate or otherwise transfer this Agreement to any other person without the prior written consent of the other party. Any such assignment made without the consent of the other party shall be void and the attempted assignment shall constitute a material breach of this Agreement.

For purposes of this Section, "assignment" shall include, but not be limited to: (i) a sale, exchange, or other transfer of substantially all of Contractor's assets dedicated to service under this Agreement to a third party; (ii) a sale, exchange, or other transfer of forty-nine percent (49%) or more of the outstanding common stock of Contractor to a person other than the Contractor; (iii) any reorganization, consolidation, merger, recapitalization, stock issuance or re-issuance, voting trust, pooling agreement, escrow arrangement, liquidation, or other transaction to which Contractor or any of its shareholders is a party which results in a change of ownership or control of forty-nine percent (49%) or more of the value or voting rights in the stock of Contractor; and (iv) any combination of the foregoing (whether or not in related or contemporaneous transactions) which has the effect of any such transfer or change of ownership. Actions taken under (ii), (iii) or (iv) hereof are cumulative and shall be taken together as done as a single action without regard to the date of occurrence. For the purposes of this Section, the term "proposed assignee" shall refer to the proposed transferee(s) or other successor(s) in interest pursuant to the assignment.

Contractor acknowledges that this Agreement involves rendering a vital service to District's residents and businesses, and specified herein based on (1) Contractor's experience, skill, and reputation for conducting its Solid Waste management operations in a safe, effective and responsible fashion, at all times in keeping with applicable Waste management laws, regulations and good Waste management practices, and (2) Contractor's financial resources to maintain the required equipment and to support its indemnity obligations to District under this Agreement. District has relied on each of these factors, among others, in choosing Contractor to perform the services to be rendered by Contractor under this Agreement.

If Contractor requests District's consideration of and consent to an assignment, District may deny or approve such request in its complete discretion. No request by Contractor for consent to an assignment need be considered by District unless and until Contractor has met the following requirements:

A. Contractor shall undertake to pay District its reasonable expenses for attorney's fees and investigation costs necessary to investigate the suitability of any proposed assignee and to review and finalize any documentation required as a condition for approving any such assignment;

B. Contractor shall furnish District with audited financial statements of the proposed assignee's operations for the immediately preceding three (3) operating years;

C. Contractor shall furnish District with satisfactory proof that: (i) the proposed assignee has at least ten (10) years of Solid Waste management experience on a scale equal to or exceeding the sale of operations conducted by Contractor under this Agreement; (ii) in the last five (5) years, the proposed assignee has not suffered any citations or other censure from any federal, State or local agency having jurisdiction over its Waste management operations due to any significant failure to comply with

State, federal or local Waste management laws and that the assignee has provided District with a complete list of such citations and censures; (iii) the proposed assignee has at all times conducted its operations in an environmentally safe and conscientious fashion; (iv) the proposed assignee conducts its Solid Waste management practices in accordance with sound Waste management practices in full compliance with all federal, State and local laws regulating the Collection and Disposal of Waste, including Hazardous Waste as identified in Title 22 of the California Code of Regulations; (v) of any other information required by District to ensure the proposed assignee can fulfill the terms of this Agreement in a timely, safe and affective manner.

Under no circumstances shall any proposed assignment be considered by District if Contractor is in default at any time during the period of consideration.

### **12.6 Affiliated Companies**

Contractor's accounting records and financial statements shall be maintained on a basis showing the results of Contractor's operations under this Agreement separately from operations in other locations, as if Contractor were an independent entity providing services only to District. The costs and revenues associated with providing service to District shall not be combined, consolidated or in any way incorporated with those of other operations conducted by Contractor in other locations, or with those of an affiliate.

If Contractor enters into any financial transactions with a related party entity for the provision of labor, equipment, supplies, services, capital, etc., related to the furnishing of services under this Agreement, that relationship shall be disclosed to District, and in the financial reports submitted to District. In such event, District's rights to inspect records, and obtain financial data shall extend to such related party entity or entities.

### **12.7 Subcontracting**

Contractor shall not engage any subcontractors for collection or disposal of Solid Waste or collection or processing of Recyclables without the prior written consent of the District.

### **12.8 Binding on Successors**

The provisions of this Agreement shall inure to the benefit to and be binding on the successors and permitted assigns of the parties.

### **12.9 Transition to Next Contractor**

At the point of transition, Contractor shall cooperate with District and subsequent Contractor(s) to assist in an orderly transition which will include Contractor providing route lists and billing information. Contractor will not be obliged to sell Collection vehicles, bins and containers to the next Contractor. Contractor, at its option, may enter into negotiations with the next Contractor to sell (in part or all) Collection vehicles, bins and containers.

**12.10 Parties in Interest**

Nothing in this Agreement, whether express or implied, is intended to confer any rights on any persons other than the parties to it and their representatives, successors and permitted assigns.

**12.11 Waiver**

The waiver by either party of any breach or violation of any provisions of this Agreement shall not be deemed to be a waiver of any breach or violation of any other provision nor of any subsequent breach or violation of the same or any other provision. The subsequent acceptance by either party of any monies which become due hereunder shall not be deemed to be a waiver of any pre-existing or concurrent breach or violation by the other party of any provision of this Agreement.

**12.12 Contractor's Investigation**

The Contractor has made an independent investigation (satisfactory to it) of the conditions and circumstances surrounding the Agreement and the work to be performed by it.

**12.13 Notice**

All notices, demands, requests, proposals, approvals, consents and other communications which this Agreement requires, authorizes or contemplates shall, except as provided for in this Agreement, be in writing and shall either be personally delivered to a representative of the parties at the address below or be deposited in the United States mail, first-class postage prepaid, addressed as follows:

If to District:           General Manager  
                                  Malaga County Water District  
                                  3580 South Frank Avenue  
                                  Fresno, California 93725

If to Contractor:       Orange Avenue Disposal  
                                  DBA Industrial Waste and Salvage  
                                  PO Box 446  
                                  Fresno, California 93721

The address to which communications may be delivered may be changed from time to time by a notice given in accordance with this Section.

Notice shall be deemed given on the day it is personally delivered or, if mailed, three (3) days from the date it is deposited in the mail.

**12.14 Representatives of the Parties**

References in this Agreement to the "District" shall mean the Malaga County Water District, and all actions to be taken by District shall be taken by the Malaga County

Water District, except as provided below. The Board of Directors may delegate, in writing, authority to the General Manager and may permit such officials, in turn, to delegate in writing some or all of such authority to subordinate officers. Contractor may rely upon actions taken by such delegates if they are within the scope of the authority properly delegated to them.

Contractor shall, by the Effective Date, designate in writing a responsible officer who shall serve as the representative of Contractor in all matters related to the Agreement and shall inform District in writing of such designation and of any limitations upon his or her authority to bind Contractor. District may rely upon action taken by such designated representative as actions of Contractor unless they are outside the scope of the authority delegated to him/her by Contractor as communicated to District.

#### **12.15 District Free to Negotiate with Third Parties**

District may investigate all options for the Collection and Disposal of Solid Waste after the expiration of the Term. Without limiting the generality of the foregoing, District may solicit proposals from Contractor and from third parties for the provision of Collection services, Disposal services, Recycling services, Green Waste Collection and composting, and any combination thereof, and may negotiate and execute agreements for such services which will take effect upon the expiration or earlier termination under the provisions of this Agreement.

#### **12.16 Privacy**

Contractor shall strictly observe and protect the rights of privacy of customers. Information identifying individual customers or the composition or contents of a customer's waste stream shall not be revealed to any person, governmental unit, private agency, or company, unless upon the authority of a court of law, by statute, or upon valid authorization of the customer. This provision shall not be construed to preclude Contractor from preparing, participating in, or assisting in the preparation of waste characterization studies or waste stream analyses which may be required by AB 939.

#### **12.17 Compliance with Malaga Code**

Contractor shall comply with those provisions of the Malaga Code of District which are applicable, and with any and all amendments to such applicable provisions during the term of this Agreement.

#### **12.18 Lease of Equipment and Facilities**

Contractor agrees not to enter into leases or purchase of significant new vehicles and new facilities that materially affect the calculation of Contractor Compensation without the advance, written approval of District which shall not be unreasonably withheld.

## ARTICLE 13

### MISCELLANEOUS AGREEMENTS

#### **13.1 Entire Agreement**

This Agreement, including the Exhibits, represents the full and entire Agreement between the parties with respect to the matters covered herein.

#### **13.2 Section Headings**

The article headings and section headings in this Agreement are for convenience of reference only and are not intended to be used in the construction of this Agreement nor to alter or affect any of its provisions.

#### **13.3 References to Laws**

All references in this Agreement to laws shall be understood to include such laws as they may be subsequently amended or re-codified, unless otherwise specifically provided.

#### **13.4 Interpretation**

This Agreement shall be interpreted and construed reasonably and neither for nor against either party, regardless of the degree to which either party participated in its drafting.

#### **13.5 Amendment**

This Agreement may not be modified or amended in any respect except in writing signed by the parties.

#### **13.6 Severability**

If any non-material provision of this Agreement is for any reason deemed to be invalid and unenforceable, the invalidity or unenforceability of such provision shall not affect any of the remaining provisions of this Agreement which shall be enforced as if such invalid or unenforceable provision had not been contained herein.

#### **13.7 Counterparts**

This Agreement may be executed in counterparts each of which shall be considered an original.

#### **13.8 Cost of Litigation**

If any legal action is necessary to enforce any provision hereof or for damages by reason of an alleged breach of any provisions of this Agreement, or other action arising from this Agreement the prevailing party shall be entitled to receive from the losing party all costs and expenses in such amount as the Court may judge to be reasonable attorneys' fees.

**13.9 Integrated Contract**

This Agreement represents the full and complete understanding of every kind or nature whatsoever between the parties hereto. This Agreement supersedes any and all agreements relating to the subject matter hereof entered into by Contractor and District. No verbal agreement or implied covenant shall be held to vary the provisions hereof. Any modification of this Agreement will be effective only by written execution signed by both District and Contractor.

**13.10 Inserted Provisions**

Each provision and clause required by law to be inserted into the Agreement shall be deemed to be enacted herein, and the Agreement shall be read and enforced as though each were included herein. If through mistake or otherwise, any such provision is not inserted or is not correctly inserted, the Agreement shall be deemed to be so amended upon application by either party.

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**IN WITNESS WHEREOF**, District and Contractor have executed this Agreement as of the day and year first above written.

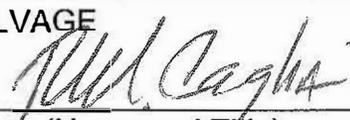
**DISTRICT:**

MALAGA COUNTY WATER DISTRICT

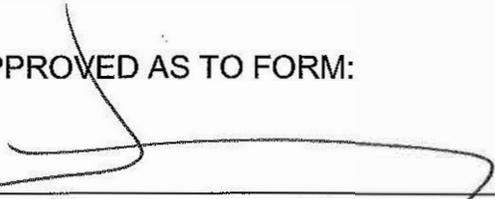
By   
Charles Garabedian, Jr. President  
Board of Directors of the  
Malaga County Water District

**CONTRACTOR:**

ORANGE AVENUE DISPOSAL  
DBA: INDUSTRIAL WASTE AND  
SALVAGE

By   
(Name and Title)

**APPROVED AS TO FORM:**

  
Neal E. Costanzo, Legal Counsel

**Exhibit 1**  
**Current Service Rates**

<b>Service</b>	<b>Qty</b>	<b>Monthly</b>	<b>Total</b>
<b>Residential Service</b>	210	\$ 15.40	\$ 3,234.00
Solid Waste - 96 gallon		included	
Recycled Waste - 96 gallon		included	
Green Waste - 96 gallon		included	
<b>Senior Citizen</b>	48	\$ 13.40	\$ 643.20
Solid Waste - 96 gallon		included	
Recycled Waste - 96 gallon		included	
Green Waste - 96 gallon		included	
<b>Senior Citizen (Reduced Volume)</b>	3	\$ 10.40	\$ 31.20
Solid Waste - 64 gallon			
Recycled Waste - 96 gallon			
Green Waste - 96 gallon			
<b>Community Clean-up (all)</b>	221	\$ 5.80	\$ 1,281.80

Monthly Average \$ 5,190.20

**Supplemental Work-Order Charges (On-Call)**

Solid Waste - 96 gallon	\$ 6.75
Recycled Waste - 96 gallon	\$ 2.75
Green Waste - 96 gallon	\$ 4.00
R/O Container	\$ 110.00
Bulk Item (2 cuyd max)	\$ 50.00

**Exhibit 2**  
**Service Provided to District at No Charge**

**Recreation Center**

1 x 96 gallon solid waste	weekly	No Charge
3 x 96 gallon recycled waste	weekly	No Charge
3 x 96 gallon green waste	weekly	No Charge
3 cuyd front load trash	2 x weekly	No Charge
3 cuyd front load trash	events	No Charge

**Residential Area**

Street sweeping	monthly	No Charge
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**WWTF**

3 cuyd front load trash (grit screenings)	2 x weekly	No Charge
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**District Office**

1 x 96 gallon solid waste	weekly	No Charge
1 x 96 gallon recycled waste	weekly	No Charge

**Common Areas (District Facilities)**

Minor pot hole filling	on-call	No Charge
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**Events**

Feista Days	September Each Year	No Charge	3 cuyd front load
Cinco De Mayo	May Each Year	No Charge	3 cuyd front load
Holiday	December Each Year	No Charge	3 cuyd front load
Thanksgiving	November Each Year	No Charge	3 cuyd front load
Fall/Halloween	October Each Year	No Charge	3 cuyd front load
Up to Three additional Events	Each Year	No Charge	3 cuyd front load

**EXHIBIT 3**  
**Proposed Service Rates**

<b>Service Rate</b>	<b>Qty</b>	<b>Monthly</b>
<b>Residential Service</b>	218	\$ 18.40
Solid Waste - 96 gallon		included
Recycled Waste - 96 gallon		included
Green Waste - 96 gallon		included
<b>Reduced Volume</b>	3	\$ 16.40
Solid Waste - 64 gallon		included
Recycled Waste - 96 gallon		included
Green Waste - 96 gallon		included
<b>Community Clean-up (all)</b>	221	\$ 7.05
<b>Administrative Fee (all)</b>	221	\$ 2.32
Monthly Average		
Yearly Average		
<b>Total Full Service Rate</b>		<b>\$ 27.77</b>
<b>Total Reduced Volume Rate</b>		<b>\$ 25.77</b>
<b>Supplemental Work-Order (On-Call)</b>		
Solid Waste - 96 gallon		\$ 7.80
Recycled Waste - 96 gallon		\$ 3.60
Green Waste - 96 gallon		\$ 5.00
R/O Container		\$ 130.00
Bulk Item (2 cuyd max)		\$ 50.00
Used oil (WWTF p/u; bulk qty)		\$ 110.00
Cart Replacement		\$ 60.00
Delivery Fee (reinstatement following cancellation of service of suspension of service for non-payment)		\$50