

**AMENDMENT NO. 2 TO
MUNICIPAL SOLID WASTE IMPORTATION AGREEMENT**

This **Amendment No. 2 to Municipal Solid Waste Importation Agreement** (“**Amendment**”) is made upon its execution by all parties this ___ day of _____, 2016 (“**Effective Date**”) by and between the County of Orange, a political subdivision of the State of California (“**County**”) and County Sanitation District No. 2 of Los Angeles County (“**District**”). County and District are collectively referred to as the “**Parties**.”

- A. The Parties entered into a Municipal Solid Waste Importation Agreement (“**Agreement**”) on May 14, 2013, permitting District to deliver Imported Acceptable Waste (as that term is defined in the Agreement) to the Disposal System (as that term is defined in the Agreement). The District began delivering Imported Acceptable Waste to the County on November 1, 2013.
- B. The Parties entered into Amendment No. 1 on February 25, 2014, increasing District’s minimum tonnage commitment from 255,000 to 648,210 tons per year, and expanding District’s use of landfills to include Frank R. Bowerman Landfill in addition to the Olinda Landfill.
- C. The Agreement originally included a June 30, 2016 termination date due to County’s agreement with its cities to cease importation at that time. The agreement with the cities has been amended to permit continued importation, and County and District have determined that it is mutually beneficial to extend the Municipal Solid Waste Importation Agreement.
- D. Except for Section 1 of this Amendment, all provisions of this Amendment will become effective on July 1, 2016.

Therefore, the Parties amend the Agreement as follows:

- 1. Section 2 is replaced in its entirety with the following:

SECTION 2: TERM OF AGREEMENT

The term (“**Term**”) of this Agreement will commence on the Effective Date and terminate on June 30, 2025, and may be extended for one subsequent five-year term upon mutual agreement of the Parties.

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2. Section 3.1 is replaced in its entirety with the following:

3.1 COMMITMENT TO DELIVER WASTE

- (a) Beginning July 1, 2016, the District agrees to deliver an amount of “**Committed Tonnage**” as follows:

Landfill	Annual Tonnage Commitment	Monthly Average Tonnage Delivery	Maximum Daily Cap (1)
Olinda	540,000 tons	45,000 tons	1,950 tons
Frank R. Bowerman	252,000 tons	21,000 tons	2,000 tons

(1)Daily cap is to provide flexibility for occasional fluctuations in day-to-day deliveries, and is not intended to increase entitled disposal capacity beyond the tonnage commitment.

Daily caps may be waived, decreased, or increased administratively by mutual agreement of the Director and District’s Chief Engineer and General Manager. Tonnage in excess of contractually permitted amounts may be redirected to the Prima Deshecha Landfill or rejected from the system at Director’s discretion.

If a landfill closes, the Committed Tonnage to that landfill will cease. If capacity is available at other sites, and District wants to utilize available system capacity, the Parties will negotiate an arrangement to accommodate this tonnage at other sites.

- (b) Should additional landfill capacity become available, the Parties may increase the Committed Tonnage by mutual written consent of the Director and the District’s Chief Engineer and General Manager.
- (c) County affirms that should additional capacity become available within the Disposal System, District will be considered along with other existing contractors to utilize the available capacity for Imported Acceptable Waste. The allocation process shall follow the policy approved by the Director at the time such capacity becomes available.
- (d) Committed tonnage allocations to each landfill are based on the quantities of in-County waste disposed at each site according to County’s agreements with in-County cities, sanitary districts, and haulers. If District disposes both Imported Acceptable Waste and in-County waste, then Imported Acceptable Waste delivered to one landfill may not be offset by in-County tonnage being shifted from that landfill to another location. Any shift in the delivery of in-County tonnage from its established disposal site to another landfill without County’s prior written approval constitutes a material breach of this Agreement and may be cause for reallocation of Committed Tonnage or other remedies as provided herein.
- (e) County recognizes that overall disposal quantities may decline in the future due to increased recycling efforts and/or other factors out of District’s control, and that District’s overall need for disposal options may decrease. The District’s Committed Tonnage is all of the residual waste requiring landfill disposal from its Puente Hills

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Materials Recovery Facility, South Gate Transfer Station and Downey Area Recycling and Transfer Facility, with the exception of residual waste delivered to the El Sobrante Landfill to meet the District's 2,500 tons per month contractual commitment at that site. Parties agree to review at the request of the District Committed Tonnage levels during the Term of this Agreement. District must provide documentation acceptable to the Director to support that a decrease in Committed Tonnage is due to changes in disposal demand and not due to use of alternative disposal facilities by District; Committed Tonnage is expected to be delivered to individual landfills in the same approximate ratio, as the original Committed Tonnage reflected.

3. Section 4.1 is replaced in its entirety with the following:

4.1 COMMITMENT TO PROVIDE DISPOSAL SERVICES

The County agrees to provide Disposal Services to District for the Term of this Agreement under the conditions specified in this Agreement. The County warrants that it can receive District's imported Acceptable Waste at the Designated Landfills identified in Section 3.1(a), or as adjusted per Section 7.3, under the facility permit for the Term of this Agreement.

4. Section 4.2 is replaced in its entirety with the following:

4.2 RATE FOR DISPOSAL SERVICES

Beginning on July 1, 2016, the County shall charge District for Disposal Services for Committed Tonnage on a per ton basis at the "**Contracted Rate**" identified in Exhibit B under the conditions of this Agreement. This rate is based on the anticipated delivery of tonnage as specified in Section 3.1 and is being given to District in consideration of its commitment to deliver the tonnage of Imported Acceptable Waste to the Designated Landfills each month during the Term of this Agreement, as provided in Section 3.1, and is subject to the adjustments provided in Sections 3.1, 4.4 and 4.5.

The monthly rate for Disposal Services shall be based on the monthly tonnage delivered by the District and its subcontractors and shall be based on a whole month's delivery. No rate adjustments will be made for a period of less than one month. The appropriate rate may be reflected in the same month's invoice or as an adjustment to subsequent month's invoice.

5. Section 4.3 is replaced in its entirety with the following:

4.3 PAYMENT FOR DISPOSAL SERVICES

Prior to November 1, 2013, the District shall establish deferred billing accounts under separate agreement with the County which will be substantially similar to the agreement in Exhibit C, attached hereto and incorporated by this reference. District shall establish deferred billing accounts as needed to comply with Section 5.3 of this Agreement.

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A calendar year adjustment by landfill will be calculated by March 31 of the subsequent year based on the formula shown below. This calculation shall be prorated for partial contract years. Tonnage in excess of Committed Tonnage at one landfill may not be used to offset a shortfall at another landfill, except to the extent that County has approved the use of alternative landfill to meet another landfill's tonnage commitment. In the event District foresees a shortfall in tonnage delivery to one of its sites for a limited period, District may request such written approval from County, and approval shall not be unreasonably withheld. The year-end adjustment is payable within thirty (30) days of date of invoice.

Put or Pay by Landfill

(Committed Tonnage* x Contracted Rate**) – Actual Payments

*Committed Tonnage as listed in Section 3.1 for applicable landfill, as it may be adjusted.

**Contracted Rate as listed in Section 4.2 for applicable landfill, as it may be adjusted.

6. Section 4.4 is replaced in its entirety with the following:

4.4 AUTOMATIC ANNUAL RATE ADJUSTMENT FOR DISPOSAL SERVICES

Beginning July 1, 2017, the rate specified in Section 4.2 and all other rates provided for in this Agreement shall be adjusted as follows:

The rates shall be subject to automatic annual adjustments in proportion to changes in the Consumer Price Index for All Urban Consumers (CPI-U) for the Los Angeles-Riverside-Orange County, CA Area (All Items index – 1982-84=100, Base Year) promulgated by the Bureau of Labor Statistics of the U.S. Department of Labor. The automatic adjustment shall be effective on July 1 of each year and shall be calculated by means of the following formula:

$A = \$ [\text{base rates} \times B/C]$ where

A = Adjusted Rate

B = Monthly CPI for the month of December of the year prior to the date the adjustment is to become effective

C = Monthly CPI for the month of December 2015

In the event that the County does not implement the annual July 1 CPI-based rate adjustment provided for in its Waste Disposal Agreements with County cities for in-County disposal, the annual CPI-based rate adjustment that would have been effective under this contract as of the same July 1 will be waived for that year.

In no event shall the minimum annual rate be reduced by reason of any such adjustment. In the event that the Consumer Price Index is not issued or published for the period for which such minimum annual rate is to be adjusted and computed hereunder, or in the event that the Bureau of Labor Statistics of the U.S. Department of Labor should cease to publish such index figures, then any similar index published by any other branch or department of the U.S.

Government shall be used, and if none is so published, then another index generally recognized and authoritative shall be substituted by the County.

7. The first two paragraphs of Section 5.3 are replaced in their entirety with the following.

5.3 MONTHLY ADJUSTMENT BETWEEN REVENUE CATEGORIES

When the processing of in-County controllable waste and importation occurs at the same transfer station, both Parties recognize the inherent discrepancies in the system of allocating each truckload by category of in-County vs. importation as each truck leaves the transfer station. Due to the variables of incoming tonnage from many cities, extraction of recyclables, varying waste characterizations by city, complete accuracy of the outbound waste stream is not immediately available at the time the truck leaves the dock on its way to the landfill.

Waste origin is based on an estimate at the time the truck enters the landfill. Discrepancies in allocation by revenue category (in-County vs. importation) will be apparent after each month is concluded and the actual allocations are determined by District. District is expected to provide reasonable estimates on delivery, and significant adjustments between in-County and import tonnage categories are problematic for the County. Net tonnage adjustments between import and in-County categories, from estimates at the landfill to corrected allocations, of more than two percent (2%) of total actual importation tonnage delivered in a given month shall be assessed liquidated damages at a rate of \$2.00 per ton. These damages will be assessed on a per account basis.

8. Section 5.6 is added as follows:

5.6 TIPPERS AT LANDFILL SITES

County will study the operational feasibility and financial impact of using tippers at its landfills for use by importers. If usage is determined to be a viable option, Director will negotiate with the District's Chief Engineer and General Manager for District to install and use tippers on site.

9. Section 7.4 is deleted.

10. Section 8.5 is replaced in its entirety with the following:

8.5 NON-ASSIGNMENT OF AGREEMENT; SUBCONTRACTING

District may not assign this Agreement or any of the rights or obligations under this Agreement without the prior written consent of the County, which may be withheld at the County's sole discretion. Any person or entity to whom this Agreement is assigned must expressly agree to be bound by all obligations of District. District will remain liable to County for all obligations under this Agreement notwithstanding any assignment made pursuant to this clause.

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District may deliver solid waste collected by District or any other entity under subcontract to District, provided said waste does not originate within Orange County and originates within a municipality or special district which has implemented an approved Household Hazardous Waste Collection Program and has fully implemented its SRRE. District must notify County prior to delivery of waste from any transfer station or other facility not owned by District, and District must establish with the County a separate account for each such transfer station or other facility (billing will continue to be in District's name and to District's mailing address).

11. The following language is deleted from Exhibits D-1, D-2 and D-3:

Customer Service Area: A customer service area with ample parking for vehicles is located near the scales. A privately operated mobile catering service provides food and drinks. Public restrooms and public telephones are available.

12. Exhibit A is deleted.

13. Exhibit B is replaced in its entirety with the following:

EXHIBIT B

CONTRACTED RATE SCHEDULE

Below is the rate schedule as it may be applied per Section 4. This schedule does not entitle District to bring in greater than its Committed Tonnage per Section 3.1(a), nor relieve the Put-or-Pay obligation per Section 4.3. The rate per ton to be paid for all tons in one month shall be based on the end-of-month total; rates will not be charged on an incremental basis. For example, if District delivers 70,000 tons in one month, each ton that month will be charged at \$25.25.

Monthly Tonnage (based on total system tonnage)	Rate Per Ton as of July 1, 2016 (shall be adjusted per Section 4.4)
<10,000	\$29.00
10,000 to 20,000	\$28.00
20,001 to 27,500	\$27.00
27,501 to 35,000	\$26.75
35,001 to 50,000	\$26.50
50,001 to 65,000	\$26.00
> 65,000	\$25.25

14. All other terms and conditions of the Agreement (as amended by Amendment No. 1) shall remain unchanged, with full force and effect.

[SIGNATURE PAGE FOLLOWS.]

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SIGNATURE PAGE

The Parties hereto have executed this Agreement on the dates shown opposite their respective signatures below.

**COUNTY SANITATION DISTRICT NO. 2 OF
LOS ANELES COUNTY**

Date: _____

By: _____

Chairperson

ATTEST:

Secretary

APPROVED AS TO FORM:
Lewis Brisbois Bisgaard & Smith, LLP

By: _____
District Counsel

County of Orange, a political
subdivision of the State of California

Print Name Title

Signature Date

APPROVED AS TO FORM:
County Counsel

By: _____
James Steinmann, Deputy