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SAN BERNARDINO COUNTY

Contract Number

13-188 A-3

SAP Number
44.0000.2218

Public Works – Solid Waste Management Division

Department Contract Representative	Darren Meeka, Deputy Director
Telephone Number	(909) 386-8703
Contractor	Arakelian Enterprises, Inc. DBA Athens Services
Contractor Representative	Greg Loughnane, Executive Director
Telephone Number	(626) 336-3636
Contract Term	7/1/2013 – 6/30/2031
Original Contract Amount	$475,125,555
Amendment Amount	
Total Contract Amount	
Cost Center	6702004250

IT IS HEREBY AGREED AS FOLLOWS*:*

CONTRACT 13-188
AMENDMENT NO. 3
WASTE DISPOSAL SYSTEM OPERATIONS CONTRACT

The following is Amendment No. 3 to Contract No. 13-188 ("Amendment No. 3") with Arakelian Enterprises, Inc. DBA Athens Services ("Contractor"), for the operation and maintenance of the County's Waste Disposal System.

WHEREAS, on April 23, 2013 (Item No. 39), the Board of Supervisors ("Board") approved Contract No. 13-188, Waste Disposal System Operations Contract ("Contract") with Contractor for the operation and maintenance of the County's Waste Disposal System, for a period of ten years commencing on July 1, 2013 and ending on June 30, 2023;

WHEREAS, on May 19, 2015 (Item No. 47), the Board approved Amendment No. 1 to the Contract which increased the amount by $3,790,495 to provide a portion of the Land Use Fee revenue generated to finance additional recycling in the CDSDP, increased the maximum time and material charges for extra services by $200,000 per year, adjusted the annual Performance Bond amount, and provided clarifying Contract language;

WHEREAS, on February 11, 2020 (Item No. 55), the Board approved Amendment No. 2 to the Contract to extend the term eight years, with the option to extend two additional four-year periods with possible additional

extensions, reset the operations contract rate and import burial rates for the extension period, which will be escalated annually based on the Consumer Price Index, and reduce the amount of import waste delivered; and

WHEREAS, the Parties desire to enter into this Amendment No. 3 to revise the waste densities in the Contract along with the associated Contract sections related to achieving increased landfill densities.

NOW THEREFORE, the Contract is hereby amended as follows:

1. Section 4.2(d) of the Contract, entitled "Failure to Achieve Effective Density", is amended in its entirety to read:

4.2 Liquidated Damages for Substandard Performance and Density Bonus

(d) Failure to Achieve Effective Density. The Contractor agrees that the effective use of the available capacity (air space) of the County's Active Landfills is of extreme importance to the County. Contractor agrees to perform all Facilities Operations in such a way as to maximize the amount of Solid Waste disposed within the available air space by maximizing the compaction of the Solid Waste and minimizing the use of cover soil within the limits of applicable law and regulation. The goals established for the Contract shall be to achieve a Minimum Effective Density (**"MED"**) measured in pounds per cubic yard for each Active Landfill within the ranges specified in the Contract. Overall or cumulative density for the whole Disposal System will not be given consideration when determining effective use of the available air space of the County's Active Landfills.

(i) **Determination of Effective Density.** The County shall survey each landfill area at the beginning and end of the measurement period by an annual aerial survey. This survey information shall be used to establish the volume portion (V) of the Effective Density calculation. The County shall continuously track and record the weight of the Solid Waste being disposed at each Facility. The Solid Waste weight used shall be the same weight that the County reports to the State Board of Equalization (BOE) for waste disposal. When the measurement period and the tonnage period do not coincide, the BOE average will be used to adjust the total Solid Waste weight. This information shall be used as the weight portion (W) of the Effective Density calculations, which is taken from the BOE's Integrated Waste Management Fee Return Form (line 8). (Note: Any imported Processed Green Material (PGM) or Material Recovery Facility (MRF) fines, if approved, brought to the landfill Sites and used as ADC in excess of 50,000 tons per year shall be added to the weight (W) portion of the Effective Density calculation.) Each measurement period shall be approximately twelve (12) months in duration and shall follow successively without lapse throughout the term of the Contract. Effective Density shall be calculated using the volume measurement (V) and Solid Waste weight (W) from the same measurement period. Adjustments for protective cover soil placed on the liner, stockpiles within the extent of filling, and other volumes deemed appropriate by the Contract Administrator shall be considered for density calculations. See Figure 1A for an example of methodology for how Effective Density will be calculated effective Contract Year 9 (July 1, 2021) through the end of the Contract term.

(ii) **Assessment of Liquidated Damages.** If the calculated Effective Density at a specific Active Landfill equals or exceeds the Minimum Effective Density (MED) identified in the Contract for that Active Landfill, there will be no liquidated damages imposed. No liquidated damages will be imposed for the first twenty vertical feet (20') of waste placed on the floor in any newly lined landfill cell. If the calculated Effective Density at a specific Active Landfill is less than the MED identified in the Contract for that Active Landfill, then liquidated damages, in the amount determined using the following equation, will be assessed:

$$\text{Liquidated Damages} = [(W) / (MED) - (V)] \times \$2.50$$

Effective July 1, 2021, throughout the remaining term of the Contract, the following are the MED required at each Site measured in pounds per cubic yard (pcy):

FACILITY	MINIMUM EFFECTIVE DENSITY
Barstow	1,125 pcy
Landers	1,125 pcy
Mid-Valley	1,350 pcy
San Timoteo	1,200 pcy
Victorville	1,250 pcy

See Figure 1B for an example of the methodology for how the Liquidated Damages will be calculated effective Contract Year 9 (July 1, 2021) through the end of the Contract term.

(iii) **Density Bonus.** If the calculated Effective Density at a specific Active Landfill exceeds the MEDB (Minimum Effective Density for Bonus) in the chart below for that Active Landfill, then the Contractor will receive a bonus in the form of an increase in the Facilities Operations Compensation in the amount determined using the following equation:

$$\text{Bonus} = [(W) / (MEDB) – (V)] \times \$2.50$$

The following are the Minimum Effective Densities for Bonus and Maximum Effective Densities for Bonus for each Site used to calculate bonus payments. In no event will Contractor receive a Density Bonus for Effective Densities above the Maximum Effective Density for Bonus. See Figure 1C for an example and methodology for how density bonuses will be calculated effective Contract Year 9 (July 1, 2021) through the end of the Contract term.

FACILITY	MINIMUM EFFECTIVE DENSITY (MEDB) FOR BONUS	MAXIMUM EFFECTIVE DENSITY (MXEDB) FOR BONUS
Barstow	1,225 pcy	1,300 pcy
Landers	1,225 pcy	1,300 pcy
Mid-Valley	1,425 pcy	1,725 pcy
San Timoteo	1,300 pcy	1,450 pcy
Victorville	1,350 pcy	1,500 pcy

2. Add Figure 1A, entitled “Example Computation for Calculating Airspace Utilization Density”, which is an example of the density calculation beginning Contract Year 9 (beginning July 1, 2021) through the end of the Contract term.

3. Add Figure 1B, entitled “Example Computation for Calculating Airspace Utilization Liquidated Damages”, which is an example of the methodology for how Liquidated Damages will be calculated effective Contract Year 9 (July 1, 2021) through the end of the Contract term.

4. Add Figure 1C, entitled “Example Computation for Calculating Airspace Utilization Bonus”, which is an example of the bonus calculation beginning Contract Year 9 (July 1, 2021) through the end of the Contract term.

5. Exhibit A of the Contract, entitled “Definitions”, is hereby amended to add or revise the following definitions:

“Maximum Effective Density for Bonus (MXEDB)” – means the effective density goal for the Contractor to achieve per Site in pounds per cubic yard to get assessed the maximum bonus amount for exceeding the Minimum Effective Density for Bonus.

“Minimum Effective Density (MED)” - means the requirement for the Contractor to achieve minimum refuse density per Site in pounds per cubic yard and not get assessed liquidated damages.

“Minimum Effective Density for Bonus (MEDB)”- means the goal for the Contractor to achieve minimum refuse density per Site in pounds per cubic yard and get assessed a bonus for exceeding the required refuse density.

6. Exhibit B-11 of the Contract, entitled, “Contractor Provided Equipment” is amended to read:

B-11 Contractor Provided Equipment

Contractor shall supply, at Contractor’s own expense, operating equipment at each Facility necessary to perform the requirements of this Contract. All such equipment shall be kept in good operating condition, shall be properly protected and shall be placed in the charge of competent operators. The Contractor shall ensure that equipment is available on-site for arduous, heavy-duty service to operate Class III landfills. The equipment utilized must be specifically designed for the use intended. Contractor will maintain its equipment in good operating condition and fully comply with federal, state and local requirements associated with the maintenance and operation of said equipment. Contractor must rebuild trash equipment (Waste Handling Dozers and Compactors) at the equipment’s half-life of 12,500 operating hours and replace equipment at 25,000 operating hours. Waste Handling Dozers and Compactors that have reached 25,000 operating hours may remain onsite and used as spares (Spare Waste Handling Dozers and Compactors) as long as they are replaced with a new equivalent piece of equipment at that Site. The Contractor will make every effort to operate Waste Handling Dozers and Compactors prior to operating any Spare Waste Handling Dozers and Compactors. Ancillary landfill support equipment (such as: Spare Waste Handling Dozers and Compactors; small dozers (CAT D6 or smaller); wheel loaders; rock trucks; excavators; and motorgraders must be rebuilt at 16,000 operating hours and replaced at 30,000 operating hours. In cases where rebuilds are not available on landfill equipment (excluding Waste Handling Dozers and Compactors), Contractor must make every effort to repair/replace major components (e.g. engine, transmission, final drives).

Contractor shall determine the number and type of equipment needed to achieve compliance with this Contract. All equipment shall be in conformance with Contractor’s Equipment List listed in Exhibit I and shall remain at its respective Facility and fully functional for the duration of the Contract. Effective July 1, 2021, Contractor shall add one new CAT 836 compactor at the Mid-Valley Sanitary Landfill and make every effort to maintain a total of four (4) CAT 836 compactors with less than 25,000 operating hours each available for use at Mid-Valley Sanitary Landfill based on Site volume, or equivalent, at Mid-Valley Sanitary Landfill for the duration of the Contract term.

Acceptance of Contractor’s Equipment List by County only reflects that County acknowledges that Contractor is representing that the equipment list allows Contractor to meet the minimum requirements of the Contract. Acceptance of Contractor’s Equipment List by the County does not mean that the County is warranting that the amount and type of equipment will be adequate to perform all the requirements containing in this Contract, nor does it relieve the Contractor from providing such additional pieces of fully operational equipment at any Facility as may be necessary for the Contractor to meet its obligation under this Contract.

Contractor shall obtain the Contract Administrator’s approval for any exchange or deletion to the Equipment List. Contractor may propose to add or delete equipment to the list at any time. For any equipment on the Equipment List that is leased or rented by Contractor, or is otherwise owned by someone other than Contractor, Contractor shall provide the Contract Administrator and maintain as current, the name and address of the owner of the equipment. All equipment shall be equipped with accessories such as rollover protection, back-up warning systems and other devices, as may be required to comply with applicable state and federal safety requirements. All equipment must be equipped with a working original equipment manufacturer (OEM) hour meter or odometer. Contractor shall submit to the Contract Administrator a monthly equipment report by Facility, within 10 days of the end of each month, which contains: type of equipment, function performed and hours/mileage worked by Site. Equipment hours and mileage reported will be readings from each equipment’s OEM hour meter and/or odometer.

7. Add Section 18.21 to the Contract:

18.21 Electronic Signatures

The Contract may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same Contract. The parties

shall be entitled to sign and transmit an electronic signature of this Contract (whether by facsimile, PDF or other email transmission), which signature shall be binding on the party whose name is contained therein. Each party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed Contract upon request.

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Except as amended herein, all other terms and conditions of the Contract remain in full force and effect.

IN WITNESS WHEREOF, the Board of Supervisors of the County of San Bernardino and Contractor have each caused this Contract to be subscribed by its respective duly authorized persons, on its behalf.

COUNTY OF SAN BERNARDINO

►

Curt Hagman, Chairman, Board of Supervisors

Dated:

SIGNED AND CERTIFIED THAT A COPY OF THIS DOCUMENT HAS BEEN DELIVERED TO THE CHAIRMAN OF THE BOARD

Lynna Monell
Clerk of the Board of Supervisors
of the County of San Bernardino

By
Deputy

ARAKELIAN ENTERPRISES, INC.
DBA ATHENS SERVICES
(Print or type name of corporation, company, contractor, etc.)

By ►
(Authorized signature - sign in blue ink)

Name Ron J. Arakelian, III
(*Print or type name of person signing contract)*

Title Executive Officer
(Print or Type)

Dated:

Address P.O. BOX 60009

CITY OF INDUSTRY, CA 91716

FOR COUNTY USE ONLY

Approved as to Legal Form	Reviewed for Contract Compliance	Reviewed/Approved by Department
►	►	►
Julie Surber, Principal Asst. County Counsel	Andy Silao, P.E.	Brendon Biggs, Director
Date	Date	Date

FIGURE 1A
EXAMPLE COMPUTATION FOR CALCULATING AIRSPACE UTILIZATION DENSITY

Below is an example of methodology for how Effective Density will be calculated effective July 1, 2021 through the end of the Contract term. This example uses non-site-specific arbitrary numbers to illustrate the calculation process.

Fiscal Year
2021-2022

Formula:
Effective Density = W / V

Weight (W)
This is taken from the Board of Equalization (Integrated Waste Management Fee Return Form – Line 8)

3rd Quarter 2021 – 73,000 tons
4th Quarter 2021 – 70,000 tons
1st Quarter 2022 – 72,000 tons
2nd Quarter 2022 – 71,000 tons

Total tons disposed = 286,000 tons
(W) = 286,000 tons

Volume (V))
Determined by the difference between the July 1, 2022 topo versus the July 2021 topo within the aerial extent of filling determined by the survey.

460,000 CY – Unadjusted Volume

Stockpiles within the extent of filling on the July 1, 2021 topo
(added to Unadjusted Volume – to exclude stockpiles)

600 CY

Stockpiles within the extent of filling on the July 1, 2022 topo
(subtracted from Unadjusted Volume – to exclude stockpiles)

900 CY

460,000 CY + 600 CY – 900 CY = 459,700 CY (Adjusted Volume)

(V) = 459,700 CY

Effective Density = (W)/(V) = 286,000 tons/459,700 CY = 0.622 tons/CY x 2,000 lbs = 1,244 lbs/CY

Effective Density = 1,244 lbs/CY

FIGURE 1B
EXAMPLE COMPUTATION FOR CALCULATING AIRSPACE UTILIZATION DENSITY LIQUIDATED DAMAGES

Below is an example of methodology for how the Effective Density Liquidated Damages will be calculated effective July 1, 2021 through the end of the Contract term. This example uses non-site-specific arbitrary numbers to illustrate the calculation process.

Formula:
Liquidated Damages = [(W) / (MED) – (V)] x $2.50

MED = 1,350 LBS/CY

Weight (W)
This is taken from the Board of Equalization (Integrated Waste Management Fee Return Form – Line 8)

3rd Quarter 2021 – 73,000 tons
4th Quarter 2021 – 70,000 tons
1st Quarter 2022 – 72,000 tons
2nd Quarter 2022 – 71,000 tons

Total tons disposed = 286,000 tons
(W) = 286,000 tons = 572,000,000 lbs

Volume (V))
Determined by the difference between the July 1, 2022 topo versus the July 2021 topo within the aerial extent of filling determined by the survey.

460,000 CY – Unadjusted Volume

Stockpiles within the extent of filling on the July 1, 2021 topo
(added to Unadjusted Volume – to exclude stockpiles)

600 CY

Stockpiles within the extent of filling on the July 1, 2022 topo
(subtracted from Unadjusted Volume – to exclude stockpiles)

900 CY

460,000 CY + 600 CY – 900 CY = 459,700 CY (Adjusted Volume)

(V) = 459,700 CY

Effective Density = (W)/(V) = 286,000 tons/459,700 CY = 0.622 tons/CY x 2,000 lbs = 1,244 lbs/CY

MED = 1,350 lbs/CY

LD=[(W) / (MED) – (V)] X $2.50= [(572,000,000 lbs) / (1,350 lbs/CY) – 459,700 CY] X $2.50= $89,990

FIGURE 1C
EXAMPLE COMPUTATION FOR CALCULATING AIRSPACE UTILIZATION DENSITY BONUS

Below is an example of methodology for how the Effective Density Bonus will be calculated effective July 1, 2021 through the end of the Contract term. This example uses non-site-specific arbitrary numbers to illustrate the calculation process.

Formula:
Bonus = [(W) / (MEDB) – (V)] x $2.50

Fiscal Year
2021-2022

MED = 1,125 lbs/CY
MEDB = 1,225 lbs/CY

Weight (W)
This is taken from the Board of Equalization (Integrated Waste Management Fee Return Form – Line 8)

3rd Quarter 2021 – 73,000 tons
4th Quarter 2021 – 70,000 tons
1st Quarter 2022 – 72,000 tons
2nd Quarter 2022 – 71,000 tons

Total tons disposed = 286,000 tons
(W) = 286,000 tons = 572,000,000 lbs

Volume (V))
Determined by the difference between the July 1, 2022 topo versus the July 2021 topo within the aerial extent of filling determined by the survey.

460,000 CY – Unadjusted Volume

Stockpiles within the extent of filling on the July 1, 2021 topo
(added to Unadjusted Volume – to exclude stockpiles)

600 CY

Stockpiles within the extent of filling on the July 1, 2022 topo
(subtracted from Unadjusted Volume – to exclude stockpiles)

900 CY

460,000 CY + 600 CY – 900 CY = 459,700 CY (Adjusted Volume)

(V) = 459,700 CY

Effective Density = (W)/(V) = 286,000 tons/459,700 CY = 0.622 tons/CY x 2,000 lbs = 1,244 lbs/CY

Bonus= [(W) / (MEDB) – (V)] X 2.50= [(572,000,000 lbs) / (1,225 LBS/CY) – 459,700 CY] X $2.50= $18,096