

**REPORT/RECOMMENDATION TO THE BOARD OF SUPERVISORS
OF SAN BERNARDINO COUNTY
AND RECORD OF ACTION**

June 25, 2024

FROM

NOEL CASTILLO, Director, Department of Public Works - Solid Waste Management

SUBJECT

Amendment to Contract with Arakelian Enterprises, Inc. dba Athens Services for Waste Disposal System Operations

RECOMMENDATION(S)

Approve **Amendment No. 5 to Contract No. 13-188** with Arakelian Enterprises, Inc. dba Athens Services for Waste Disposal System Operations, including a non-standard term, increasing the annual operations cost by \$1,934,805, from \$21,714,104 to \$23,648,909, due to unforeseen extraordinary increases in prevailing wage rates and costs of heavy equipment; establishing a baseline cost for fuel and compensating for fuel costs exceeding the baseline; changing the dates used to establish the cost of living adjustment; revising the densities for the Mid-Valley and Victorville Sanitary Landfills; adding a green waste/organic diversion rate; allowing for an increase in import waste delivered at the discretion of the County; and extending the term by four years, for a total term of July 1, 2013 through June 30, 2035.
(Presenter: Noel Castillo, Director, 387-7906)

COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES

Operate in a Fiscally-Responsible and Business-Like Manner.

FINANCIAL IMPACT

Approval of this item will not result in the use of Discretionary General Funding (Net County Cost) as the Department of Public Works – Solid Waste Management Division (SWMD) is financed by fee revenue. SWMD establishes fees that are charged to the public and other agencies for utilization of the County's Waste Disposal System. Due to unanticipated extraordinary increases in prevailing wage rates and costs of equipment, a one-time payment of \$161,233 will be paid for the remainder of 2023-24. For 2024-25, the estimated cost for this amendment is \$1,934,805, an increase of approximately 6% of the overall compensation, due to the increases in prevailing wage rates and costs of heavy equipment. Both the operations and maintenance costs and the fees for import are subject to annual cost of living adjustments. Sufficient appropriation and revenue have been included in the SWMD 2024-25 budget and will be included in future recommended budgets.

BACKGROUND INFORMATION

On April 23, 2013 (Item No. 39), as a result of a competitive procurement, the Board of Supervisors (Board) approved Contract No. 13-188 (Contract) with Arakelian Enterprises, Inc. dba Athens Services (Athens) for a period of 10 years, from July 1, 2013, through June 30, 2023, for the operation and maintenance of the County's Disposal System, which consists of

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five active landfills and nine transfer stations. The Contract also provides for import tonnage commitments to generate revenue for the County's Disposal System.

On May 19, 2015 (Item No. 47), the Board approved Amendment No. 1 to the Contract to provide a portion of the Land Use Assessment revenue to finance additional recycling, increase the maximum time and material budget for extra services, and other clarifying Contract language.

On February 11, 2020 (Item No. 55), the Board approved Amendment No. 2 to the Contract to extend the term of the Contract by eight additional years, from July 1, 2023, to June 30, 2031, increase the operations Contract burial rates, and reduce the amount of import tonnage by Athens for the remaining term of the Contract in order to conserve landfill airspace for future needs. Additionally, it allowed for two four-year options to extend, though each of those extensions will require approval by Athens and the Board.

On May 18, 2021 (Item No. 52), the Board approved Amendment No. 3 to the Contract to revise density standards and liquidated damage penalties for failure to meet the standards and add incentive payments for exceeding the standards.

On October 4, 2022 (Item No. 36), the Board approved Amendment No. 4 to the Contract to allow a two-year deferral on the collection of liquidated damages, on amounts under \$250,000, for the failure to achieve minimum effective densities; allow retroactive early cost-of-living adjustments, effective July 1, 2022, to Athens' compensation to address unpredicted cost increases; and beginning July 1, 2024 through the end of the Contract term on June 30, 2031, allow for early cost-of-living compensation adjustments under specific economic conditions.

Amendment No. 2, approved on February 11, 2020 (Item No. 55), included Contract reopener periods, the first of which began on July 1, 2023. According to the terms of the reopener period, the County and Athens are required to meet and discuss any potential amendments to the Contract within 180 days from the reopener date of July 1, 2023. The terms also provide for the County's consideration of extending the Contract term by an additional four years. The County and Athens have been in continued discussions since July 2023 and have agreed to the terms of the recommended Amendment No. 5.

This amendment will increase the operations cost to operate the County's Solid Waste Disposal System due to an extraordinary increase in prevailing wage rates and costs of heavy equipment used to operate the landfills. Additionally, a baseline cost for fuel will be established in order to compensate Athens when fuel exceeds the baseline cost, while the County will receive a credit when the fuel prices are below the baseline cost.

Athens requested a change to the dates used to establish the annual cost of living adjustment. The Contract currently identifies the publication date of the Consumer Price Index (CPI) used to calculate the adjustment as the annual change in the CPI index for the preceding 12-month period from September to September. In order to provide a more accurate adjustment for the upcoming fiscal year, the County and Athens have agreed to change the dates to a 12-month period from April to April. The change in the operations rates to reflect the annual cost of living adjustment will continue to be effective July 1 of each year.

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After an extensive evaluation of densities was conducted taking into consideration multiple factors for landfilling operations, the County has agreed to lower the Minimum Effective Density at the Mid-Valley Sanitary Landfill from 1,350 pounds per cubic yard (pcy) to 1,300 pcy, and at the Victorville Sanitary Landfill from 1,250 pcy to 1,225 pcy. As a result of lowering the densities, Athens will no longer receive a bonus payment for exceeding the Minimum Effective Densities at each landfill.

With the passage of Senate Bill 1383 (California Short-Lived Climate Pollutant Act of 2016), green waste and organic waste must be diverted from the landfills. This amendment will add a green waste/organic diversion rate to allow Athens to be compensated for the diversion of these materials from various County transfer stations and landfills. Funding will come from the County's Comprehensive Disposal Site Diversion Program (CDSDP), which charges self-haul customers, roll-off container trucks, and other vehicles such as pickups and dump trucks (because these vehicles are delivering waste that has not been subject to a curb-side diversion program prior to entering the landfill or transfer station) a \$12.00 per ton fee.

This amendment will also increase the maximum import waste tonnage amount from 820,000 tons per year to 1,115,000 tons per year. Any import tonnage above 820,000 tons per year must receive the County's assessment and written approval prior to the delivery of the waste. The County is not obligated to accept any offer to dispose import waste above 820,000 tons per year. Any additional waste approved above 700,000 tons per year shall be considered for delivery to the Victorville Sanitary Landfill.

The Contract currently expires on June 30, 2031. Approval of this amendment will authorize the extension of the term for four years through June 30, 2035.

The amendment deletes the sections that authorized the County to issue a Default Notice to Athens or Athens to issue a Default Notice to the County, for failing to perform nonmaterial provisions of the Contract and to terminate the Contract for failing to perform nonmaterial requirements under the Contract. An example of Athens failing to perform a nonmaterial requirement is the failure to provide information and reports to SWMD in a timely manner and in the required format.

The amendment will delete the following standard County contract term under County Policy 11-05:

1. The provision allowing the County to terminate the Contract for convenience has been deleted.
 - In alignment with the standard County contract term, the current Contract with Athens allows the County to terminate the Contract without cause with at least 90 days written notice to Athens, although Athens would have the right to continue import of solid waste to County landfills for up to one additional year.
 - Potential Impact: The County can only terminate the Contract for a breach of the material terms of the Contract or a felony conviction for public corruption.

SWMD recommends approval of this amendment, including the non-standard term, to ensure continuation of waste disposal system operations. Athens has been performing exceptional services under this Contract since 2013. In 2013 when this Contract was first approved by the Board, Athens was a new contractor to the County without a proven track record of its

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performance, therefore necessitating the need to have a termination for convenience clause. Athens has proven to be able to successfully operate the County's solid waste disposal system. The County still retains the ability to terminate the Contract for a breach of the material terms of the Contract or a felony conviction for public corruption. The recommended amendment allows SWMD to continue the valued partnership with Athens to operate the County's solid waste disposal system.

PROCUREMENT

N/A

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Julie Surber, Principal Assistant County Counsel, 387-5455) on May 8, 2024; Purchasing (Michael Candelaria, Lead Buyer, 387-8258) on May 9, 2024; Finance (Jessica Trillo, Administrative Analyst, 387-4222) on May 22, 2024; and County Finance and Administration (Paloma Hernandez-Barker, Deputy Executive Officer, 387- 5423) on May 24, 2024.

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Record of Action of the Board of Supervisors
San Bernardino County

APPROVED (CONSENT CALENDAR)

Moved: Curt Hagman Seconded: Joe Baca, Jr.
Ayes: Col. Paul Cook (Ret.), Jesse Armendarez, Dawn Rowe, Curt Hagman, Joe Baca, Jr.

Lynna Monell, CLERK OF THE BOARD

BY  _____
DATED: June 25, 2024



cc: PW/SWMD - Meeka w/ agree
 Contractor c/o PW/SWMD w/ agree
 File w/ agree
JLL 07/12/2024