



**Contract Number**

13-188 A-5

**SAP Number**

44.0000.2218

**Public Works – Solid Waste Management**

<b>Department Contract Representative</b>	<u>Darren Meeka, Deputy Director</u>
<b>Telephone Number</b>	<u>(909) 386-8703</u>
<b>Contractor</b>	<u>Arakelian Enterprises, Inc. DBA Athens Services</u>
<b>Contractor Representative</b>	<u>Anthony Bertrand, Executive Vice President</u>
<b>Telephone Number</b>	<u>(626) 723-3740</u>
<b>Contract Term</b>	<u>7/1/2013 – 6/30/2035</u>
<b>Original Contract Amount</b>	<u>\$475,125,155</u>
<b>Amendment Amount</b>	<u>\$21,282,855</u>
<b>Total Contract Amount</b>	<u>\$496,408,010</u>
<b>Cost Center</b>	<u>6702004250</u>

**IT IS HEREBY AGREED AS FOLLOWS:**

**AGREEMENT 13-188  
AMENDMENT NO. 5  
WASTE DISPOSAL SYSTEM OPERATIONS CONTRACT**

The following is Amendment No. 5 to Agreement No. 13-188 (“Amendment No. 5”) 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 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;

**WHEREAS**, on May 18, 2021 (Item No. 52), the Board approved Amendment No. 3 to revise the waste densities in the Contract along with the associated Contract sections related to achieving increased landfill densities;

**WHEREAS**, on October 4, 2022 (Item No. 36), the Board approved Amendment No. 4 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 Contractor's 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; and

**WHEREAS**, the Parties desire to enter into this Amendment No. 5 to adjust the operations cost due to unforeseen extraordinary increases in prevailing wage rates and costs of heavy equipment; establish a baseline cost for fuel and compensate for fuel costs exceeding the baseline; change the dates used to establish the cost of living adjustment; revise the densities for the Mid-Valley and Victorville Sanitary Landfills; add a green waste/organic diversion rate; allow for an increase in import waste at the discretion of the County; and extend the term of the contract four years for a total Contract term of July 1, 2013 through June 30, 2035.

**NOW THEREFORE**, the Agreement is hereby amended as follows:

1. Section 1.2(a) of the Contract, entitled "Commencement Date and Term", is amended in its entirety to read:

**1.2 (a) Commencement Date and Term.** This Contract shall be effective upon execution by the Parties hereto, April 23, 2013 or upon Board of Supervisors (Board) approval, whichever is later ("Effective Date"), and Contractor shall commence performance hereunder on July 1, 2013 ("Commencement Date"). The term of this Contract shall be 22 years, ending on June 30, 2035. Each year of the Contract ("Contract Year") shall commence on July 1 (or on the Commencement Date, if other than July 1) and end on the following June 30 (or, if applicable, on the earlier termination date of the Contract).

2. Section 4.2(d)(ii) of the Contract, entitled "Assessment of Liquidated Damages", is amended in its entirety to read:

**4.2 (d)(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:

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

Effective Contract Year 9 (July 1, 2021) through the end of Contract Year 10 (June 30, 2023), 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 Year 10 (June 30, 2023).

The total amount of liquidated damages that may be deferred up to a maximum of two years, pursuant to Section 4.3, paid by Contractor to County, for failure to achieve effective density, shall not exceed \$250,000. Any liquidated damages assessed above the \$250,000 shall be deducted from the next monthly Facilities Operations Compensation payment after the liquidated damages are determined, Contractor is notified and the appeal period has expired, or any appeal has been decided by the County’s Director of Public Works, or his/her designee. The deferral of liquidated damages applies only to those liquidated damages incurred in Contract Year 9 (July 1, 2021) through Contract Year 10 (June 30, 2023).

Effective Contract Year 11 (July 1, 2023) through the end of the Contract term, the amount of liquidated damages will be determined using the following equation:

$$\text{Liquidated Damages} = [(W) / (\text{MED}) - (V)] \times \$2.00$$

Effective Contract Year 11 (July 1, 2023) through the end of the Contract term, 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	1,300 pcy
San Timoteo	1,200 pcy
Victorville	1,225 pcy

3. Section 4.2(d)(iii) of the Contract, entitled “Density Bonus”, is amended in its entirety to read:

**4.2 (d)(iii) Density Bonus.** Effective Contract Year 9 (July 1, 2021) through Contract Year 10 (June 30, 2023) only, 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:

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

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 Contract Year 10 (June 30, 2023).

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

Beginning with Contract Year 11 (July 1, 2023), Contractor shall not be entitled to a Density Bonus of any kind.

4. Section 4.3 of the Contract, entitled “Assessment of Liquidated Damages/Contractor’s Right to Appeal” is amended in its entirety to read:

**4.3 Assessment of Liquidated Damages/Contractor’s Right to Appeal.** The County reserves the right to assess liquidated damages solely on the basis of the Contract Administrator’s assessment of the Contractor’s performance relative to the requirements of this Contract, or based on the results of an inspection by Division staff or a Regulatory Agency, including but not limited to, CalRecycle, Regional Water Quality Control Board (“RWQCB”) or the Local Enforcement Agency (“LEA”). Contractor shall be notified of any assessed liquidated damages in writing by the Contract Administrator at the time the violation is noted or in subsequent correspondence. Contractor shall have the right to appeal any assessed liquidated damages to the County’s Director of Public Works, or his/her designee, whose decision on any such matter shall be final. Contractor must submit the appeal within five (5) working days of receipt of the notice from the County of the assessment of liquidated damages or Contractor’s right to appeal any assessment of liquidated damages is waived. Except for the assessment of liquidated damages for failure to achieve effective density under Section 4.2(d), the compensation adjustments associated with liquidated damages shall be deducted from the next monthly Facilities Operations Compensation payment after the liquidated damages are determined, Contractor is notified and the appeal period has expired, or any appeal has been decided by the County’s Director of Public Works, or his/her designee. The timeframe for any compensation adjustments associated with liquidated damages for failure to achieve effective density under Section 4.2(d) for Contract Year 9 (July 1, 2021) through Contract Year 10 (June 30, 2023) shall be determined at the discretion of the Director of Public Works or his/her designee, but any compensation adjustments under Section 4.2(d) shall be within two years from the date the liquidated damages are determined, Contractor is notified and the appeal period has expired, or any appeal has been decided by the County’s Director of Public Works, or his/her designee. Any liquidated damages assessed and the timeframe for payment of same shall be documented in the Annual Report of the Contractor’s performance pursuant to Section 4.1 of the Contract. The deferral of liquidated damages applies only to those liquidated damages incurred in Contract Year 9 (July 1, 2021) through Contract Year 10 (June 30, 2023).

5. Section 5.1 of the Contract, entitled “Facilities Operation Compensation” is amended in its entirety to read:

### **5.1 Facilities Operation Compensation**

**(a) General Provisions.** Table 2 applies to Year 1 through Year 7 (June 30, 2019). Table 2A applies to Contract Year 8 (July 1, 2020) through Year 11 (June 30, 2024). Table 2B, attached to this Amendment and incorporated by reference, applies beginning with Contract Year 12 (July 1, 2024) through the end of the Contract term or any extension thereof. The compensation for performing Facilities Operations (“**Facilities Operations Compensation**”) is based on the Total Annual Contractor’s Cost set forth in the Summary of Costs shown in Table 2, 2A or 2B, as applicable and as adjusted per the applicable sections of Article 5, or as otherwise provided for in this Contract. The Contractor shall be paid monthly, in arrears, within thirty (30) days of the end of each month. The Contractor shall be paid one twelfth (1/12<sup>th</sup>) of the Facilities Operations Compensation due for such year [increased or reduced, to the extent applicable, by the provisions of Article 4 and Article 5, or as otherwise provided for in this Contract]. The Summary of Costs, Table 2, 2A or 2B, as applicable, will be revised annually by the County on or before June 1 and submitted to the Contractor for review and comment, if any, which shall be provided prior to July 1. The revised Table 2, 2A or 2B, as applicable, will reflect the Contractor’s compensation for the next Contract Year, including all Annual Adjustments and all other adjusted rates as required or otherwise permitted by the Contract, and reflect the difference in the Contractor’s initial annual cost of the Performance Bond (difference between the initial one-year performance bond cost and the subsequent initial three-month performance bond cost).

- (i) Contract Year 1 Compensation.** During the first Contract Year, Contractor will be paid the Total Annual Contractor’s Cost amount of \$16,686,700, pursuant to the Summary of Costs, attached as Table 2 to this Contract, in the manner described as follows:

- (A) Contractor shall be compensated one twelfth (1/12<sup>th</sup>) of the Contractor's Total Fixed Annual Costs ("**Total Fixed Annual Costs**"), listed on line 2.1 as \$1,049,397, on a monthly basis.
- (B) Contractor shall be compensated one twelfth (1/12<sup>th</sup>) of the Active Landfills Total Direct Costs ("**Active Landfill Total Direct Costs**"), listed on line 2.7 as \$11,923,539, on a monthly basis for the annual landfill baseline tonnage of 1,260,236 tons ("**Annual Landfill Baseline Tonnage**") for Active Landfills. For any annual landfill tonnage, excluding the tonnage Contractor provides under Article 20, above the Annual Landfill Baseline Tonnage, the Contractor will be paid a flat Facility Rate of \$6.50 per ton, listed in column 5 (Lines 2.2 through 2.6), of the Summary of Costs attached at Table 2, as further described in Section 5.6, and as adjusted per the applicable sections of Article 5, or as otherwise provided for in this Contract.
- (C) Contractor shall be compensated one twelfth (1/12<sup>th</sup>) of the Transfer Stations Total Direct Costs ("**Transfer Station Total Direct Costs**"), listed on line 2.17 as \$3,713,763, on a monthly basis for all Transfer Stations, as adjusted per the applicable sections of Article 5, or as otherwise provided for in this Contract, based on the Annual Assumed Transfer Station Tonnage of 117,588 tons, listed in column 2 (lines 2.8 through 2.16) on the Summary of Costs ("**Annual Assumed Transfer Station Tonnage**"), attached as Table 2 to this Contract. For any annual tonnage above/below each Transfer Station's Annual Assumed Transfer Station Tonnage, listed in column 2 (lines 2.8 through 2.16) on the Summary of Costs in Table 2, the difference will be multiplied by the variable rate per ton listed in column 5 (lines 2.8 through 2.16) of the Summary of Costs for each Transfer Station where there was an increase/decrease in that facility's Annual Assumed Transfer Station Tonnage. Any adjustment shall be paid either by the County to the Contractor, if said adjustment is due the Contractor, or by the Contractor to the County if said adjustment is due the County, on or before the sixtieth day after the end of each Contract Year. Tons above or below each Transfer Station's Annual Assumed Transfer Station Tonnage will be reconciled annually as described in Section 5.6.
- (ii) **Contract Years 2-7 Compensation.** For Contract Years 2-7, Facilities Operation Compensation shall equal the Total Annual Contractor's Costs for the prior Contract Year, as adjusted per the applicable sections of Article 5, or as otherwise provided for in this Contract.
- (iii) **Contract Years 8-11 Compensation.** Beginning Contract Year 8 (July 1, 2020), the compensation for performing Facilities Operations will be based upon Table 2A, Renegotiated Summary of Costs. Beginning Contract Year 9 (July 1, 2021), the Annual Adjustment will be calculated per the applicable sections of Article 5, or as otherwise provided for in this Contract, based on the Renegotiated Summary of Costs, Table 2A. The revised Renegotiated Summary of Costs, Table 2A, for Contract Year 9 (beginning July 1, 2021) through Contract Year 11 (June 30, 2024) will reflect the revised Contractor's compensation as adjusted by the applicable sections of Article 5.
- (iv) **Compensation Beginning Contract Year 12.** Beginning Contract Year 12 (July 1, 2024), the compensation for performing Facilities Operations will be based upon Table 2B, Renegotiated Operations Costs. Renegotiated costs include: (1) Total Fixed Annual Costs; (2) Active Landfills Total Direct Costs; and (3) Transfer Stations Total Direct Costs. Renegotiated costs do not include: (1) Facility Rate Per Ton, as listed in column 6 of the Summary of Costs in Table 2B; (2) the per ton rate, as listed in column 5 (Lines 2.2 through 2.6) of the Summary of Costs in Table 2B for any annual landfill tonnage, excluding the tonnage Contractor provides under Article 20, above the Annual Baseline Tonnage; (3) the adjustment per ton for each ton over/under the Annual Assumed Transfer Station Tonnage, as listed in column 5 (Lines 2.8 through 2.16); (4) the Comprehensive Disposal

Site Diversion Program (CSDSP) Rate for materials diverted off site and removed from the Disposal System referenced in Section 5.8(g); (5) the CSDSP Beneficial Reuse Rate for materials processed and beneficially reused on site, referenced in Section 5.8(g); and (6) the per trip rate for the transfer of waste from the Baker Transfer Station to the designated disposal facility as described in Section 5.10. Beginning Contract Year 13 (July 1, 2025) and each Contract Year thereafter, the Annual Adjustment will be calculated per the applicable sections of Article 5, or as otherwise provided for in this Contract, based on the Renegotiated Operations Costs, Table 2B. The revised Renegotiated Operations Costs, Table 2B, for Contract Year 13 (beginning July 1, 2025) through the end of the Contract term or any extension thereof, will reflect the revised Contractor's compensation as adjusted by the applicable sections of Article 5.

**(b) Fuel Compensation.** Beginning Contract Year 11 (July 1, 2023), and each Contract Year thereafter, Contractor shall be compensated for fuel based on the baseline diesel fuel cost of \$4.74 per gallon, and such baseline fuel cost will be adjusted annually according to Section 5.2(d). Contractor will be compensated for actual costs that exceed the baseline diesel fuel cost per gallon and the County will "bank" the cost savings for diesel fuel that is lower than the baseline diesel fuel cost. By July 30 of each Contract Year (beginning July 1, 2024), Contractor shall provide to the Contract Administrator a summary of diesel fuel consumption by month by fuel type along with copies of actual invoices for the just ended Contract Year to be used to calculate the actual cost per gallon paid by Contractor. Contractor may submit invoices on a monthly basis if desired. If the total actual payment of diesel fuel exceeds the total of the baseline diesel fuel cost per gallon multiplied by the annual consumption, the Contractor will be compensated for the difference between the actual diesel fuel cost and the baseline diesel fuel cost. Such amount will be included in the Contractor's next monthly Facilities Operations Compensation payment after County's receipt of the Year-End invoices and analysis is completed, which shall not be unreasonably delayed. If the total actual payment of diesel fuel is lower than the total of the baseline diesel fuel cost multiplied by the annual consumption, then the County will "bank" the difference between the baseline diesel fuel cost and the actual diesel fuel cost that will be applied against any future payments owed to Contractor when the actual payment of fuel exceeds the baseline diesel fuel cost amount as adjusted annually according to Section 5.2(d).

6. Section 5.2(a) of the Contract, entitled "Schedule of Annual Adjustments", is amended in its entirety to read:

**(a) Schedule of Annual Adjustments.**

- (i) Contract Years 2-7.** Beginning with the second through the seventh Contract Year (July 1, 2014 – June 30, 2020), an Annual Adjustment to Facilities Operation Compensation ("**Annual Adjustment**") will occur. The Annual Adjustment for the second through the seventh Contract Year shall be determined pursuant to the provisions of Section 5.2(b), below.
- (ii) Contract Year 8.** The Facilities Operation Compensation for Contract Year 8 (July 1, 2020 – June 30, 2021) will be according to the amounts listed in the Renegotiated Summary of Costs, Table 2A, for Year 8.
- (iii) Contract Years 9-11.** Beginning with the ninth Contract Year (July 1, 2021) through the end of the Contract Year 11 (June 30, 2024), the Annual Adjustment shall be determined pursuant to the provisions of Section 5.2(c).
- (iv) Contract Year 12.** The Facilities Operation Compensation for Contract Year 12 (July 1, 2024 – June 30, 2025) will be according to the amounts listed in the Renegotiated Operations Costs, Table 2B, for Year 12, adjusted pursuant to the provisions of Section 5.2(d) for Contract Year 12 (using the percentage change from September 2022 to April 2024).
- (v) Contract Year 13 and thereafter.** Beginning with Contract Year 13 (July 1, 2025) through the end of the Contract term and any extensions thereof, the Annual Adjustment shall be determined pursuant to the provisions of Section 5.2(d).

7. Section 5.2(c) of the Contract, entitled “Method of Adjustment for Contract Years 9 Through the End of the Contract Term, is amended in its entirety, including revising the title to “Method of Adjustment for Contract Year 9 Through Contract Year 11”, to read:

**(c) Method of Adjustment for Contract Year 9 Through Contract Year 11.**

**(i) General.** Pursuant to Section 5.2(a)(iii), an Annual Adjustment to Facilities Operation Compensation, beginning Contract Year 9 (July 1, 2021) through Contract Year 11 (June 30, 2024) will occur according to the formula contained in this Section 5.2(c). All Annual Adjustments will be effective July 1 of the Contract Year to which they relate and shall be applied per Section 5.2(c)(ii).

**(ii) Calculation of Annual Adjustment.** The Facilities Operations Compensation, beginning Contract Year 9 (July 1, 2021) through Contract Year 11 (June 30, 2024) shall be adjusted according to the following procedures:

**(A)** Obtain the Consumer Price Index for Los Angeles-Long Beach-Anaheim, CA (“**CPI**”) (Series ID CUURS49ASA0 – Not Seasonally Adjusted, All Items, Base Period: 1982-84=100) as published by the Bureau of Labor Statistics (“**BLS**”), U.S. Department of Labor, and calculate the year-to-year percentage change for the 12-month period September to September. The rate shall be increased annually by any positive change in the CPI and effective each July 1, beginning Contract Year 9 (July 1, 2021) through Contract Year 11 (June 30, 2024). The rate will not change effective July 1 of Contract Year 9 (July 1, 2021) and any subsequent Contract Year if the annual change in the CPI-U index for the preceding 12-month period September to September is zero or negative. If the annual change in the CPI-U index for the preceding 12-month period September to September is negative, all Parties agree that the negative change in the CPI-U index will be used in the subsequent year’s calculation of the net annual change in the CPI-U index. In no case will the current adjusted base rate ever be decreased. For example, if the annual change in the CPI-U index for the preceding 12-month period September to September is negative two percent (-2%), then the rate will remain the same effective that July 1. The following year, if the annual change in the CPI-U index for the preceding 12-month period September to September is positive three percent (3%), then the rate effective that July 1 will increase by the net 1%.

$$\frac{\text{CPI-U (new)} - \text{CPI-U (old)}}{\text{CPI-U (old)}}$$

**(B)** Any rate adjusted by this Annual Adjustment will become effective July 1 of any subsequent Contract Year through Contract Year 11 (June 30, 2024). Any positive change in the CPI-U index for the preceding 12-month period September to September shall result in a change to the annual Facilities Operations Compensation.

**(C)** The Annual Adjustment shall be calculated according to 5.2(c)(ii)(A) and applied to the following costs and rates: (1) Total Fixed Annual Costs; (2) Active Landfills Total Direct Costs; (3) Transfer Stations Total Direct Costs; (4) Facility Rate Per Ton, as listed in column 6 of the Renegotiated Summary of Costs in Table 2A; (5) the \$7.47 per ton rate, as listed in column 5 (Lines 2.2 through 2.6) of the revised Renegotiated Summary of Costs, Table 2A, for any annual landfill tonnage, excluding the tonnage Contractor provides under Article 20, above the Annual Landfill Baseline Tonnage; (6) the adjustment per ton for each ton over/under the Annual Assumed Transfer Station Tonnage, as listed in column 5 (Lines 2.8 through 2.16); (7) the Comprehensive Disposal Site Diversion Program (CSDSP) Rate for materials diverted off site and removed from the Disposal System referenced in Section 5.8(g); (8) the CSDSP Beneficial Reuse Rate for materials processed and beneficially reused on site, referenced in Section 5.8(g); and (9) the per trip rate for the transfer of waste from the Baker Transfer Station to the designated disposal facility as described in Section 5.10.

8. Section 5.2(d) of the Contract, entitled “Method of Adjustment for Contract Years 12 Through the End of the Contract Term”, is added to the Contract as specified below:

**(d) Method of Adjustment for Contract Year 12 Through the End of the Contract Term.**

(i) **General.** Pursuant to Section 5.2(a)(iv)-(v), an Annual Adjustment to Facilities Operation Compensation, beginning Contract Year 12 (July 1, 2024) through the end of the Contract term and any extensions thereof, will occur according to the formula contained in this Section 5.2(d). All Annual Adjustments will be effective July 1 of the Contract Year to which they relate and shall be applied per Section 5.2(d)(ii).

(ii) **Calculation of Annual Adjustment.** The Facilities Operations Compensation, beginning Contract Year 12 (July 1, 2024) through the end of the Contract term and any extensions thereof, shall be adjusted according to the following procedures:

(A) Obtain the Consumer Price Index for Los Angeles-Long Beach-Anaheim, CA (“**CPI**”) (Series ID CUURS49ASA0 – Not Seasonally Adjusted, All Items, Base Period: 1982-84=100) as published by the Bureau of Labor Statistics (“**BLS**”), U.S. Department of Labor, and calculate the year-to-year percentage change for the 12-month period April to April. For Contract Year 12 (July 1, 2024) only, the percentage change will be calculated using September 2022 to April 2024, and such calculation will be reflected in an updated Renegotiated Operations Costs in Table 2B once the BLS publishes the index for April 2024 that will be provided to the Contractor by June 30, 2024. Should this index no longer be published by the BLS, then the BLS replacement index shall be used. If no replacement index is published, then the Parties shall meet and agree upon a replacement index. The rate shall be increased annually by any positive change in the CPI and effective each July 1, beginning Contract Year 12 (July 1, 2024) and through the end of the Contract term and any extensions thereof. The rate will not change effective July 1 of Contract Year 12 (July 1, 2024) and any subsequent Contract Year if the annual change in the CPI-U index for the preceding 12-month period April to April is zero or negative. If the annual change in the CPI-U index for the preceding 12-month period April to April is negative, all Parties agree that the negative change in the CPI-U index will be used in the subsequent year’s calculation of the net annual change in the CPI-U index. In no case will the current adjusted base rate ever be decreased. For example, if the annual change in the CPI-U index for the preceding 12-month period April to April is negative two percent (-2%), then the rate will remain the same effective that July 1. The following year, if the annual change in the CPI-U index for the preceding 12-month period April to April is positive three percent (3%), then the rate effective that July 1 will increase by the net 1%.

$$\frac{\text{CPI-U (new)} - \text{CPI-U (old)}}{\text{CPI-U (old)}}$$

(B) Any rate adjusted by this Annual Adjustment will become effective July 1 of any subsequent Contract Year throughout the Term of the Contract and any extensions thereof. Any positive change in the CPI-U index for the preceding 12-month period April to April shall result in a change to the annual Facilities Operations Compensation.

(C) The Annual Adjustment shall be calculated according to 5.2(d)(ii)(A) and applied to the following costs and rates: (1) Total Fixed Annual Costs; (2) Active Landfills Total Direct Costs; (3) Transfer Stations Total Direct Costs; (4) Facility Rate Per Ton, as listed in column 6 of the Renegotiated Operations Costs in Table 2B; (5) the \$8.52 per ton rate, as listed in column 5 (Lines 2.2 through 2.6) of the revised Renegotiated Operations Costs, Table 2B, for any annual landfill tonnage, excluding the tonnage Contractor provides under Article 20, above the Annual Landfill Baseline Tonnage; (6) the adjustment per ton for each ton over/under the Annual Assumed Transfer Station Tonnage, as listed in column 5 (Lines 2.8 through 2.16);

(7) the Comprehensive Disposal Site Diversion Program (CDSDP) Rate for materials diverted off site and removed from the Disposal System referenced in Section 5.8(g); (8) the CDSDP Beneficial Reuse Rate for materials processed and beneficially reused on site, referenced in Section 5.8(g); and (9) the per trip rate for the transfer of waste from the Baker Transfer Station to the designated disposal facility as described in Section 5.10.

9. Section 5.3 of the Contract, entitled “Extraordinary Adjustments”, is amended in its entirety to read:

### 5.3 Extraordinary Adjustments

**(a) General Matters.** The Contractor or County may request an adjustment to Facilities Operations Compensation at reasonable times for extraordinary changes in the cost of providing service under this Contract (“**Extraordinary Adjustments**”). Extraordinary changes shall not include changes in the market value of Recyclable Materials from the values assumed in the Contractor’s Proposal or inaccurate estimates by the Contractor of its proposed cost of operations. Nor shall extraordinary changes include changes in cost where such changes are (or will be) reflected, directly or indirectly, in PPI for Contract Years 2 through 7, and in CPI for Contract Year 8 (beginning July 1, 2020) and each subsequent year through the end of the Contract term or any extensions thereof. For each such request, the requesting Party shall prepare a schedule documenting its historical cost of operation and the effect of the extraordinary event (both increases and decreases) on its facility operation costs. Such request shall be prepared in a form acceptable to the County with support for assumptions made by the requesting Party in preparing the estimate. If the County is the requesting Party, the Contractor shall be given an opportunity to review and comment on the County’s proposal. The County shall review the request and, in the County’s sole discretion and judgment, make the final determination on the appropriate amount of the Extraordinary Adjustment, if any.

#### **(b) Fiscal Year 2022-23.**

- i. **CPI Market Adjustment.** For Fiscal Year 2022-23, a comparison of the May 2021 to May 2022 CPI demonstrates an increase of 8.0% percent (“**Current May CPI**”) versus the September 2020 to September 2021 CPI increase of 4.6% per Section 5.2(c) (“**Original September CPI**”). The County and Contractor agree that due to this extraordinary increase in the operations costs, the rates in the Contract, excluding the rates in Article 20.4 and the rates in Section 5.2(c)(ii)(C)(5)(6), (“**Contractor’s Compensation**”) shall be adjusted by the Current May CPI effective July 1, 2022 and ending June 30, 2023 (“**2022-23 Adjusted Compensation**”). Contractor acknowledges that the 2022-23 Adjusted Compensation is not considered a baseline compensation and that the annual year-end analysis and reconciliation pursuant to Section 5.6(c) is based on the Original September CPI baseline compensation and not the 2022-23 Adjusted Compensation. Any Extraordinary Adjustment provided hereunder shall not limit or otherwise restrict Contractor’s right to request and obtain an Extraordinary Adjustment unrelated to this Section 5.3(b).
- ii. **Non-applicability to imported waste.** The rate that the Contractor pays to the County for importing waste (Article 20.4), as well as the rates in Section 5.2(c)(ii)(C)(5)(6) which are rates paid to the Contractor as a part of the year-end analysis and pursuant to Section 5.6(c), will remain at Original September CPI and is not included in this Extraordinary Adjustment, as only rates that the County pays the Contractor on a monthly or quarterly basis are included in the Extraordinary Adjustment.
- iii. **Reconciliation and true-up.** Contractor acknowledges that by requesting an Extraordinary Adjustment under this 5.3(b), the result of the reconciliation and true-up may result in a reduction of their monthly compensation payments for either 12 or 24 months in which the true-up amount is applied, and when determining the CPI adjustment for the next Fiscal Year pursuant to Section 5.2(c)(ii)(A) where a net annual change is negative, it may result in a reduction of the Contractor’s monthly compensation. County and Contractor agree that the adjustment specified herein made effective July 1, 2022 will be reconciled and true-up as follows:

1. Step 1: County shall determine Contractor's Compensation that would have been paid to Contractor using only Original September CPI for the period of July 1, 2022 to June 30, 2023 ("**2022-23 Baseline Compensation**").
2. Step 2: County shall determine the actual CPI adjustment to be effective July 1, 2023 and ending June 30, 2024, pursuant to Section 5.2(c) ("**2023-24 Contract CPI**").
3. Step 3: County shall adjust the 2022-23 Baseline Compensation by the 2023-24 Contract CPI ("**2023-24 Baseline Compensation**").
4. Step 4: County shall add the 2022-23 Baseline Compensation and 2023-24 Baseline Compensation ("**2022-24 Pull Forward Limit**").
5. Step 5: County shall add the 2022-23 Adjusted Compensation and 2023-24 Baseline Compensation, and if said amount exceeds the 2022-24 Pull Forward Limit, the County shall be entitled to a "true-up" in the amount of such excess ("**2022-23 True-Up**").
6. Step 6: The 2022-23 True-Up shall be applied in 12 equal monthly deductions effective July 1, 2023 ending June 30, 2024, each subtracted from the monthly 2023-24 Baseline Compensation, provided that if the total amount, as subtracted, would result in Contractor Compensation that is less than the 2022-23 Adjusted Compensation, the 2022-23 True-Up shall be applied in 24 monthly deductions ending June 30, 2025 ("**2023-24 Reconciliation Period**").

**iv. Illustrative Example.** This illustrative example is using the Facilities Operations Compensation for adjustment and does not include all rates adjusted to Contractor's Compensation effective July 1, 2022. All payments for any rate adjusted will be included in the reconciliation and true-up to ensure the total payment to the Contractor under this Section 5.3(b) does not exceed the 2022-24 Pull Forward Limit. For illustrative purposes only, if Facilities Operations Compensation were the only form of Contractor's Compensation, compensation would be adjusted hereunder as follows:

1. If Facilities Operations Compensation is adjusted by Current May CPI, effective July 1, 2022, Contractor would be entitled to \$20,795,767. This would be the 2022-23 Adjusted Compensation.
2. If Facilities Operations Compensation is adjusted by Original September CPI for the period of July 1, 2022 to June 30, 2023, the 2022-23 Baseline Compensation would be \$20,141,085.
3. If the September 2021 to September 2022 CPI increase is 7% per Section 5.2(c), the 2023-24 Contract CPI is 7%, and if applied to the 2022-23 Baseline Compensation, the 2023-24 Baseline Compensation is \$21,550,961.
4. Adding the 2022-23 Baseline Compensation and 2023-24 Baseline Compensation, the Pull Forward Limit is \$41,692,046 (\$20,141,085 + \$21,550,961).
5. Since the 2022-23 Adjusted Compensation plus the 2023-24 Baseline Compensation is \$42,346,728 (\$20,795,767 + \$21,550,961), and exceeds the 2022-24 Pull Forward Limit of \$41,692,046, the County would be entitled to a 2022-23 True Up of \$654,682 (\$42,346,728 - \$41,692,046).
6. The 2022-23 True-Up of \$654,682 is subtracted from the 2023-24 Baseline Compensation of \$21,550,961, equating to the total of \$20,896,279, which is more

than the 2022-23 Adjusted Compensation of \$20,795,767. Accordingly, the 2022-23 True-Up would be applied over 12 monthly equal deductions, beginning July 1, 2023 and ending June 30, 2024.

- v. **Indemnification; Hold Harmless.** The Contractor agrees to indemnify, defend (with counsel reasonably approved by County) and hold harmless (“**Indemnification**”) the County and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages, and/or liability to the extent arising from any Contractor’s Compensation granted by the County under Section 5.3(b), including but not limited to the acts, errors or omissions of any person and for any costs or expenses incurred by the County on account of any claim, except where such Indemnification is prohibited by law. This Indemnification provision shall apply regardless of the existence or degree of fault of indemnitees. The Contractor’s Indemnification obligation applies to the County’s “active” as well as “passive” negligence but the Indemnification does not apply to the County’s “sole negligence” or “willful misconduct” within the meaning of Civil Code section 2782. Notwithstanding the foregoing, the Contractor’s total liability for any Indemnification under this Section 5.3(b)(v) shall not exceed Two Hundred Forty Four Thousand Dollars (\$244,000). This limitation does not apply to any other indemnification provided by Contractor under this Contract.

**(c) Supporting Information for Extraordinary Adjustments.** In the event the Contractor requests a rate adjustment on the basis of extraordinary increases in the costs of doing business, the Contractor shall in addition to providing the County with documentation supporting its request, as outlined above, if required by the County, also provide a copy of its audited financial statements prepared by a Certified Public Accountant or a licensed public accountant, which shall have been prepared in compliance with Rule 58 of the “Rules and Regulations of the State Board of Accountancy,” as established by the California Code of Regulations, Title 16, Division I. Such Certified Public Accountant or licensed public accountant shall be entirely independent of the Contractor and shall have no financial interest whatsoever in the business of the Contractor. The County may specify the form and detail of the financial statements.

10. Section 5.6(b) of the Contract, entitled “Monthly Tonnage Report”, is amended in its entirety to read:

**(b) Monthly Tonnage Report.** Within thirty (30) calendar days after the end of each month, the County shall furnish the Contractor, by Facility, the actual tonnage of Solid Waste received at each Facility during the previous month with such tonnage being measured as provided in Section 5.6(a) (“**Monthly Tonnage Report**”). Contractor shall submit prior month ticket changes within 10 days after the end of the month (e.g., January tickets changes must be submitted by February 10<sup>th</sup>), but in no case later than 14 days after the end of the month. Contractor shall submit jurisdictional (origin) reports within 25 days after the end of each month, but in no case later than the last business day of each month. Failure to meet these deadlines may result in the assessment of liquidated damages. The above-mentioned deadlines are necessary in order for the County to comply with mandated State reporting requirements and billing in a timely manner.

11. Section 5.8(d) of the Contract is amended in its entirety to read:

**(d) Financing Comprehensive Disposal Site Diversion Program.** To finance CDS DP, the County charges self-haul customers, roll-off container trucks (excluding only the controlled waste from non-participating Cities of Colton and Victorville), and other vehicles such as pick-ups 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. The fee may be adjusted at the County’s discretion.

In addition to the \$12.00 per ton fee, for Contract Year 2 (July 1, 2014) through Contract Year 11 (June 30, 2024), on a monthly basis, the County will allocate Land Use Assessment revenue in the amount equal to the CDS DP-eligible land use tons received during the then-current fiscal year, which amount is multiplied by the fixed amount of \$10.00 per ton (up to a maximum of \$400,000 per year). The total dollar amount, calculated on the preceding formula, will be used to finance the CDS DP services at the Transfer Station and Active Landfill that serve the area from which the Land Use Assessment revenue was generated. Any remaining Land Use

Assessment Revenue funds previously allocated to the CSDSP program will revert to the County on July 1, 2024.

12. Section 5.8(f) of the Contract is amended in its entirety to read:

**(f) Payment for Comprehensive Disposal Site Diversion Program Materials.** The Contractor will not be paid the Facilities Operation Compensation per ton unit cost for CSDSP materials. The CSDSP Rate per diverted ton, as discussed in Section 5.8(g) below, will be paid on the CSDSP tonnage diverted and removed from the County’s Disposal System. Tonnage records for all diverted materials shall be tracked by the County and Contractor in a manner approved by the County. Contractor shall retain all records including all vendor or third-party weight tickets which shall be provided as backup to the County for reconciliation of payment. If backup cannot be provided, then only the County records will be used for determining payment. This is a stand-alone program paid for by the per diverted ton rate. The Contractor will be compensated the CSDSP Beneficial Reuse Rate, as discussed in Section 5.8(g) below, for any material processed through CSDSP and used as beneficial reuse on site, such as, but not limited to, Wet Weather Material, Alternative Daily Cover (ADC), Mulch, erosion control, road base, or as determined by the Contract Administrator. Contractor shall submit and reconcile beneficial reuse tickets with County Operations staff and County will provide Contractor a final scale report with CSDSP tonnages. Contractor must invoice the County separately, on a monthly basis, in arrears, for each month’s CSDSP activity no later than 14 calendar days after the County provides the final scale report. Failure to meet the deadline may result in the assessment of liquidated damages. County shall pay Contractor within thirty (30) days of receipt of an acceptable invoice. For the avoidance of doubt, the amounts paid to Contractor hereunder will be in addition to any compensation otherwise due to Contractor under the Contract.

13. Section 5.8(g) of the Contract, entitled “CSDSP Compensation”, is amended in its entirety to read:

**(g) CSDSP Compensation.** Beginning Contract Year 1, Contractor will be compensated the CSDSP per ton rate of \$45.00 (“**CSDSP Rate**”), as described in Table 1A, adjusted annually pursuant to Section 5.2, for Inert Material, mattresses, Wood Waste, green waste, and Construction and Demolition Debris and any other materials that the County has targeted for recycling and Diversion through the CSDSP that is diverted off site and removed from the County’s Disposal System. Beginning Contract Year 1, Contractor will also be compensated \$23.00 per ton (“**CSDSP Beneficial Reuse Rate**”), as described in Table 1B, adjusted annually pursuant to Section 5.2, for materials processed through CSDSP that are beneficially reused on site (e.g., Wet Weather Material, ADC, Mulch, erosion control, road base). Materials processed through CSDSP to be beneficially reused on site must be pre-approved by the Contract Administrator. In no instance will the Contractor be paid more than the revenue collected by the County for CSDSP.

Beginning Contract Year 12 (July 1, 2024), Contractor shall be paid for the diversion of green waste/organics, deemed acceptable for processing at the American Organics Composting Facility located at 20055 Shay Road, Victorville, CA 92394, from the transfer stations per the table below specified in this Section 5.8(g), which such rates will be annually adjusted according to Section 5.2 (d). The diversion of green waste/organics from landfills may start at a future date. The Contractor will not be compensated at the below costs for diversion of green waste/organics from the below landfills without written authorization from the Contract Administrator.

	<b>Organic Waste Transportation &amp; Disposal (Cost per load up to 1 ton)</b>	<b>Disposal of Additional Tons over 1 ton (Cost per ton)</b>
Big Bear Transfer Station	N/A	\$100.00
Heaps Peak Transfer Station	N/A	\$100.00
Morongo Collection Center	\$1,118.08	\$81.00
Phelan Transfer Station	\$338.08	\$81.00
Twentynine Palms Transfer Station	\$806.08	\$81.00
Barstow Landfill	\$650.08	\$81.00
Landers Landfill	\$962.08	\$81.00
Victorville Landfill	\$494.08	\$81.00

14. Section 8.1 of the Contract, entitled "Failure to Prosecute Work" is amended in its entirety to read:

### **8.1 Failure to Prosecute Work.**

**(a) Notice Default.** Should the Contractor fail to prosecute the Work or any separate part thereof in substantial conformity to the requirements of this Contract, the County shall have the right to provide a notice of such failure ("**Default Notice**") to the Contractor as follows:

**(i)** If Contractor fails to perform any of the material provisions of this Contract (which provisions are agreed to be those where the Contractor's failure to perform results in a failure to adhere to any required level of performance set forth in any applicable federal, state, or local law or regulation, and which in turn have the result of either jeopardizing the health, safety or welfare of the public or of subjecting or potentially subjecting the County to enforcement action by any Regulatory Agency) in conformity with the requirements of this Contract, or so fails to make progress as to make it extremely unlikely that Contractor will be able to comply with the material provisions of this Contract, and the Contractor receives a Default Notice relative to such failure, Contractor shall:

(A) cure the default within five (5) business days of the receipt of the Default Notice if the failure can be cured within that time; or

(B) if the failure cannot be cured within the five (5) business days of receipt of the Default Notice, Contractor shall provide a work plan ("**Corrective Work Plan**") acceptable to the Contract Administrator within said five (5) business days specifying the reasons why the failure cannot be corrected with the five (5) business day period, the proposed items of work necessary to correct the failure and a schedule of when each item of work will be commenced and completed and when the failure will be corrected. So long as the Contractor is diligently prosecuting the items of work called for in the accepted Corrective Work Plan and is in conformity with the time schedule contained therein, County will not take action to serve Contractor with a Notice of Intention to Terminate for Default, as provided in Section 8.2, below, nor in the absence of an emergency, will the County take any action to prosecute the work itself, as allowed in Section 8.1(b) through Section 8.1(e).

**(ii) Reserved.**

**(iii)** Without limiting the generality of Section 8.1(a)(i), the failure of the Contractor to take any of the following actions shall constitute a failure to perform a material provision of this Contract:

(A) provide the indemnity required in Section 6.1;

(B) provide any of the insurances required in Section 6.4; or

(C) provide the performance bond or Irrevocable Letter of Credit required in Section 6.6.

**(iv)** The Contract Administrator may consider the position of any applicable Regulatory Agency with respect to the acceptability of any Corrective Work Plan proposed by Contractor. Acceptance of any Corrective Work Plan shall not relieve the Contractor from any obligation it has to satisfy any applicable Regulatory Agency with respect to any time constraint, or scope of work to be performed, imposed with respect to any alleged violation or regulatory deficiency at any Facility.

**(b) County's Right to Perform Work.** If, after receipt of a Default Notice by Contractor with respect to a material default hereunder, the specified failure giving rise to the Default Notice is not cured within the time frames set forth in Section 8.1(a), the Contract Administrator may serve written notice upon the Contractor of the County's intention to correct the default ("**County Performance Notice**"). After serving the County Performance Notice, the County may by force labor or by employment of a third party or parties, or by both such means, as appropriate and lawful, obtain such services as the Contract Administrator deems necessary to correct such default.

**(c) Contractor Liability.** The Contractor shall be liable to the County for all costs associated with so correcting the default as specified in Section 8.1(b). County shall be entitled to an administration/management charge equal to ten percent (10%) of the cost of such force labor and/or third party.

**(d) Use of Contractor Materials and Equipment.** Should it be deemed necessary by the Contract Administrator that the County or the County's employed third party correct the default as described in Section 8.1(b), the County may, without liability for so doing, take possession of and utilize for the purpose of correcting such default such materials, equipment and other property belonging to the Contractor as may be at the Facilities and necessary to correct the default.

**(e) Emergency.** In case of emergency, when in the opinion of the Contract Administrator it is necessary for the public health, safety or welfare to act immediately, the County may proceed to take any action or actions necessary to protect the public health, safety or welfare without serving either Default Notice or County Performance Notice required by this Section 8.1

**(f) Non-Exclusivity or Remedy.** The foregoing right is in addition to and not in limitation of any other rights or remedies available to the County pursuant to law or this Contract. Specifically, the decision of the County to correct any default which is the subject of the Default Notice and County Performance Notice shall not prejudice the right of the County to seek a termination of this Contract under the terms of Section 8.2. County agrees that it shall not exercise its right hereunder to perform all or a substantial portion of the Work required of Contractor in this Contract or to operate any Facility or substantial portion thereof for an extended period of time.

15. Section 8.2 of the Contract, entitled "Termination on Default of Contractor" is amended in its entirety to read:

**8.2 Termination on Default of Contractor.** Upon any of the occurrences set forth in Section 8.2(b), Contractor shall be in default under this Contract. In such event, the County shall have the right to serve (in the manner provided in Article 16) the Contractor with a written notice of its intention to terminate the Contract for the default of Contractor ("**Notice of Intention to Terminate for Default**").

**(a) Meeting.** In the event a Notice of Intention to Terminate for Default is served on Contractor, no action on that Notice shall be taken until a meeting is conducted between the County's Chief Executive Officer and Contract Manager, relative to the action or inaction of the Contractor giving rise to the Notice of Intention to Terminate for Default. Unless otherwise agreed to by both Parties, the meeting shall be conducted on the second work day following the effective date of Notice, as determined pursuant to the provisions of Section 16.2, in the office of the County's Chief Executive Officer. Following such meeting (or the unsuccessful attempt to hold such a meeting) the County shall have the right to serve (as provided in Article 16) the Contractor a written notice of termination ("**Notice of Termination for Default**") and thereby terminate this Contract for default. The actions of the County hereunder shall not prejudice any legal right of Contractor to the extent not otherwise affected by provisions of this Contract.

**(b) Grounds for Termination for Default.** Contractor shall be in default under the terms of this Contract [and County may serve Contractor with a Notice of Intention to Terminate for Default and, following the required meeting with Contractor, terminate this Contract] if:

**(i)** After receipt of a Default Notice by Contractor, the specified failure giving rise to the Default Notice is not cured within the time frames set forth in Section 8.1(a), above, or

**(ii) Reserved;** or

**(iii)** There has been any felony conviction for a violation of any federal or state law relating to bribery of public officials or bribery of an employee of County or bribery of any Subcontractor performing Work under this Contract or other acts of public corruption, of:

(A) any employee or agent of Contractor, its parent company or any Affiliate, where such felony conviction relates to actions taken by such person in respect to this Contract, or

(B) any past employee or agent of Contractor, its parent company or any Affiliate, where such felony conviction relates to actions taken by such person in respect to this Contract while an employee of Contractor; or

(C) the Chief Executive Officer, Chief Operating Officer or Chief Financial Officer of Contractor, its parent company or any Affiliate; or

(iv) There has been a felony conviction of any Subcontractor of Contractor which relates to actions taken by such Subcontractor in respect to this Contract and involves a violation of any federal or state law relating to bribery of public officials or bribery of an employee of County or bribery of an employee of Contractor performing Work under this Contract or other acts of public corruption.

(c) **Reserved.**

(d) **Failure to Perform Caused by Force Majeure.** The Contractor shall not be deemed to be in default, nor shall this Contract be subject to termination for default, as provided in this Section, if the failure to perform under the terms and conditions of the Contract is caused by a Force Majeure, unless such event renders Contractor unable to perform its obligations under this Contract for a period of three (3) days and other qualified companies are able to perform.

(e) **Remedy Not Exclusive.** The rights and remedies provided to the County by this Section are not exclusive but are in addition to other rights and remedies provided to the County by law or by other provisions of this Contract.

16. Section 8.3 of the Contract, entitled "Termination on Default of County" is amended in its entirety to read:

### **8.3 Termination on Default of County**

(a) **Notice of Default.** Should the County fail to perform any of its obligations in substantial conformity to the requirements of this Contract, the Contractor shall have the right to provide a notice of such failure ("**Default Notice to County**") to the County as follows:

(i) If County fails to perform any of the material provisions of this Contract (which provisions are agreed to be ones where the County wrongfully fails to make payment of any compensation due Contractor under the provisions of Article 5) in conformity with the requirements of this Contract, or so fails to make progress as to make it extremely unlikely that County will be able to comply with the material provisions of this Contract, and County receives a Default Notice to County relative to such failure, County shall:

(A) cure the default within five (5) business days of the receipt of the Default Notice to County if the failure can be cured within that time; or

(B) if the failure cannot be cured within five (5) business days of receipt of the Default Notice to County, County shall provide a corrective action plan ("**Corrective Action Plan**") acceptable to the Contractor within said five (5) business days specifying the reasons why the failure cannot be corrected within the five (5) business day period, the proposed corrective action to correct the failure and a schedule of when each step of the Corrective Action Plan will be commenced and completed and when the failure will be corrected. So long as the County is diligently prosecuting the items of work called for in the accepted Corrective Action Plan and is in conformity with the time schedule contained therein, Contractor will not take action to serve County with a Notice of Contractor Intention to Terminate for Default, as provided in Section 8.3(b) through Section 8.3(d).

(ii) **Reserved.**

(b) **Termination for Default.** Upon any of the occurrences set forth in Section 8.3(b)(ii), County shall be in default under this Contract. In such event, the Contractor shall have the right to serve (in the manner provided in Article 16) the County with a notice of its intention to terminate the Contract for the default of County

**(“Notice of Contractor Intention to Terminate for Default”).**

(i) In the event a Notice of Contractor Intention to Terminate for Default is served on County, no action on that Notice shall be taken until a meeting is conducted between the Contract Manager and the County’s Chief Executive Officer, relative to the action or inaction of the County giving rise to the Notice of Contractor Intention to Terminate for Default. Following such meeting (or the unsuccessful attempt to hold such a meeting) the Contractor shall have the right to serve (as provided in Article 16) the County a written notice of termination (**“Notice of Contractor Termination for Default”**) and thereby terminate this Contract for default. The actions of Contractor in terminating the Contract under this Section shall not prejudice any legal right of the County to the extent not otherwise affected by provisions of this Contract.

(ii) County shall be in default under the terms of this Contract [and Contractor may serve County with a Notice of Contractor Intention to Terminate for Default and, following the required meeting with County, terminate this Contract] if after County’s receipt of a Default Notice to County, the specified failure giving rise to the Default Notice to County is not cured within the time frames set forth in Section 8.3(a).

**(c) Failure to Perform Caused by Force Majeure.** The County shall not be deemed to be in default, nor shall this Contract be subject to termination for default, as provided in this Section, if the failure to perform under the terms and conditions of the Contract is caused by a Force Majeure.

**(d) Remedy Not Exclusive.** The rights and remedies provided to the Contractor by this Section are not exclusive but are in addition to other rights and remedies provided to the Contractor by law or by other provisions of this Contract.

17. Section 8.4 of the Contract, entitled “Termination for Convenience of County” is deleted in its entirety.

18. Section 12.2 of the Contract, entitled “Prevailing Wages” is amended in its entirety to read:

**12.2 Prevailing Wages.** The Contractor’s compensation for Work performed under this Contract has been determined in part in reliance upon the applicability of prevailing wage rates, as further discussed in Sections 12.3 and 12.4, below, established pursuant to Section 1773 of the California Labor Code by the Director of the California Department of Industrial Relations. Revisions to any applicable rates which are duly determined by the Director of the Department of Industrial Relations shall be incorporated into this Contract without any action required by the Parties to this Contract. Without limiting the generality of Section 12.1, above, where the performance of Work under this Contract involves the performance of Work for which the payment of prevailing wages, as further discussed in Sections 12.3 and 12.4, below, is required, the Contractor shall comply, and shall insure that any Subcontractor(s) comply, with all federal, state and local law and regulation, as same may be amended from time to time, relative to such prevailing wages, including without limit the provisions of Chapter 1 of Part 7 of Division 2 of the California Labor Code.

Contractor acknowledges that Contractor will be held responsible for compliance with the provisions of Sections 1777.5 and 1776 of the State Labor Code. The Contractor hereby agrees to comply with the State Labor Code and acknowledges that, in accordance with Section 3700 of the State Labor Code, Contractor will be required to secure the payment of compensation to Contractor’s employees.

Contractor is prohibited from performing Work on a public works project with a Subcontractor who is ineligible to perform Work on a public works project pursuant to Section 1777.1 or 1777.7 of the Labor Code. Any contract entered into between a contractor and a debarred Subcontractor is void as a matter of law. A debarred Subcontractor may not receive any public money for performing Work as a Subcontractor on a public works contract, and any public money that may have been paid to a debarred Subcontractor by a contractor on the project shall be returned to the awarding body. The contractor shall be responsible for the payment of wages to Works of a debarred Subcontractor who has been allowed to work on the project.

Due to unanticipated extraordinary increases in prevailing wage, Contractor shall be compensated in the amount of \$241,856 if Amendment No. 5 is approved by the Board of Supervisors prior to or on June 1, 2024,

or in amount of \$120,928 if Amendment No. 5 is approved by the Board of Supervisors after June 1, 2024 but prior to June 30, 2024. This payment will not be used to calculate the annual adjustment calculation for Contract Year 12. Contractor shall invoice the County separately for the amount specified herein and the County shall tender payment within thirty (30) days of an acceptable invoice.

19. Section 14.10, entitled "California Air Resources Board", is added to the Contract as follows:

**14.10 California Air Resources Board.** The Work included in this Contract is subject to the California Air Resources Board (CARB) approved amendments relating to In-Use Off Road Diesel-Fueled Fleets found at California Code of Regulations Title 13, sections 2449, 2449.1, and 2449.2 (the "Regulations"). The Regulations require Contractor to certify that the Contractor's off-road diesel-fueled fleets comply with CARB regulations. Section 2249(b) includes a list of off-road diesel-fueled fleets subject to these regulations. It is the responsibility of the Contractor to verify if their fleet is subject to these regulations. Contractor and its subcontractors shall comply with sections 2449, 2449.1, 2449.2 of Title 13 of the California Code of Regulations, including by providing Certificate(s) of Reported Compliance for In-Use Off-Road Diesel-Fueled Fleets for the fleet used in performing Work under this Contract and their subcontractors, if applicable. Contractor shall not enter into a contract with a fleet for which it does not have a valid Certificate of Reported Compliance for the fleet including any subcontractors, if applicable, prior to entering into a new or renewed contract with that fleet. Contractor shall only allow fleets with valid Certificates of Reported Compliance to perform Work under this Contract. The Certificates of Reported Compliance received by the Contractor must be retained for three (3) years after Contract termination. Upon request by CARB, these records must be provided to CARB within five (5) business days of the request. Between March 1 and June 1 of each year, Contractor must collect new valid Certificates of Reported Compliance for the current compliance year, as defined in Regulation Section 2449(n), from all fleets that perform Work under this Contract as of March 1 of that year. Contractor must not write contracts to evade this requirement. If Contractor discovers that any fleet intending to operate vehicles subject to the Regulation for Contractor does not have a valid Certificate of Reported Compliance, as defined in Regulation section 2449(n), or if Contractor observes any noncompliant vehicles subject to the Regulation on Contractor's job site, then Contractor must report the required information to CARB within the time period contained in in the Regulations. Upon request by CARB, Contractor must immediately disclose to CARB the name and contact information of each responsible party for all vehicles subject to the Regulation operating at the job site or for Contractor. If applicable, Contractor shall prominently display signage for any project where vehicles subject to the Regulation as provided and within the time period contained in the Regulation. By signing this Amendment Contractor hereby certify that it and all of its subcontractors will conform to the CARB In-Use Off-Road Diesel- Fueled Fleets requirements for all work involving the use of vehicles subject to the Regulations, including, without limitation, as applicable, the Contracting Requirements in Title 13 CCR section 2449, subdivision (i), subparts (1) – (4), and the Prime Contractor Requirements in Title 13 CCR section 2449, subdivision (j), subparts (1) – (5). Contractor agrees to provide the County with its current CARB issued Certificate of Reported Compliance forms within five (5) business days of executing this Amendment.

20. Section 18.22, entitled "Campaign Contribution Disclosure (SB 1439)", is added to the Contract as follows:

**18.22 Campaign Contribution Disclosure (SB 1439).** Contractor has disclosed to the County using Exhibit T - Campaign Contribution Disclosure Senate Bill 1439, whether it has made any campaign contributions of more than \$250 to any member of the Board of Supervisors or other County elected officer [Sheriff, Assessor-Recorder-Clerk, Auditor-Controller/Treasurer/Tax Collector and the District Attorney] within the earlier of: (1) the date of the submission of Contractor's proposal to the County, or (2) 12 months before the date this Contract was approved by the Board of Supervisors. Contractor acknowledges that under Government Code section 84308, as of the date of this Amendment, Contractor is prohibited from making campaign contributions of more than \$250 to any member of the Board of Supervisors or other County elected officer for 12 months after the County's consideration of the Contract. In the event of a proposed amendment to this Contract, the Contractor will provide the County a written statement disclosing any campaign contribution(s) of more than \$250, or any then-amount that may be specified under applicable. to any member of the Board of Supervisors or other County elected officer within the preceding 12 months of the date of the proposed amendment. Campaign contributions include those made by any agent/person/entity on behalf of the Contractor or by a parent, subsidiary or otherwise related business entity of Contractor.

21. Section 20.2 of the Contract, entitled “Amount of Solid Waste to be Delivered”, is amended in its entirety to read:

**20.2 Amount of Solid Waste to be Delivered.**

- (a) Contract Year 1 through Contract Year 7.** During Contract Year 1 through Contract Year 7 (July 1, 2013 through June 30, 2020), Contractor shall deliver a minimum of five million five hundred seventy-five thousand (5,575,000) tons, up to a maximum of eight million four hundred thousand (8,400,000) tons, of Article 20 Solid Waste to the Disposal System, except as provided for in Section 8.4 and Section 20.7 for early termination of Article 20 Solid Waste, in the manner and amount described in this Article 20.
- (b) Contract Year 8.** During Contract Year 8 (July 1, 2020 through June 30, 2021), Contractor shall deliver a minimum of six hundred thousand (600,000) tons, up to a maximum of nine hundred thousand (900,000) tons, of Article 20 Solid Waste to the Disposal System, except as provided for in Section 8.4 and Section 20.7 for early termination of Article 20 Solid Waste, in the manner and amount described in this Article 20.
- (c) Contract Year 9 through Contract Year 11.** During Contract Year 9 through Contract Year 11 (July 1, 2021 through June 30, 2024) , Contractor shall deliver a minimum of five hundred fifty thousand (550,000) tons, up to a maximum of eight hundred twenty thousand (820,000) tons, of Article 20 Solid Waste to the Disposal System, except as provided for in Section 8.4 and Section 20.7 for early termination of Article 20 Solid Waste, in the manner and amount described in this Article 20.
- (d) Contract Year 12 through the end of the Contract Term.** During Contract Year 12 (beginning July 1, 2024) through the end of the Contract Term, Contractor shall deliver a minimum of five hundred fifty thousand (550,000) tons per Contract Year, up to a maximum of eight hundred twenty thousand (820,000) tons per Contract Year, of Article 20 Solid Waste to the Disposal System, except as provided for in Section 8.4 and Section 20.7 for early termination of Article 20 Solid Waste, in the manner and amount described in this Article 20. Contractor may deliver, upon annual written notice to the Contract Administrator and written approval from the Contract Administrator, up to a maximum of one million one hundred fifteen thousand (1,115,000) tons per Contract Year of Article 20 Solid Waste to the Disposal System, except as provided for in Section 8.4 and Section 20.7, in the manner and amount described in this Article 20. The County is not obligated to accept any offer to dispose of any Article 20 Solid Waste above eight hundred twenty thousand (820,000) tons per year.
- (e) Proration: Reconciliation (Contract Years 1, 3, 6).** Contractor shall deliver the minimum amount of municipal solid waste (MSW) and ADC, as described below, for each Contract Year. The amount of Article 20 Solid Waste for the first Contract Year, July 1, 2013 to June 30, 2014, will be prorated and the Contractor will deliver a minimum of five hundred thirty thousand (530,000) tons of MSW and ADC the first Contract Year. At the end of Contract Years 3 and 6, the Contractor and County will reconcile the amount of Article 20 Solid Waste delivered by the Contractor to ensure that the Contractor has delivered a total minimum of two million four hundred thousand (2,400,000) tons (average of 800,000 tons/Contract Year) of MSW and ADC (PGM or MRF fines, if approved) over three Contract Years on a “put or pay basis”. Within 60 days of the end of Contract Years 3 and 6, Contractor will pay the County the amount due if Contractor has not delivered a total minimum of two million four hundred thousand (2,400,000) tons at the end of Contract Years 3 and 6, at the then current Valley Article 20 Disposal Fee rate.
- (f) Tonnage Over 700,000 Tons.** For Contract Year 12 through the end of term of the Contract, Contractor will provide written notice in the event delivered Article 20 Solid Waste is greater than seven hundred thousand (700,000) tons during any Contract Year. County reserves the right to evaluate the facility impacts arising from such tonnage. Delivered Article 20 Solid Waste greater than seven hundred thousand (700,000) tons shall be considered for delivery to the Victorville Sanitary Landfill at the then current Victorville Article 20 Disposal Fee amount, which said fee is adjusted annually.
- (g) Annual Tonnage Commitment of MSW; Put or Pay.**

  - i. The first Contract Year, Contractor shall deliver a minimum of five hundred thousand (500,000) tons

of MSW and a minimum of thirty thousand (30,000) tons of PGM, for a total minimum of 530,000 tons of Article 20 Solid Waste, on a “put or pay basis”.

- ii. Contractor shall deliver throughout Contract Years 2 through 7 (July 1, 2014 through June 30, 2020) a minimum of seven hundred thousand (700,000) tons of municipal solid waste (MSW) per Contract Year, to be delivered in roughly equal monthly amounts, on a “put or pay basis”, up to a maximum of one million two hundred thousand (1,200,000) tons per Contract Year. In addition, Contractor shall deliver a minimum of forty thousand (40,000) additional tons of either MSW or ADC (charged at the Valley Article 20 Disposal Fee rate), on a “put or pay basis”, in order to meet a Minimum Annual Article 20 Total Tonnage of at least seven hundred and sixty-five thousand (765,000) tons per Contract Year, except that PGM can no longer be delivered after December 31, 2019.
- iii. During Contract Year 8 (beginning July 1, 2020), Contractor shall deliver a minimum of six hundred thousand (600,000) tons of MSW, to be delivered in roughly equal monthly amounts, on a “put or pay basis”, up to a maximum of nine hundred thousand (900,000) tons.
- iv. During Contract Years 9 through 11 (July 1, 2021 through June 30, 2024), Contractor shall deliver a minimum of five hundred fifty thousand (550,000) tons of MSW, to be delivered in roughly equal monthly amounts, on a “put or pay basis”, up to a maximum of eight hundred twenty thousand (820,000) tons.
- v. During Contract Year 12 (beginning July 1, 2024) through the end of the Contract term, Contractor shall deliver a minimum of five hundred fifty thousand (550,000) tons of MSW, to be delivered roughly equal monthly amounts, on a “put-or-pay” basis.

**(h) Annual Tonnage Commitment of ADC.**

- i. Contractor shall deliver throughout Contract Years 2 through 6 (July 1, 2014 through June 30, 2019) a minimum of fifty thousand (50,000) tons per Contract Year of ADC (PGM or MRF fines, if approved) on a “put or pay basis”.
- ii. From July 1, 2019 through December 31, 2019, Contractor shall deliver a minimum of twenty-two thousand (22,000) tons of ADC on a “put or pay basis”. All ADC delivered must be used as ADC and used according to regulations. ADC may be delivered under this provision as long as ADC is counted as diversion by CalRecycle.
- iii. Beginning January 1, 2020 through the end of the Contract term, the PGM component of Article 20 ADC will no longer be accepted, as PGM will not be counted as diversion by CalRecycle. Contractor shall have the option to deliver CalRecycle approved ADC (excluding PGM) if it is counted as diversion by CalRecycle, throughout the term of the agreement up to a maximum of 50,000 tons per year. Any ADC delivered to County landfills that does not qualify for diversion by CalRecycle shall be charged the refuse Article 20 import rate.

**(i) Tonnage Increases or Tonnage Decreases; Put-or-Pay.** The Contract Administrator, in consultation with the County Administrative Office, may direct tonnage increases or tonnage decreases for specific time periods, with at least 180 days prior written notice to the Contractor. In the event tonnage is decreased below the then current “put-or-pay” amount, the new lower tonnage amount will become the “put-or-pay” amount during the tonnage reduction period.

22. Section 20.6 of the Contract, entitled “Cost of Living Adjustments”, is amended in its entirety to read:

**20.6 Cost of Living Adjustments.**

**(a)** Commencing July 1, 2014 through June 30, 2024, the Valley Article 20 Disposal Fee, Victorville Article 20 Disposal Fee and the ADC Article 20 Import Fee shall be adjusted annually with the formula described herein each July 1 during the Contract. The base rate shall be increased annually by any positive change in

the Consumer Price Index, CPI-U index (Series ID: CUURA421SA0 – Not Seasonally Adjusted, Area: Los Angeles-Riverside-Orange County, CA, Item: All items, Base Period: 1982-84=100) for the preceding 12-month period September to September and effective each July 1 throughout the Contract Term. The rate will not change effective July 1 of any subsequent year throughout the Contract Term if the annual change in the CPI-U index for the preceding 12-month period September to September is zero or negative. If the annual change in the CPI-U index for the preceding 12-month period September to September is negative, all Parties agree that the negative change in the CPI-U index will be used in the subsequent year’s calculation of the net annual change in the CPI-U index. In no case will the current adjusted base rate ever be decreased except as provided in Section 20.8. For example, if the current rate is \$30.00 per ton and the annual change in the CPI-U index for the preceding 12-month period September to September is negative two percent (-2%), then the rate effective that July 1 will continue to be \$30.00 per ton. The following year, if the annual change in the CPI-U index for the preceding 12-month period September to September is positive three percent (3%), then the rate effective that July 1 will be \$30.00 plus 1%, or \$30.30.

$$\frac{\text{CPI-U (new)} - \text{CPI-U (old)}}{\text{CPI-U (old)}}$$

If the Consumer Price Index is no longer published, or is otherwise unavailable, then the Cost of Living Adjustment shall be determined by using standard official statistics measuring changes to, respectively, labor costs and cost of materials, as the parties shall mutually agree.

**(b)** Commencing July 1, 2024 through the end of the Contract, the Valley Article 20 Disposal Fee, Victorville Article 20 Disposal Fee and the ADC Article 20 Import Fee shall be adjusted annually with the formula described herein each July 1 during the Contract. The base rate shall be increased annually by any positive change in the Consumer Price Index, CPI-U index (Series ID: CUURA421SA0 – Not Seasonally Adjusted, Area: Los Angeles-Riverside-Orange County, CA, Item: All items, Base Period: 1982-84=100) for the preceding 12-month period April to April and effective each July 1 throughout the Contract Term. Notwithstanding the foregoing, for Contract Year 12 (July 1, 2024) only, the percentage change will be calculated using September 2022 to April 2024, and such calculation will be reflected in a revised Renegotiated Operations Costs Table 2B once the BLS publishes the index for April 2024, which will be provided to the Contractor by June 30, 2024.

The rate will not change effective July 1 of any subsequent year throughout the Contract Term if the annual change in the CPI-U index for the preceding 12-month period April to April is zero or negative. If the annual change in the CPI-U index for the preceding 12-month period April to April is negative, all Parties agree that the negative change in the CPI-U index will be used in the subsequent year’s calculation of the net annual change in the CPI-U index. In no case will the current adjusted base rate ever be decreased except as provided in Section 20.8. For example, if the current rate is \$30.00 per ton and the annual change in the CPI-U index for the preceding 12-month period April to April is negative two percent (-2%), then the rate effective that July 1 will continue to be \$30.00 per ton. The following year, if the annual change in the CPI-U index for the preceding 12-month period April to April is positive three percent (3%), then the rate effective that July 1 will be \$30.00 plus 1%, or \$30.30.

$$\frac{\text{CPI-U (new)} - \text{CPI-U (old)}}{\text{CPI-U (old)}}$$

If the Consumer Price Index is no longer published, or is otherwise unavailable, then the Cost of Living Adjustment shall be determined by using standard official statistics measuring changes to, respectively, labor costs and cost of materials, as the parties shall mutually agree.

23. Add Table 2B, entitled “Renegotiated Operations Costs”, which outlines the increased operations rates which will be used to apply the Annual Adjustment for Contract Year 12 (beginning July 1, 2024) that will be calculated per the applicable sections of Article 5, or as otherwise provided for in this Contract.

24. Exhibit B-11 of the Contract, entitled “Contractor Provided Equipment”, is amended in its entirety 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 CAT836 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. Beginning January 1, 2024 through December 31, 2028, Contractor shall purchase new equipment and/or perform mid-life rebuilds in substantial compliance with the below schedule:

<b>2024, 2025</b>	<b>2025, 2026</b>	<b>2026, 2027</b>	<b>2027, 2028</b>	<b>2028</b>
836 Compactor	836 Compactor	836 Compactor	3 Wheel Loaders	Wheel Loader
Excavator	Excavator	Excavator	836 Compactor Mid-Life	6 Transfer Trucks
2 Roll-off Trucks	D8 Dozer	D8 Dozer	D8 Dozer Mid-Life	836 Compactor Mid-Life
3 Water Trucks	836 Compactor Mid-Life	3 Wheel Loaders	2 Transfer Truck Mid-Life	D8 Dozer Mid-Life
836 Compactor Mid-Life	Excavator Mid-Life	836 Compactor Mid-Life		
Excavator Mid-Life	D8 Dozer Mid-Life	Excavator Mid-Life		
D8 Dozer Mid-Life	Motorgrader Mid-Life	D8 Dozer Mid-Life		
D6 Dozer Mid-Life	2 Wheel Loader Mid-Life	2 Transfer Truck Mid-Life		
963 Track Loader Mid-Life	2 Transfer Truck Mid-Life			
5 Wheel Loader Mid-Life				

Effective July 1, 2025, Contractor shall have completed installation of Global Positioning System (GPS) equipment and software on all compactors that handle waste at each of the landfills to track, monitor and improve landfill waste densities in real-time. The Contractor shall share access to software data with the County and which shall be included in the monthly reports submitted to the County.

Due to unanticipated extraordinary increases in equipment costs, Contractor shall be compensated in an amount of \$80,611 if Amendment No. 5 is approved by the Board of Supervisors prior to or on June 1, 2024, or in an amount of \$40,305 if Amendment No. 5 is approved by the Board of Supervisors after June 1, 2024 but prior to June 30, 2024. This is a one-time payment and will not be used to calculate the annual adjustment calculation for Contract Year 12. Contractor shall invoice the County separately for the amount specified herein and the County shall tender payment within thirty (30) days of an acceptable invoice.

Acceptance of Contractor's Equipment List by the 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 requirements contained 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.



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

SAN BERNARDINO COUNTY

►  
\_\_\_\_\_  
Dawn Rowe, Chair, 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  
San Bernardino County

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, California 91716

**FOR COUNTY USE ONLY**

Approved as to Legal Form	Reviewed for Contract Compliance	Reviewed/Approved by Department
► Julie Surber, Principal Assistant County Counsel	► Andy Silao, P.E.	► Noel Castillo, P.E., Director
Date _____	Date _____	Date _____

**TABLE 2B**

**RENEGOTIATED OPERATIONS COSTS**

**Contract Amendment No. 5 - Rebase of the Landfill/Transfer Station Costs(9)**

**Contractor Name: Arakelian Enterprises Inc., dba Athens Services**

Column	Description/Location	Annual Cost		Assumed Standard Annual Tonnage			Facility Rate Per Ton for Each "Non-Athens" Ton Over 1,260,236 Tons	Facility Rate Per Ton for Article 20 Tonnage
		A: Entire System		Tons Other Than From County TS	County TS Tons	Annual Landfill Baseline Tonnage		
		1	1a.	2	3	4		
2.1	<b>A. Total Fixed Annual Costs - Year (1)</b>	<b>\$1,323,291</b>						
	<b>Landfills</b>	<b>B. Active Landfills - Direct Costs</b>	<b>B. Active Landfills - Total Costs (2)</b>					
2.2	Barstow	\$2,151,519	\$2,279,045	35,623	37,129	72,752	\$8.52	N/A
2.3	Landers	\$1,671,373	\$1,770,439	36,356	15,505	51,861	\$8.52	N/A
2.4	Mid-Valley	\$6,570,816	\$6,960,279	665,350	-	665,350	\$8.52	\$9.07
2.5	San Timoteo	\$3,051,911	\$3,232,806	161,965	36,032	197,997	\$8.52	\$14.16
2.6	Victorville	\$3,577,801	\$3,789,866	243,354	28,922	272,276	\$8.52	\$12.06
2.7	<b>Active Landfills Sub-Total Costs</b>	<b>\$17,023,420</b>	<b>\$18,032,435</b>	<b>1,142,648</b>	<b>117,588</b>	<b>1,260,236</b>		
	<b>Transfer Stations</b>	<b>C. Transfer Stations - Direct Costs</b>	<b>C. Transfer Stations - Total Costs (3)</b>	<b>Annual Assumed Transfer Station Tonnage</b>	<b>Landfill Used</b>		<b>Facility Rate Per Ton For Each Ton Over / Under Annual Assumed Transfer Station Tonnage</b>	
2.8	Baker (4)	\$76,083	\$80,590	1,454	Barstow		\$26.59	
2.9	Big Bear (5)*	\$1,086,517	\$1,150,918	31,484	Barstow		\$19.15	
2.10	Camp Rock (Lucerne Valley) (6)	\$180,696	\$191,407	1,830	Barstow		\$21.12	
2.11	Heaps Peak*	\$1,611,708	\$1,707,243	36,032	San Timoteo		\$15.44	
2.12	Morongo Valley (Trails End)	\$127,160	\$134,696	991	Landers		\$15.60	
2.13	Newberry Springs (7)	\$124,630	\$132,018	354	Barstow		\$32.75	
2.14	Phelan (Sheep Creek)*	\$1,072,202	\$1,135,752	28,922	Victorville		\$9.02	
2.15	Trona-Argus (8)	\$325,821	\$345,134	2,007	Barstow		\$33.70	
2.16	Twentynine Palms*	\$697,381	\$738,716	14,514	Landers		\$14.38	
2.17	<b>Transfer Stations Sub-Total Costs</b>	<b>\$5,302,198</b>	<b>\$5,616,474</b>	<b>117,588</b>				
2.18	<b>Annual Contractor's Totals</b>	<b>\$23,648,909</b>	<b>\$23,648,909</b>	<b>1,260,236</b>				

(1) First year Total Fixed Costs reduced by \$124,989 for Performance Bond rebate, remainder is COLA adjusted for second year

(2) Annual Landfill Compensation with pro rated portion of Total Fixed Annual Costs included

(3) Annual Transfer Station Compensation with pro rated portion of Total Fixed Annual Costs included

(4) Baker is currently operated by the Baker CSD, and it is the Contractor's responsibility to transfer and transport the waste and recyclables. Baker does not include operation of the transfer station.

(5) Assume Big Bear tonnage will be transported to Barstow

(6) Uses rolloff boxes.

(7) Low volume transfer station, uses 3 cubic yard bins.

(8) Assume Trona-Argus tonnage will be transported to Barstow.

(9) All rates in this Table 2B will be adjusted by CPI according to the contract when available and will be effective July 1, 2024

\* Transfer Stations with full operations



# EXHIBIT T

## Campaign Contribution Disclosure (SB 1439)

### DEFINITIONS

Actively supporting the matter: (a) Communicate directly with a member of the Board of Supervisors or other County elected officer [Sheriff, Assessor-Recorder-Clerk, District Attorney, Auditor-Controller/Treasurer/Tax Collector] for the purpose of influencing the decision on the matter; or (b) testifies or makes an oral statement before the County in a proceeding on the matter for the purpose of influencing the County's decision on the matter; or (c) communicates with County employees, for the purpose of influencing the County's decision on the matter; or (d) when the person/company's agent lobbies in person, testifies in person or otherwise communicates with the Board or County employees for purposes of influencing the County's decision in a matter.

Agent: A third-party individual or firm who, for compensation, is representing a party or a participant in the matter submitted to the Board of Supervisors. If an agent is an employee or member of a third-party law, architectural, engineering or consulting firm, or a similar entity, both the entity and the individual are considered agents.

Otherwise related entity: An otherwise related entity is any for-profit organization/company which does not have a parent-subsidiary relationship but meets one of the following criteria:

- (1) One business entity has a controlling ownership interest in the other business entity;
- (2) there is shared management and control between the entities; or
- (3) a controlling owner (50% or greater interest as a shareholder or as a general partner) in one entity also is a controlling owner in the other entity.

For purposes of (2), "shared management and control" can be found when the same person or substantially the same persons own and manage the two entities; there are common or commingled funds or assets; the business entities share the use of the same offices or employees, or otherwise share activities, resources or personnel on a regular basis; or there is otherwise a regular and close working relationship between the entities.

Parent-Subsidiary Relationship: A parent-subsidiary relationship exists when one corporation has more than 50 percent of the voting power of another corporation.

**Contractors must respond to the questions on the following page. If a question does not apply respond N/A or Not Applicable.**

1. Name of Contractor: \_\_\_\_\_
2. Is the entity listed in Question No.1 a nonprofit organization under Internal Revenue Code section 501(c)(3)?  
 Yes  If yes, skip Question Nos. 3-4 and go to Question No. 5      No
3. Name of Principal (i.e., CEO/President) of entity listed in Question No. 1, if the individual actively supports the matter and has a financial interest in the decision: \_\_\_\_\_
4. If the entity identified in Question No.1 is a corporation held by 35 or less shareholders, and not publicly traded ("closed corporation"), identify the major shareholder(s):  
 \_\_\_\_\_
5. Name of any parent, subsidiary, or otherwise related entity for the entity listed in Question No. 1 (see definitions above):

Company Name	Relationship

6. Name of agent(s) of Contractor:

Company Name	Agent(s)	Date Agent Retained (if less than 12 months prior)

7. Name of Subcontractor(s) (including Principal and Agent(s)) that will be providing services/work under the awarded contract if the subcontractor (1) actively supports the matter and (2) has a financial interest in the decision and (3) will be possibly identified in the contract with the County or board governed special district.

Company Name	Subcontractor(s):	Principal and//or Agent(s):

8. Name of any known individuals/companies who are not listed in Questions 1-7, but who may (1) actively support or oppose the matter submitted to the Board and (2) have a financial interest in the outcome of the decision:

Company Name	Individual(s) Name

9. Was a campaign contribution, of more than \$250, made to any member of the San Bernardino County Board of Supervisors or other County elected officer within the prior 12 months, by any of the individuals or entities listed in Question Nos. 1-8?

No  If **no**, please skip Question No. 10.

Yes  If **yes**, please continue to complete this form.

10. Name of Board of Supervisor Member or other County elected officer: \_\_\_\_\_

Name of Contributor: \_\_\_\_\_

Date(s) of Contribution(s): \_\_\_\_\_

Amount(s): \_\_\_\_\_

Please add an additional sheet(s) to identify additional Board Members or other County elected officers to whom anyone listed made campaign contributions.

By signing the Contract, Contractor certifies that the statements made herein are true and correct. Contractor understands that the individuals and entities listed in Question Nos. 1-8 are prohibited from making campaign contributions of more than \$250 to any member of the Board of Supervisors or other County elected officer while award of this Contract is being considered and for 12 months after a final decision by the County.