



Contract Number

13-188 A-2

SAP Number

44.0000.2218

**Public Works – Solid Waste
Management Division**

Department Contract Representative	Darren Meeka, Interim Deputy Director
Telephone Number	(909) 386-8703
Contractor	Arakelian Enterprises, Inc. DBA Athens Services
Contractor Representative	Greg Loughnane, President
Telephone Number	(626) 336-3636
Contract Term	7/1/2013 – 6/30/2031
Original Contract Amount	\$230,672,760
Amendment Amount	\$244,452,795
Total Contract Amount	\$475,125,555
Cost Center	6702004250

IT IS HEREBY AGREED AS FOLLOWS:

**CONTRACT 13-188
AMENDMENT NO. 2
WASTE DISPOSAL SYSTEM OPERATIONS CONTRACT**

The following is Amendment No. 2 to Contract No. 13-188 (“Amendment No. 2”) 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 CSDP, 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; and

WHEREAS, the Parties desire to enter into this Amendment No. 2 to extend the Contract term eight years, with the option to extend two additional four-year periods with possible additional extensions, if approved

by the Board in future recommended Board actions, reset the operations contract rate and import burial rates, for the extension period, which will be escalated annually based on the Consumer Price Index (CPI), and reduce the amount of import waste delivered.

NOW THEREFORE, the Contract is hereby amended as follows:

1. Section 1.2 of the Contract, entitled “Effective Date of Contract; Term and Extension”, is amended in its entirety to read as follows:

1.2 Effective Date of Contract; Term and Extension.

- (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 18 years, ending on June 30, 2031. 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).
- (b) Contract Reopener Periods.** Beginning July 1, 2023 and every four years thereafter during the Contract term, the County and Contractor shall meet and discuss any potential amendments to the Contract. Any changes to the Contract that are negotiated will be subject to Board approval. If the County and Contractor do not agree to an amendment to the Contract within 180 days from the reopener start date (i.e. July 1, 2023, July 1, 2027, etc.), the Contract term shall not be extended and the Contract shall terminate upon the Contract termination date in effect at that time, or a date sooner if agreed to by both Parties. If both Parties agree to amended Contract terms, the County may consider extending the Contract term by an additional four years as provided for in Section 1.2(c).
- (c) Extension of Term.** If the Parties agree to amended Contract terms per Section 1.2(b) above during the first four-year review (i.e. July 1, 2023), the County has the option, but not the requirement, to extend the term of this Contract an additional four-year period. If the Parties agree to amended Contract terms per Section 1.2(b) above during the second four-year review (i.e. July 1, 2027), the County has the option, but not the requirement, to extend the term of this Contract an second additional four-year period. Only the Board of Supervisors can exercise the option to extend the Contract through approval of an amendment to this Contract, which the County agrees to present to the Board within 180 days from agreement by staff of both Parties. Assuming the County elects to exercise its right to each of the two consecutive, four-year periods, the total term of the Contract will be twenty-six (26) years. The County may, upon the approval of future contract amendment(s) by the Board, allow for additional extensions beyond the two possible extensions provided for in this Amendment.
- (d) Reserved.**
- (e) Terms and Conditions; Extensions.** Notwithstanding anything in this Contract to the contrary and except as expressly agreed by the Parties in writing, the term and conditions of this Contract shall be in full force and effect during the term of this Contract and any extension thereof.
- (f) Contract Review.** If the County or the Contractor believe the terms and/or requirements of the Contract to be overly burdensome or objectionable, or significant Disposal System changes have occurred (including, but not limited to, significant regulatory changes, significant tonnage increases/decreases, significant changes in the industry), either Party may request a meeting to discuss their concerns. The meeting request shall be in writing to the other Party and reference this section of the Contract. If the Parties mutually agree on an appropriate amendment to the Contract, the Contract Administrator shall make a recommendation for such an amendment for presentation to and approval by the Board.
- (g) Contract Revision- Minimum Effective Density.** In addition to the Contract reopener discussed above in Section 1.2(b), no later than six (6) months following the approval of Amendment No. 2 by the Board, the Parties agree to meet and negotiate additional revisions to the Contract related to potential revisions to the Minimum Effective Density standards (“Revised MEDs”), associated incentive pay to Contractor for exceeding the Revised MEDs and liquidated damage penalties for Contractor’s failure to meet the standards (collectively the “Additional MED Changes”). The Parties

will negotiate this subsequent amendment in good faith and reasonably work together to finalize the amendment. Any revisions to the Contract for Revised MEDs and Additional MED Changes shall be submitted to the Board for approval as an amendment to the Contract within fifteen (15) months of approval of Amendment No. 2 (“Revision Deadline”), unless extended by mutual agreement of the Parties.

The Parties acknowledge that the Revised MEDs identified in the table below are only a target for initial negotiation purposes, may be changed in the subsequently approved amendment to the Contract, and that Contractor shall not be required to satisfy the Revised MEDs until the Board approves an amendment to this Contract.

The Parties acknowledge that these Revised MEDs are based on current conditions and waste streams existing as of this Amendment No. 2.

FACILITY	MINIMUM EFFECTIVE DENSITY
Barstow	1,200 pcy
Landers	1,200 pcy
Mid-Valley	1,400 pcy
San Timoteo	1,300 pcy
Victorville	1,300 pcy

In the event that twelve (12) months have elapsed following approval of Amendment No. 2 by the Board without the presentation to the Board of an amendment for Revised MEDs and Additional MED Changes, the Parties shall agree to non-binding mediation of the issue(s). The mediator shall be mutually agreed to by both Parties and the Parties shall share the mediator’s fees equally. Each Party shall bear its attorney fees, expert fees, expenses, and costs.

- Section 5.1 of the Contract, entitled “Facilities Operation Compensation”, subsection (a) “General Provisions” is amended in its entirety to read:

5.1 Facilities Operation Compensation

(a) General Provisions. 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 attached as Table 2, 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 (1/12th) 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, 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 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).

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 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.

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

5.2 Annual Adjustments

- (a) **Schedule of Annual Adjustments.** Beginning with the second through the seventh Contract Year (July 2014 – June 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.

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.

Beginning with the ninth Contract Year (July 1, 2021) 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(c).

4. Section 5.2 of the Contract, entitled "Annual Adjustments", is amended to add Section 5.2(c) "Method of Adjustment for Contract Years 9 Through the End of the Contract Term".

5.2 Annual Adjustments

- (c) **Method of Adjustment for Contract Years 9 Through the End of the Contract Term.**

- (i) **General.** Pursuant to Section 5.2(a), paragraph 3, an Annual Adjustment to Facilities Operation Compensation, beginning Contract Year 9 (July 1, 2021) through the end of the Contract term and any extensions thereof, 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 the end of the Contract term and any extensions thereof, shall be adjusted according 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. 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 9 (July 1, 2021) and through the end of the Contract term and any extensions thereof. 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 throughout the Term of the Contract and any extensions thereof. 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.

5. Section 5.3 of the Contract, entitled “Extraordinary Adjustments”, subsection (a) “General Matters” is amended in its entirety to read as follows:

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 includes 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 and request and, in the County’s sole discretion and judgment, make the final determination on the appropriate amount of the Extraordinary Adjustment, if any.

6. 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. 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.

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.

During Contract Year 9 (beginning July 1, 2021) through the end of the Contract term, 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.

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.

Except as provided for in Section 20.3(d), for Contract Year 8 through the end of term of the Contract, Contractor shall deliver the amount of Article 20 Solid Waste listed in the above paragraphs on a "put or pay basis". Within 60 days of the end of each Contract Year, beginning with Contract Year 8, through the end of the term of the Contract, Contractor will pay the County the amount due if Contractor has not delivered the total amount stated for each Contract Year at the then current Valley Article 20 Disposal Fee rate.

The Contract Administrator, in consultation with the County Administrative Office, may direct tonnage increases or tonnage decreases, if any, with at least 180 days written notice to the Contractor.

- (a) Except for the first Contract Year, the 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 ("**Annual Tonnage Commitment of MSW**") 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. 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. During Contract Year 9 (beginning July 1, 2021) 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 in roughly equal monthly amounts, on a "put or pay basis", up to a maximum of eight hundred twenty thousand (820,000) tons.
- (b) Except for the first Contract Year, the 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) ("**Annual Tonnage Commitment of ADC**") on a "put or pay basis". Contractor may deliver additional ADC volumes, if the additional ADC is utilized in compliance with State regulations set forth by CalRecycle, above the 50,000 per Contract Year tons up to a maximum of one hundred fifty thousand (150,000) tons per Contract Year. 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. 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.

- (c) Except for the First Contract Year, in addition to the minimum amounts of Article 20 Solid Waste required to be delivered pursuant to Sections 20.2(a) and 20.2(b), throughout Contract Years 2 through 7 (July 1, 2014 through June 30, 2020), 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 (“**Minimum Annual Article 20 Total Tonnage**”), except that PGM can no longer be delivered after December 31, 2019.
- (d) 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”.

7. Section 20.3 of the Contract, entitled “Facility to be Utilized”, is amended in its entirety to read:

20.3 Facility to be Utilized. The Contractor shall deliver the Article 20 Solid Waste to the Mid-Valley Landfill, San Timoteo Landfill, and/or the Victorville Landfill, unless and only to the extent, the Contract Administrator directs the Contractor to dispose of all or any part of such Article 20 Solid Waste at an alternate County landfill.

- (a) During Contract Years 1 through 8 (July 1, 2013 through June 30, 2021), a minimum of one hundred thousand (100,000) tons per Contract Year, up to a maximum of two hundred thousand (200,000) tons per Contract Year of Article 20 Solid Waste may be delivered to the San Timoteo Landfill, at the discretion of the Contract Administrator. During Contract Years 9 (July 1, 2021) through the end of the Contract term, a minimum of one hundred thirty five thousand (135,000) tons per Contract Year, up to a maximum of two hundred thousand (200,000) tons per Contract Year of Article 20 Solid Waste may be delivered to the San Timoteo Landfill, at the discretion of the Contract Administrator. Contractor acknowledges that the San Timoteo Landfill operates under permitted daily tonnage limits, and it is essential for the County to be in compliance with the permit and not exceed the permitted daily tonnage limit. Therefore, Contractor’s vehicles shall not be allowed entry to the San Timoteo Landfill where such delivery would cause the County to exceed the permitted daily limit. In-County and WDA City waste shall have priority over imported waste when daily permitted tonnage may be exceeded.
- (b) During Contract Years 1 through 7 (July 1, 2013 through June 30, 2020), a minimum of fifteen thousand (15,000) tons per Contract Year, up to a maximum of two hundred thousand (200,000) tons per Contract Year, of Article 20 Solid Waste may be delivered to the Victorville Landfill, at the discretion of the Contract Administrator. During Contract Years 8 (July 1, 2020) through the end of the Contract term, a minimum of fifteen thousand (15,000) tons per Contract Year, up to a maximum of four hundred fifteen thousand (415,000) tons per Contract Year of Article 20 Solid Waste may be delivered to the Victorville Landfill, at the discretion of the Contract Administrator.
- (c) During Contract Years 1 through 7 (July 1, 2013 through June 30, 2020), all other Article 20 Solid Waste shall be delivered to the Mid-Valley Landfill. During Contract Year 8 (July 1, 2020-June 30, 2021), a minimum of four hundred eighty five thousand (485,000) tons, up to a maximum of five hundred eighty thousand (580,000) tons of Article 20 Solid Waste shall be delivered to the Mid-Valley Landfill. During Contract Year 9 (beginning July 1, 2021) through the end of the Contract term, a minimum of four hundred thousand (400,000) tons per Contract Year, up to a maximum of five hundred thousand (500,000) tons per Contract Year of Article 20 Solid Waste shall be delivered to the Mid-Valley Landfill, at the discretion of the Contract Administrator.
- (d) Beginning with Contract Year 11 (beginning on July 1, 2023) through the end of the Contract term, the Contract Administrator, in consultation with the County Administrative Office, reserves the right to direct Contractor to reduce or stop disposing of Article 20 Solid Waste at the Mid-Valley Landfill, including below the identified minimum of four hundred thousand (400,000) tons within a minimum of 180 days written notice to the Contractor. In the event the Contract Administrator executes this right, County and Contractor will meet and confer, and negotiate in good faith resulting changes to this contract. Contractor acknowledges and agrees that the ability to deposit Article 20 Solid Waste at the Mid-Valley Landfill in year 11 and thereafter is dependent upon many factors, including, but not limited to, the expansion of the Mid-Valley Landfill, the potential for intervention by regulatory agencies (including but not limited to, Santa Ana Regional Water Quality Control Board,

Environmental Protection Agency, and Department of Toxic Substance Control), and intervention by surrounding municipalities or other entities. Contractor has taken these factors into consideration and agrees that any County direction to reduce or cease disposing of Article 20 Solid Waste at the Mid-Valley Landfill shall not result in a breach of this Contract by County.

8. Section 20.4 of the Contract, entitled "Article 20 Disposal Fee", subsections (c), (d), (e), and (f) are amended in their entirety to read:

20.4 Article 20 Disposal Fee.

(c) For Contract Years 1 through 6 (July 1, 2013 through June 30, 2019), an import fee of \$14.00 per ton ("**ADC Article 20 Import Fee**"), as adjusted by Section 20.6 and Section 20.7, for the delivery of a minimum of fifty thousand (50,000) tons per Contract Year of ADC (PGM or MRF fines, if approved). For July 1, 2019 through December 31, 2019, an import fee of \$15.76 per ton ("**ADC Article 20 Import Fee**"), as adjusted by Section 20.6 and Section 20.7, for the delivery of a minimum of twenty five thousand (25,000) tons per Contract Year of ADC (PGM or MRF fines, if approved). Contractor shall not be paid the facility per ton fee listed in column 6 of Table 2, Summary of Costs, for any imported ADC up to the minimum of 50,000 tons per Contract Year. In the event that the ADC imported at the ADC Article 20 Import Fee rate is ultimately not used as ADC and is landfilled as waste, the Contractor shall be charged the Valley Article 20 Disposal Fee for those tons landfilled. Contractor may deliver additional ADC volumes, if the ADC is utilized in compliance with State regulations set forth by CalRecycle, above the 50,000 tons per Contract Year, at the Valley Article 20 Disposal Fee rate, as adjusted by Section 20.6 and Section 20.7. Any amount of ADC delivered per Contract Year above the 50,000 tons, paid at the Valley Article 20 Disposal Fee rate, will be included in the County's effective density calculations, pursuant to Section 4.2(d)(i). Contractor will also be paid the listed facility per ton fee listed in column 6 of Table 2, Summary of Costs, as adjusted per Article 5, for any ADC delivered above the minimum of 50,000 tons per Contract Year that was subject to the Valley Article 20 Disposal Fee. Beginning January 1, 2020 through the end of the Contract term, the ADC Article 20 Import Fee rate will not apply to PGM, due to PGM used as ADC no longer being counted as diversion by CalRecycle.

(d) Put or Pay Basis:

1. For Contract Years 1 through 7, Contractor shall deliver the Annual Tonnage Commitment of MSW on a "put or pay basis". If, during the Contract Year, the Contractor delivers less than the Annual Tonnage Commitment of MSW, the Contractor will pay the County an amount equal to the Annual Tonnage Commitment of MSW, multiplied by the Valley Article 20 Disposal Fee for the Mid-Valley and San Timoteo Landfills, referenced in Section 20.4 and adjusted according to Section 20.6 and Section 20.7. If, during the Contract Year, the Contractor delivers more than the Annual Tonnage Commitment of MSW, the Contractor will pay the County an amount equal to the actual amount of MSW delivered during the Contract Year multiplied by the Article 20 Disposal Fee per site, referenced in this Section 20.4 and adjusted annually according to Section 20.6 and Section 20.7.
2. Beginning in Contract Year 8 and throughout the remaining term of the Contract, Contractor shall deliver the minimum amount of Article 20 Solid Waste to the Disposal System as stated in Section 20.2 (MSW) on a "put or pay basis". If, during the Contract Year, the Contractor delivers less than the minimum amount of Article 20 Solid Waste to the Disposal System as stated in Section 20.2 (MSW), the Contractor will pay the County an amount equal to the minimum amount of Article 20 Solid Waste to the Disposal System (MSW) as stated in Section 20.2, multiplied by the Valley Article 20 Disposal Fee for the Mid-Valley and San Timoteo Landfills, referenced in Section 20.4 and adjusted according to Section 20.6 and Section 20.7. If, during the Contract Year, the Contractor delivers more than the minimum amount of Article 20 Solid Waste to the Disposal System (MSW) as stated in Section 20.2, the Contractor will pay the County an amount equal to the actual amount of MSW delivered during the Contract Year multiplied by the Article 20 Disposal Fee per site, referenced in this Section 20.4 and adjusted annually according to Section 20.6 and Section 20.7.

- (e) For Contract Years 1 through 6 (July 1, 2013 through June 30, 2019) and July 1, 2019 through December 31, 2019, Contractor shall deliver the Annual Tonnage Commitment of ADC on a “put or pay basis”. If, during the Contract Years 1 through 6 and July 1, 2019 through December 31, 2019, the Contractor delivers less than the Annual Tonnage Commitment of ADC, the Contractor shall pay the County an amount equal to the Annual Tonnage Commitment of ADC multiplied by the ADC Article 20 Import Fee rate, referenced in Section 20.4 and adjusted according to Section 20.6 and Section 20.7. If during the Contract Year, the Contractor delivers more than the Annual Tonnage Commitment of ADC, the Contractor will pay the County an amount equal to the Valley Article 20 Disposal Fee described in Section 20.4(c) for amounts of ADC in excess of 50,000 tons per Contract Year. Beginning January 1, 2020 through the end of the Contract term, the Annual Tonnage Commitment of ADC will be deleted, however Contractor shall have the option to deliver ADC that is approved and counted as diversion by CalRecycle.
- (f) For Contract Years 1 through 7 (July 1, 2013 through June 30, 2020), Contractor shall deliver a minimum of forty thousand (40,000) 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 the Minimum Annual Article 20 Total Tonnage of at least seven hundred and ninety thousand (790,000) tons per Contract Year. If, during Contract Years 1 through 7, the Contractor delivers less than the Minimum Annual Article 20 Total Tonnage, the Contractor shall pay the County an amount equal to the difference between the Minimum Annual Article 20 Total Tonnage and the total of the Annual Tonnage Commitment of MSW and the Annual Tonnage Commitment of ADC, multiplied by the Valley Article 20 Disposal Fee rate, referenced in Section 20.4 and adjusted according to Section 20.6 and Section 20.7. If, during Contract Years 1 through 7, the Contractor delivers more than the Minimum Annual Article 20 Total Tonnage, the Contractor will pay the County an amount equal to the actual amount of Article 20 Solid Waste delivered during the Contract Year multiplied by the applicable Article 20 fee per waste type (MSW or ADC) per site, referenced in this Section 20.4 and adjusted annually according to Section 20.6 and Section 20.7. If, at the end of each Contract Year beginning with Contract Year 8 through the end of the Contract term, the Contractor delivers less than the amount of Article 20 Solid Waste listed in Section 20.2 for each of the Contract Years 8 through the end of the Contract term, Contractor will pay the County an amount equal to the difference between the amount of Article 20 Solid Waste listed in Section 20.3 for Contract Years 8 through the end of the Contract term and the actual amount of Article 20 Solid Waste delivered at the then current Valley Article 20 Disposal Fee rate.

9. Sections 20.5 of the Contract, entitled “Compensation”, is amended in its entirety to read:

20.5 Compensation. For Contract Years 1 through 7 (July 1, 2013 through June 30, 2020), Contractor shall be compensated for the handling and burial of Article 20 Solid Waste monthly in arrears, on a per ton rate per site basis, with the per ton rate per site adjusted annually under the provisions of Article 5, as set forth in Column 6 (lines 2.4-2.6) of the Summary of Costs attached as Table 2, for all MSW delivered, and for any ADC imported above the annual minimum of 50,000 tons, per the Monthly Tonnage Reports. For Contract Years 8 (beginning on July 1, 2020) through the end of the Contract term, Contractor shall be compensated for the handling and burial of Article 20 Solid Waste monthly in arrears, on a per ton rate per site basis, with the per ton rate per site adjusted annually under the provisions of Article 5, as set forth in Column 6 (lines 2.4-2.6) of the Renegotiated Summary of Costs attached as Table 2A, for all MSW delivered per the Monthly Tonnage Reports.

10. Section 20.7 of the Contract, entitled “Three-Year Article 20 Disposal Fee Review”, is hereby deleted in its entirety, replaced by the four-year review provided for in Section 1.2(b). Section number 20.7 shall be reserved for future amendment use.

11. Add Table 2A, entitled “Renegotiated Summary of Costs”, which outlines the rates beginning at Contract Year 8 (beginning on July 1, 2020) and which will be used for the revised negotiated rates that the Annual Adjustment for Contract Year 9 (beginning July 1, 2021) will be calculated on per the applicable sections of Article 5, or as otherwise provided for in this Contract.

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

“Annual Tonnage Commitment of ADC” - means Contractor’s commitment to deliver a minimum of fifty thousand (50,000) tons annually of ADC (PGM or MRF fines, if approved) during Contract Years 2 through 6, and twenty five thousand (25,000) tons of ADC (PGM or MRF fines, if approved) during July 1, 2019 through December 31, 2019, on a “put or pay basis”.

“Annual Tonnage Commitment of MSW” – means Contractor’s commitment to deliver a minimum of seven hundred thousand (700,000) tons of MSW annually during Contract Years 2 through 7, to be delivered in roughly equal monthly amounts, on a “put or pay basis”.

“Minimum Annual Article 20 Total Tonnage” – means the Minimum Annual Article 20 Total Tonnage of at least 790,000 tons during Contract Years 2 through 7 to be delivered by the Contractor.

“Renegotiated Summary of Costs” – means Table 2A entitled “Renegotiated Summary of Costs”, which outlines the rates beginning at Contract Year 8 (beginning on July 1, 2020) and which will be used for the revised negotiated rates that the Annual Adjustment for Contract Year 9 (beginning July 1, 2021) will be calculated per the applicable sections of Article 5, or as otherwise provided for in this Contract.

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

B-11 Contractor Provided Equipment

Contractor shall supply, at Contractor’s own expense, operating equipment at each Facility necessary to perform the requirements of this Contract. All such equipment shall be kept in good operating condition, shall be properly protected and shall be placed in the charge of competent operators. The Contractor shall ensure that equipment is available on-site for arduous, heavy-duty service to operate Class III landfills. The equipment utilized must be specifically designed for the use intended. Contractor will maintain its equipment in good operating condition and fully comply with federal, state and local requirements associated with the maintenance and operation of said equipment. Contractor must rebuild equipment at the equipment’s half-life of 12,000 operating hours and replace equipment at 25,000 operating hours.

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.

Acceptance of Contractor’s Equipment List by County only reflects that County acknowledges that Contractor is representing that the equipment list allows Contractor to meet the minimum requirements of the Contract. Acceptance of Contractor’s Equipment List by the County does not mean that the County is warranting that the amount and type of equipment will be adequate to perform all the requirements 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.

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

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14. Any reference in the Contract of Table 2, Summary of Costs, will apply to Contract Years 1 through 7 (July 1, 2013 through June 30, 2020) and will be replaced by Table 2A, Renegotiated Summary of Costs, for Contract Year 8 (beginning July 1, 2020) through the end of the Contract term or any extension thereof.

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

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

COUNTY OF SAN BERNARDINO

ARAKELIAN ENTERPRISES, INC.

DBA ATHENS SERVICES

(Print or type name of corporation, company, contractor, etc.)

▶

Curt Hagman, Chairman, Board of Supervisors

By ▶

(Authorized signature - sign in blue ink)

Dated: _____

Name GREG LOUGHNANE

(Print or type name of person signing contract)

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

Title PRESIDENT

(Print or Type)

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

By _____
Deputy

Dated: _____

Address P.O. BOX 60009

CITY OF INDUSTRY, CA 91716

FOR COUNTY USE ONLY

Approved as to Legal Form

Reviewed for Contract Compliance

Reviewed/Approved by Department

▶

Julie Surber, Principal Assistant County Counsel

▶

Mohammad Ali, P.E., Chief - Contracts

▶

Brendon Biggs, P.E., Interim Director, Department of Public Works

Date _____

Date _____

Date _____

**TABLE 2A
RENEGOTIATED SUMMARY OF COSTS
Contract Year 8 - (Beginning July 1, 2020)**

Contractor Name: Arakelian Enterprises Inc., dba Athens Services

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		
Column	1	1a.	2	3	4	5	6
2.1 A. Total Fixed Annual Costs - Year (1)	\$1,064,669						
	B. Active Landfills - Direct Costs	B. Active Landfills - Total Costs (2)					
2.2 Barstow	\$1,731,031	\$1,833,633	35,623	37,129	72,752	\$7.47	N/A
2.3 Landers	\$1,344,723	\$1,424,428	36,356	15,505	51,861	\$7.47	N/A
2.4 Mid-Valley	\$5,286,626	\$5,599,977	665,350	-	665,350	\$7.47	\$7.95
2.5 San Timoteo	\$2,455,453	\$2,600,993	161,965	36,032	197,997	\$7.47	\$12.41
2.6 Victorville	\$2,878,563	\$3,049,182	243,354	28,922	272,276	\$7.47	\$10.57
2.7 Active Landfills Sub-Total Costs	\$13,696,396	\$14,508,213	1,142,648	117,588	1,260,236		
	C. Transfer Stations - Direct Costs	C. Transfer Stations - Total Costs (3)	Annual Assumed Transfer Station Tonnage	Landfill Used		Facility Rate Per Ton For Each Ton Over / Under Annual Assumed Transfer Station Tonnage	
2.8 Baker (4)	\$61,212	\$64,840	1,454	Barstow		\$23.30	
2.9 Big Bear (5)*	\$874,171	\$925,985	31,484	Barstow		\$16.78	
2.1 Camp Rock (Lucerne Valley) (6)	\$145,381	\$153,998	1,830	Barstow		\$18.51	
2.11 Heaps Peak*	\$1,296,723	\$1,373,583	36,032	San Timoteo		\$13.53	
2.12 Morongo Valley (Trails End)	\$102,308	\$108,372	991	Landers		\$13.67	
2.13 Newberry Springs (7)	\$100,273	\$106,216	354	Barstow		\$28.69	
2.14 Phelan (Sheep Creek)*	\$862,653	\$913,784	28,922	Victorville		\$7.90	
2.15 Trona-Argus (8)	\$262,143	\$277,681	2,007	Barstow		\$29.53	
2.16 Twenty-nine Palms*	\$561,086	\$594,343	14,514	Landers		\$12.60	
2.17 Transfer Stations Sub-Total Costs	\$4,265,950	\$4,518,802	117,588				
2.18 Annual Contractor's Totals	\$19,027,015	\$19,027,015	1,260,236				

- (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.
- * Transfer Stations with full operations