AMENDMENT NO. 5 TO THE WASTE DISPOSAL AGREEMENT NO. 04-321

On April 27, 2004, the City of Adelanto ("City") and San Bernardino County ("County") entered into a Waste Disposal Agreement ("WDA"). The parties hereby amend the WDA, on the Effective Date as provided herein, by their respective execution of this agreement (hereinafter "Amendment').

Recitals

- A. The parties have previously entered into the following amendments to the WDA. Amendment No. 1 allowed the County to charge the fee of \$10.00 per ton (prorated) for identified controllable waste of the City (e.g., roll off container trucks and other County/City vehicles such as pickups and dump trucks) and have such waste subject to being processed in the recycling program. Amendment No. 2 allowed the County to calculate the annual cost of living adjustment earlier in the calendar year. Amendment No. 3 extended the term of the WDA to June 30, 2021, applied an annual fixed WDA renewal discount adjustment of \$0.82 per ton for the term of the WDA, and allowed the County to enter into agreements to accept in-County waste from non-WDA users of the Disposal System at a rate lower than the WDA Contract Rate in exchange for sharing the net revenue generated from those agreements. Amendment No. 4 reset the WDA Contract Rate and extended the term for five (5) years to June 30, 2026.
- B. In connection with the ongoing administration of the WDA, the parties have determined it is now in their best interests to cap the WDA Contract Rate in order to maintain a 15% buffer between the WDA Contract Rate and the County's posted gate rate.
- C. This change will assist both the City and the County in planning for future fiscal years' budgeting of solid waste disposal services and costs by putting a mechanism in place for the future to prevent compaction with the County's posted gate rate.

NOW THEREFORE, in consideration of the forgoing recitals and the following covenants and promises the Parties agree as follows:

1. Amended Section 4.2 CONTRACT RATE. (A) Generally. This section is amended in its entirety to read:

SECTION 4.2. <u>CONTRACT RATE</u>. (A) <u>Generally.</u> Effective July 1, 2022, the Contract Rate payable by each Franchise Hauler shall be \$40.75 per ton, subject to potential adjustment necessary to reflect the circumstances set forth below:

- (i) increased costs incurred by the County (in excess of available insurance proceeds) due to the occurrence of one or more Uncontrollable Circumstances, including Changes in Law; and
- escalation during the Term of this Agreement calculated in accordance with Section 4.2(B). In no case will the calculation of escalation exceed 85% of the County approved general public gate rate (currently \$59.94 minus the current CDSDP recycling fee of \$12.00), as such fees may be amended.

Prior to adjusting the Contract Rate as a result of any of the circumstances described in Section 4.2(A)(i), the County shall utilize the following remedy: reduce the costs of operating the Disposal System to the extent practicable.

Any adjustments to the Contract Rate permitted by Section 4.2(A)(i) shall be calculated by the County to reflect the actual costs or expenses of addressing the circumstance or circumstances pursuant to which the adjustment is authorized, and shall also reflect, where applicable, the then remaining capacity in the Disposal System. Such adjustment may not reflect circumstances other than the circumstances described in Section 4.2(A)(i).

2. <u>Amended Section 4.2. CONTRACT RATE. (B) Calculation of Escalation. This section is amended in its</u> <u>entirety to read:</u>

SECTION 4.2. <u>CONTRACT RATE</u>. (B) <u>Calculation of Escalation</u>. For purposes of Section 4.2(A)(ii), the Contract Rate shall be adjusted in accordance with the formula described in this Section each July 1 during the term hereof, commencing July 1, 2022. The adjustment shall be calculated in accordance with the following formula:

Contract Rate = Fixed Portion + [Escalating Portion x Index]

Where,

Fixed Portion = \$10.87

Escalating Portion = \$17.63

Index = Price Index, which shall be determined in accordance with the following formula:

 $I = .7[PPI_1/PPI_2] + .3[EI_1/EI_2]$

- PPI₁ = The Producer Price Index, Industrial Commodities Commodity Data, as published at the United States Department of Labor, Bureau of Labor Statistics web site, Series ID WPU03 thru 15 for the month of September in the year prior to the year for which the adjustment is being made (e.g., the adjustment effective July 1, 2011 will use the September 2010 value)
- PPI₂ = Producer Price Index, Industrial Commodities Commodity Data for the month of September, 1997
- EI₁ = Employment Cost Index, Total Compensation, Private Industry All Workers, as published at the United States Department of Labor, Bureau of Labor Statistics web site, Series ID: CIU20100000000001 for the last quarter of the year preceding the year for which the adjustment is being made (e.g., the adjustment effective July 1, 2011 will use the third quarter, 2010 value)
- El₂ = Employment Cost Index, Compensation, Private Industry All Workers, as published at the United States Department of Labor, Bureau of Labor Statistics web site, Table 3, established for the third quarter of 1997.

Effective July 1, 2022, and each July 1 thereafter during the term of the Agreement, the Contract Rate adjustment will be calculated as provided above, except that an annual fixed WDA renewal discount adjustment of \$0.82 per ton will be applied after the annual Cost of Living Adjustment (COLA) adjustment. In no case will the adjustment to the Contract Rate exceed 85% of the County's approved general public gate rate (without the current CDSDP recycling fee of \$12.00), as such fees may be amended. For example, the current County's posted gate rate is \$47.94 (\$59.94 minus the \$12 CDSDP fee). Therefore, the WDA Contract Rate cannot be more than 85% of that rate, which is \$40.75. However, if the County adjusts its posted gate rate in any future year of the term of the WDA, the WDA Contract Rate will be adjusted according to the above calculation formula, including the renewal discount adjustment of \$0.82 per ton, up to the maximum of 85% of the newly posted gate rate. If the calculated annual adjustment of any year would exceed the 85%, then the capped maximum amount of 85% will be used. If, however, the posted gate rate does not change, and the WDA Contract Rate is already at the capped 85% amount, the WDA Contract Rate will remain the same for the calculated fiscal year. Any decrease in the calculated

adjustment to the Contract Rate, calculated according to the above formula, including the renewal discount adjustment, will be applied to the then WDA Contract Rate.

Please note that, due to timing, in future years where the gate rate is recommended to be increased, the WDA rate notification letter may be delayed until final approval of the gate rate by the Board of Supervisors.

If at any time either the Employment Cost Index or the Producer Price Index is no longer published, or are otherwise unavailable, then the COLA shall be determined by using standard official statistics measuring changes to, respectively, labor costs and cost of materials, as the parties shall mutually agree.

3. <u>Amended Section 5.2 CITY CONVENIENCE TERMINATION. This section is amended in its entirety to</u> read:

SECTION 5.2. <u>CITY CONVENIENCE TERMINATION.</u> In exchange for capping the WDA Contract Rate, the City agrees to commit to remaining a WDA City, with no provision to terminate without cause, for the remainder of the WDA Term.

- 4. <u>Effective Date.</u> This Amendment shall be effective if and only when all fifteen cities/towns listed on Exhibit A have each adopted and executed a counterpart of this Amendment No. 5 (the amendment number may differ for each city/town listed on Exhibit A) and such amendment has been adopted and executed by the County on or before June 30, 2022. In all events, the conditions in the forgoing sentence shall occur otherwise this Amendment No. 5 shall be null and void and without any effect whatsoever.
- 5. This Amendment may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same Amendment. The parties shall be entitled to sign and transmit an electronic signature of this Amendment (whether by facsimile, PDF or other email transmission), which signature shall be binding on the party whose name is contained therein. Each party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed Amendment upon request.
- 6. Except as modified in this Amendment (or in any prior Amendment(s)) all other terms and conditions of the WDA shall remain in full force and effect.

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/// /// /// /// /// /// IN WITNESS WHEREOF, the parties have caused this Amendment to be executed by their duly authorized officers or representatives as of the day and year first above written.

SAN BERNARDINO COUNTY	City of Adelanto (Print or type name of corporation, company, contractor, etc.)	
	Ву 🕨	
Curt Hagman, Chairman, Board of Supervisors	(Authorized signature - sign in blue ink)	
Dated:	Name	
SIGNED AND CERTIFIED THAT A COPY OF THIS	(Print or type name of person signing contract)	
DOCUMENT HAS BEEN DELIVERED TO THE		
CHAIRMAN OF THE BOARD	Title	
Lynna Monell Clerk of the Board of Supervisors of San Bernardino County	(Print or Type)	
Ву	Dated:	
Deputy		
	Address 11600 Air Expressway	
	Adelanto, CA 92301	

Approved as to Legal Form	Reviewed for Contract Compliance	Reviewed/Approved by Department
► Jolena Grider, Deputy County Counsel	► Andy Silao, P.E.	► Brendon Biggs, Director
Date	Date	Date

EXHIBIT A

CITIES/TOWNS WITH A WASTE DELIVERY AGREEMENT WITH THE COUNTY OF SAN BERNARDINO OFFERED THIS AMENDMENT JUNE 2022 FOR AN AGREEMENT END DATE OF JUNE 30, 2026

- 1. ADELANTO
- 2. APPLE VALLEY
- 3. BARSTOW
- 4. BIG BEAR LAKE
- 5. COLTON
- 6. FONTANA
- 7. GRAND TERRACE
- 8. HESPERIA
- 9. HIGHLAND
- 10. LOMA LINDA
- 11. RIALTO
- 12. TWENTYNINE PALMS
- 13. VICTORVILLE
- 14. YUCAIPA
- 15. YUCCA VALLEY