

Exhibit I



Shannon Yauchzee, Chief Executive Officer

November 23, 2016

Mr. Gustavo Romo
City of Irwindale
5050 N. Irwindale Avenue
Irwindale, CA 91706

RE: Comments on the Irwindale Entitlements: conditional use permit, Site Plan and Design Review, Development Agreement, Zone Ordinance Amendment, General Plan Amendment and Franchise Agreement

Dear Mr. Romo:

The City of Baldwin Park respectfully submits these comments on the entitlement plans for the Irwindale Materials Recovery Facility and Transfer Station (MRF/TS) Project located at 2200 Arrow Highway, including Conditional use permit number 08-2016, Site Plan and Design Review (DA Number 06-2016, Development Agreement Number 02-2016, Zone Ordinance Amendment Number 04-2016, General Plan Amendment Number 02-2016 and Franchise Agreement.

On January 21, 2009, the City Council for the City of Baldwin Park adopted Resolution No. 2009-0002 in opposition to the MRF/TS. To ensure that Baldwin Park's residents and businesses are adequately protected against impacts from the Project, the City Council for the City of Baldwin Park has no alternative but to strongly oppose the development of a MRF/TS at the proposed location, which lies immediately adjacent to the jurisdictional boundary between the cities of Baldwin Park and Irwindale.

When the City of Irwindale certified the final environmental impact report (FEIR) for the Materials Recycling Facility and Transfer Station Project (Project or MRF/TS) on June 8, 2016, it left consideration of the following six additional local land use entitlements for a later date: (1) a Site Plan and Design Review Permit for the actual development of the site; (2) a General Plan amendment (GPA) to change the land use designation of the site from "Commercial" to "Commercial/Industrial;" (3) a zoning ordinance amendment to reduce the alcohol sales distance requirements from recreational uses due to the convenience store location adjacent to the Santa Fe Dam recreational area; (4) a separate Development Agreement for the authorization of the use and Project conditions of approval; (5) a Conditional Use Permit (CUP) for the alcohol sales within the convenience store; and (6) an agreement for franchise and regulation of the Project operations.

On October 31, 2016, the Applicant (Athens Services) submitted applications for five of the six above discretionary approvals (all but the franchise agreement). You requested comments from City of Baldwin Park (Baldwin Park) planning staff by November 22, 2016. We appreciate the opportunity to provide comments on the applications and provide the following comments in response to your request.

- The applications are for a larger Project than approved, despite the FEIR Response to Comments' citation to a passage from the RDEIR that promises that the overall square-footage will be capped at 247,007 square feet (SF). (FEIR at C&R-111, C&R 204, C&R 336-37 [citing RDEIR at 2.0-10].) In contrast, the applications are for a 267,969 SF Project—20,962 SF larger than the FEIR

analyzed, as reflected in its admitted square footage cap. The overage requires preparation of a supplemental or subsequent EIR ("further EIR") and circulation of the further EIR for public review.

- o Public Resources Code section 21166 requires preparation of a further EIR where: (a) Substantial changes are proposed in the project which will require major revisions of the EIR; (b) Substantial changes occur with respect to the circumstances under which the project is being undertaken which will require major revisions in the EIR; or (c) New information, which was not known and could not have been known at the time the EIR was certified, becomes available. (Pub. Res. Code § 21166(a)-(c); 14 Cal. Code Regs. § 15162(a).) The further EIR must be circulated for public review and comment. (14 Cal. Code Regs. §§ 15162(d); 15163(c).)
- o The applications are for a 265,382 SF materials recovery facility and transfer station and a 2,587 SF convenience store (267,969 SF total), whereas the FEIR states that the convenience store will be no larger than 2,390 SF and total square footage for both the convenience store and all buildings associated with the materials recovery facility and transfer station ("MRF/TS") will not exceed 247,007 SF. (FEIR at C&R-111, C&R 204, C&R 336-37 [citing RDEIR at 2.0-10 — "The exact specifications for individual uses within a building footprint may be higher or lower than these estimates, but in each case not to exceed the aggregate square footage footprint for each individual building as set forth above [247,007 total for all buildings."].)
- o The significant expansion in square footage requires further analysis in a further EIR because the substantial changes in the size of the Project will require major revisions to the previous EIR due to new significant environmental effects and/or substantial increases in the severity of previously identified significant effects, including traffic and air quality impacts.
- o For example, the FEIR explains that "for purposes of estimating project site grading emissions," 247,007 SF was used for all MRF/TS buildings and the convenience store. (C&R-111.) The additional square footage requires additional analysis of the air quality emissions to be supplemented in light of the larger Project to account for the Project's greater impacts. This analysis is critical because the air basin is already in non-attainment. (See, e.g., FEIR at C&R-199.)
- o Likewise, the Updated Traffic Impact Analysis ("TIA") attached to the FEIR bases its conclusions on a 246,022 SF project (including a 2,390 SF convenience store). (Updated TIA at 1, 9, 21.) The TIA must also be updated and a further EIR must be circulated for public comment.
- o The Site Plan and Design Review Permit application includes more than a 222 percent increase in parking spaces as analyzed in the FEIR. The applicant now seeks to construct 327 parking spaces, but the FEIR considered the impacts of constructing only 147 spaces. For example, the FEIR at C&R-111 and C&R-204 shows that the quality analysis considered the emissions from construction of less than half of the presently proposed spaces. Preparation of a further EIR is required to address this substantial change. (See, e.g., *Concerned Citizens of Costa Mesa, Inc. v. 32nd District Agricultural Association* (1986) 42 Cal.3d 929, 937 [changes to a project to construct an amphitheater were substantial enough to require evaluation in a further EIR where seating was increased by 200 percent, the site was expanded, and a stage was reoriented].)
- o We acknowledge that a Statement of Overriding Considerations was previously adopted for the Project, but the additional 20,000+ SF and a 222 percent increase in parking

spaces need to be analyzed to determine whether feasible mitigation is available to mitigate the incremental impacts over and above the significant impacts identified in the FEIR and addressed in the Statement of Overriding Consideration.

- Moreover, a further EIR is required because the substantial changes in the Project render invalid the FEIR's conclusions that there is no impact, an impact is less than significant, or that an impact is less than significant with mitigation. For example, given that construction of parking spaces is now proposed to double that analyzed in the FEIR, the further EIR must reassess the conclusion that air emissions attributable to construction activities are less than significant with mitigation. (FEIR at C&R-16.) Likewise, the further EIR must analyze whether mitigation is still sufficient to bring GHG emissions below the significance threshold, given the expansion in the Project's footprint. (FEIR at C&R-23 to 24.) The further EIR must also reassess the conclusion that there is no impact on aesthetics associated with construction or operational activities, given the substantial increase in the Project's size (more than 20,000 SF) and the fact that more than two-times the area of parking lot is proposed to be constructed.
- We note that prior to an approval of the GPA, zone change, and Site Plan and Design Review Permit (addressed below), Irwindale is required to make a finding that the Project, as modified in the applications, will be compatible with the existing and intended character of the area. (City of Irwindale 2020 General Plan, p.60; *see also* Irwindale Municipal Code §§ 17.80, *et seq.*; 17.84, *et seq.*; 17.70 *et seq.*) However, based on the FEIR previously certified, and based on the expanded footprint included in the applications, at this time there is insufficient evidence to support Irwindale making the requisite findings for the zone change and GPA because the Project would not be considered compatible with the existing and intended character of the area, and the project could be detrimental and potentially injurious to nearby receptors.
 - The EIR acknowledges at page 3.9-12 of Chapter 3.9 (Land Use Planning) that the project would be subject to review and compliance with municipal codes. The RDEIR states that "[T]he purpose of this review is to determine whether the characteristics of any such use are compatible with the types of uses generally permitted in the surrounding area." However, as stated in the EIR on page 3.3-23 (Chapter 3.3, Air Quality, Greenhouse Gas, Odor, and Health Risk Assessment), the nearest residence is located on the south side of Live Oak Avenue in the City of Baldwin Park approximately 325 feet from the Project. There are 17 residences that are located south of Live Oak Avenue that are approximately equal distance from the Project as the nearest residence. These 17 residences are part of a 50+-year old residential neighborhood. These residences, as well as the neighborhood residences, are single story homes with detached garages. Between the Project and the residential neighborhood is an area designated Industrial Commercial by Baldwin Park and primarily contains low profile (approximately 20 feet in height) buildings that are part of the Live Oak Commerce Center. CEQA requires consideration and mitigation of Project impacts on these land uses irrespective of whether the neighborhoods most severely affected are located in Irwindale or Baldwin Park. (*City of San Diego v. Board of Trustees of the California State University* (2015) 61 Cal.4th 945 [holding that mitigation of off-site environmental effects required]; *County of San Diego v. Grossmont-Cuyamaca Community College Dist.* (2006) 141 Cal.App.4th 86, 101-105 [holding that lead agency incorrectly found in EIR that funds appropriated for construction project could not feasibly be used to mitigate project's off-site traffic impacts].)
 - The scale of development given the imposing physical characteristics of the Project, as modified in the applications, is not consistent with the existing development along and south of Live Oak Avenue because the bulk of the proposed MRF facility is substantially larger than the existing buildings along and south of Live Oak Avenue. The existing non-

residential buildings range from approximately 20,000 square feet to 60,000 square feet. The new larger MRF/TS facility proposed in the applications is now 267,969 SF which is now four times larger than the non-residential structures along Live Oak Avenue. In addition, the heights of the structures along Live Oak Avenue are approximately 20 to 30 feet, whereas the Project is approximately twice that—the proposed structure ranges from 43 feet to 51 feet. The bulk and height characteristics of the proposed structure are not compatible. The FEIR's conclusion that the Project "does not conflict with any goal, plan or policy of the City's General Plan, or other land use plan, policy, or regulation" is unsupported and should be revisited in a further EIR—particularly in light of the new and substantially larger project now proposed by the applicant in its applications.

- In addition, prior to an approval of a GPA, zone change, or Site Plan and Design Review Permit, Irwindale is required to make a finding that the proposed use will not be materially detrimental to the public welfare or injurious to the adjacent properties. (City of Irwindale 2020 General Plan, p.60; *see also* Irwindale Municipal Code §§ 17.80, *et seq.*; 17.84, *et seq.*; 17.70 *et seq.*)
 - However, the EIR acknowledges that the project would result in significant and unavoidable operational and traffic-related noise impacts. The unavoidable operational noise impacts affect residents to the south and commercial users to the southwest, as well as offices and business along Live Oak Avenue and Arrow Highway as described on pages 3.10-35 and 3.10-37 of the EIR. The Project land use that generates these noise impacts which exceed existing noise standards are not, and cannot be considered compatible use with the surrounding area. Furthermore, the noise standards set by Irwindale as well as by Baldwin Park have been established to preclude harmful noise impacts to receptors such as residents, employees and visitors within their communities. The unavoidable exceedance of the noise standards could be detrimental and potentially injurious to nearby receptors.
 - These problems are made worse by the Project changes in the applications, which reflect a substantially larger project by square footage, and a 222 percent increase in parking spaces than were analyzed in the FEIR certified on June 8, 2016.
- In light of the incompatibilities and conflicts with the General Plan addressed above, issuance of a Site Plan and Design Review Permit is precluded by Irwindale Municipal Code section 17.20.020, which requires that "proposed development is compatible with surrounding development in terms of scale, style and construction materials; that on and off-site circulation is adequate to support the project; that city services are adequate and available; that projects are of the highest quality of land planning and design, and that projects reflect the design themes of the community and are consistent with the city's general plan and land use and planning, all in an effort to protect the health, safety and welfare of the community and to enhance the development, use, occupancy, health, safety and welfare of surrounding areas for residential, commercial or industrial uses or purposes."
 - Further, issuance of the Site Plan and Design Review Permit is precluded at this time by Irwindale Municipal Code section 17.70.040 because the FEIR as certified is inadequate under CEQA because it does not analyze the impacts of the substantially larger Project.
- The proposed amendment to the Zoning Ordinance seeking a revision to distance requirements for the sale of alcoholic beverages is concerning. The project description includes a CUP which is "required for the approval of the sale of alcoholic beverages in the proposed convenience store and for the gas station." (FEIR at C&R-7.) However per Section 17.58.040 of the Irwindale Municipal Code, a CUP shall not be issued for approval of the sale of alcoholic beverages if located within 300 feet from residential use or within one thousand feet from an educational

institution, nursery school, day camp, day care center, public park, or playground, as such distances are measured from the closest property line of each use. There is no analysis in the Project environmental document pertaining to this proposed change identifying the surrounding uses or the reason for the proposed amendment, yet the RDEIR shows that there are numerous sensitive receptors nearby. (RDEIR at 3.3-23.) Therefore, the FEIR must be supplemented to analyze the proposed change with respect to surrounding uses and sensitive receptors.

- Additionally, there is no indication that Irwindale's Municipal Code even allows for the required distance to be modified to accommodate the proposed uses, and the FEIR contains no explanation why the proposed modification would be consistent with the Municipal Code. The purpose and intent of the CUP requirements, including the distance requirements is "to preserve a healthy environment for residents and businesses by establishing a set of consistent standards for the safe operation of alcoholic beverage establishments." (Irwindale Municipal Code § 17.58.010.)
- Further, Irwindale Municipal Code section 17.80.040 requires the applicant to show the following facts before a CUP can be granted:
 - A. That the site for the proposed use is adequate in size and shape; and
 - B. That the site has sufficient access to streets and highways, adequate in width and pavement type to carry the quantity and quality of traffic generated by the proposed use; and
 - C. That the proposed use will not have an adverse effect upon adjacent property.
- Given the numerous adverse effects upon adjacent property, on its face, the application for the CUP does not meet or satisfy these requirements, and should be denied.
- In addition, the proposed General Plan designation of commercial/industrial is inappropriate for the Project, which should be designated as a straight industrial use.
 - The General Plan provides designations for Convenience Commercial and Community Commercial. Convenience Commercial includes smaller retail activities and businesses that typically cater to the daily household needs of the area residents. Community Commercial includes uses that generally have a larger market area and provide a wide range of goods and services including fuel retailers, fast-food restaurants, and other transportation-related services. (City of Irwindale 2020 General Plan, pp. 24-25.) In contrast, the designation of Heavy Industrial includes intensive industrial operations that may also include outdoor storage of materials and equipment as an ancillary use and Light Industrial applies to industrial operations located primarily inside buildings in a clean, well-maintained setting. (City of Irwindale 2020 General Plan, p. 25.)
 - The only arguably commercial portion of the Projects occupies 2,390 SF (as analyzed in the EIR) or 2,587 SF as reflected in the applications, of the Project's total square footage of 247,007 (now 265,382 SF per the applications). It is apparent that the overwhelming portion of this Project is devoted to heavy industrial use. The fact that the Waste Project will receive nearly 2,500 trucks per day, loading and offloading waste, should be evidence on its own that this Project is a heavy industrial use. Designating the Project as even partially commercial conflicts with the City's General Plan. We believe that the EIR is flawed in its conclusion that the Project would have a less than significant impact under threshold LUP-2, and this conclusion must be reanalyzed in light of the significant changes included in the applications. In fact, the Project will conflict with a number of policies in the General Plan that were adopted for the purpose of avoiding or mitigating environmental effects. Furthermore, the proposed General Plan designation of industrial/commercial

conflicts with the designation definitions included in the General Plan. The Waste Project should be designated as Heavy Industrial and the EIR must be revised to reflect this significant effect and recirculated.

- We reiterate Baldwin Park's April 27, 2016 and June 8, 2016 comments that approval of the Project would conflict with numerous policies in the General Plan, and therefore request that planning staff recommend modification of the applications to rectify all inconsistencies. The conflicting policies include:
 - Community Development Element policy 3, which provides that the City will continue to ensure that the type, location, and intensity of all new development and intensified developments adhere to the requirements that are specified for their particular land use categories in the General Plan, and policy 5, which provides that the City will continue to promote comprehensive development consistent with this General Plan, as opposed to piecemeal and incremental planning. The Project conflicts with both of these policies because it requires a GPA to allow industrial development in a commercial area and a Zoning Ordinance amendment to allow a MRF/TS in a manufacturing zone. Rather than ensure that development of the site complies with existing General Plan designations and zoning, approval of the Project would require altering both to accommodate a Project that is not suitable for the area and will have negative impacts on surrounding incompatible uses.
 - Housing Element policies 3 and 4 require maintenance of existing housing, including affordable housing. The Waste Project site is located in close proximity to an established residential neighborhood. As stated in the RDEIR on page 3.3-23 (Chapter 3.3, Air Quality, Greenhouse Gas, Odor, and Health Risk Assessment), the nearest residence is located on the south side of Live Oak Avenue in the City of Baldwin Park approximately 325 feet from the Project. There are 17 residences that are located south of Live Oak Avenue that are approximately equal distance from the Project as the nearest residence. These 17 residences are part of a 50+-year old residential neighborhood. The negative impacts of the facility are likely to decrease surrounding property values, driving people away from these more affordable neighborhoods, which these communities are in short supply of already. This in turn will lead to housing decay. This result directly conflicts with Housing Element policies 3 and 4, requiring the conservation and maintenance of housing. CEQA's requirements with respect to the impact analysis and mitigation of off-site impacts are not lessened simply because the neighborhood in question is located in Baldwin Park. (*City of San Diego v. Board of Trustees of the California State University* (2015) 61 Cal.4th 945 [holding that mitigation of off-site environmental effects required]; *County of San Diego v. Grossmont-Cuyamaca Community College Dist.* (2006) 141 Cal.App.4th 86, 101-105 [district incorrectly found in EIR that funds appropriated for construction project could not feasibly be used to mitigate project's off-site traffic impacts].)
 - Resource Management Element policy 9 requires the cooperation with other agencies charged with improving air and water quality, and policy 10 requires the cooperation with surrounding cities in the implementation of regional resource management plans and programs. However, the Project will have serious negative impacts in the areas of air quality and greenhouse gas ("GHG") emissions. Therefore, approval of the applications would cause a failure to protect and improve air quality and conflict with the Resource Management policies.
 - Resource Management Element policy 19, under the General Plan's mining and reclamation section, requires consideration of environmental justice issues related to air quality and ensure that all land use decisions are made in an equitable fashion to protect

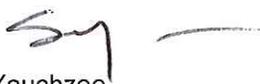
residents from health effects. Although the applications are not for a mining or reclamation project, the Project presents a similar level of impacts to such projects. Due to its serious environmental justice impacts, the applications conflict with Resource Management policy 19.

- Public Safety Element policies 4, 5 and 6 require measures to reduce the community's exposure to noise levels through land use compatibility and other strategies. The Project presents a number of serious noise impacts and these impacts are in part related to its location near a residential neighborhood and other land uses with which the Project is incompatible. These impacts violate the Public Safety Element policies.
- The Project also conflicts with Resource Management Element policy 11, which provides that Irwindale supports efforts to reduce GHG emissions. The Project will have significant and unavoidable GHG impacts.
- We appreciate your consideration of the above comments. We also note that prior to City Council consideration of a proposed zoning ordinance amendment, Site Plan and Design Review Permit, issuance of CUP, and GPA, the Planning Commission must hold a hearing to consider the approvals and recommend or deny the proposed approvals. (Irwindale Municipal Code §§ 17.84.040, 17.84.050, 17.80.070; 17.70.030(B) ["All site plan and design review applications filed in conjunction with variance, conditional use permit, zoning ordinance amendment and tentative tract map requests will be reviewed by the planning commission"]; City of Irwindale 2020 General Plan, p.60.) We request notice prior to the Planning Commission's consideration of any and all applications related to the Project. We also request notice of the City Council's consideration of the applications after action of the Planning Commission.

We thank you for your consideration of these general comments and the specific comments in the attached chart.

Respectfully,

CITY OF BALDWIN PARK


Shannon Yauchzee
Chief Executive Officer

cc: Dianne De Felice, Brownstein Hyatt Farber Schreck
Robert Tafoya, Tafoya & Garcia LLP