

**RESOLUTION NO. 2021-06-3268**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IRWINDALE APPROVING A FRANCHISE AND FACILITY OPERATIONS AGREEMENT BY AND BETWEEN THE CITY OF IRWINDALE AND ARAKELIAN ENTERPRISES, INC., DBA ATHENS SERVICES ON PROPERTY LOCATED AT 2200 ARROW HIGHWAY (APN 8535-001-911), SUBJECT TO CONDITIONS AS SET FORTH HEREIN AND MAKING FINDINGS IN SUPPORT THEREOF**

**A. RECITALS.**

- (i.) Athens Services, 14048 Valley Boulevard, City of Industry, CA 91746, the Applicant, has made a request for the construction and operation of a Materials Recovery Facility and Transfer Station (MRF/TS) with a convenience store and public gas station located at 2200 Arrow Highway – APN 8535-001-911, (This Franchise and Facility Operations Agreement (Agreement) is being processed concurrently with General Plan Amendment No. 02-2016; Zone Ordinance Amendment No. 04-2016; Development Agreement No. 02-2016; Conditional Use Permit No. 08-2016; and Site Plan and Design Review (DA) Permit No. 06-2016) (Application)).
- (ii.) The City of Irwindale and Athens Services have met and determined it is in the interest of the City and Athens Services to enter into a Franchise and Facility Operations Agreement regarding the Material Recovery Facility and Transfer Station, convenience store/public gas station to be located at 2200 Arrow Highway, Irwindale, CA 91706 (APN: 8535-001911).
- (iii.) The proposed 265,228 square foot building area will include a MRF/TS, convenience store and public gas station on a 17.22-acre site that is zoned M-2 (Heavy Manufacturing).
- (iv.) The Franchise and Facility Operations Agreement shall be effective upon development of the MRF/TS and convenience store/public gas station.
- (v.) On February 24, 2021, the City Council conducted a duly noticed public hearing, as required by law, on the Application and approved the Application at that same meeting subject to the approval of this Resolution.
- (vi.) The City has not received any comments or additional information constituting substantial new information requiring recirculation of any portion of the environmental review for the Project under Public Resources Code section 21092.1 and State CEQA Guidelines section 15088.5.
- (vii.) All the requirements of CEQA, the State CEQA Guidelines, and the City of Irwindale’s Local CEQA Guidelines have been satisfied by the City in the 2020 FEIR, which is sufficiently detailed such that all of the potentially significant effects of the Project have been adequately evaluated.
- (viii.) All legal prerequisites to the adoption of this Resolution have occurred.

## **B. RESOLUTION.**

NOW, THEREFORE, it is hereby found, determined and resolved by the City Council of the City of Irwindale as follows:

SECTION 1. The City Council hereby specifically finds that all of the statements set forth in the Recitals, Part A, of this Resolution are true and correct, and incorporated into this Resolution by reference as findings of fact.

SECTION 2. The City Council hereby specifically finds and determines that the project, as proposed, and including the Franchise and Facility Operations Agreement, has been adequately analyzed in the 2020 Final Environmental Impact Report (2020 FEIR) (SCH#2013051029). In making this determination, the City Council, as Lead Agency, has reviewed and considered the information in the 2020 FEIR, the written and oral testimony provided to the City, and the remainder of the administrative record for the project. The City Council has separately certified, via City Council Resolution No. 2021-08-3270 that the 2020 FEIR has been completed in compliance with the California Environmental Quality Act (Pub. Resource Code, § 21000 et seq.), reflects the City of Irwindale's independent judgment and analysis, and that all mitigation measures available to reduce to the project's impacts to the extent feasible have been adopted in the project's Mitigation Monitoring and Reporting Program. The City Council has also separately adopted a Statement of Overriding Considerations and CEQA Findings of Fact, attached as Exhibit A to Resolution 2021-08-3270. A copy of the 2020 FEIR and Mitigation Monitoring and Reporting Program was posted on the City's website.

SECTION 3. Based upon substantial evidence presented to this City Council during the public hearing conducted with regard to this Application, including written staff reports and verbal testimony, and the proposed Franchise & Facility Operations Agreement attached hereto as Exhibit "A", this City Council hereby specifically finds as follows:

- a. In order to protect public health, safety, and welfare, to control pest and nuisance vectors and to carry out the mandatory duties imposed on the city by the State of California, the city council may authorize one or more contractors to make arrangements with generators of solid waste for the collection, transportation, recycling and disposal of solid wastes within and throughout the city. To this end, the city council, subject to all applicable state laws, specifically retains the right to grant a limited, non-exclusive or exclusive franchise or franchises for the operation of a Material Recovery Facility/Transfer Station (as such term is defined in Section 17.56.070).
- b. No solid waste enterprise or other person shall undertake the operation of a Material Recovery Facility/Transfer Station (as such term is defined in Section 17.56.070) without first obtaining a franchise granted by the city council, in writing, naming the contractor. Any specific exceptions to the

ATTEST:

Laura M. Nieto  
Laura M. Nieto, MMC  
Chief Deputy City Clerk

STATE OF CALIFORNIA            }  
COUNTY OF LOS ANGELES    } ss.  
CITY OF IRWINDALE            }

I, Laura M. Nieto, Chief Deputy City Clerk of the City of Irwindale, do hereby certify that the foregoing Resolution No. 2021-06-3268 was duly adopted by the City Council of the City of Irwindale, at a regular meeting held on the 24<sup>th</sup> day of February 2021, by the following vote:

AYES:           Councilmembers:       Ambriz, Breceda, Burrola, Garcia, Mayor Ortiz  
NOES:           Councilmembers:       None  
ABSENT:        Councilmembers:       None  
ABSTAIN:       Councilmembers:       None

Laura M. Nieto  
Laura M. Nieto, MMC  
Chief Deputy City Clerk

foregoing franchise requirement may be designated in the city's duly-adopted franchise contract.

c. The term of each franchise shall be set forth in the franchise agreement. A reasonable franchise fee shall be included within every franchise granted pursuant to this chapter. The amount and payment thereof shall be determined by the city council, and shall be set forth in the Agreement. A penalty for late payments may be imposed.

d. A grant of franchise pursuant to this Section shall be made in the discretion of the city council and consistent with Irwindale City Charter Section 608."

f. The proposed Franchise & Facility Operations Agreement, as described herein, will not be materially detrimental to the public welfare or injurious to the adjacent properties in that the proposed uses of 2200 Arrow Highway will be industrial, consistent with neighboring uses.

SECTION 4. Based upon the substantial evidence and conclusions set forth herein above, this City Council hereby approves the proposed Franchise and Facility Operations Agreement.

SECTION 5. The documents and materials that constitute the record of proceedings upon which this Ordinance has been based are located at 5050 Irwindale Avenue, Irwindale, California. The custodian for these records is the Community Development Manager. This information is provided in compliance with Public Resources Code section 21081.6.

SECTION 6. A Notice of Determination shall be filed with the County of Los Angeles and the California State Clearinghouse within five working days of final project approval.

SECTION 7. The Chief Deputy City Clerk shall:

- a. Certify to the adoption of this Resolution; and
- b. Forthwith transmit a certified copy of this Resolution, by certified mail, to the Applicant at the address of record set forth in the Application.

PASSED, APPROVED AND ADOPTED this 24<sup>th</sup> day of February 2021.

  
\_\_\_\_\_  
H. Manuel Ortiz, Mayor

**EXHIBIT A**

**FRANCHISE & FACILITY OPERATIONS AGREEMENT**

**by and between**

**THE CITY OF IRWINDALE**

**("City")**

**and**

**ARAKELIAN ENTERPRISES, INC., dba ATHENS SERVICES**

**("Athens")**

## FRANCHISE & FACILITY OPERATIONS AGREEMENT

THIS FRANCHISE & FACILITY OPERATIONS AGREEMENT (this "Agreement") is entered into on \_\_\_\_\_, 2021, by the CITY OF IRWINDALE ("City"), a municipal corporation, and ARAKELIAN ENTERPRISES, INC., dba ATHENS SERVICES, a California Corporation, ("Athens"). City and Athens are herein collectively referred to as the "Parties" and each individually as a "Party".

### R E C I T A L S:

A. Recitals and Capitalized Terms. The Recitals in this Agreement constitute part of this Agreement and each Party shall be entitled to rely on the truth and accuracy of each Recital as an inducement to enter into this Agreement. The capitalized terms used in these Recitals and throughout this Agreement shall have the meaning assigned to them in Article 1.0. Any capitalized terms not defined in Article 1.0 shall have the meaning otherwise assigned to them in this Agreement, one of the other Agreements, or apparent from the context in which they are used.

B. Integrated Waste Management Act. The State of California through enactment of the California Integrated Waste Management Act of 1989 (Public Resources Code Sections 40000 *et seq.* (the "Act")), has directed all local jurisdictions to promote recycling and to maximize the use of feasible source reduction, recycling and composting options in order to reduce the amount of solid waste required to be disposed of by land disposal. Furthermore, the Puente Hills Landfill, a major solid waste disposal facility for the region has closed as of October 31, 2013 and conditions to reduce the quantities of waste accepted and to close by the year 2013, resulting in the need for additional waste processing facilities and transfer stations to be developed in the region to meet the solid waste management needs of jurisdictions and protect public health and safety.

C. GHG Reduction. The Legislature, by enactment of the Global Warming Solutions Act of 2006 ("AB 32"), has declared that the reduction of greenhouse gas emissions (GHGs) that cause climate change is among the state's top priorities. Local governments will play a vital role in the implementation of AB 32 by identifying opportunities and best practices to increase waste reduction and recycling, thereby reducing carbon emissions. Athens' operation of a mixed waste recycling system will contribute to GHG emissions reductions by reducing fuel consumption and vehicle miles traveled in performing waste collection and diversion activities for the City and by recovering and recycling commodities in the waste stream.

D. The MRF/TS Project. On January 6, 2005, the City issued a Request for Expressions of Interest and Statements of Qualifications ("REI/SOQ") from interested and qualified parties to plan, permit, build, operate and maintain a state-of-the-art regional municipal solid waste transfer station and recovery facility at a location in the City to manage and process solid waste generated within and outside of the City, and received multiple responses thereto. On March 3, 2005, Athens submitted a proposal in response to the City's REI/SOQ that met or exceeded all requirements of the REI/SOQ by proposing the construction and operation of a Materials Recovery Facility and Transfer Station (the "MRF/TS") accompanied by a public Fueling Facility/Convenience Store and appurtenant improvements (collectively, the "Project"). On June 25, 2008, in order to promote industrial development and fulfill the goals of the Act and

AB 32, the City and Athens, along with the former Irwindale Redevelopment Agency, entered into that certain Memorandum of Understanding, as amended, regarding the Project (“MOU”), including Athens’ proposed development and operation of the proposed MRF/TS. The Parties intend that the MRF/TS will provide for the long-term management and recycling of municipal solid waste generated in the City. The MRF/TS will serve as a point to accept, process, recover, and transfer mixed municipal waste (“MMW”) and residue following diversion activities to an appropriate permitted end-point disposal facility. The Facility Scope & Components are further described and permitted in the Site Plan and Design Review Permit No. 06-2016 (City Council Resolution No. 2021-12-3274) (“SP and DR Permit”) and the 2020 Certified FEIR, (2020 FEIR) adopted concurrently herewith by the City Council on February 24, 2021.

E. DDA With Agency; DA With City. The Project is proposed to be developed on an approximate 17.22-acre parcel owned by the Successor Agency to the Irwindale Community Redevelopment Agency (“Agency”), which site is legally described and depicted in Exhibit “B” hereto (the “Site”). The Agency was formed pursuant to Health & Safety Code § 34167.5, which made the Agency the successor-in-interest to all assets and obligations of the former Irwindale Redevelopment Agency (“Former RDA”). On December 29, 2011, the California State Supreme Court issued a ruling on the constitutional validity of two 2011 legislative budget trailer bills, ABX1 26 (Chapter 5, Statutes of 2011) and ABX1 27 (Chapter 6, Statutes of 2011), which resulted in the outright dissolution of all 425 redevelopment agencies in the State of California. As part of that dissolution process, former redevelopment lands, like the Site, inured to successor agencies by operation of law. Moreover, the dissolution laws provide a process for the disposition and/or transfer of assets, including property holdings of the Former RDA. Subsequent legislation, AB 1484 (Chapter 26, Statutes of 2012), which was passed, signed, and enacted on June 28, 2012, provided further detailed procedures governing the disposition of Former RDA assets such as the Site. Approximately concurrent with the Effective Date of this Agreement, Athens will enter into a separate Disposition and Development Agreement (the “DDA”) that will establish the terms by which the Agency’s interest in the Site will be conveyed to Athens. Also approximately concurrent with the Effective Date of this Agreement, Athens will enter into a separate Development Agreement (the “DA”) with the City to establish Athens’ entitlement rights and development processes for the Project.

F. Easement/Access Issues. The Project is proposed to be built upon the Site. The Site is traversed by an easement area owned by the Los Angeles County Department of Water and Power (“LADWP Easement”). The LADWP Easement is depicted in more detail in Exhibit “D-1” hereto. The use of the LADWP Easement will be conveyed to Athens via an easement or license from LADWP permitting Athens’ use and occupation of the LADWP Easement for MRF/TS parking and appurtenant uses. There also exists over the Site an easement for use held by Southern California Edison (the “SCE Easement”), which Easement is depicted in more detail in Exhibit “D-2” hereto. The use of the SCE Easement will be conveyed to Athens via an easement or license from Southern California Edison permitting Athens’ use and occupation of the SCE Easement for MRF operation and ancillary uses.

G. This Agreement. This Agreement is entered to establish the terms by which (i) the City will grant a franchise to Athens for the exclusive operation of a MRF/TS within City limits, and (ii) Athens will operate the Facility and its appurtenant uses and maintain the Site. The Parties

further acknowledge that the Facility will be constructed, managed, operated, marketed and promoted in a professional manner.

H. Other Agreements. The Parties understand that this Agreement is for the establishment of terms upon which Athens will operate the Facility. The Parties also acknowledge that the following necessary documents have been, or will be, negotiated in order to fulfill the obligations and goals under the MOU to develop and operate the Project: (i) the DDA between the Agency and ATHENS for conveyance of the Site to ATHENS for the development of the Project; (ii) a "Reimbursement Agreement" between City and ATHENS, dated October 22, 2008, as amended, under which ATHENS is obligated to reimburse or advance funds to City for all development costs associated with the Project, including but not limited to conducting environmental reviews under CEQA, processing and negotiating permits, entitlements and conditions, and legal costs; (iii) a Franchise Agreement – Trash Collection and Street Sweeping, dated April 13, 2011, as amended on December 12, 2012, and governing the exclusive right and obligation of Athens to collect solid waste and sweep streets in the City (collectively, "Franchise Agreement – Trash Collection and Street Sweeping"), (iv) a recorded instrument of Covenants, Conditions and Restrictions on the use of the Site as a MRF/TS (the "CC&Rs"), (v) a "LADWP Easement Agreement" governing Athens' rights over the LADWP Easement, (vi) an "SCE Easement Agreement" governing Athens' rights over the SCE Easement, and (vii) a "Solid Waste Facilities Permit" to be issued by the California Integrated Waste Management Board or its successor ("SWFP"). The foregoing agreements and instruments, together with all City ordinances approving the foregoing agreements and instruments, are collectively referred to as the "Agreements" or "Other Agreements" in contrast to this Agreement. The Parties hereto acknowledge that this Agreement and the Other Agreements bear overlapping impact upon the Site and upon Athens' development of the Project, and thus the effectiveness of this Agreement is conditioned on approval and execution by the City and Athens of each of the Other Agreements.

I. Athens as Qualified Operator. Athens is a family-owned and operated company that has been providing refuse removal and recycling services in Southern California (largest in L. A. County) for more than 50 years. Athens currently operates a MRF in the unincorporated area of Los Angeles County near the City of Industry, the first of its kind in the area. Since 1957 Athens has been a leader in the waste industry providing state-of-the-art services including automated waste and recycling collection, green waste recycling, food waste/organics collection and composting, commercial bin and compactor services, construction and demolition services, special waste transportation, transfer and material recovery, storage box rentals, and street/parking lot sweeping in many areas of Southern California. As owners and operators of an existing MRF and a composting facility, Athens offers the highest diversion waste and recycling programs for residential, commercial and municipal locations.

J. Mutual Agreement. Based on the foregoing and subject to the terms and conditions set forth herein, the Parties desire to enter into this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained, and having determined that the foregoing Recitals are true and correct and should be and hereby are incorporated into this Agreement, the Parties agree as follows:

**ARTICLE 1.0**  
**DEFINITIONS**

Whenever any term used in this Agreement has been defined by Division 30, Part 1 Chapter 2 of the California Public Resources Code, the definitions in the Public Resources Code as presently defined and as they may be amended in the future shall apply unless the term is otherwise defined in this Agreement. In the event of conflict between the definition of a term as found in the California Public Resources Code or in City ordinances and this Agreement, the definition in this Agreement shall, unless otherwise mutually agreed in writing by the Parties, supersede the definition found in the Public Resources Code or in City ordinances.

Further, where a phrase or term of art is not defined in this Agreement but is defined in one of the Other Agreements, the phrase or term shall bear the meaning defined in the Other Agreements.

1.1 Agency. "Agency" the Successor Agency to the Irwindale Community Redevelopment Agency, a California public body, corporate and politic.

1.2 Agreement. "Agreement" means this Agreement, including all exhibits and attachments which are incorporated herein by reference, as this Agreement may be amended. The exhibits include the following:

- Exhibit A - Facility Scope & Components
- Exhibit B - Site Legal Description and Site Map
- Exhibit C - Project Site Plan
- Exhibit D-1 - LADWP Easement
- Exhibit D-2 - SCE Easement
- Exhibit E - Description of Host Fee Structure
- Exhibit F - Route & Circulation Plan
- Exhibit G - Facility Use Rates
- Exhibit H - Fire Prevention & Emergency Response Measures

1.3 Agreements/Other Agreements. "Agreements" and "Other Agreements" means all those other contractual instruments identified in the preceding Recital H of this Agreement.

1.4 Applicable Law. "Applicable Law" means all statutes, rules, regulations, guidelines, actions, determinations, Permits, orders, or requirements of the United States, State, County, City and local and regional government authorities and agencies having applicable jurisdiction, that apply to or govern the Facility, the Site or the performance of the Parties' respective obligations hereunder, including any of the foregoing which concern health, safety, fire, environmental protection, labor relations, mitigation monitoring plans, building codes, zoning, non-discrimination, prevailing wages if applicable, and the Los Angeles County Integrated Waste Management Plan. All references herein to Applicable Law include subsequent amendments or modifications thereof, unless otherwise specifically limited in this Agreement or one of the other Agreements.

1.5 Assignment. All forms of use of the verb “assign” and the nouns “assignment” and “assignee” shall include all contexts of hypothecations, sales, conveyances, transfers, leases, and assignments.

1.6 Athens. “Athens” means Arakelian Enterprises, Inc., dba Athens Services, a California Corporation.

1.7 Athens' Costs. "Athens Costs" means Athens' obligation to pay for all costs identified in the MOU and/or the Reimbursement Agreement, including but not limited to all project development and construction costs, all costs of public education, all costs of the environmental review, all costs for entitlement, all costs of acquiring the Site, all Host Fees, all operational costs and all other costs identified in the MOU, the Reimbursement Agreement and herein as the responsibility of Athens.

1.8 Best Management Practices (“BMP”). “Best Management Practices” or “BMP” means structural, nonstructural, and managerial techniques recognized to be the most effective and practical means to reduce environmental impacts arising from the Project, whether affecting soils, air, water, noise, traffic, public infrastructure, public health/safety, or other impacts emanating from the Facility while still allowing the productive use of resources. BMPs also include treatment requirements, operating procedures, and practices to control Site runoff, spillage or leaks, sludge or waste disposal, trash or debris, or drainage from raw material storage or similar matters.

1.9 CEQA. “CEQA” means the California Environmental Quality Act, Section 21000 *et seq.* of the California Public Resources Code and its implementing regulations and guidelines, including future amendments to or re-codification thereof.

1.10 City. “City” means the City of Irwindale, California, a chartered municipal corporation.

1.11 City Council. “City Council” means the governing body of the City of Irwindale.

1.12 Claims or Litigation. “Claims or Litigation” means any challenge by adjacent owners or any other third parties as to (i) the legality, validity approval or adequacy of this Agreement, the MOU and/or other Agreements, the EIR, other development approvals, or other actions of City or Agency pertaining to the Project, (ii) Athens' exercise of the rights under this Agreement, (iii) damages against City or Agency as a consequence of the foregoing actions or for the taking or diminution in value of their property, (iv) damages against the City or Agency for injuries, losses or damages due to Athens' use of, or operations on, the Site, (v) any repair, cleanup or detoxification, or preparation and implementation of any removal, remediation, response, closure, or other plan (regardless of whether undertaken due to governmental action) concerning any hazardous waste and/or HHW (as such terms will be broadly defined) deposited after the commencement of Project construction at any place where Athens delivers, stores, processes, composts, or disposes of solid waste, (vi) claims pursuant to Section 107(e) of the Comprehensive Environmental Response, Compensation and Liability Act, “CERCLA”, 42 U.S.C. Section 9607(e), and California Health and Safety Code Section 25364, the Resource Conservation and Recovery Act, “RCRA”, 42 U.S.C. Sections 6901 *et seq.* or other similar federal, state or local law or regulation, or (vii) actions or injuries otherwise arising from the Project.

1.13 Commercial/Institutional Haulers. “Commercial/Institutional Haulers” means (i) haulers delivering waste in the course of a commercial waste hauling enterprise, and (ii) waste hauling and deliveries performed by governmental entities in the course of public works projects or services. Commercial/Industrial Haulers do not include Selfhaulers.

1.14 Construction and Demolition Material (“C&D Material”). “Construction and Demolition Material” or “C&D Material,” as included in Permitted Waste, means any combination of building materials and solid waste resulting from construction, remodeling, repair, cleanup, or demolition operations as defined in California Code of Regulations, Title 22 Section 66261.3 *et seq.* This term includes, but is not limited to, asphalt, concrete, Portland cement concrete, brick, lumber, gypsum wallboard, cardboard, and other associated packaging, roofing material, ceramic tile, carpeting; plastic pipe and steel. The material may be commingled with rock, soil, tree stumps; and other vegetative matter resulting from land clearing and landscaping for construction or land development projects.

1.15 Correction Plan. “Correction Plan” means a plan undertaken by Athens with City approval, for the correction or remediation of violations of Performance Standards and/or nuisance conditions pursuant to Section 5.5(f) of this Agreement.

1.16 CPI. “CPI” means the Consumer Price Index, All Urban Consumers (All Items), for the Los Angeles-Anaheim-Riverside Metropolitan Area, published by the United States Department of Labor, Bureau of Labor Statistics (1982-84 = 100). If both an official index and one or more unofficial indices are published, the official index shall be used. If said CPI index is no longer published at the adjustment date, it shall be constructed by conversion tables included in such new index.

1.17 E-Waste. “E-Waste” means electronic waste such as consumer electronic equipment that is no longer wanted. E-Waste can include, but is not limited to computers, printers, televisions, VCR's, cell phones, fax machines, stereos, and electronic games.

1.18 Default. “Default” (used herein with a lower case initial letter, “default”) means any material default, breach, or violation of a provision of this Agreement as defined in Section 12.2 hereof. “City Default” refers to a Default by City, while “Athens Default” refers to a Default by Athens.

1.19 CIWMB. “CIWMB” means the California Integrated Waste Management Board, as established pursuant to the Act (Public Resources Code §§ 4000 *et seq.*).

1.20 Commencement of Operations. “Commencement of Operations” means the start of Athens' operations at the MRF/TS.

1.21 Construction and Demolition (C&D) Material. “Construction and Demolition Material” or “C&D Material,” means any combination of building materials and Refuse resulting from construction, remodeling, repair, cleanup, or demolition operations as defined in California Code of Regulations, Title 22 Section 66261.3 *et seq.* This term includes, but is not limited to, asphalt, concrete, Portland cement concrete, brick, lumber, gypsum wallboard, cardboard, and other associated packaging, roofing material, ceramic tile, carpeting; plastic pipe and steel. The

material may be commingled with rock, soil, tree stumps; and other vegetative matter resulting from land clearing and landscaping for construction or land development projects.

1.22 DA. "DA" means that Development Agreement existing between, or to be negotiated between, the Parties pursuant to the Development Agreement Statute, Sections 65864, *et seq.*, of the Government Code, for Athens' development of the Project. This Agreement is intended to be additional to, and consistent with, said DA. The DA will define the roles of the Parties during the Project development and permitting stage and the public benefits that will be provided to the City. The DA would only be approved following consideration of an environmental review document in accordance with the requirements of CEQA.

1.23 DDA. "DDA" means that Disposition and Development Agreement between the Agency and Athens that has been, or will be, negotiated between the Parties based on the MOU for the Agency's conveyance to Athens of the Site.

1.24 Divert or Diversion. "Divert" or "Diversion" means to divert from disposal facilities or transformation facilities (including incineration, pyrolysis, distillation, gasification or biological conversion) through source reduction, recycling and composting, as provided in Section 41780 of the Act as such act may be hereafter amended or superseded provided that Divert or Diversion shall include delivery to transformation facilities if the overall diversion achieved by the City is at a level where delivery to such facilities shall be considered Diversion pursuant to the Act.

1.25 Effective Date. Generally, the term "Effective Date" means the date that is thirty (30) days following adoption of the Authorizing Ordinance approving the DA.

1.26 EIR. "EIR" means that final environmental impact report for the Project certified by the City Council pursuant to CEQA and the subsequently adopted 2020 FEIR.

1.27 Facility or MRF/TS. "Facility" and "MRF/TS" mean the material recovery facility/transfer station proposed to be constructed by ATHENS as permitted and described in (1) the SP and DR Permit and (2) 2020 FEIR, including Site improvements, utility interconnections, the scale house, buy-back recycling center, improvements needed to participate in an HHW program, construction and demolition debris area, green waste area, a building for transfer and materials recovery and processing areas, a visitors education center and convenience store, together with employee and administrative offices, parking areas, materials storage areas and ancillary support facilities, furnishings and equipment and any and all other physical structures on the Site and Off-Site Improvements.

1.28 Facility Scope. "Facility Scope" means the components to, scale of and operational elements for the Facility and Athens' activities on the Site, and permitted and described in SP and DR Permit and (2) 2020 FEIR.

1.29 Final Plans and Specifications. "Final Plans and Specifications" means the final construction and site plans for the Facility, including a complete description of all building locations, footprints, elevations, architectural elements, parking and traffic circulation, specific square footages and as approved by the City in writing pursuant to Article 4 of this Agreement.

1.30 Green Waste. "Green Waste" means any and all forms of biodegradable plant material which can be placed in a covered Container, such as wastes generated from the maintenance or alteration of public, commercial or residential landscapes including, but not limited to, yard clippings, leaves, tree trimmings, prunings, brush, and weeds as well as other such landscaping waste. Tree stumps and limbs greater than three (3) inches in diameter are excluded unless they are reduced to a chipped form; otherwise, such large portions of Green Waste shall be considered Bulky Waste.

1.31 Hazardous Material. "Hazardous Material" bears the meaning ascribed to it in Section 13.2 of this Agreement.

1.32 Host Fee. "Host Fee" means payments by Athens to City for hosting a MRF/TS within City's limits, as detailed in Exhibit "E" hereto.

1.33 Host Fee Deposit. "Host Fee Deposit" means that deposit by Athens as described in Exhibit "E" hereof.

1.34 Host Fee Rate. "Host Fee Rate" means that payment component of the Host Fee to be made by Athens to the City at a rate of \$1.70 per ton for every ton deposited at the Facility, all as further described in Exhibit "E" hereto.

1.35 Household Hazardous Waste or HHW. "Household Hazardous Waste" or "HHW" means material used in residences that may threaten human health or the environment when improperly discarded and usually has one or more of the following characteristics: flammable, toxic, corrosive, and/or reactive.

1.36 Initial Term. "Initial Term" shall mean that initial thirty (30) year period that this Agreement will remain in effect, as described in Section 2.1 hereof, and absent permitted termination or default by a Party.

1.37 LADWP. "LADWP" is the acronym for the City of Los Angeles Department of Water and Power.

1.38 LADWP Easement. "LADWP Easement" means that transmission easement traversing the Site and owned by LADWP. The LADWP Area is legally described in Exhibit "D-1" hereto. Athens will be authorized to occupy and utilize the LADWP Easement pursuant to an "Application for Secondary Land Usage" approved by LADWP to permit use of the LADWP Easement for parking by Athens' employees and invitees.

1.39 Local Enforcement Agency or LEA. "Local Enforcement Agency" or "LEA" means the entity designated by the City and certified by the CIWMB to enforce federal and state laws and regulations for the safe and proper handling of solid waste at the Facility. Initially, the City has designated the County of Los Angeles as the LEA. The LEA performs routine and monthly investigations of the Facility, investigates complaints of illegal disposal of solid waste and administers a permitting and inspection program to ensure the Facility's regulatory compliance.

1.40 Mixed Municipal Waste ("MMW"). "Mixed Municipal Waste" or "MMW" means all municipal solid waste including putrescible and non-putrescible solid, semi-solid, and liquid wastes, including garbage, trash, refuse, paper, rubbish, ashes, industrial wastes, street sweepings, recyclables and catch basin residue. The definition of MMW includes all materials that are generally considered to be MMW in the solid waste industry and all materials that are MMW as a matter of law or regulation.

1.41 MOU. "MOU" means Memorandum of Understanding and refers to that agreement entered into by the Parties on June 25, 2008, as amended, for implementation of this Agreement, the other Agreements and Project development generally, as described in greater detail in Recital D hereto.

1.42 Operational Obligations. "Operational Obligations" means Athens' obligations to operate the Facility in accordance with Article 6 of this Agreement.

1.43 Operational Year. "Operational Year" means each 12 months following the Commencement of Operations date and shall begin and end on the anniversary of the Commencement of Operations date.

1.44 Performance Standards. "Performance Standards" means Athens' obligation to operate the Facility in accordance with Article 5 of this Agreement.

1.45 Permits. "Permits" are defined in Section 3.2, as renewed or amended from time to time.

1.46 Permitted Waste. "Permitted Waste" means Refuse which the Facility may receive under its Permits and Applicable Law which is expected to include, without limitation: MMW, C&D Materials, Green Waste, E-Waste, HHW, Recyclable Materials and Source Separated Recyclable Materials.

1.47 Person(s). "Person(s)" means any individual, association, corporation, firm, joint venture, limited liability company, organization, partnership, trust, the United States, the State, a county, a municipality or special purpose district.

1.48 Project. "Project" means Athens' construction and operation of the Facility and the negotiation of, and carrying out of, this Agreement and the related Agreements.

1.49 Public Works Director. "Public Works Director" means the Director of Public Works or similar officer of City.

1.50 Reasonable Business Efforts. "Reasonable Business Efforts" means those efforts a reasonably prudent business Person would expend under the same or similar circumstances in the exercise of such Person's business judgment, intending in good faith to take steps calculated to satisfy the obligation which such Person has undertaken to satisfy.

1.51 Recovered Materials. "Recovered Materials" means those materials recovered from Permitted Waste by any processing including the separation and removal of recyclable

materials from the Permitted Waste, whether by manual or mechanical means, by Athens at the Facility before any marketing or sales thereof.

1.52 Recyclable Materials or Recyclables. "Recyclable Materials" or "Recyclables" interchangeably mean those materials which have been discarded, thrown away, or abandoned by the generator or owner thereof, and are commonly collected in recycling programs in southern California for the purpose of reprocessing or remanufacturing. The list of recyclable materials includes, but is not limited to, the following: newspaper (including inserts, coupons, and store advertisements); corrugated cardboard; mixed waste paper including office paper, computer paper, magazines, junk mail, catalogs, kraft bags, paper, paperboard, egg cartons, phone books, brown paper, grocery bags, colored paper, construction paper, envelopes, legal pad backings, shoe boxes, cereal and other similar food boxes, tissue boxes, paper tubes, and wrapping paper; glass containers including brown, clear, and green glass bottles and jars; aluminum including beverage containers, foil, and food containers; milk and juice cartons and jugs; steel or tin cans; small scrap metal including metal coat hangers; plastic jugs, bottles, and containers including resins #1 through #7; used motor oil and oil filters.

1.53 Refuse. "Refuse" bears the same meaning as Mixed Municipal Waste.

1.54 Rolling Extensions. "Rolling Extensions" means the automatic extension of this Agreement for repeating ten (10) year periods after conclusion of the Initial Term, as described in Section 2.1.

1.55 SCE. The term "SCE" is the acronym for the Southern California Edison Company.

1.56 SCE Easement. The term "SCE Easement" means that transmission easement traversing the Site and owned by SCE. The SCE Easement is legally described in Exhibit "D-2" hereto. Athens will be authorized to occupy and utilize the SCE Easement pursuant to an easement or license from SCE permitting Athens' use and occupation of the SCE Easement for MRF/TS parking and appurtenant uses.

1.57 Selfhauler. "Selfhauler" means any Person who delivers Refuse or Recyclable Materials to the Facility on their own behalf. Selfhaulers consist of Persons hauling Refuse either in the course of their business or for residential purposes, but Selfhaulers do not include Commercial/Institutional Haulers.

1.58 Site. "Site" means the real property currently owned by Agency where Athens proposes to construct the Project and operate the MRF/TS, comprised of an approximately 17.22-acre site at the intersection of Arrow Highway and Live Oak Avenue. The Site is legally described and depicted in Exhibit "B" hereto. The exact boundaries and area of the Site shall be determined by a survey prior to the conveyance of Title to Athens.

1.59 Site Map. "Site Map" means the site map showing the Site attached hereto as Exhibit "B".

1.60 Site Plan(s). "Site Plan" means that scaled depiction of the Project buildings, locations and square footages as situated on the Site, at Exhibit "C" hereto.

1.61 Source Separated Recyclable Materials. "Source Separated Recyclable Materials" means a type of Permitted Waste, means commingled and/or pre-sorted Recyclable Materials that are segregated from MMW prior to collection, including high grade paper, glass, metal, plastic, aluminum, newspaper, corrugated paper or other Recyclable Materials and delivered separately from other Permitted Waste.

1.62 Term. "Term" means that period of time during which this Agreement shall be in effect and bind the Parties, as defined in Section 2.1.

1.63 Termination Notice. "Termination Notice" means that notice terminating this Agreement as described in Section 12.4 hereof.

1.64 Transfer/Processing Report ("TPR"). Transfer Procedures Report ("TPR") means that report prepared by Athens pursuant to CIWMB guidelines and Section 9.1 of this Agreement.

1.65 Trash Hauling Contract. "Trash Hauling Contract" means the contract approved by the City to exclusively provide for the collection of Mixed Municipal Waste and Recyclable Materials from property within the City to the MRF/TS for collection, processing and disposal.

1.66 Uncontrollable Circumstance. "Uncontrollable Circumstance" means any act, event or condition that has delayed or prevented, or which the Parties hereto agree may be reasonably expected to delay or prevent, a Party from performing or complying with one of its obligations under this Agreement, including, without limitation, such acts, events or conditions as:

a. A change in law, including (i) the adoption, promulgation, amendment, modification, rescission, revision or revocation of any Applicable Law or change in judicial or administrative interpretation thereof occurring after the date hereof, and/or (b) any order or judgment of any federal, State or local court, administrative agency or governmental body issued after the date hereof, so long as such order or judgment is not the result of Athens' negligent or willful misconduct or criminal violation; or

b. Governmental action, inaction, restriction, initiative, referendum, moratoria, or processing with governmental agencies, the delay of which is not due to the negligent or untimely action or inaction of Athens; or

c. Earthquake, explosions, epidemic, quarantine, landslide, lightning, fire, flood and weather, including, without limitation, consecutive or numerous non-consecutive days of rain, snow or other inclement weather during the construction period; or other Acts of God; or

d. Sabotage, acts of public enemy, war, riot, insurrection or civil disturbance, expropriation, confiscation; or

e. Failure of any permitted subcontractor or supplier of goods, materials, services or other items required for performance of this Agreement (other than an affiliate of Athens) to furnish such goods, services, materials or other items on the dates agreed to, which materially and adversely affects Athens' ability to perform its obligations and Athens is not able to reasonably obtain substitute goods, services, materials or items on the agreed upon dates; or

f. The condemnation, taking, seizure, involuntary conversion or requisition of title to or use of the Facility, the Site or any material portion or part thereof by the action of any federal, State, county, city or local governmental agency or authority.

In no event shall any act, event or condition that has occurred as a result of poor management practices or negligence of Athens, or an employee or agent thereof, be an Uncontrollable Circumstance.

1.67 Unpermitted Waste. “Unpermitted Waste” means hazardous, medical or radioactive wastes (except HHW) that the Facility may not receive or process under its Permits and Applicable Law. All elements of this definition shall conform to the provisions of the Permits, as such Permits may be amended from time to time, and the terms of the Permits shall prevail over the following illustrative list of Unpermitted Waste examples. The term “Unpermitted Waste” includes, without limitation:

- a. Asbestos, including friable materials that can be crumbled with pressure and are therefore likely to emit fibers, being a naturally occurring family of carcinogenic fibrous mineral substances, which may be an Unpermitted Waste if it contains more than one percent asbestos;
- b. Ash residue from the incineration of Refuse;
- c. Auto shredder “fluff” consisting of upholstery, paint, plastics, and other non-metallic substances which remain after the shredding of automobiles;
- d. Dead animals that are large (i.e., no more than 50 lbs.) in size;
- e. Industrial solid or semi-solid wastes which pose a danger to the operation of the Facility, including cement kiln dust, ore process residues;
- f. Infectious and bio-medical wastes which have disease transmission potential and are classified as hazardous by the State or County Health Services, including pathological and surgical wastes, medical clinic wastes, wastes from biological laboratories, syringes, needles, blades, tubing, bottles, drugs, patient care items such as linen or personal or food service items from contaminated areas, chemicals, personal hygiene wastes, and carcasses used for medical purposes or with known infectious diseases;
- g. Liquid wastes which are not spadeable, usually containing less than fifty percent solids, including cannery and food processing wastes, landfill leachate and gas condensate, boiler blowdown water, grease trap pumpings, oil and geothermal field wastes, septic tank pumpings rendering plant byproducts and sewage sludge;
- h. Radioactive wastes under Chapter 7.6 (commencing with Section 25800) of Division 20 of the State Health and Safety Code, and any waste that contains a radioactive material, the storage or disposal of which is subject to any other State or federal regulation; and/or

i. Sewage sludge comprised of human (not industrial) residue, excluding grit or screenings, removed from a waste water treatment facility or septic tank, whether in a dry or semidry form.

**ARTICLE 2.0**  
**TERM & GRANT OF AUTHORITY**

2.1 Term. The Term of this Agreement shall be for an initial term of thirty (30) years, which shall run from Commencement of Operations (the "Initial Term"). At the conclusion of the Initial Term, this Agreement shall be subject to an automatic ten (10) year rolling extension so long as the Developer has met its obligations under the terms of the Development Agreement (the "Rolling Extensions"). Once this Agreement has entered into any Rolling Extension period, should the City seek to terminate the Agreement for a reason other than a material breach (pursuant to Article 12.0 hereof), the Term would continue for an additional ten (10) years from and after the giving of the Termination Notice.

2.2 Conditions to Effectiveness. This Agreement shall be effective only after and if all appropriate environmental review in accordance with CEQA has been completed, and the Facility, and the Agreements have been considered and approved by the City Council pursuant to a public hearing as required by Applicable Law, and that all MRF/TS approvals, entitlements and Permits have been granted by the appropriate agencies or entities. Athens acknowledges that nothing herein is intended as a commitment or representation that the City or Agency will approve the other Agreements.

2.3 Grant of Franchise. The City hereby grants to Athens the exclusive franchise, right, license and privilege (except as provided in Section 2.4 below) to operate a large-scale MRF/TS facility within City limits, such that for the Term of this Agreement (as may be extended by operation of the Rolling Extensions), and to the extent the City is allowed to so regulate under Applicable Law, the City shall not permit any other Person to construct or operate a large-scale MRF/TS in the City. For purposes of this grant of franchise, a "large-scale MRF/TS facility" means a MRF/TS facility operating as a primary use of property and engaging in Refuse/Recyclables processing and transfer activities comparable to those franchised under this Agreement. Nothing herein shall prevent small scale commercial businesses from conducting recycling activities as part of their business. Further, Athens shall not develop or acquire a competing MRF/TS of any sort within ten (10) miles of the territory of the City of Irwindale or within the City of Azusa (excluding (i) the Athens Materials Recovery Facility located at 14048 Valley Boulevard, and (ii) any existing facility developed or owned by an entity acquired by Athens).

2.4 Exceptions to Franchise. The exclusive MRF/TS facility franchise herein granted shall be subject to the following exclusions:

a. *Existing Athens Facilities*. The Athens Materials Recovery Facility located at 14048 Valley Boulevard, and any existing facility developed or owned by an entity acquired by Athens.

b. *Small-Scale Buyback Stands.* It is expressly understood that nothing herein shall prevent or preclude the development or operation of small-scale facilities for the buyback and processing of Recyclables and any exclusivity restrictions in favor of Athens shall only prevent City and the Agency from permitting or entering into an agreement for a large-scale MRF/TS facility of a size comparable to Athens' MRF/TS and operating as a primary use of property. This exemption shall be interpreted to mean that the franchise granted herein will not preclude the operation of existing or future small-scale recycling buyback centers located throughout the City as a secondary, appurtenant, joint or accessory use to another primary use (e.g., recycling buyback booths, kiosks or collection stands located in grocery store parking lots or similar areas).

c. *Facilities Processing Refuse Unpermitted at Athens' MRF/TS.* It is expressly understood that nothing herein shall prevent the development, construction and/or operation of a facility (subject to compliance with all Applicable Laws and City entitlements) if it is solely engaged in the processing or transport of Unpermitted Waste (including Hazardous Waste) that cannot otherwise be lawfully processed or transported at Athens' MRF/TS.

d. *Acquisitions of Competing Facilities.* Nothing herein shall prevent Athens from acquiring an integrated waste disposal business which as its assets currently owns a competing facility within the geographical limits of Athens' franchise and then continuing to operate such competing facility.

e. *Legally-Required Exemptions.* Other Refuse collection, removal or disposal facilities required to be exempt from Athens' franchise pursuant to State or Federal law, including but not limited to Non-City governmental entities operating their own Refuse facility within City boundaries. The exclusivity provisions herein shall be interpreted consistent with State and Federal law and are severable from this Agreement to the extent they contravene any laws.

2.5 Annexations. This Agreement shall extend to any territory annexed to the City during the Term that is not covered by an existing Solid Waste permit, license, agreement or franchise granted by another public entity shall be added hereto, except to the extent that collection by Athens within that annexed territory would violate the provisions of Public Resources Code Section 49520. In such event, this Agreement shall become effective as to such area at the earliest possible date permitted by law, and City agrees that it shall cooperate with Athens to fulfill any requirement necessary for Athens to serve the annexed area consistent with this Section.

2.6 Franchise Contingent on Athens' Fulfillment of Duties. To the extent that the franchise granted hereby is exclusive, it shall be so only if Athens is and shall be at all times ready, willing and able to perform its obligations under this Agreement, including but not limited to, complying with all Performance Standards and Operational Obligations, complying with all Applicable Laws, and complying with the terms and requirements of all Permits.

### **ARTICLE 3.0** **PERMITTING**

3.1 Legal Compliance. Athens is required during every phase of the Project and operation of the Facility to maintain compliance with all Applicable Laws including, but not limited to, the following:

- CEQA
- California Administrative Code, Titles 8, 14, 23, and 24
- California Health and Safety Code
- California Department of Motor Vehicles
- California Integrated Waste Management Act
- California Occupational Health and Safety Administration
- Federal Clean Water Act
- Resource Conservation and Recovery Act
- Clean Air Act
- Applicable local, regional, and State air quality and water quality regulations
- State and local fire and building codes; electrical standards

3.2 Permits. Athens shall, with reasonable cooperation from the City, be responsible for obtaining all approvals, licenses, orders and permits required by Applicable Law for the operation of the Facility (“Permits”) and shall be solely responsible for maintaining such Permits in accordance with Applicable Laws. Athens shall apply in a timely manner for such other Permits and approvals as may be required from other governmental or quasi-governmental agencies having jurisdiction over the Facility as may be required for the development of, or provision of services to, the Facility in accordance with the requirements set forth herein. The City shall cooperate with Athens in its efforts to obtain such Permits and approvals. The City and Athens shall cooperate and use reasonable efforts in coordinating the implementation of the Project with other public agencies, if any, having jurisdiction over the Site or the Project. Permits include, without limitation, the following:

<b>APPROVALS/PERMITS REQUIRED FOR THE PROPOSED PROJECT</b>	
<b>AGENCY</b>	<b>APPROVAL / PERMITS</b>
City of Irwindale	Development Agreement
City of Irwindale	Conditional Use Permit, if needed
City of Irwindale	Site Plan and Design Review Permit
City of Irwindale	General Plan Amendment
City of Irwindale	Zone Change
City of Irwindale	Zoning Code Amendment
City of Irwindale	Approval and Certification of the Final EIR
City of Irwindale	Storm Water Pollution Prevention Plan
City of Irwindale	Certificate of Completion (as defined in the DA) and Certificate of Occupancy
Los Angeles County Public Health Solid Waste Management Program (acting as the Local Enforcement Agency [LEA]) in conjunction with the California Integrated Waste Management Board	Solid Waste Facility Permit, Tire Hauler Permit

<b>APPROVALS/PERMITS REQUIRED FOR THE PROPOSED PROJECT</b>	
<b>AGENCY</b>	<b>APPROVAL / PERMITS</b>
Los Angeles County Sanitation District	Industrial Waste Water Discharge Permit
South Coast Air Quality Management District	Permits to construct and operate odor control devices, paint spray booths, and gasoline dispensers
California Department of Industrial Relations, Division of Occupational Safety and Health	Work area design approval and compressor air tank permits
California Department of Conservation, Division of Recycling	Beverage container recycling certifications
California Environmental Protection Agency, Division of Toxic Substance Control	Hazardous Waste Handler Identification Number, hazardous waste generator/hauler permits, electronic waste handler/hauler permit
California Department of Food and Agriculture Division of Measurement Standards	Weighmaster license
California Department of Transportation	Biannual inspection of terminals
California State Water Resources Control Board, Regional Water Quality Control Board (Region 4)	Waste Discharge Identification Number in compliance with the National Pollution Discharge Elimination System, and Storm Water Pollution Prevention Plan

Other approvals, licenses, orders and permits required by Applicable Law and with which Athens shall remain in strict compliance throughout the Term of this Agreement include any order, permit or requirements imposed by a LEA and the California Department of Toxic Substances Control (“DTSC”).

#### **ARTICLE 4.0**

#### **FACILITY CONSTRUCTION & COMMENCEMENT OF OPERATIONS**

4.1 Project Description. The non-final Site Plan(s) for the Project are presented in Exhibits “A” and “C” hereto. All buildings will conform to the City’s Design Guidelines and incorporate the environmental control system described below and such other additional measures as may be recommended through the CEQA review process. Athens proposes to size the MRF/TS to handle up to 6,000 tons per day with the following proposed multiple functions and processes:

a. *Transfer Station.* Transfer station for refuse collection and transfer. The transfer station would include a below grade load out area to allow for the transfer vehicles to be top-loaded through load out ports at the tipping floor. A portion of the transfer station would also be dedicated for self-haul use.

b. *Materials Recovery Facility.* Material recovery facility for Diversion of Recyclable Materials from commercial and residential customers via one or more sorting lines for MMW. The Recyclables would be baled within the building and transferred to recyclable load-out vehicles at the exterior recyclable load out dock. Residue from the Diversion process would be conveyed to the adjacent transfer station for load-out.

c. *Green Waste.* A Green Waste area would accommodate collection and grinding of Green Waste. The Green Waste would be transferred to outgoing delivery vehicles.

d. *C&D Materials.* A Construction and Demolition Materials area would be utilized for collection, sorting and recyclable load-out of C&D Materials. The incoming C&D Material would be screened, sorted and Diverted to containers. The containers would be transferred to outgoing recyclable load-out vehicles.

e. *Inert Materials.* Inert materials would be sorted and directed towards filling of approved Irwindale inert mining pits.

f. *Office/Administrative.* An office area would be dedicated for administrative support for the Facility. This area would also include an education area for use by local students in demonstrating the activities of the Facility.

g. *Employee Areas.* An employee area/control area would include restrooms, a break area and offices. The upper level control area would be used to accommodate the operational control functions of the Facility. The employee area/control area would be linked to the office area via an upper level observation gallery.

h. *Maintenance.* A separate maintenance building would include two service bays and an adjacent office/parts area.

i. *Fueling Station.* Site improvements would include diesel and natural gas fueling operations with public access, a truck wash area, truck scale and scale house, load-out ramps, truck loading docks, driveways, employee and operation vehicle parking, and landscaping.

j. *Alternative Fuel Vehicles.* The facility will encourage the use of alternative fuel vehicles. If possible, a fueling facility will be provided on-site, and Athens will consolidate operations to foster the payment of utility and sales taxes to the City through the point of use and/or sale.

#### 4.2 Alterations After Construction of Each Improvement.

a. Except as otherwise specified in this Agreement, once construction of any Project improvement has been completed, Athens shall not make, or permit any other person to make, any substantial alterations to such improvements without prior written consent of the City. For purposes of this Section, an alteration of the Site is considered to be "substantial" if it requires the issuance of a City building permit. In the event Athens determines that a substantial alteration is necessary, such alteration shall not be undertaken without providing written notice to the City accompanied by plans and specifications detailing the proposed alteration. Athens' notice, plans and specifications for a proposed alteration must be provided to the City in a manner giving City staff sufficient time to thoroughly review the proposed alterations before determining whether to provide written City approval for said alterations (which approval shall not be unreasonably withheld, conditioned, or delayed). Notwithstanding the foregoing, Athens shall be entitled, without need for written City consent, to make non-structural alterations to completed Project improvements to the extent such alterations are intended to increase the efficiency of or to improve

the appearance of the Site, the Facility and their operations, and do not require City building permits.

b. Athens is required to incorporate new technology reasonably available to control environmental impacts of the Project as needed to meet the following performance goals: (i) standards set by applicable regulations (including, without limitation, South Coast Air Quality Management District Rule 410), or (ii) as reasonably needed to meet the environmental Performance Standards set forth in this Agreement, or (iii) as required to respond to citizen complaints as required by Section 5.5 of this Agreement. Such technology upgrades shall be undertaken at Athens' sole cost.

4.3 Commencement of Operations. For purposes of this Agreement, the Facility's Commencement of Operations shall occur after the following two conditions have been met: (i) Phase 1 of the Project's improvements as set forth in the Development Agreement have been completely built-out, and (ii) all City certificates or Permits necessary for occupation and operation of such improvements have been issued. The completion of these two conditions precedent shall trigger the date of the Commencement of Operations. The date of the Commencement of Operations shall also initiate the following rights and obligations:

a. *Host Fee Commences with Commencement of Operations.* The Commencement of Operations shall be deemed to be the trigger for Athens' Host Fee obligations regardless of whether the Facility has actually started to accept Permitted Waste and/or Recyclables (excepting that the Host Fee Deposit and certain initial payment/escrow funds will be made at the times stated in Exhibit "E").

b. *Written Notice to City.* Athens shall promptly provide the City written notice of the precise date of the Commencement of Operations. In this notice, Athens shall also notify the City of the volume and/or types of Permitted Waste that Athens anticipates to accept at the Facility on or about the date of the Commencement of Operations.

c. *Commencement of Athens' Right to Accept Permitted Waste.* On the date of the Commencement of Operations Athens shall have the right to start accepting and processing Permitted Waste at the Facility.

d. *Warranty of Capacity to Accept/Process Permitted Waste.* Starting on the Commencement of Operations, Athens warrants the Facility will be ready to receive and process Permitted Waste as appropriate to the Project improvements then in place. Athens further warrants that it will utilize Reasonable Business Efforts to accept and process Permitted Waste and Recyclable Materials at the Facility and to utilize all completed Facility components.

4.4 Full Operations. With the Commencement of Operations, Athens shall maintain any constructed component of the Facility in a fully operational state, such that such Facility components and Site improvements will be capable of performing as required hereunder and capable of so operating in compliance with all Performance Standards and Operational Obligations.

4.5 Materials Flow. With the Commencement of Operations, Athens shall maintain a consistent and efficient flow of Refuse and Recyclables into and out of the Facility. At such time

the relevant portion of the Facility is constructed and to the extent Athens is reasonably and lawfully able to do so, Athens shall exercise its flow control management in such a manner as to establish the Facility as the sole or primary destination for all Permitted Waste generated within the City or collected by Athens in the area. The goal of maintaining an efficient waste stream shall be the Diversion of Refuse and Recyclables away from landfills, with priority being the marketable recycling or re-use of materials. The following chart summarizes the Parties' understanding of how various MMW and Recyclables will be processed through the waste stream under Athens' control:

**Irwindale MRF/TS - Materials Flow**

<b>Inbound</b>	<b>Processing:</b>	<b>Outbound</b>
Municipal Solid Waste	MRF/TS	<ul style="list-style-type: none"> <li>• Recyclables Market</li> <li>• Compost Facility</li> <li>• Landscape Markets</li> <li>• Inert Processors</li> <li>• Landfill</li> <li>• Conversion Technology Facility</li> </ul>
Residential/Commercial/Industrial Source Separated Recyclables	MRF	<ul style="list-style-type: none"> <li>• Recyclables Market</li> <li>• Inert Processors</li> <li>• Landfill</li> <li>• Conversion Technology Facility</li> </ul>
Residential/Commercial/Industrial Source Separated Green Waste, Wood Waste, and Organics	Green Waste	<ul style="list-style-type: none"> <li>• Compost Facility</li> <li>• Landscape Markets</li> <li>• Landfill</li> <li>• Conversion Technology</li> </ul>
Self Haul	Self Haul	<ul style="list-style-type: none"> <li>• Recyclables Market</li> <li>• Compost Facility</li> <li>• Landscape Markets</li> <li>• Landfill</li> <li>• Conversion Technology</li> </ul>
Construction and Demolition	C&D Processing	<ul style="list-style-type: none"> <li>• Recyclables Market</li> <li>• Inert Processors</li> <li>• Compost Facility</li> <li>• Landscape Markets</li> <li>• Landfill</li> <li>• Conversion Technology</li> </ul>

**ARTICLE 5.0**  
**PERFORMANCE STANDARDS**

5.1 General Obligation. Beginning from the Start-Up Period of Facility operations, Athens covenants to comply with all Performance Standards throughout the Term of this

Agreement and to perform its Operational Obligations with respect to Facility operation as required hereunder, by the Development Agreement, in accordance with accepted practice for comparable facilities, sound management and operations practice, any applicable TPR, Final Plans and Specifications, Permits, Applicable Law, and any other covenants, conditions and restrictions pertaining to the Facility.

Athens shall not use or permit the use of the Facility for any purpose other than those contemplated by this Agreement and the Development Agreement, and Athens shall not-accept, transfer, recover or process any materials other than Permitted Waste and Refuse allowed pursuant its Permits and Applicable Laws.

## 5.2 Environmental Performance Standards.

a. *Air Quality and Odor Standards.* A standard operations/maintenance manual for odor reduction, formulated and tested for effectiveness by first-hand experience at Athens' existing facility, will be in place and followed from the first day of Facility operations. Athens shall operate the MRF/TS in compliance with all requirements, recommendations, and best management practices (“BMPs”) and/or mitigation measures for minimization and mitigation of air quality and odor impacts as detailed in Chapter 3.3 of the EIR, including but not limited to, compliance with all California Air Resources Board (“CARB”) and SCAQMD standards, rules, and regulations. All Athens' vehicles using the Facility shall meet CARB and SCAQMD requirements. To further minimize odor and air quality impacts from the Facility, Athens agrees to the following:

(1) To install and diligently maintain odor control equipment in the MRF/TS, including without limitation an exhaust ventilation system with exhaust air drawn through state-of-the-art odor neutralizing systems or compounds and dust filtration system; a water misting system to control dust in the tipping area and transition areas of the building where handling of solid waste tends to release dust; complete enclosure of the facility, with all tipping, sorting and transfer operations taking place indoors; and doors on all vehicle entrances and exits on the Facility. Airflow and odor control equipment throughout the Facility will be managed automatically by software controls and barometric louvers to insure that all airflow is directed in to the building and through the filtration system. The exhaust ventilation system shall be in full operation while tipping, transfer, or sorting operations are taking place, and shall be run to the extent necessary during non-operational periods to ensure odors cannot escape from the closed Facility. All Facility doors shall be kept closed except when actually in use.

(2) Athens will direct all Facility users and Self-haulers to discharge Permitted Waste and will conduct all recovery and processing inside the buildings so designated in the Final Plans and Specifications. Minimized building openings will assist in odor control and noise reduction of interior operations.

(3) All paved areas of the Site, and the interior of the Facility, shall be swept at least once each operating day. Work platforms and sorting areas will be swept once each shift and machinery shall be cleaned on a weekly basis. The tipping floor and Green Waste areas shall be swept routinely throughout the day by power sweepers and by janitors with brooms to remove refuse, dust, and debris. These areas shall also be periodically power scrubbed or scraped

during nighttime operations. All liquid waste from the power scrubbing of the tipping and Green Waste floors, truck loading areas, and canopy wash areas shall be discharged to the municipal sewer system under permit from the Los Angeles County Sanitation Districts.

(4) MMW shall be handled in a first-in, first-out basis such that Refuse and Recyclables, including the unrecovered remainder of the sorting processes and waste brought to the Facility for transfer, remains on Site no longer than forty-eight (48) hours after its arrival, and recovered recyclable materials are shipped off Site as soon as full-load quantities are recovered but no longer than thirty (30) days. All recovered plastics and organic materials shall be stored indoors. Quick action roll-up doors will be used continuously at vehicle entries to minimize exterior exposure to the operations.

(5) Athens will make dust masks available to employees, customers and members of the public while they are inside the MRF/TS during extant dust conditions.

(6) Notwithstanding the foregoing, Athens may use different technologies and equipment to achieve Air Quality and Odor Standards as may be reasonably approved by the City in writing provided that such technologies and equipment are as effective or more effective as the methodologies and technologies specified in this Section 5.2a.

b. *Hazardous Materials Standards.* Athens shall operate the MRF/TS in compliance with all requirements, recommendations, mitigation measures and BMPs for minimization and mitigation of hazards and hazardous materials impacts as detailed in Section 3.4 of the EIR. Although Athens shall not knowingly accept Hazardous Materials at the Facility, from time to time the MRF/TS could receive some materials considered hazardous mixed with normal non-hazardous MMW loads. The following measures and standards shall, at a minimum, apply to Hazardous Materials at the Site:

(1) Facility management shall be experienced, knowledgeable and trained in the Applicable Laws and regulations concerning Hazardous Materials and shall ensure that all employees receive specific training as it relates to their job assignments. Special attention should be given to tipping floor personnel including forepersons and spotters. Training will be performed periodically, when an employee is assigned to a new position, or upon the assignment of a new hire.

(2) Every load coming into the Facility tipping floor will be visually screened for any suspicious materials such as unlabeled containers, barrels, used motor oils, car batteries, and any other items indicating the presence of Unpermitted Materials. Random documented load checks will be performed daily at the direction of the tipping floor leadership. These inspections must be recorded in the appropriate form provided for that purpose.

(3) Any Hazardous Materials found at the Facility must be removed from the Site using the appropriate protective equipment to area(s) identified for temporary storage of such waste. To this end, the appropriate Facility manager will be informed immediately to arrange moving any Hazardous Materials to the Facility's "Hazardous Waste Storage Cabinet" or hauled off Site for proper disposal, as appropriate. Every twenty-four (24) hours or when the Storage Cabinet is full (whichever comes first), Athens will arrange for pick-up and disposal of

Hazardous Materials by a licensed Hazardous Materials hauler. Athens shall arrange for an earlier or immediate disposal of Hazardous Materials by a licensed Hazardous Materials hauler if required by any Applicable Law.

c. *Water & Soils Quality Standards.* Athens shall operate the MRF/TS in compliance with all requirements, recommendations, and BMPs for minimization and mitigation of water and soils quality impacts as detailed in Chapter 3.5 of the EIR, including but not limited to:

(1) Pollutant discharge from the Site must be prevented using BMPs issued under a NPDES General Permit (administered by the Los Angeles RWQCB under SWRCB Water Quality Order 99-08-DWQ) prior to development. This permit will include the preparation of a site specific SWPPP. The SWPPP further also outline stormwater sampling and BMP inspection requirements. Athens agrees to implement and maintain compliance with all requirements imposed under these permits.

(2) Development of, and compliance with, an Erosion and Sediment Control Plan and associated BMPs.

(3) The Facility shall be designed and maintained in accordance with the U.S. Green Building Council (USGBC).

(4) The perimeter of the Site will be covered with, and Athens shall maintain, vegetation landscaping and a wall, thus, preventing off-site runoff from entering the facility. Athens shall exercise BMP to assure that the Site will be graded such that no stormwater flow can leave the Site without first passing through a bioremediation swale system.

d. *Noise Standards.* Athens shall comply with existing City noise standards during operation of the MRF/TS and all mitigation measures and recommendations detailed in Chapter 3.8 of the EIR, and any required measures in the 2020 FEIR, including but not limited to:

(1) In construction of the Project, Athens shall implement and comply with those mitigation measures set forth in Section 3.8.3 of the EIR for construction activities.

(2) For operational impacts, per the City of Irwindale noise ordinance, Athens shall not cause operational-related noise levels at the Site boundary exceeding over five dB over the ambient or the ambient base noise levels as set forth in Irwindale Municipal Code Section 9.28.030, whichever is greater, when measured at any boundary line of the Site.

(3) Throughout Facility operations, for the southern Site boundary along Live Oak Avenue (except for the driveway cutouts) and along the southwest property boundary (for approximately the first 450 feet of the property boundary north of Live Oak Avenue), Athens shall maintain an 8-foot perimeter masonry soundwall on top of a two-foot berm so that the effective height of the soundwall would be 10 feet.

(4) Throughout Facility operations, Athens shall take all reasonable steps to immediately address and resolve nighttime operations using BMPs (10 p.m. – 7 a.m.) that result in verified noise complaints to eliminate objectionable noise during the nighttime hours.

Potential measures may include without limitation, moving the operation further from nighttime sensitive receptors, moving the activity indoors during nighttime hours, or conducting the objectionable activity during daytime hours.

(5) For transportation noise, exceeding over five dB over the ambient or the ambient base noise levels as set forth in Irwindale Municipal Code Section 9.28.030, whichever is greater, when measured at any boundary line of the Site.

(6) All tipping, transfer, and sorting operations shall occur inside an enclosed building, with doors on all vehicle entrances and exits which are kept closed unless actually in use. Facility doors shall be kept closed when not in use, particularly at night, to prevent escape of noise.

(7) The Site perimeter shall be ringed by a masonry soundwall. Outdoor operations, maintenance, and construction activities shall be scheduled to ensure that any particularly noisy activities occur during normal weekday business hours. All Athens' service vehicles accessing the Site will be maintained with mufflers in good working order and backup alarms kept set at the lowest volume allowed by Applicable Laws. Use of vehicle horns shall be discouraged on Site except as necessary to alert workers of an emergency situation.

(8) Athens will cooperate with the Public Works Director to address other substantiated noise complaints which can be mitigated through Reasonable Business Efforts.

e. *Litter and Pest Vector Standards.* Athens shall maintain the Facility and Site in a neat and orderly condition, unfavorable to rodents and insects, including cleanup of litter and debris on Site and along roads near the Site, at a minimum, daily, or as frequently as necessary to comply with this requirement. In addition:

(1) Athens will develop and implement a rodent and insect management program, including contracting with a professional pest control company to inspect the Facility on a periodic basis, no less often than once per month. In the event of apparent pest vector activity, within twenty-four (24) hours of City direction, Athens shall implement vector control measures sufficient to remedy the vector nuisance. Traps and baits will be placed and spraying for insects conducted in accordance with the recommendations of the pest-control firm in order to maintain the Facility and Site in a pest-free condition to the satisfaction of the Local Enforcement Agency and on an as-needed basis to mitigate any verified public complaints of pest vectors.

(2) The Facility buildings shall be designed and maintained in such manner as to facilitate cleaning and to minimize hiding places that might harbor pests. Athens shall exercise Reasonable Business Efforts to ensure that the Facility is operated through the use of pest-proof materials such as metal and concrete; minimizes hiding places such as dark corners, crevices and inaccessible void spaces where debris might accumulate and pests may hide and breed; and ensuring that all areas of the Facility (including machinery pits, baler sumps, etc.) are easily accessible and adequately lit for cleaning purposes.

(3) All areas of the Facility, including tipping areas and work platforms, shall be swept at least daily either by hand or mechanical sweeper (excepting that the

MRF shall be swept routinely throughout the day by mechanical sweeper to pick up any litter on paved surfaces). A cleaning crew shall daily remove litter from landscaped areas. Further, walls, fencing and landscaping surrounding the Site shall be maintained to prevent any windborne litter from blowing offsite. Materials accepted at the Facility for sorting shall be handled in a first-in, first-out basis and in all cases are processed and the remainder of unrecoverable wastes removed from the property within forty-eight (48) hours of arrival. Recovered recyclable materials are also handled on a first-in, first-out basis and shipped out by individual load to minimize inventories and ensure older materials do not accumulate on site to act as a home for insects and vermin. Sorting machinery is cleaned thoroughly by dry methods on at least a weekly basis.

(4) Traps and baits will be placed and spraying for insects conducted in accordance with the recommendations of the pest-control firm in order to maintain the facility and site in a pest-free condition to the satisfaction of the Local Enforcement Agency.

f. *Greater Standards.* Where any conditions of approval for the Project provide for more stringent standards or measures than are specified in this Article 5, then such greater or more stringent standards or measures shall apply.

### 5.3 Parking, Trucks and Traffic Performance Standards.

#### a. *Parking & Parking Lot Circulation.*

(1) **Regular Parking:** A total of 326 parking stalls will be provided for the Project, consistent with what is permitted and described in (1) the SP and DR Permit and (2) 2020 FEIR. Parking stall sizes and driveways will be per City standards and all Applicable Laws.

(2) **Transfer Truck Parking:** Transfer truck parking shall be provided consistent with what is permitted and described in (1) the SP and DR Permit and (2) 2020 FEIR. A total of nineteen (19) parking stalls for transfer trucks shall be provided.

b. *Traffic Circulation.* Internal traffic circulation and ingress and egress from the MRF/TS shall comply with and at all times maintain the Site circulation mitigation measures set forth in Section 3.12.8 of the EIR and as revised by the 2020 FEIR. Employee shifts shall be scheduled so that employees do not arrive or depart during peak traffic hours. Athens' trucks shall use the routes for ingress and egress to and from the Site as shown in Exhibit "F" hereto. Athens will use Reasonable Business Efforts to enforce measures to assure that the designated access corridors to and from the Facility to the I-605 or I-210 freeways are utilized in connection with the operation of the Facility. Attached hereto as Exhibit "F", and incorporated herein by this reference, is the proposed Route and Circulation Plan for Athens' proposed Site ingress/egress and collection routes. Athens will ensure that a tow-truck will be on call to remove any trucks that break down and create traffic problems on the designated route between the Facility and the freeways. Further, Athens shall implement and maintain a policy of, at least every five (5) years, reviewing the Refuse carrying capacity of its Refuse transfer and hauling trucks and, based upon the findings of such five-year review, replacing smaller or less efficient vehicles with larger or more efficient trucks in an effort to reduce the overall number of Refuse hauling vehicles on City streets.

c. *Cleaning of Access Corridors.* An Athens Services street sweeper will sweep the westbound curb lane of Live Oak Avenue, the eastbound curb lane of Arrow Highway, and the middle turn lane of Arrow Highway, adjacent to the facility, on a daily basis each day the facility is in operation. In addition, Athens shall implement daily litter pick-up along adjacent properties, adjacent streets and along transportation corridors, such that any litter resulting from Athens' operations (including Athens' customers delivering waste to the Site) will be removed. Athens' obligation to clean-up debris in public right-of-ways and/or transportation corridors shall apply regardless of whether such debris was inadvertently spilled or intentionally dumped.

d. *Enclosure of Trucks.* All Commercial/Institutional Haulers and Athens collection vehicles shall be enclosed and free of debris prior to leaving the Site to eliminate spillage. No uncovered vehicles are permitted to leave the Site unless they are empty. Athens shall further exercise Reasonable Business Efforts to encourage Selfhaulers to cover their vehicles to eliminate spillage, including publicly-posted rules and instructions for the enclosure and/or securing of Refuse in Selfhauler vehicles. Athens shall maintain at the Facility extra tarps on-hand to replace faulty or missing tarps on vehicles. Persons repeatedly in violation of Athens' rules and regulations regarding the enclosure and securing of transported Refuse, or Persons who otherwise repeatedly cause Refuse spillage and residue, may be denied service at the Facility or Athens may adopt a fine schedule for repeat violations of the enclosure requirement. All loads leaving the Site shall be monitored to make sure they do not track out or drop materials onto public roadways as they depart.

e. *Traffic Queuing on City Streets.* Athens shall provide a level of services at the Facility such that City streets surrounding the Site, particularly Live Oak Avenue, Arrow Highway and Baldwin Park Blvd., shall be free of any queuing of vehicles entering or leaving the Facility. Athens shall staff the Facility as needed to meet this Performance Standard and Athens shall manage vehicular queuing on entrance and exit corridors to the Site such that there shall be no vehicles queued and awaiting service in any public street.

f. *Vehicular Turnaround Time.* Athens will make Reasonable Business Efforts to ensure that each waste collection and delivery vehicle utilizing the MRF/TS is able to complete unloading at the Facility after no more than thirty minutes (30) minutes, absent vehicle breakdown or driver negligence.

#### 5.4 Additional Performance Standards.

a. *Rotation of Refuse.* Refuse will be moved off-site within 48 hours of delivery.

b. *Lighting.* All Site lighting shall be shielded to avoid off-site glare.

c. *Reclaimed Water.* The MRF/TS shall be developed for and shall use reclaimed water when available.

d. *Green Building.* Athens shall maintain the Facility in a "green" building design with LEED certification. Athens will maintain "green" building design elements including, without limitation, recycled content and local building materials, daylighting with clerestory windows and skylights, low flow plumbing fixtures, energy efficient lighting, high performance

HV AC systems and a cool roof design. Site "green" design elements to be maintained shall include, without limitation, low water use landscaping, reflective paving, irrigated trees and shading in parking areas, efficient/directed site lighting and storm water pollution prevention devices. Irrigated tree planters in the parking areas shall be maintained and nurtured for the preservation of healthy, mature, full-growth trees to provide adequate shade (including the use of sunken irrigation systems as needed to prevent the roots of shade trees from damaging surface concrete). Athens shall also cooperate with Southern California Edison to obtain grants for solar power systems, variable speed motors and other energy efficiency measures.

e. *Facility Aesthetics.* The exterior design of the Facility shall be maintained consistent with its Mediterranean architecture with varying parapet heights, vertical tower elements, arcades, arched entry structures and deeply recessed exterior fenestrations to break the building into smaller scale forms. Athens shall maintain the exterior materials in colors plaster colors traditional to Mediterranean design (generally earth tones or muted pastels), roof tiles, wrought iron and decorative tile accents, accentuated building cornices and plaster building ornaments. Changes in exterior materials or color schemes shall be subject to City approval, which approval shall not be unreasonably withheld, conditioned, or delayed.

f. *Fire Prevention & Emergency Response.* Athens will implement and maintain fire prevention measures accordance with County Fire Codes and Applicable Law. Further, Athens will maintain, at a minimum, those fire prevention and emergency response measures identified in Exhibit "H" hereto. Athens shall notify the City in writing of any changes to the protocols in Exhibit "H" and such changes shall be subject to the City's approval (which approval shall not be unreasonably withheld, conditioned, or delayed, or which approval shall not be required where the changes to Exhibit "H" are required by law). Athens shall thereafter promptly provide the City with a revised Exhibit "H" reflecting the approved or legally required changes.

#### 5.5 Remedies for Failure to Observe Performance Standards and Nuisance Violations.

a. *Complaints Received by City.* Complaints received by the City regarding MRF/TS operations and Athens' performance will be transmitted by the Public Works Director to Athens in writing. Athens shall investigate each complaint reasonably made, take corrective action and respond to the complaining party to the extent deemed necessary, and subsequently report any such action to the City by email. Athens shall maintain a log of complaints received and corrective actions implemented in accordance with the requirements of the Facility's Solid Waste Facility Permit as enforced by the LEA, which log shall be available for City inspection at the Facility during normal business hours.

b. *Complaints Received Directly by Athens.* Athens shall also take corrective action on any public complaints reasonably made that are directly received by Athens. Complaints received by Athens and Athens' corrective actions thereon shall also be entered into the log described in Subsection (a) above.

c. *City Investigation.* In the absence of public complaint, the City may also initiate its own investigation of the Facility if it has a reasonable belief that Athens is failing to observe Performance Standards or a nuisance condition is occurring. If the City, based on its own

observations or investigations, discovers any conditions violating the terms of this Agreement (including but not limited to failure to observe any Performance Standards or regulatory agency requirements, or the production of any nuisance condition), City shall include a written description of the violation to Athens with a reasonable time to cure. Athens shall investigate all problems so identified by the City and take corrective timely action thereon and include such complaints and corrective actions in the log and the email report to the City as described in Subsection (a) above.

d. *Nuisance Conditions.* Repeated, substantiated complaints of, or continued conditions of, poor service quality, failure to observe Performance Standards, regulatory agency requirements, and/or nuisance conditions may be handled in the manner prescribed below. For purposes of this Section, the term “nuisance conditions” shall include, but is not limited to, the following:

(1) Traffic queuing on City streets and/or recurrent failures to meet standards for vehicular circulation onto, through and away from the Site as required by Section 5.3;

(2) Failure to clear debris and litter attributable to Athens' operations and customers found upon and in the immediate surrounding area near the Facility and along immediate access routes, traffic corridors and public rights-of-way as required by Section 5.3 or the maintenance of the Site in such a manner as to facilitate a pest infestation;

(3) Poor maintenance of Athens trucks in violation of Section 6.17;

(4) Violations of safety standards required under Applicable Law or by this Agreement;

(5) Use of unqualified or incompetent employees by Athens in violation of this Agreement, including but not limited to violations of Section 6.8 hereof;

(6) Odor, air quality, soil or water conditions violating those standards stated in the conditions of approval applicable to the Project, Sections 5.2(a) and 5.2(c) hereof, and/or the EIR;

(7) Violations of the City’s noise ordinance and other noise-related requirements found in the conditions of approval applicable to the Project, Section 5.2(d) hereof, the EIR or Applicable Law;

(8) Failure to maintain landscaping at the Site in an attractive and professional manner;

(9) Failure to repair, reconstruct or repaint any structure(s) or equipment which has been materially damaged or have materially deteriorated, regardless of whether such deterioration is due to poor maintenance or through the course of normal wear and tear. For purposes hereof, “material” damage or deterioration means the equipment or structures are performing at a level 10% or more below their full operational capacity and/or the equipment or structures present an unprofessional, nuisance appearance to the public view;

(10) Any similar recurrent violation of the Performance Standards or Operational Obligations stated in this Agreement;

(11) Any enforcement action taken by the LEA that requires closure of the Facility for any 24-hour period and/or requires a judicial or administrative remedy prior to re-opening the Facility;

(12) Knowingly accepting Unpermitted Waste or violation of the standards relating to Hazardous Materials, including violations of Section 5.2(b) hereof;

(13) Closure of the Facility in violation of this and other Agreements;

(14) Misconduct with respect to scale operations, knowingly misrepresenting measurements or persistent violations of Applicable Laws governing weights and measures;

e. *Notice of Violation.* Violations listed in Section 5.5(e) above, as items (1) through (10) shall be deemed “minor” in nature, while violations in categories (11) through (14) shall be considered “major.” Repeated violations in any minor category may become major violations for purposes of this Agreement. Initially, when the Public Works Director or a designated enforcement officer observes a violation, a verbal warning shall be given to the Athens official or employee managing Facility operations. If the violation is thereafter repeated and, in the opinion of the City’s Public Works Director or designated enforcement officer, Athens has not taken timely, effective action to correct the violation and prevent its repetition, then the Public Works Director or designated enforcement officer may instate the provisions of Article 12.0 hereof and may subject Athens to additional liquidated damages.

f. *Remedies for Severe, Persistent or Major Violations.* Should ATHENS' violations be severe and repetitive or otherwise not reasonably subject to correction, or if the violations qualify as “major” violations as defined in Section 5.5(e), the Public Works Director may, in his sole discretion, immediately institute the procedures set forth in Article 12.0 hereof.

g. *No Waiver of City’s Police Powers or Legal Rights.* Nothing in this Agreement is intended to limit the power and ability of the City or any LEA to initiate administrative and/or judicial proceedings for the abatement of nuisance conditions or violations of any applicable law. Nothing herein shall waive or limit any other legal rights or recourses the City may have in response to Athens' repeated, material violations of Performance Standards or failure to mitigate nuisance conditions.

5.6 City Municipal Code Procedures. The procedures set forth in Section 5.5 above are non-exclusive. In lieu of the procedures and remedies stated in Section 5.5, the City may, in its sole and absolute discretion, utilize any administrative citation or administrative procedures contained in the City Municipal Code relating to the abatement of nuisances and/or violations of the Municipal Code, as may be amended or renumbered; provided, the Agreement can only be terminated pursuant to the provisions of Article 12.0.

5.7 City’s Right of Entry. City reserves any rights of entry it may have to the Site pursuant to law, as well as a right of immediate entry to the Site in the event an emergency situation

that threatens public health, safety or welfare, and any other remedies available by law or under the terms of this Agreement or any other Agreements. Upon learning of the situation, City shall attempt to notify Athens of the situation as soon as possible. Upon receiving such notice from City, Athens shall immediately advise City whether Athens is unable or unwilling to take responsive action or make arrangements for a third party to respond to the situation. City may immediately enter the Site, whether by its own forces or a contracted third-party, to respond to the situation if (i) City is unable to notify Athens, or (ii) Athens advises City that it is unable or unwilling to respond to the emergency situation, or (iii) Athens' inaction or delay manifests no intention of responding to the circumstances.

City's entry to the Site pursuant to this Section shall be without liability to City for any loss or damage that may accrue to Athens' merchandise, fixtures, or other property or to Athens' business by reason thereof unless such loss or damage is caused by City's negligence or willful misconduct.

Any costs, expenses or damages incurred by City in responding to circumstances warranting City's entry to the Site shall be paid by the City unless the cause for such entry was a breach of this Agreement by Athens. In the event that such entry by the City is the result of a breach of this Agreement or Other Agreements by Athens, City shall send Athens written notice and an invoice of all costs, expenses or damages reasonably incurred by City in its response to such circumstances. Within five (5) business days, Athens may contest in writing the costs, expenses or damages, in whole or in part, identified by City. City shall consider Athens' written contest of costs, expenses or damages in good faith and determine, in the City's sole discretion, whether to reject, accept in part, or accept fully the position taken by Athens; City shall promptly notify Athens of its determination in writing. Athens shall reimburse to City all costs, expenses or damages as finally determined by City within ten (10) business days of issuance of the City's final determination or, if Athens never contested the costs, expenses or damages originally identified by the City, Athens' reimbursement shall be made within ten (10) business days of the City's initial notice and invoice of costs, expenses or damages. If Athens fails to make such payment when due, the same shall accrue interest as provided in Section 12.6 and shall be a material default of this Agreement, subject to all rights and remedies herein. In the event that such entry by City was not the result of a breach of this Agreement by Athens, then the City shall reimburse Athens for all of its costs, losses and expenses arising from or related to such entry.

## **ARTICLE 6.0**

### **OPERATIONAL OBLIGATIONS**

6.1 Disposal and Recycling of City Refuse. All Refuse gathered from City facilities or from City operations, including maintenance, may be deposited in the Facility without charge. Athens shall use Reasonable Business Efforts to recycle such Refuse pursuant to the Act and this Agreement.

6.2 Governance and Rate Setting. Athens shall set its own rates for various classes of customers of the Facility in a manner which makes usage of the Facility competitively attractive. As of the Effective Date of this Agreement, Facility use rates are those reflected in Exhibit "G" hereto. Residential self-haul customers who reside within the City shall be entitled to dispose of their residential self-haul waste generated in such customers' homes at no cost at the MRF/TS.

6.3 Host Fees. As part of its Operational Obligations, upon the commencement of the first year of operations, and of every operating year thereafter until the termination or expiration of the Agreements, Athens shall pay the Host Fee to the City as specified in Exhibit "E" hereto.

6.4 General Facility Operations. Athens shall be responsible for staffing any constructed phase of the Facility during the term of this Agreement and any extensions thereto. Athens shall exercise all Reasonable Business Efforts in maintaining and cleaning the Facility, including but not limited to the MRF/TS, Buyback/Recycling Center facilities, Green Waste areas, construction debris areas, administrative offices, employee areas, maintenance buildings, household hazardous waste operations, public education areas and all accessory operational areas. In addition, Athens shall secure, pay, and maintain all certificates, Permits, government fees, licenses and inspections necessary for the operation of the Facility. Athens shall pay all costs associated with the operations of the Facility including but not limited to accounting, purchasing, payroll, personnel, material marketing functions, general and administrative overhead costs including all costs of utilities required for operations. Furthermore, all operations of the Facility shall conform in all material respects to the standards contained in Permits, any Transfer/Processing Report ("TPR"), all Agreements including this Agreement, industry practices for similar facilities, sound management and operations practices, any operations/maintenance manuals, all Permit conditions and Applicable Law. In the event of any controversy or dispute over the meaning or application of these requirements, the decision of the City's management shall be determinative, subject to a right of appeal to the City Council.

a. *General Maintenance.* Athens shall maintain the Facility and the Site in good working order and repair, including landscape, building and equipment maintenance and repair; cleaning and painting the Facility; street sweeping; maintaining any spare parts inventory; and generally performing periodic maintenance in accordance with any applicable TPR and any regulatory requirements or Applicable Law. In anticipation of any potential emergency operation during Facility equipment failure and/or power outages, Athens shall always maintain at least one loader on the Site for transfer operations, together with a standby generator. Athens shall maintain the aesthetic appearance of the Facility and Site in accordance with the Plans and Specifications, and Athens shall make Reasonable Business Efforts to perform preventative maintenance and implement landscaping/architectural elements as needed to prevent public complaints about the Site or Facility and to prevent the creation or maintenance of any public nuisance.

b. *General Safety.* Athens acknowledges that worker safety and fire prevention is of critical importance to the City, and shall conduct Facility operations in a safe manner, in accordance with Applicable Law and any fire-related Permits, requirements of insurance carried pursuant to this Agreement and the Agreements, and standard practices in the waste management/materials recovery industry. Athens will require that all pickers wear dust masks, steel-toed boots, safety glasses and gloves to the extent required by Applicable Law. Athens will train all laborers in safety procedures in accordance with Applicable Law. Athens shall direct traffic upon entry to the Site so that it travels, queues, unloads and exits in a safe manner. Athens shall provide and maintain all necessary and appropriate fire control equipment, including but not limited to an alarmed sprinkler system, fire hoses and extinguishers.

6.5 Diversion of Permitted Waste. Athens shall use Reasonable Business Efforts to maximize recovery and processing of delivered Permitted Waste and Diversion of Recovered

Materials and marketing of such materials. Athens acknowledges that this obligation is in addition to and not derogation of its Performance Standards and Operational Obligations. Notwithstanding the foregoing, Athens shall not be liable for damages or be deemed in default of this or other Agreements if it is meeting its Performance Standards and Operational Obligations.

6.6 AB 939. Athens acknowledges that the City is mandated to meet the requirements of AB 939 that requires the City to Divert fifty percent (50%) of the City's municipal solid waste away from landfills. Upon Athens receiving an Occupancy Permit for the Facility, it will make Reasonable Business Efforts to recover, process and Divert Recovered Materials from delivered Permitted Waste collected within the City to assist the City with AB 939 compliance. Furthermore, the City anticipates that the State Legislature will adopt new legislation that will increase the minimum Diversion requirement and/or add new Diversion program requirements, such as the required Diversion of food wastes. Upon the effective date of any new legislation that affects the Diversion requirements currently imposed by AB 939, Athens will comply with said changes-of-law pursuant to Section 6.7, below, and the City will reasonably cooperate with Athens to provide any approvals or changes in City policy (consistent with Applicable Law) as reasonably needed for Athens' implementation of a revised or new Diversion program meeting amended legislative requirements. In the course of meeting and conferring with regard to any revised or new Diversion program, the City and Athens may consider, without limitation, the throughput of Recyclable Waste and recyclable rich waste, the quality of recovered materials, and the marketing of recovered materials.

6.7 AB 939 Guarantee and Indemnification. Without in any way limiting the indemnification provisions in Article 12.0 hereof, Athens unconditionally guarantees compliance with the requirements of AB 939 as amended from time to time. Athens shall carry out its obligations under this Agreement so that the City will meet or exceed the diversion requirements set forth in AB 939, and all amendments thereto, as more fully set forth below. City and Athens shall reasonably assist each other to meet the City's AB 939 diversion requirements. In carrying out the provisions of this Section, Athens agrees to perform the following obligations at its cost and expense:

- a. Defend, with counsel approved by City, indemnify and hold harmless the City against all fines and/or penalties imposed by the Board, if Athens fails or refuses to provide information relating to its operations which is required under this Agreement and such failure or refusal prevents or delays City from submitting reports required by AB 939 in a timely manner;
- b. Assist City in preparing for, and participating in, the Board's biannual review of the City's source reduction and recycling element pursuant to Public Resources Code Section 41825;
- c. Assist City in responding to inquiries from the Board in applying for an extension under Public Resources Code Section 41820, if so directed by City; in conducting any hearing conducted by the Board relating to AB 939; or in any other investigative or enforcement manner undertaken by any agency;
- d. Defend, with counsel acceptable to City, and Indemnify and hold harmless the City against any fines or penalties levied against it for violation of AB 939's Diversion

requirements, excepting any fine or penalty imposed if City's failure to meet the Act's Diversion requirements is the result of an order.

e. In cooperating with the City, should it seek to become its own enforcement agency, to the extent it may be permitted under Applicable Law.

#### 6.7 Personnel and Subcontractors.

a. *Athens' Employees.* Athens shall engage qualified and competent employees, including managerial, supervisory, clerical, maintenance, and operating personnel in numbers necessary for safe and efficient Facility operation and to perform Athens' Performance Standards and Operational Obligations. Athens shall use Reasonable Business Efforts with the goal of hiring employees who are residents of City. Athens shall inform City of its initial and continuing outreach programs to hire City residents. Athens shall train its staff to perform work in a safe and efficient manner in accordance with a health and safety plan to be developed by Athens, and subject to City review, comment and approval, and Athens shall ensure that each staff person treats customers, Selfhaulers and other members of the public with professionalism and courtesy. Facility management will become familiar with regulations and Applicable Laws concerning Hazardous Materials and ensure that all employees receive specific training as it relates to their job assignments. Special attention should be given to tipping floor personnel including forepersons and spotters. Training will be performed periodically, and when an employee is assigned to a new position.

b. *Approved Subcontractor List.* Prior to opening Facility operations, Athens shall provide the City's Public Works Director with a complete list of subcontractors that Athens may utilize for (i) Unpermitted Waste disposal and Hazardous Material disposal services, (ii) Facility management, or (iii) contract services that are a component of Facility operations. Athens shall not utilize outside contractors for any material performance of its obligations hereunder except those expressly listed. The list of potential subcontractors shall describe the type of contract work each subcontractor is licensed to perform and Athens shall warrant that each listed subcontractor is duly licensed and qualified to perform the type of work that may potentially be performed by each subcontractor.

c. *Use of Subcontractors.* Facility subcontractors shall be utilized at Athens' sole cost (except to the extent paid as part of a joint cooperative effort with the County of Los Angeles or other governmental entity) and without any impact upon Host Fees paid to the City. All subcontractors shall be licensed as required under Applicable Law to perform their subcontracted work and obtain and maintain a City business license if required by Applicable Law. Athens shall remain otherwise liable for the full and complete performance of its obligations hereunder, including the payment of Host Fees, and those obligations and duties under the Other Agreements.

6.8 Facility Equipment. Athens shall employ and maintain all equipment necessary for the effective operation of the Facility, at its sole cost and expense, substantially in accordance with reasonable care according to industry standards, any Applicable Laws, the terms of any Permits or the Agreements, this Agreement, any operations/maintenance manuals, or any applicable TPR.

6.9 Receiving Hours. The MRF/TS may (but shall not be required to) operate twenty-four (24) hours per day, seven (7) days per week. Athens hereby guarantees that, excepting Uncontrollable Circumstances, designated holidays and the terms of any Permits or Applicable Laws, the Facility will remain open for receipt of Permitted Waste seven (7) days each week with at least eight (8) hours for receiving Permitted Waste. Athens shall post-Facility receiving hours and holiday schedules in a conspicuous location at the Facility and shall utilize all Reasonable Business Efforts to publicly circulate Facility hours and holiday schedules, which Efforts shall include, without limitation, providing public notice of such schedules on a website for the Facility or in newspapers of general circulation. Other scheduling parameters applicable to the Facility shall be as follows:

a. *Holidays.* Athens warrants that the Facility will close for no more than six (6) holidays per Operational Year. Each Operational Year, Athens may choose the six designated holidays from any of the following:

- New Year's Day (January 1 every year);
- Martin Luther King Day (third Monday each January);
- Presidents Day/Washington's Birthday Observed (third Monday every February);
- Memorial Day Observed (last Monday every May);
- July 4th Independence Day;
- Labor Day (first Monday every September);
- Columbus Day Observed (second Monday every October);
- Veterans' Day (Nov. 11 every year);
- Thanksgiving Day (fourth Thursday in November); and
- Christmas Day

b. *Additional Hours.* In exigent circumstances and upon request of the City no less than one day in advance, Athens shall accept, recover and/or process Permitted Waste at times other than those described in this Section above.

6.10 Facility Downtime. Athens shall use Reasonable Business Efforts to perform repairs and maintenance in such a manner as to minimize any interruption to the regular receipt of Permitted Waste. Athens shall give the Public Works Director one week's notice of scheduled shutdowns for repair and maintenance. If Athens cannot accept Permitted Waste or operate the Facility for any other reason, it shall give the Public Works Director immediate telephonic notice followed by notice in writing explaining the cause of such downtime, the actions needed to bring the Facility back to full operational status and the nature and expected duration of the shutdown and its impact on Athens' ability to comply with Performance Standards and Operational Obligations.

6.11 Scale Downtime; K Factor. In order to maintain its weekly receiving hours, Athens shall take all Reasonable Business Efforts to take preventative maintenance measures with respect to all scales and equipment utilized in the course of receiving Permitted Waste such that scale and equipment downtime is minimized. To the extent practicable, if any scale is inoperable, being tested or otherwise unavailable, vehicles shall be weighed on the remaining operating scales.

In the event of multiple scale failures that significantly impact Athens' ability to weigh-in Permitted Waste, achieve requirements for vehicular turn-around and meet the limits on vehicular queuing in public streets required by this Agreement and the Agreements, then Athens shall utilize a waste volume conversion factor "K-factor" for estimating vehicle weight. Athens shall utilize this K-factor flat rate for the calculation of Permitted Waste receipts and Host Fees until such time that Facility scales are repaired to a fully operational condition in accordance with Applicable Laws. Athens shall use all Reasonable Business Efforts to immediately and promptly repair and/or replace, in a fully professional manner, scales that are non-functioning and/or functioning at an accuracy or precision that is not compliant with Applicable Laws.

6.12 Scales. Athens shall test and calibrate all scales in accordance with Applicable Law. Upon City request, it shall provide the City with copies of scale testing results, including but not limited to any results from State-conducted inspections. Athens shall further test and calibrate any or all scales upon written request therefore by the City, within three days of such request. If such test results indicate that the scale or scales comply with Applicable Law, the City will reimburse Athens the direct costs of such tests, not including the cost of personnel time utilized in conduction such test. If City-requested test results indicate that the scale or scales did not comply with Applicable Law, then all weight measurements recorded and Host Fees calculated, charged and paid, as the case may be, from the date of such request, shall be adjusted and corrected consistent with the results of such test. Commercial collection vehicles and transfer trucks shall be assigned a number for weighing purposes. Tare weights shall be checked at least annually or promptly upon City request.

6.13 HHW & E-Waste. HHW & E-Waste. The Facility shall endeavor to provide a location for Irwindale residents to dispose of E-Waste free-of-charge, subject to obtaining all necessary permits and completing any necessary environmental review pursuant to CEQA. In addition, Athens will endeavor to establish a permitted HHW disposal area on-Site which will be contingent on funding through the County of Los Angeles, obtaining all necessary permits and completing any addition environmental review as required by CEQA. Upon the construction of a HHW area, recyclable HHW may only be delivered or directed to the HHW collection area depicted in the Final Plans and Specifications during HHW receiving hours; Athens will from thereon recover, process and market such HHW materials. Athens will provide for, or arrange, the recycling and/or reuse of such HHW materials at permitted facilities other than landfills, through licensed contractors, in accordance with Permits and Applicable Law, and will exercise Reasonable Business Efforts to not otherwise dispose of such HHW materials. Athens will further utilize Reasonable Business Efforts to market and sell HHW and/or E-Waste in a socially and environmentally responsible manner, including without limitation, the exercise of Reasonable Business Efforts to avoid the marketing or sale of HHW or E-Waste to entities or foreign nations reputed for environmental degradation or the commission of human-rights violations in connection with the global HHW or E-Waste market.

6.14 Public Education and Information Program. Athens understands that the Project's success is linked with the perceptions of the local residents and businesses of Irwindale of the proposed Facility. Within thirty (30) days of the projected Commencement of Operations, Athens will prepare and submit to the City for its approval a detailed Public Education and Information Program. City shall provide its comments or indicate approval to Athens within thirty (30) days of receipt of the plan. The all-inclusive public education and outreach program, as approved by

the City, will be undertaken by Athens at Athens' sole cost. This program will include professionally prepared and computer generated visual images of the proposed Facility and its relationship to the surrounding area. Athens will host public forums to ensure information about the Project is reviewed with all interested residents and businesses and to facilitate concerns addressed during the environmental review process. Athens will provide detailed and educational materials on the environmental control systems with working examples for the public to review. All materials shall be subject to City review prior to presentation. The Public Education and Information Program will be updated and modified in response to initial public reaction.

6.15 Denial of Service. Athens shall have the right to refuse to provide service to any Person seeking to utilize any component of the Facility if, (i) in the reasonable judgment of Athens, providing service to such Person would result in a risk of loss or liability to Athens, or (ii) such Person fails to comply with Applicable Law or the rules and regulations imposed by Athens in accordance with this Agreement, or (iii) such Person has previously delivered, or attempted to deliver, Unpermitted Waste to the Facility, or (iv) or, Refuse has accumulated beyond Facility capacity or Refuse limits imposed by Permits and/or Applicable Laws, or (v) such Person delivers waste outside established receiving hours, or (vi) emergency circumstances and Uncontrollable Circumstances prevent service to the Person.

6.16 Athens Trucks. Athens shall at all times maintain all vehicles used by Athens in the operation of the Facility ("Facility Vehicles") in good condition, so that each Facility Vehicle operates properly and safely. Athens acknowledges that it is important to the City that Athens presents a professional and pleasing image. Therefore, Athens shall wash all Facility Vehicles and shall repaint all Facility Vehicles (including trim) on a regular basis to present a professional image. Facility Vehicles, for purposes of this Section, do not include vehicles owned and operated by Athens but used solely in connection with Athens' operations unrelated to the operation of the MRF/TS hereunder. Additionally, the condition of the vehicles used by Athens for performance under the Trash Hauling Franchise Agreement shall be governed by the Trash Hauling Franchise Agreement.

a. *Truck Bodies.* All Facility Vehicle bodies shall be constructed of metal, water-tight and leak proof, and shall be constructed to prevent odors and falling, leaking or spilling of Refuse. Each Facility Vehicle shall carry, at all times, a broom and shovel to be used for the immediate removal of any spilled material. Each Facility Vehicle shall also carry a fire extinguisher and first aid kit.

b. *Safety Markings.* Athens shall ensure that all its Facility Vehicles used off-site bear all necessary and appropriate safety features, including highway lighting, flashing and warning lights, clearance lights, and warning flags, in accordance with the requirements of the California Vehicle Code and other Applicable Law.

c. *Identification.* Athens shall ensure that its name, telephone number, and the vehicle number shall be visibly displayed on all Facility Vehicles in letters and figures not less than six (6) inches high on each side and the rear of each vehicle used off-site. In addition, Athens may design and produce interchangeable signs for its Facility Vehicles containing messages designed to alert the public to special waste management programs in English and additional

languages as deemed appropriate by Athens. Athens agrees that all such vehicular signage shall comply with the requirements of the California Vehicle Code and other Applicable Laws.

d. *Registration.* Athens shall register all Facility Vehicles, except those vehicles used solely on the Site, with the California Department of Motor Vehicles in accordance with Applicable Law. Athens shall obtain a certificate of compliance (smog check) issued pursuant to Part 5 of Division 26 of the California Health and Safety Code (Sections 43000, *et seq.*) and the regulations promulgated thereunder and/or a safety compliance report issued pursuant to Division 14.8 of the California Vehicle Code (Section 34500, *et. seq.*) and the regulations promulgated thereunder, as applicable to each Facility Vehicle. Athens shall maintain copies of registration certificates and reports and shall make them available for inspection upon request by the City. Athens shall also obtain and maintain certificates of compliance to comply with SCAQMD fleet vehicle emissions requirements.

e. *Truck Emissions.* All of Athens' Facility Vehicles shall comply with South Coast Air Quality Management District ("SCAQMD") regulations for fleet vehicle emissions. Athens shall provide a fleet of Facility Vehicles sufficient in number and capacity to perform the services required under this Agreement.

6.17 Patents, Trademarks, Licenses. Athens and its affiliates shall hold or possess a right to use all patents, rights to patents, trademarks; copyrights and licenses, as the case may be ("Proprietary Property") of any equipment or software not owned by the City necessary for the performance by Athens of its Performance Guarantees and Operational Obligations and the transactions contemplated by this Agreement and the Agreements. As of the date hereof, Athens represents that it does not know any material conflict regarding rights to Proprietary Property.

6.18 Facility Website; Further Operational Rules and Regulations. Athens shall establish and maintain, at its sole cost, a publicly-accessible website dedicated to informing the public about the Facility, its hours, holiday schedule, location, requirements and guidelines for Selfhaulers using the Facility, and any other Facility information pertinent to public users. The website shall also provide an email address and telephone number for the public to contact Facility management. Athens shall establish guidelines and operating procedures and instructions regarding the use of the Facility by Selfhaulers and members of the public and shall include, without limitation, instructions for the enclosure and/or securing of Refuse in Selfhauler vehicles in order to prevent Refuse spillage or residue. Athens shall prominently post such guidelines and program parameters at the Facility and upon the publicly-accessible website. Persons repeatedly in violation of Athens' guidelines regarding the enclosure and securing of transported Refuse, or Persons who otherwise repeatedly cause Refuse spillage and residue, may be denied service at the Facility per Section 6.16 herein or Athens may adopt a fine schedule for repeat violations of the enclosure requirement.

6.19 Signage. All Athens' on-Site signage must comply with the City's Sign Ordinance. No advertising material or signs shall be painted, installed, erected or displayed on a building exterior without first obtaining written City approval.

6.20 Non-Discrimination. Athens shall not discriminate in the use of the Facility on account of race, color, national origin, ancestry, religion, sex, marital status or disability.

6.21 Personal Property Taxes. Athens shall pay, before they become delinquent all taxes, assessments, or other charges levied or imposed by any governmental entity on the furniture, trade fixtures, appliances, and other personal property placed by Athens in, on, or about the Facility.

6.22 Payment of Utility Charges. Athens shall pay all charges for the furnishing of gas, water, electricity, telephone services, and other public utilities to the Facility during the Term of this Agreement or any extension thereof, as well as any utility taxes that may be applicable to the Facility.

## **ARTICLE 7.0**

### **UNPERMITTED WASTE**

7.1 Screening and Removal of Unpermitted Waste. Athens shall not knowingly accept Unpermitted Waste at the Facility or elsewhere in the City. Athens shall implement an Unpermitted Waste exclusion program in accordance with Permits and Applicable Law, including video camera filming of Refuse disposal on the tipping floor with record of the date and time thereof, in order to attempt to prevent acceptance of Unpermitted Waste.

Every load coming into the Facility will be visually checked for any suspicious materials such as unlabeled containers, barrels, used motor oils, car batteries, etc. Random documented load checks will be performed daily at the direction of the tipping floor leadership. These inspections must be recorded in the appropriate form provided for that purpose. Athens shall reject any Unpermitted Waste discovered in vehicles or during tipping thereof and require that all Persons remove such Unpermitted Waste from their vehicle and from the Facility. If Athens reasonably determines that it is impracticable to remove such items, then Athens may deem the entire load to comprise Unpermitted Waste and shall have the right to refuse to accept the entire load.

7.2 Inadvertently Accepted Unpermitted Waste. If Athens inadvertently receives delivery of any Unpermitted Waste, it shall classify, treat and/or transport or arrange for the transportation of such Unpermitted Waste from the Facility to a disposal facility that may accept the Unpermitted Waste under Applicable Law, as necessary. Neither Athens nor the City shall countenance or knowingly permit the delivery of Unpermitted Waste to the Facility, nor countenance or knowingly permit the storage of Unpermitted Waste at the Facility.

Any Unpermitted Waste found must be removed using the appropriate protective equipment to the area(s) identified for temporary storage of such materials. The appropriate Facility manager will be informed immediately to arrange moving the materials to the Hazardous Waste Storage Cabinet or hauled off-site for proper disposal, as appropriate, and as described in Section 5.2(b) hereof.

Athens shall pay all costs and expenses incurred in the handling, transportation and disposal of inadvertently-accepted Unpermitted Waste, including any applicable subcontractor charges and fees. The City and Athens shall use Reasonable Business Efforts to identify any Person responsible for the delivery or abandonment of any Unpermitted Waste at the Facility and the Parties shall use Reasonable Business Efforts, or BMPs if applicable, to require such Person to bear all costs and liabilities associated with the handling thereof. The City and Athens shall take all reasonable steps necessary to seek enforcement of Applicable Law regarding such delivery or abandonment.

**ARTICLE 8.0**  
**OPERATIONAL OBLIGATIONS RELATING TO ATHENS CRIMINAL ACTIVITY**

A default of this Agreement shall occur should Athens' officers or directors have a criminal conviction of any offence relating to solid waste activities anywhere or any activities within the City of Irwindale from a court of competent jurisdiction with respect to:

- a. Fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement; or
- b. Bribery or attempting to bribe a public officer or employee of a local, state, or federal agency in that officer or director's or Athens' employee's official capacity; or
- c. Embezzlement, racketeering, false claims, false statements, forgery, falsification or destruction of records, obstruction of justice, receiving stolen property, or theft; or
- d. A conviction, admission of guilt or pleading of *nolo contendere* to the conduct described in this Section by an Athens officer or director shall constitute a default of this Agreement and all other Agreements relating to the Facility, unless Athens, in its discretion, terminates or replaces the culpable Athens officer or director, as the case may be, with an appropriate officer or director within fifteen (15) days' notice and opportunity following such conviction, admission or pleading of *nolo contendere*.

**ARTICLE 9.0**  
**REPORTS, MONITORING & RECORDS**

9.1 Quarterly Reports & Transfer and Processing Report.

a. *TPR.* Consistent with CIWMB guidelines, a Transfer and Processing Report ("TPR") shall be developed and maintained on the Facility. This shall include operating procedures for odor reduction, formulated and tested for effectiveness by first-hand experience at Athens' existing facilities, and will be in place from and followed from the first day of operation.

b. *Quarterly Reports.* Athens shall submit quarterly reports to City, wherein Athens certifies to City that it has met its Performance Standards and Operational Obligations under this Agreement during such quarter. If Athens cannot so certify, or if its complaint log evidences, or if the City notifies Athens it has failed to meet any of its Performance Standards and Operational Obligations without cure, then the provisions of Section 5.5 or Article 12.0, as appropriate, may apply on a per-occurrence basis.

9.2 Records Retention. Athens shall use every Reasonable Business Effort to maintain those operational, weighing and business records that are regularly kept in the course of business according to industry practice. Such records shall be retained for a period of not less than five (5) years, or in accordance with Applicable Law, whichever period is longer; provided, Athens may keep videotapes for a period no less than one year. Records shall be maintained in an organized and efficient fashion such that they are readily available upon City request pursuant to this Article.

a. *Host Fee Records.* Athens shall keep daily accurate and complete records of Facility operations with respect to vehicular weight and inbound Refuse tonnage of any nature whatsoever. Such records shall be in paper, electronic, magnetic or other media in sufficient detail to allow Athens to calculate, and City to corroborate, the Host Fee, any damages and other amounts hereunder and to determine compliance with the provisions of this Agreement. All computations, records, files and reports, relating to Host Fee calculations possessed by Athens shall be made available to the City for inspection and copying upon City request therefor or in connection with a "Periodic Financial Audit" or "Annual Monitoring Review." Athens shall furnish such records and other materials to the City no later than ten (10) days after request therefor.

b. *Errors in Host Fee Payments.* Should the Host Fee Records described in Subdivision (a) above indicate that Athens has underpaid any Host Fee to the City, the City shall send a written notice to Athens describing such underpayment and, within seven (7) business days Athens shall pay the shortfall in Host Fee plus a late fee equaling five percent (5%) of the amount of the shortfall.

9.3 Annual Monitoring Review. In addition to any provisions contained elsewhere in this Agreement providing for City investigations of the Site, the City may in good faith review Athens' performance under this Agreement at least once during each twelve (12) month period from the Effective Date to determine whether, on the basis of substantial evidence, Athens has complied in good faith with terms or conditions of this Agreement.

a. *Cost of Review.* The reasonable cost of the annual monitoring review shall be borne by Athens and Athens shall deposit such amount as shall be reasonably required by City to pay for such review within fourteen (14) business days after written notice from the City detailing the costs of review. Prior to each monitoring review, Athens shall deliver to City such information reasonably requested by City demonstrating Athens' good faith compliance with the terms of this Agreement and as required by Applicable Law.

b. *Conduct and Result of Review.* The Public Works Director may conduct the review administratively, or may cause the review to be conducted by his/her designee or a qualified consultant retained by the City at City's cost. If the Public Works Director finds that Athens has substantially complied with the terms and conditions of this Agreement, the review shall be concluded. If said Director finds and determines that Athens has not substantially complied with the terms and conditions of this Agreement for the period under review, the Director may initiate the administrative procedures set forth in Section 5.5 hereof, or the procedures for termination or modification of the Agreement, pursuant to Articles 11 and 12 hereof.

c. *Certificate of Compliance.* If at the conclusion of a periodic review the City finds that Athens is in substantial compliance with this Agreement, the City shall, upon request by Athens, issue an Estoppel Certificate to Athens pursuant to Section 15.2.

d. *Failure to Conduct Annual Review.* The failure of the City to conduct the Annual Review shall not be a default.

9.4 Periodic Financial Audits. City may also audit the tonnage, revenues and payments to the City at any time or may perform an additional audit based on the request of complainants,

in its sole discretion. If City requests such an audit in addition to the annual audit provided by Athens with payment of the Host Fees, City will pay for the cost of the tonnage audit unless the audit reflects a discrepancy (negative) greater than three percent (3%) of the Host Fees due to the City, in which case Athens shall pay for such audit; provided that any such audit conducted in accordance with any Enhanced Performance Review shall be a part of the Enhanced Performance Review and paid for thereunder. In addition, in the event of an audit generated by complaints, if any violations or significant issues are identified, Athens shall reimburse the City for any costs incurred in performing the audit; City recognizes that said financial data is confidential and proprietary to Athens and, to the extent allowed by law, agrees to work cooperatively to ensure that such information will not be publicly disclosed, subject to Section 9.8 hereof.

9.5 Enhanced Performance Review. City may conduct one (1) Enhanced Performance Review every five (5) year period following the Effective Date of this Agreement. Athens will make a deposit to pay the total cost of the Annual and Enhanced Performance Review, and pay the actual cost therefore. Athens shall fully cooperate with the Public Works Director and his staff and consultants conducting the reviews. An Enhanced Performance Review may consider, at minimum, the following:

- a. Any bona fide complaints received by the City about the approved operations, activities and events; and
- b. Any negative impacts to the City, as identified by City staff, which have not been resolved with Athens. Negative impacts may also include impacts upon municipal revenue(s); and
- c. Violations of any of the Performance Standards; and
- d. Performance of periodic audits per Sections 9.3 and 9.4.

An Enhanced Performance Review may be undertaken administratively by the Public Works Director, or by the City Council or such other authority as the City Council may direct. The Enhanced Performance Review will incorporate the same procedures and remedies outlined in Section 9.3 above.

9.6 City Inspection. In addition, the City shall have the right, but not the obligation, to informally observe and inspect Facility operations at any time. In connection therewith, City and its representatives authorized by the City Manager shall have the right to enter the Facility at any time and speak to the designated Facility manager or other person then in actual managerial control of the Facility; such City representatives shall have access to the Facility at all times, provided that they shall comply with the Athens' reasonable safety and security rules and shall not interfere with the work of Athens or its subcontractors. Upon City request, Athens shall make specified personnel available to accompany City employees on inspections. Athens shall ensure that its employees cooperate with the City and respond to the City's inquiries. Athens shall make operational, weighing and business records available to the City during Facility receiving hours upon City request; Athens shall provide City copies thereof at City's request.

9.7 Public Records Act. Athens acknowledges and agrees that information submitted to the City pursuant to this Agreement may be subject to compulsory disclosure by the City upon

request from a member of the public under the California Public Records Act, Government Code Section 6250, *et seq.* The City acknowledges and agrees that certain information which may be disclosed by Athens or which Athens may be required to submit pursuant to the Agreement may be considered as confidential, proprietary, or a trade secret by Athens. The City agrees to protect the confidentiality of materials submitted to it to the extent permitted by Applicable Law including the Public Records Act. Athens shall specifically and clearly designate all materials as "CONFIDENTIAL" which it wishes the City to treat in confidence and withhold from public disclosure to the extent permitted by Applicable Law, including the Public Records Act. The City agrees not to voluntarily disclose any materials so designated to persons other than officers, attorneys, employees and consultants of the City involved in financing, overseeing and operating the Facility.

a. If the City receives a request from a third party to review and/or copy material designated as "CONFIDENTIAL" it will inform Athens and will permit Athens to present arguments and facts to the City in support of the position that the material is entitled to an exemption from disclosure under the Public Records Act and should not be released. Athens acknowledges that City has ten (10) days to respond to any public records request and that any such argument and facts in support of Athens' assertion of an exemption must be delivered to the City early enough to be considered by the City and incorporated by the City in its response to the party requesting documents.

b. If the City determines that the material is not entitled to an exemption and that it must be released, the City will advise Athens of such determination prior to releasing the material so that Athens may seek a court order enjoining its release. If the City determines that the material is entitled to an exemption, and the person who requested the information files a legal action seeking its release, the City will advise Athens and will not oppose a motion by Athens to intervene in the action. Further, in such situation Athens shall intervene in the action and indemnify and hold City harmless from all legal expenses incurred in defending the action as well as any attorneys' fees which may be awarded to such third party, and the City shall tender its defense to Athens.

c. Notwithstanding the foregoing, City shall have no liability for damages to Athens due to the disclosure of any information which Athens believes to be confidential or a trade secret.

## **ARTICLE 10.0** **TRANSFER**

10.1 Definition of Transfer. As used in this Section, the term "Transfer" shall include any hypothecation, mortgage, pledge, or encumbrance of this Agreement or the Facility by Athens, subject to the exceptions set forth in Section 10.3 below. A Transfer shall also include the transfer to any person or group of persons acting in concert of more than thirty percent (30%) of the present equity ownership and/or more than thirty percent (30%) of the voting control of Athens (jointly and severally referred to herein as the "Trigger Percentages"), taking all transfers into account on a cumulative basis, except transfers of such ownership or control interest to an affiliate owned or controlled by the present beneficial owners of Athens or members of their immediate family, or between members of the same immediate family, or transfers to a trust, testamentary or otherwise,

in which the beneficiaries are limited to members of the transferor's immediate family. A transfer of interests (on a cumulative basis) in the equity ownership and/or voting control of Athens in amounts less than Trigger Percentages shall not constitute a Transfer subject to the restrictions set forth herein. In the event Athens or its successor is a corporation or trust, such Transfer shall refer to the transfer of the issued and outstanding capital stock of Athens, or of beneficial interests of such trust; in the event that Athens or any general partner comprising Athens is a limited or general partnership or a limited liability company, such Transfer shall refer to the transfer of more than the Trigger Percentages in the limited or general partnership or limited liability company interest; in the event that Athens or any general partner is a joint venture, such Transfer shall refer to the transfer of more than the Trigger Percentages of such joint venture partner, taking all transfers into account on a cumulative basis.

10.2 Transfers Require Approval. Athens shall not Transfer this Agreement or any of Athens' rights hereunder, or any interest in the Facility or in the improvements thereon, directly or indirectly, voluntarily or by operation of law, except as provided below, without the prior written approval of City, and if so purported to be transferred, the same shall be null and void. Athens will submit its request for City consent to the City together with documents, including but not limited to: (i) the transferee's audited financial statements for at least the immediately preceding three (3) operating years; (ii) proof that the proposed transferee has municipal solid waste management experience on a scale equal to or exceeding the scale of operations conducted by Athens; (iii) proof that in the last five (5) years, the proposed transferee has not suffered any citations or other censure from any federal, state, or local agency having jurisdiction over its waste management operations due to any significant failure to comply with federal, state, or local waste management law and that the transferee has provided the City with a complete list of such citations and censures; (iv) proof that the proposed transferee has at all times conducted its operations in an environmentally safe and conscientious fashion; (v) proof that the proposed transferee conducts its municipal solid waste management practices in accordance with sound waste management practices in full compliance with all federal, state, and local laws regulating the collection and disposal of waste, including hazardous waste; (v) proof that the transferee's officers or directors have no criminal convictions constituting a default under Article 8; and (vi) any other information required by the City to ensure the proposed transferee can fulfill the terms of the Agreements, including the payment of indemnities and damages and provision of bonds and/or performance standards, in a timely, safe, and effective manner.

10.3 Exceptions. The requirement to obtain City approval for a Transfer shall not apply to any of the following:

- a. Any mortgage, deed of trust, sale/lease-back, a pledge of equity collateral, or other form of conveyance for financing and any resulting foreclosure therefrom.
- b. The granting of easements or dedications to any appropriate governmental City or utility or permits to facilitate the operation of the Facility.
- c. A sale or transfer resulting from or in connection with a reorganization as contemplated by the provisions of the Internal Revenue Code of 1986, as amended or otherwise, in which the ownership interests of a corporation are assigned directly or by operation of law to a

person or persons, firm or corporation which acquires the control of the voting capital stock of such corporation or all or substantially all of the assets of such corporation.

d. A sale or transfer to an affiliate of Athens owned or controlled by the present beneficial owners of Athens or members of their immediate family, or between members of the same immediate family, or transfers to a trust, testamentary or otherwise, in which the beneficiaries are limited to members of the transferor's immediate family.

10.4 Assumption of Obligations. No attempted Transfer of any of Athens' obligations hereunder shall be effective unless and until the successor party executes and delivers to City an assumption agreement in a form approved by the City assuming such obligations. Following any such assignment or Transfer of any of the rights and interests of Athens under this Agreement, the exercise, use and enjoyment shall continue to be subject to the terms of this Agreement to the same extent as if the assignee or transferee were Athens.

10.5 Release of Athens. City's consent to a Transfer shall not be deemed to release Athens of liability for performance under this Agreement unless such release is specific and in writing executed by City, which release shall not be unreasonably withheld. Upon the written consent of City to the complete assignment of this Agreement and the express written assumption of the assigned obligations of Athens under this Agreement by the assignee, Athens shall be relieved of its legal duty from the assigned obligations under this Agreement, except to the extent Athens is in default under the terms of this Agreement prior to said Transfer.

10.6 Athens to Pay Transfer Costs. Athens will pay City its reasonable expenses for attorneys' fees and investigation costs necessary to investigate the suitability of any proposed transferee or assignee, and to review and finalize any documentation required as a condition for approving any such Transfer.

## **ARTICLE 11.0** **AMENDMENTS**

11.1 Initiation of Amendment. Either Party may propose an amendment to this Agreement.

11.2 Procedure. Except as set forth in Section 11.4 below, the procedure for proposing and adopting an amendment to this Agreement shall be the same as the procedure required for entering into this Agreement in the first instance.

11.3 Consent. Except as expressly provided in this Agreement, no amendment to all or any provision of this Agreement shall be effective unless set forth in writing and signed by duly authorized representatives of each of the Parties hereto.

11.4 Minor Modifications.

a. Implementation of Facility operations may require minor modifications of the details of the Parties under this Agreement. The Parties desire to retain a certain degree of flexibility with respect to those items covered in general terms under this Agreement. Therefore,

non-substantive and procedural modifications of the Facility operations shall not require modification of this Agreement.

b. A modification will be deemed non-substantive and/or procedural if it does not result in a material change in fees, intensity of use, permitted uses, the maximum height and size of buildings, the reservation or dedication of land for public purposes, the improvement and construction standards and specifications for the Facility, the quality of Athens' services or ability of Athens to fulfill all Performance Standards, Operational Obligations, changes of less than 10% unless otherwise specified herein or in other Agreements, Permit requirements or Applicable Law.

c. Notwithstanding the foregoing, City will process any change to this Agreement consistent with State law and will hold public hearings therein if so required by State law and the Parties expressly agree nothing herein is intended to deprive any Party or Person of due process of law.

11.5 Effect of Amendment to this Agreement. The Parties agree that except as expressly set forth in any such amendment, an amendment to this Agreement will not alter, affect, impair, modify, waive, or otherwise impact any other rights, duties, or obligations of either Party under this Agreement.

## **ARTICLE 12.0**

### **DEFAULT, REMEDIES AND TERMINATION**

12.1 Rights of Nondefaulting Party after Default. The Parties acknowledge that both Parties shall have hereunder all legal and equitable remedies as provided by law following the occurrence of a default (as defined in Section 12.2 below) or to enforce any covenant or agreement herein. Before this Agreement may be terminated or action may be taken to obtain judicial relief the Party seeking relief for a default ("Nondefaulting Party") shall comply with the notice and cure provisions of Section 12.2.

12.2 Notice of Default and Opportunity to Cure. A Nondefaulting Party in its discretion may elect to declare a default under this Agreement in accordance with the procedures hereinafter set forth for any failure or breach of the other Party ("Defaulting Party") in its performance of a material duty or obligation of said Defaulting Party under the terms of this Agreement. However, the Nondefaulting Party must provide written notice to the Defaulting Party setting forth the nature of the breach or failure and the actions, if any, required by Defaulting Party to cure such breach or failure ("Default Notice"). Upon receiving a Default Notice, at the election of either Party, the Parties may meet to develop a written corrective action plan ("Correction Plan") to prevent further occurrence of the problematic conditions established in the Notice. The Correction Plan shall be finally prepared by the City (or, at the election of the City, by Athens) within ten (10) business days after the meeting between the Public Works Director and/or City Manager or his/her designee and Athens. The Correction Plan may include additional procedures, as deemed necessary by the Public Works Director and/or City Manager designee, to assure that in the future the Facility will be operated in compliance with this Agreement.

a. The Defaulting Party shall be deemed in "default" under this Agreement, where: (i) said breach or failure can be cured, but the Defaulting Party has failed to fully cure, or,

in the case of a default that cannot be fully cured within thirty days, commences and diligently pursues a cure within thirty (30) days after the date of the Default Notice (subject to the provisions below), or (ii) a monetary default remains uncured for ten (10) days (or such lesser time as may be specifically provided in this Agreement).

12.3 Non-Monetary Defaults; Longer Cure Period. The Defaulting Party on a non-monetary default shall not be deemed in breach of this Agreement, and such default shall be waived, if such non-monetary default cannot reasonably be cured within the above-prescribed thirty-day period, and as long as the Defaulting Party does each of the following:

- a. Notifies the Nondefaulting Party in writing with a reasonable explanation as to the reasons the asserted default is not curable within the thirty (30) day period;
- b. Notifies the Nondefaulting Party of the Defaulting Party's proposed cause of action to cure the default;
- c. Promptly commences to cure the default within the thirty (30) day period;
- d. Makes periodic reports to the Nondefaulting Party as to the progress of the program of cure; and
- e. Diligently prosecutes such cure to completion.

12.4 Termination Upon Default. Upon receiving a Default Notice, should the Defaulting Party fail to timely cure any default, or fail to diligently pursue such cure as prescribed above, the Nondefaulting Party may, in its discretion, provide the Defaulting Party with a written notice of intent to terminate this Agreement and other Agreements ("Termination Notice"). The Termination Notice shall state that the Nondefaulting Party will elect to terminate the Agreement and such other Agreements as the Nondefaulting Party elects to terminate within thirty (30) days and state the reasons therefor (including a copy of any specific charges of default) and a description of the evidence upon which the decision to terminate is based. Once the Termination Notice has been issued, the Nondefaulting Party's election to terminate Agreements will only be waived if (i) the Defaulting Party fully and completely cures all defaults prior to the date of termination, or (ii) pursuant to Section 12.5, below.

12.5 Athens Hearing Opportunity Prior to Termination. If Athens is the Defaulting Party pursuant to Section 12.2 above, then the City's Termination Notice to Athens shall additionally specify that Athens has the right to a hearing prior to the City's termination of any Agreements ("Termination Hearing"). The Termination Hearing shall be scheduled as an open public hearing item at a regularly-scheduled City Council meeting within thirty (30) days of the Termination Notice, subject to any legal requirements including but not limited to the Ralph M. Brown Act, Government Code Sections 54950-54963. At said Termination Hearing, Athens shall have the right to present evidence to demonstrate that it is not in default and to rebut any evidence presented in favor of termination. Based upon substantial evidence presented at the Termination Hearing, the Council may, by adopted resolution, act as follows:

- a. Decide to terminate this Agreement and the other Agreements, except as the City Council shall otherwise direct by resolution; or

b. Determine that Athens is innocent of a default and, accordingly, dismiss the Termination Notice and any charges of default; or

c. Impose conditions on a finding of default and a time for cure, such that Athens' fulfillment of said conditions will waive or cure any default.

Findings of a default or a conditional default must be based upon substantial evidence supporting the following two findings: (i) that a default in fact occurred and has continued to exist without timely cure, and (ii) that such default has, or will, cause a material breach of this Agreement and/or a substantial negative impact upon public health, safety and welfare, the environment, the City or the financial terms established in the Agreements, Facility operations, or such other interests that the City and public may have in the Facility.

12.6 Interest on Monetary Default. In the event Athens fails to perform any monetary obligation under this Agreement, Athens shall pay interest thereon at the rate of ten percent (10%) per annum from and after the due date of said monetary obligation until payment is actually received by City.

12.7 Cross-default. In the event that the City Council, following a hearing on an Athens default pursuant to Section 12.5 hereof, determines to terminate this Agreement as a remedy for such default, such determination shall concurrently cause termination of the other Agreements, except as the City Council shall otherwise direct by resolution.

12.8 Continued Lawful Use of Facility After Termination of This Agreement. Termination or expiration of this or the other Agreements shall not restrict Athens from future use of the Site in accordance with then-current Applicable Laws, including but not limited to zoning of the Site and any requirements of the City's entitlement process. To this end, the termination of the Agreement shall terminate, at a minimum and without limitation, the grant-of-franchise effected by Article 2.0 hereof. The Host Fee shall terminate when the Facility ceases to be used for the receipt, processing and transfer of waste.

12.9 Liquidated Damages. If a Default Notice is issued and thereafter it is concluded that a default in fact occurred and continued to exist without timely cure, then liquidated damages may be assessed against Athens (as liquidated damages and not a penalty) by the Public Works Director and/or City Manager designee in the amount of \$500 for every day the condition persisted or persists. Further, if a violation for which liquidated damages were assessed recurs on three (3) or more days within a 60-day period following any assessment of liquidated damages, then starting on the fourth (4th) day that such violation either persists or recurs the amount of liquidated damages shall increase to \$750 per day; violations subject to this escalation must be of the same type or category in order for enhanced liquidated damages to apply. In the event of a major violation, as defined in Section 5.5(e) above, damages shall not be ascertained in an amount of \$500, but rather the sum assessed shall be \$1000 per occurrence from the initial major violation.

a. *Basis for Liquidated Damages.* The Parties further recognize that if Athens continues to fail to observe its Performance Standards or Operational Standards, fails to prevent and remediate nuisance conditions, or fails to cooperatively undertake the immediate cure of any violation in a timely manner, the City and its residents will suffer damages and that it is and will

be impractical and extremely difficult to ascertain and determine the exact amount of damages which City and its citizens will suffer. Therefore, the Parties agree that the liquidated damages established herein represent a reasonable estimate of the amount of such damages for such specific violations, considering all of the circumstances existing on the date of this Agreement, including the relationship of the sums to the range of harm to City that reasonably could be anticipated and the anticipation that proof of actual damages would be costly or impractical. In placing their initials at the places provided, each Party specifically confirms the accuracy of the statements made above and the fact that each Party has had ample opportunity to consult with legal counsel and obtain an explanation of these liquidated damage provisions prior to entering this Agreement.

Athens' Initials \_\_\_\_\_

City's Initials \_\_\_\_\_

**ARTICLE 13.0**  
**INDEMNITY AND ENVIRONMENTAL LIABILITY**

13.1 Indemnity Obligations. Athens will be required to protect, defend, indemnify and hold harmless City, Agency and their elected officials, officers, employees, volunteers and agents (“Indemnified Parties”) from and against any and all Claims or Litigation, in addition to Athens' indemnity obligations with regard to Hazardous Material set forth in Section 13.2(c). Such indemnification shall not cover any Claim or Litigation due to the extent of the negligence or willful acts of the Indemnified Parties or the Indemnified Parties have received compensation from an insurance carrier for the full amount of such Claim. Such indemnification shall be limited to Claims or Litigation resulting directly from Athens services and obligations under the terms of the Agreements and will survive the termination of the Agreements.

13.2 Hazardous Materials. Athens understands and agrees that in the event Athens incurs any loss or liability concerning Hazardous Materials (as hereinafter defined) and/or oil wells and/or underground storage tanks and/or pipelines whether attributable to events occurring prior to or following the Effective Date of this Agreement, then Athens may look to current or prior owners of the Site, but under no circumstances shall Athens look to City or Agency for any liability or indemnification regarding Hazardous Materials and/or oil wells and/or underground storage tanks and/or pipelines. Athens, and each of the entities constituting Athens, if any, hereby waives, releases, remises, acquits and forever discharges and its officers, employees, and agents of and from any and all Environmental Claims, Environmental Cleanup Liability and Environmental Compliance Costs, as those terms are defined below, and from any and all actions, suits, legal or administrative orders or proceedings, demands, actual damages, punitive damages, loss, costs, liabilities and expenses, which concern or in any way relate to the physical or environmental conditions of the Site, the existence of any Hazardous Material thereon, or the release or threatened release of Hazardous Materials therefrom, whether existing prior to, at or after the Certificate of Completion (as such term is defined in the DA). It is the intention of the Parties pursuant to this release that any and all responsibilities and obligations of City or Agency and any and all rights, claims, rights of action, causes of action, demands or legal rights of any kind of Athens, its successors, assigns or any affiliated entity of Athens, arising by virtue of the physical or environmental condition of the Site, the existence of any Hazardous Materials thereon, or any release or threatened release of Hazardous Material therefrom, are by this Release provision declared null and void and of no present or future force and effect as to the Parties. In connection therewith, Athens and each of the entities constituting Athens, expressly agree to waive any and

all rights which said Party may have under Section 1542 of the California Civil Code which provides as follows:

***“A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.”***

ATHENS' INITIALS: \_\_\_\_\_

CITY'S INITIALS: \_\_\_\_\_

a. *Indemnity.* In addition to its indemnity obligations in Section 13.1, Athens shall protect, defend, indemnify and hold harmless the Indemnified Parties (defined in Section 13.1) from and against any and all Environmental Claims, Environmental Cleanup Liability, Environmental Compliance Costs, and any other claims, actions, suits, legal or administrative orders or proceedings, demands or other liabilities resulting at any time from the release or threatened release of any Hazardous Materials of any kind whatsoever in, on or under the Site at any time after construction of Site improvements and whether arising due to construction or thereafter, due to Facility operations, and including, but not limited to, all foreseeable and unforeseeable damages, fees, costs, losses and expenses, including any and all attorneys' fees and environmental consultant fees and investigation costs and expenses, directly or indirectly arising therefrom, and including fines and penalties of any nature whatsoever, assessed, levied or asserted against any Indemnified Parties to the extent that the fines and/or penalties are the result of a violation or an alleged violation of any Environmental Law. Athens further agrees that in the event it obtains, from former or present owners of the Site or any other persons or entities, releases from liability, indemnities, or other forms of hold harmless relating to the subject matter of this Section, Athens shall use its diligent efforts to obtain for City the same releases, indemnities and other comparable provisions.

b. *Definitions.* For purposes of this Section 13.2, the following terms shall have the following meanings.

(1) “Environmental Claim” means any claim for personal injury, death and/or property damage made, asserted or prosecuted by or on behalf of any third party, including, without limitation, any governmental entity, relating to the Site or its operations and arising or alleged to arise under any Environmental Law.

(2) “Environmental Cleanup Liability” means any cost or expense of any nature whatsoever incurred to contain, remove, remedy, clean up, or abate any contamination or any Hazardous Materials on or under all or any part of the Site, including the ground water thereunder, including, without limitation, (i) any direct costs or expenses for investigation, study, assessment, legal representation, cost recovery by governmental agencies, or ongoing monitoring in connection therewith and (ii) any cost, expense, loss or damage incurred with respect to the Site or its operation as a result of actions or measures necessary to implement or effectuate any such containment, removal, remediation, treatment, cleanup or abatement.

(3) “Environmental Compliance Cost” means any cost or expense of any nature whatsoever necessary to enable the Site to comply with all applicable Environmental

Laws in effect. "Environmental Compliance Cost" shall include all costs necessary to demonstrate that the Site is capable of such compliance.

(4) "Environmental Law" means any federal, state or local statute, ordinance, rule, regulation, order, consent decree, judgment or common-law doctrine, and provisions and conditions of permits, licenses and other operating authorizations relating to (i) pollution or protection of the environment, including natural resources, (ii) exposure of persons, including employees, to Hazardous Materials or other products, raw materials, chemicals or other substances, (iii) protection of the public health or welfare from the effects of by-products, wastes, emissions, discharges or releases of chemical substances from industrial or commercial activities, or (iv) regulation of the manufacture, use or introduction into commerce of chemical substances, including, without limitation, their manufacture, formulation, labeling, distribution, transportation, handling, storage and disposal.

(5) "Hazardous Material" is defined to include any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State of California, or the United States Government. The term "Hazardous Material" includes, without limitation, any material or substance which is: (i) petroleum or oil or gas or any direct or derivate product or byproduct thereof; (ii) defined as a "hazardous waste," "extremely hazardous waste" or "restricted hazardous waste" under Sections 25115, 25117 or 25122.7, or listed pursuant to Section 25140, of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law); (iii) defined as a "hazardous substance" under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act); (iv) defined as a "hazardous material," "hazardous substance," or "hazardous waste" under Sections 25501(j) and (k) and 25501.1 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory); (v) defined as a "hazardous substance" under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances); (vi) "used oil" as defined under Section 25250.1 of the California Health and Safety Code; (vii) asbestos; (viii) listed under Chapter 11 of Division 4.5 of Title 22 of the California Code of Regulations, or defined as hazardous or extremely hazardous pursuant to Chapter 10 of Division 4.5 of Title 22 of the California Code of Regulations; (ix) defined as waste or a hazardous substance pursuant to the Porter-Cologne Act, Section 13050 of the California Water Code; (x) designated as a "toxic pollutant" pursuant to the Federal Water Pollution Control Act, 33 U.S.C. Section 1317; (xi) defined as a "hazardous waste" pursuant to the Federal Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, *et seq.* (42 U.S.C. § 6903); (xii) defined as a "hazardous substance" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601, *et seq.* (42 U.S.C. § 9601); (xiii) defined as "Hazardous Material" pursuant to the Hazardous Materials Transportation Act, 49 U.S.C. Section 5101, *et seq.*; or (xiv) defined as such or regulated by any "Superfund" or "Superlien" law, or any other federal, state or local law, statute, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning Hazardous Materials and/or oil wells and/or underground storage tanks and/or pipelines, as now, or at any time hereafter, in effect.

13.3 Participation in Litigation; Indemnity. Athens agrees to indemnify City and its elected boards, commissions, officers, agents and employees and will hold and save them and each of them harmless from any and all actions, suits, claims, liabilities, losses, damages, penalties,

obligations and expenses (including but not limited to attorneys' fees and costs) against the City and/or Agency for any Claims or Litigation. City shall promptly provide Athens with notice of the pendency of any such Claims or Litigation for which Athens has responsibility under this Article 13, and request that Athens defend the same. If City fails promptly to notify Athens of any such Claims or Litigation or fails to cooperate fully in the defense thereof, Athens shall not, thereafter, be responsible to defend, indemnify, or hold harmless City. Athens may utilize the City Attorney's office or use legal counsel of Athens' choosing, but shall reimburse City for any necessary legal cost incurred by City. If Athens fails to do so, City may defend the Claims or Litigation and Athens shall pay the cost thereof, but if City chooses not to defend the Claims or Litigation, it shall have no liability to Athens. Athens' obligation to pay the defense cost shall extend until judgment and thereafter through any appeals. In the event of an appeal, or a settlement offer, the Parties will confer in good faith as to how to proceed and the resolution of any such appeal and the Parties' response to any such settlement offer shall require the consent of both Parties, which consent shall not be unreasonably withheld. Notwithstanding the foregoing however, City shall have the unilateral right to settle such Claims or Litigation brought against it in its sole and absolute discretion at any time after the elapse of two (2) years from the filing of a court action on any Claims or Litigation and Athens shall remain liable hereunder for the Claims and Litigation provided that (i) if the settlement would reduce the density or intensity of the Project by thirty-three percent (33%) or more, and (ii) Athens opposes the settlement, then if City still unilaterally determines to settle such Claims or Litigation, then City shall be responsible for its own litigation expense and shall promptly reimburse Developer for reasonable litigation costs actually paid by Athens (with the burden on Athens to document and prove such costs) but shall bear no other liability to Athens.

13.4 Survival of Indemnity Objections. Notwithstanding any other provision of this Agreement, Athens' release and indemnification as set forth in the provisions of this Article 13, shall survive the termination of this Agreement and shall continue in perpetuity.

#### **ARTICLE 14.0**

#### **BODILY INJURY, PROPERTY DAMAGE, AND WORKERS' COMPENSATION**

#### **INSURANCE**

14.1 Types of Insurance. Prior to the entry of Athens on the Site and throughout the Term of this Agreement, Athens shall procure and maintain (or cause to be procured and maintained), at its sole cost and expense, in a form and content reasonably satisfactory to City, the following policies of insurance:

a. Garage Liability or Commercial General Liability Insurance (collectively "CGL"). Athens shall keep or cause to be kept in force for the mutual benefit of City and Athens CGL insurance against claims and liability for personal injury or death arising from the use, occupancy, disuse or condition of the Site, improvements or adjoining areas or ways, affected by such use of the Site or for property damage, providing protection of at least Five Million Dollars (\$5,000,000.00) for bodily injury or death to any one person, at least Five Million Dollars (\$5,000,000.00) for any one accident or occurrence, and at least One Million Dollars (\$1,000,000.00) for property damage.

b. Builder's Risk Insurance. Athens shall procure and shall maintain (or cause to be procured and maintained) in force "all risks" builder's risk insurance including vandalism and malicious mischief, covering improvements in place and all material and equipment at the job site furnished under contract, but excluding contractor's, subcontractor's, and construction manager's tools and equipment and property owned by contractor's or subcontractor's employees, with limits in accordance with subsection (a) above.

c. Workers' Compensation. Athens shall also furnish or cause to be furnished to City evidence reasonably satisfactory to it that any contractor with whom Athens has contracted for the performance of any work for which Athens is responsible hereunder carries workers' compensation insurance as required by law.

d. Other Insurance. Athens may procure and maintain any insurance not required by this Agreement.

14.2 Insurance Policy Form, Content and Insurer. All insurance required by express provisions hereof shall be carried only by insurance companies authorized to do business by California, rated "A-" or better in the most recent edition of Best Rating Guide, and only if they are of a financial category Class VIII or better, unless such insurance is not available from companies meeting such standards at a commercially reasonable price and City agrees in writing to different standards. All such property policies shall contain language, to the extent obtainable, to the effect that (i) any insured loss shall be payable notwithstanding any unintentional act of negligence of City or Athens that does not result in the forfeiture of the insurance; (ii) Athens waives the right of subrogation against City and against City's agents and representatives; (iii) the policies are primary and noncontributing with any insurance that may be carried by City; and (iv) the policies cannot be canceled or have limits, coverage or deductibles materially changed except after thirty (30) days' written notice by the insurer to City or City's designated representative. Athens shall furnish City with certificates evidencing the insurance. City shall be named as additional insured on all policies of insurance required to be procured by the terms of this Agreement other than workers' compensation insurance.

14.3 Failure to Maintain Insurance and Proof of Compliance. Athens shall deliver to City, in the manner required for notices, copies of certificates of all insurance policies required hereunder within the following time limits: (a) for insurance required above, prior to entry of Athens on the Site and the commencement of any construction by or on behalf of Athens; and (b) for any renewal or replacement of a policy already in existence, simultaneously with the expiration or termination of the existing policy. If Athens fails or refuses to procure or maintain insurance as required hereby or fails or refuses to furnish City with required proof that the insurance has been procured and is in force, such failure shall be a default hereunder, subject to the applicable cure period.

## **ARTICLE 15.0**

### **EFFECT OF AGREEMENT ON TITLE; ESTOPPEL**

15.1 Binding on Successors. All of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Agreement shall be binding upon the Parties and their respective heirs, successors (by merger, consolidation, or otherwise) and assigns,

devises, administrators, representatives, lessees, and all other persons acquiring any rights or interests in Athens' Facility, or any portion thereof, whether by operation of laws or in any manner whatsoever and shall inure to the benefit of the Parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns.

15.2 Estoppel Certificates. Either Party may at any time deliver written notice to the other Party requesting an estoppel certificate (the "Estoppel Certificate") stating:

- a. The Agreement is in full force and effect and is a binding obligation of the Parties; and
- b. The Agreement has not been amended or modified either orally or in writing or, if so amended, identifying the amendments; and
- c. That no enforcement actions are outstanding or if so the status thereof.

15.3 A Party receiving a request for an Estoppel Certificate shall provide a signed certificate to the requesting Party within thirty (30) days after receipt of the request. Athens shall pay all City's cost incurred in issuing such Estoppel Certificate requested by Athens.

## **ARTICLE 16.0**

### **CITY OFFICERS AND EMPLOYEES: NON-DISCRIMINATION**

16.1 Non-liability of City Officers and Employees. No official, agent, contractor, or employee of City shall be personally liable to Athens, or any successor in interest, in the event of any default or breach by City or for any amount which may become due to Athens or to its successor, or for breach of any obligation of the terms of this Agreement.

16.2 Conflict of Interest. No officer or employee of City shall have any financial interest, direct or indirect, in this Agreement nor shall any such officer or employee participate in any decision to the Agreement which affects the financial interest of any corporation, partnership or association in which he is, directly or indirectly, interested, in violation of any state statute, regulation or Applicable Law.

16.3 Covenant Against Discrimination. Athens covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, sexual orientation, national origin, or ancestry in the performance of this Agreement. Athens shall take affirmative action to insure that employees are treated during employment without regard to their race, color, creed religion, sex, marital status, sexual orientation, national origin or ancestry.

## **ARTICLE 17.0**

### **GENERAL**

17.1 Waivers. Failure by a Party to insist upon the strict performance of any of the provisions of this Agreement by the other Party, or the failure by a Party to exercise its rights upon the default of the other Party, shall not constitute a waiver of such Party's right to insist and demand

strict compliance by the other Party with the terms of this Agreement thereafter. Once the City and Athens have approved all of the Agreements and development approvals, Athens shall be deemed to have waived any claim that any condition of the development approvals is improper or that the approval constitutes a breach of the provisions of this Agreement.

17.2 Construction of This Agreement. The language of this Agreement shall be construed as a whole and given its fair meaning. The captions of the sections and subsections are for convenience only and shall not influence construction. This Agreement shall be governed by the laws of the State of California. This Agreement shall not be deemed to constitute the surrender or abrogation of the City's governmental powers over the Site.

17.3 Severability. If any provision of this Agreement is adjudged invalid, void or unenforceable, that provision shall not affect, impair, or invalidate any other provision, unless such judgment affects a material part of this Agreement in which case this Agreement shall be amended, as necessary, in order to comply with such judicial decision.

17.4 Venue. In the event of any legal proceeding arising from the terms of this Agreement, venue shall be the State of California, in the County of Los Angeles.

17.5 Attorney's Fees. If either Party to this Agreement is required to initiate or defend a court action or proceeding brought by the other Party, the prevailing Party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorney's fees. Attorney's fees shall include attorney's fees on any appeal, and in addition a Party entitled to attorney's fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery and all other necessary costs the court allows which are incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted.

17.6 Time of Essence. Time is of the essence in the performance of the provisions of this Agreement as to which time is an element, and the resolution of any dispute which may arise concerning the obligations of Athens and City as set forth in this Agreement.

17.7 Force Majeure. The time within which Athens or the City shall be required to perform any act under this Agreement shall be extended by a period of time equal to the number of days during which performance of such act is delayed due to an Uncontrollable Circumstance. An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the Uncontrollable Circumstance, if written notice by the Party claiming such extension is sent to the other Party within thirty (30) days of knowledge of the commencement of the Uncontrollable Circumstance. Any act or failure to act on the part of a Party shall not excuse performance by that Party.

17.8 Notice. Notices provided pursuant to this Section shall be deemed received at the date of delivery as shown on the affidavit of personal service or the Postal Service or overnight courier receipt.

a. *To Athens.* Any notice required or permitted to be given by the City to Athens under this Agreement shall be in writing and (i) delivered personally to Athens or (ii)

mailed with postage fully prepaid, registered or certified mail, return receipt requested, or (iii) deposited with a recognized overnight courier service, addressed as follows:

Arakelian Enterprises, Inc., dba Athens Services  
Attn: President  
P.O. Box 6009  
City of Industry, CA 91716-0009  
Attention: President

With a copy to:  
Manatt, Phelps & Phillips, LLP  
Attn: Victor De la Cruz  
11355 W. Olympic Blvd.  
Los Angeles, CA 90064

or such other address as Athens may designate in writing to the City.

b. *To the City.* Any notice required or permitted to be given by Athens to City under this Agreement shall be in writing and (i) delivered personally to the City Manager, (ii) mailed with postage fully prepaid, registered or certified mail, return receipt requested, or (iii) deposited with a recognized overnight courier service, addressed as follows:

City of Irwindale  
Attn: City Manager  
5050 North Irwindale Avenue  
Irwindale, CA 91706

With a copy to:  
Aleshire & Wynder, LLP  
Attn: Adrian R. Guerra  
18881 Von Karman Ave., Ste 1700  
Irvine, CA 92612

or such other address(es) as the City may designate in writing to Athens.

17.9 Continuing Liabilities. After termination of this Agreement, both Parties shall remain liable for all costs, reimbursements and damages that may be applicable through this or the other Agreements, as well as any liquidated damages that have accrued pursuant to Section 5.5 hereof; nothing herein is intended to waive or limit the remedies available to either Party upon breach, termination or default of those Agreements.

17.10 Survival. All indemnity obligations set forth herein shall survive termination of this Agreement.

17.11 No Third Party Beneficiaries. The only Parties to this Agreement are Athens and City. There are no third party beneficiaries, and this Agreement is not intended, and shall not be construed, to benefit or be enforceable by any other person whatsoever.

17.12 Mutual Covenants. The covenants contained herein are mutual covenants and also constitute conditions to the concurrent or subsequent performance by the Party benefited thereby of the covenants to be performed hereunder by such benefited Party.

17.13 Relationship of Parties. It is specifically understood and agreed by and between the Parties that the Project is a private development and private operation, that neither Party is acting as the agent of the other in any respect hereunder, and that such Party is an independent contracting entity with respect to the terms, covenants, and conditions contained in this Agreement. The only relationship between City and Athens is that of a government entity regulating the operation of private property and the owner of such private property.

17.14 Entire Agreement. Except as this Agreement may be implemented through the other Agreements, this Agreement constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement, and this Agreement supersedes all previous negotiations, discussions, and agreements between the Parties. No parole evidence of any prior or other agreement shall be permitted to contradict or vary the terms of this Agreement.

17.15 Further Actions and Instruments. Each of the Parties shall cooperate with and provide reasonable assistance to the other to the extent necessary to implement this Agreement. Upon the request of either Party at any time, the other Party shall promptly execute, with acknowledgment or affidavit if reasonably required, and file or record such required instruments and writings and take any actions as may be reasonably necessary to implement this Agreement or to evidence or consummate the transactions contemplated by this Agreement.

17.16 Counterparts. This Agreement may be executed in counterparts, each of which shall be construed together and have the same effect as if all Parties executed the same copy.

17.17 Authority to Execute. The Persons executing this Agreement on behalf of the Parties hereto warrant that (i) such Party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said Party, (iii) by so executing this Agreement, such Party is formally bound to the provisions of this Agreement, (iv) the entering into of this Agreement does not violate any provision of any other Agreement to which said Party is bound and (v) there is no litigation or legal proceeding which would prevent the Parties from entering into this Agreement.

[SIGNATURE PAGE FOLLOWS ON NEXT PAGE]

**IN WITNESS WHEREOF**, the Parties hereto have executed this Agreement on the date and year first-above written.

**CITY:**

CITY OF IRWINDALE,  
a California municipal corporation

\_\_\_\_\_  
H. Manuel Ortiz, Mayor

**ATTEST:**

\_\_\_\_\_  
Laura M. Nieto, Chief Deputy City Clerk

**APPROVED AS TO FORM:**

ALESHIRE & WYNDER, LLP

\_\_\_\_\_  
Adrian R. Guerra, City Attorney

**ATHENS:**

ARAKELIAN ENTERPRISES, INC., dba  
ATHENS SERVICES, a California  
Corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_





**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that document.

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

On \_\_\_\_\_, 2021 before me, \_\_\_\_\_, personally appeared \_\_\_\_\_, proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

**OPTIONAL**

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form

**CAPACITY CLAIMED BY SIGNER**

**DESCRIPTION OF ATTACHED DOCUMENT**

- INDIVIDUAL
- CORPORATE OFFICER

\_\_\_\_\_  
TITLE OR TYPE OF DOCUMENT

\_\_\_\_\_  
TITLE(S)

- PARTNER(S)     LIMITED
- GENERAL
- ATTORNEY-IN-FACT
- TRUSTEE(S)
- GUARDIAN/CONSERVATOR
- OTHER \_\_\_\_\_

\_\_\_\_\_  
NUMBER OF PAGES

\_\_\_\_\_  
DATE OF DOCUMENT

**SIGNER IS REPRESENTING:**  
(NAME OF PERSON(S) OR ENTITY(IES))

\_\_\_\_\_  
SIGNER(S) OTHER THAN NAMED ABOVE

EXHIBIT "A"

**Facility Scope & Components**

**EXHIBIT A**  
**FACILITY SCOPE & COMPONENTS**

ATHENS proposes to construct the Project on the Site in up to three (3) phases, based on market demand and the capacity constraints of the phase(s) of the Project then-constructed; provided Phase I shall include, at a minimum, the Construction and Debris, Self-Haul –Construction and Debris, Employee Area, and Convenience Store, each having the approximate square footage shown below. The proposed improvements consist of the following proposed uses and approximate square footages to be developed by Athens pursuant to the terms of this Agreement:

<b>Project Element</b>	<b>Aggregate Approximate Square Footage</b>
Construction and Debris	41,500 s.f.
Self-Haul – Construction & Debris	52,000 s.f.
Employee Area	9,249 s.f.
Convenience Store	2,587 s.f.
Scale House (4 Total)	200 s.f.
Office	12,780 s.f.
MRF/Transfer Station	104,732 s.f.
Material Staging	25,000 s.f.
Maintenance	17,180 s.f.
<b>TOTAL:</b>	<b>Approx. 265,228 s.f.</b>

**EXHIBIT "B"**  
**Site Legal Description and Depiction**

**LEGAL DESCRIPTION**

Real property in the City of Irwindale, County of Los Angeles, State of California, described as follows:

PARCEL 2 OF PARCEL MAP NO. 22152, IN THE CITY OF IRWINDALE, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS SHOWN ON MAP FILED IN BOOK 231 PAGES 15 THROUGH 18 INCLUSIVE OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

APN: 8535-001-911





**EXHIBIT "D-1"**  
**LADWP Easement**

**EXHIBIT "D-2"**  
**SCE Easement**

**EXHIBIT "E"**  
**Description of Host Fee Structure**

***1. Advancement of Costs***

As memorialized in the Reimbursement Agreement as amended, ATHENS shall advance to the City funds necessary to cover City costs for CEQA compliance, Project review, consultant and legal support and other Project related costs; provided, however, that if the total aggregate amount requested by the City exceeds \$1,350,000, unless ATHENS agrees in writing to such excess expenditures, ATHENS may cancel this arrangement, with reimbursement by City limited solely to any unspent, advanced funds.

***2. Initial Payment and Escrow Funds***

ATHENS has deposited five hundred thousand dollars (\$500,000) into an escrow account ("Escrowed Funds") with escrow agent JPMorgan Chase Bank, NA ("Escrow Agent") per that certain Escrow Agreement by and between City, ATHENS and Escrow Agent dated August 28, 2013. The Escrowed Funds will be (a) payable to the City if ATHENS fails to build the Facility pursuant to the terms of this Agreement, or (b) returned to ATHENS if either (i) the Facility is not completed and this Agreement is terminated for any other reason, including without limitation, pursuant to the failure to pay Host Fees or pay reimbursable costs pursuant to the Reimbursement Agreement, or (ii) if the Department of Finance fails to approve this Agreement or Other Agreements, or the PMP, or (iii) upon commencement of operations at the Facility.

- a. The Escrowed Funds are held by an escrow agent in an interest-bearing account, which interest shall be paid quarterly to ATHENS.
- b. If the City believes that ATHENS has not proceeded diligently and in accordance with the Schedule of Performance to secure all necessary permits and entitlements for the development and thereafter complete development of the Facility in accordance with the terms of this Agreement City shall provide written notice to ATHENS of such belief and undertake all necessary processes pertaining to default/cure/termination as set forth in Article 10.0 hereof. In the event of uncured default or termination of an Agreement pursuant to Article 10.0.
- c. Should the City find pursuant to Article 10.0 that ATHENS commit an unjustified and uncured default resulting in termination of this or Other Agreements, then the City shall be entitled to the Escrowed Funds to be used by the City for its general governmental purposes as the City deems appropriate and the Parties shall have no further rights or obligations to each other following said termination.

### **3. *Deposit***

Upon the later to occur of (i) the final approval by City of the Facility, such final approval being demonstrated by issuance of a certificate of occupancy for the Site, (ii) the Agreements Approval Date (as defined in the MOU), and (iii) the CEQA Completion Date (as defined in the MOU), ATHENS will deposit into the City's bank account a deposit of \$5,000,000 ("Deposit"), less any amounts advanced to City for City costs expended prior to these approvals, including but limited to, amounts advanced in accordance with the Reimbursement Agreement and the MOU and/or costs to prepare environmental studies, process and negotiate the permits, entitlements and conditions of the Project. The Deposit shall include a payment of \$1,000,000 which upon receipt of (1) all permits from the Waste Management Board and other third-party government agencies required to operate the Facility, and (2) all permits, sign-offs and approvals by the Successor Agency and City necessary to commence Facility operations, will be deemed non-refundable to be used by the City for its general governmental purposes and shall not be credited against Host Fee payments. For the first year of operations and subsequent years thereafter, the Host Fee will be drawn down against the Deposit until the Deposit balance is depleted. After the Deposit is paid, should the Project be terminated due to default by ATHENS or terminated by ATHENS without cause, the City shall retain the remaining balance of the \$5,000,000 Deposit; but if the Project is terminated by ATHENS due to the default of City, the City shall refund to ATHENS any and all of the remaining balance of the Deposit, including but not limited to the \$1,000,000 "non-refundable" portion, but not including any amounts expended by the City in accordance with the terms of the MOU.

### **4. *Host Fee***

Upon the commencement of the first year of operations, and of every operating year thereafter until the termination or expiration of the Agreements, ATHENS shall pay the Host Fee to the City. The Host Fee shall be \$1.70 per ton deposited at the MRF/TS ("Host Fee Rate"). The Host Fee shall be determined at the end of the calendar year based on the tonnage actually deposited and shall be supported by an audit of the tonnage provided by ATHENS at its sole cost. The City shall be paid for the tons deposited at the MRF/TS no later than thirty (30) days from December 31st.

### **5. *Adjustments***

a. *Consumer Price Index ("CPI")*. The Host Fee Rate shall be subject to an increase every five (5) years during the Term equal to 100% of the CPI, as measured from the 1st of January in the year following commencement of operations. In addition, should the City issue a termination under Article 10.0 of this Agreement, the Host Fee shall be fixed as of the termination notice date and no further CPI adjustments to the Host Fee shall occur during the remaining ten year period of the term.

b. *Most Favored Nations Clause.* If ATHENS agrees to pay any other city a higher host fee when all terms are considered and equalized with the terms between the City and ATHENS, ATHENS shall notify City within 30 days and the Host Fee for the MRF/TS will be adjusted to match the other city's deal. ATHENS will provide a copy of such other deal and explanation of factors that should be considered in comparing it to the MRF/TS deal. The parties will either agree to a financial analysis or have such analysis prepared by a consultant mutually selected by the parties to factor any differences in the terms of the two deals so as to compare the host fees on an equal basis. For example, if ATHENS secures free land for a similarly-sized facility as the MRF/TS, the fair market value of the land, plus applicable financing fees, shall be calculated as an annual amount for the term of the MRF/TS and deducted against the fee to be compared against the Host Fee for the MRF/TS.

**6. Example**

The following is an illustrative example of the allocation of projected revenues based on an assumed 1,000,000 tons received in the first year and second year of operations ignoring adjustments.

Initial Deposit	\$5,000,000
EIR Costs Incurred by City	- \$1,350,000
Initial Payment (non-refundable)	\$500,000 (not included in deposit remaining)
Escrowed Funds	\$500,000
Deposit Remaining When Agreements Signed (Initial Payment is not included and is retained by City)	\$4,250,000
Payment Upon Receipt of Permits	- \$1,000,000
Deposit Remaining	\$3,250,000
Return of Escrowed Funds upon commencement of operations at MRF/TS	- \$500,000
Deposit Remaining	\$2,750,000
Deduction of Host Fee Payment for 1st Year of Operations	- \$1,700,000
Deposit Remaining	\$1,050,000
Deduction of Host Fee Payment for 2nd Year of Operations	- \$1,700,000
Fund Balance	- \$650,000
Payment to Bring Fund Balance to \$0	\$650,000
Fund Balance	0

In the event this or Other Agreements are terminated prior to completion of the MRF/TS for any reason other than a breach by ATHENS, all of the funds described above, other than the

EIR costs incurred by City and the Initial Payment, shall be returned to ATHENS. Using the example above, \$4,750,000 would be returned to ATHENS.

**EXHIBIT "F"**  
**Route & Circulation Plan**

**EXHIBIT "G"**  
**Irwindale MRF Rates**

<b>Customer Class</b>	<b>Rates</b>
MRF/Transfer Station	\$92.78 per ton
Construction and Debris	\$79.00 per ton
Self-Haul	\$75.00 per ton (one ton minimum) <sup>1</sup>

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<sup>1</sup> The Self-Haul rate is not applicable to residents of the City of Irwindale disposing of residential self-haul waste generated in their homes.

**EXHIBIT "H"**  
**Fire Prevention & Emergency Response Measures**

**Fire Prevention Control and Mitigation Plan:**

- A. Description of the measures the operator will take to prevent fires and to control and extinguish fires at the site:
- Provide employee training on fire prevention, control and mitigation.
  - Prohibit all open flame operations near flammable materials.
  - Install fire protection sprinklers and portable fire extinguishers in all buildings
  - Prohibit use of flammable solvents and chemicals around recycling and transfer operations.
- B. Identification and description of the equipment the operator will have available (on site and readily available off-site) to control and extinguish fires;
- Fully sprinkled buildings.
  - Portable fire extinguishers.
- C. Description of the measures the operator will take to mitigate the impacts of any fire at the site to the public health and safety and the environment:
- Prohibit the use of flammable solvents and chemicals around the recycling, storage, and transfer operations.
  - Train employees on handling hazardous and flammable materials.
  - Store sufficient quantity of absorbent material, shovels and personnel protective equipment.
- D. Description of the arrangements the operator has made with the local fire control authority having jurisdiction to provide fire prevention, control and suppression:
- The operator will provide the local fire control authority updated detailed site plan showing all buildings, structures, parking lots, storm & sanitary sewers, and adjacent property uses.
  - Identify all materials stored onsite, access to each storage area, location of emergency equipment, general purpose of other areas within the facility, and location of all aboveground and underground tanks to include sumps, vaults, below-grade treatment systems, piping, etc.
  - Map Key. Provide the following on the map:
    - o A list of hazardous materials, including wastes.
    - o Hazard class of each hazardous waste.
    - o The maximum quantity for hazardous materials.
    - o Include the contents and capacity limit of all tanks at each area and indicate whether they are above ground or below ground.
    - o List separately any radioactives, cryogenes and compressed gases for each facility.

E. Discussion of the ability of the local fire control authority to suppress fires at the site in light of the authority's personnel, expertise and equipment, the availability of water, access to the site and to flammable materials on the site, the nature of flammable materials on site, the quantity and dimensions of materials on the site} and the potential for subsurface fires in accumulations of flammable materials on the site.

- Local fire station situated less than a mile away is equipped with a single engine fire truck that could dispense water at 1500 GPM.

**Emergency Action Plan:**

1. In the event of an emergency, the following shall be notified:
  - A. On-site Responders:  
Efrain Olmos, Operations Supervisor, (626) 705-6955
  - B. Method of Notification to Responder:  
Automatic Alarm  
Manual Alarm  
Telephone  
Verbal
  - C. Agencies  
Fire Department: 911  
State Office of Emergency Environmental Services: (626) 334-5596
2. Designated Local Emergency Medical Facility:  
Occu-Med, 12134 Victory Blvd., North Hollywood, CA  
24-hour telephone (800) 801-3022
3. Mitigation Equipment:
  - A. Monitoring Devices:  
- Smoke detectors
  - B. Spill Containment:  
- Absorbents
  - C. Spill Control and Treatment  
- Mechanical Ventilation  
- Secondary Containment
4. Evacuation:
  - Immediate area evacuation routes posted
  - Entire building evacuation procedures developed
  - Assembly areas preplanned
  - Evacuation maps posted

**Emergency Response Training Plan:**

1. Person responsible for the emergency-response training plan:

Riel Johnson, Director of Resource Recovery, MRF, (626) 705-7009  
Efrain Olmos, Operations Supervisor, (626) 705-6955
2. Training Requirements:
  - A. All employees trained in the following as indicated:
    - Procedures for internal alarm/notification
    - Procedures for notification of external emergency-response organization
    - Location and content of the emergency-response plan
  - B. Chemical handlers are trained in the following as indicated:
    - Safe method for handling and storage of hazardous materials
    - Proper use of personal protective equipment.
    - Locations and proper use of fire- and spill-control equipment
    - Specific hazards of each chemical to which they may be exposed
  - C. Emergency-response team members are trained in the following:
    - Procedures for shutdown of operations
    - Procedures for using, maintaining and replacing facility emergency and monitoring equipment
3. The following records are maintained for all employees:
  - Verification that training was completed by the employee
  - Description of the type and amount of introductory and continuing training
  - Documentation on and description emergency-response drills conducted at the facility
4. A more comprehensive and detailed emergency-response training plan is maintained on site.

Location: Office of Efrain Olmos  
Responsible Person: Efrain Olmos