

## **ORDINANCE NO. 753**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF IRWINDALE APPROVING DEVELOPMENT AGREEMENT NO. 02-2016 WITH ATHENS SERVICES TO ALLOW THE CONSTRUCTION AND OPERATION OF A MATERIALS RECOVERY FACILITY AND TRANSFER STATION, CONVENIENCE STORE AND PUBLIC GAS STATION ON PROPERTY LOCATED AT 2200 ARROW HIGHWAY (APN 8535-001-911), AND MAKING FINDINGS IN SUPPORT THEREOF**

### **A. RECITALS.**

WHEREAS, Athens Services, 14048 Valley Boulevard, City of Industry, CA 91746, the Applicant, has made a request to enter into a Development Agreement (Application) with the City of Irwindale to construct and operate a Materials Recovery Facility and Transfer Station (MRF/TS) with a convenience store and public gas station on a property located at 2200 Arrow Highway – APN 8535-001-911. The proposed Development Agreement (DA No. 02-2016) is attached hereto as Attachment 1 and incorporated herein; and

WHEREAS, The Property is located on a 17.22-acre parcel on the south side of Arrow Highway. The convenience store will be approximately 2,587 square feet and there will be eight gas or diesel pumps on an island with an overhead canopy. The convenience store will sell beer and wine. The Subject Property is zoned M-2 (Heavy Manufacturing); and

WHEREAS, the City, through this ordinance, wishes to adopt Development Agreement No. 02-2016 for the MRF/TS Project; and

WHEREAS, 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; and

WHEREAS, all legal prerequisites to the adoption of this Ordinance have occurred.

### **B. ORDINANCE.**

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF IRWINDALE DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. The City Council hereby specifically finds that all of the facts set forth in Recitals, Part A, of this Ordinance are true and correct.

SECTION 2. The City Council hereby specifically finds and determines that the Project, as proposed, and including Development Agreement No. 02-2016, 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 were posted on the City's website.

SECTION 3. The provisions of the proposed Development Agreement are consistent with the City's General Plan, as amended by General Plan Amendment No. 02-2016. The Project site land use designation will be Commercial/Industrial, which permits light industry, heavy industry, and commercial uses, consistent with the proposed MRF/TS and convenience store/public gas station project.

SECTION 4. Based upon substantial evidence and conclusions presented to this City Council during the public hearing conducted with regard to this Application and set forth herein above, this City Council hereby approves Development Agreement No. 02-2016, attached hereto as Exhibit A, and by this reference, incorporated herein. The Development Agreement is necessary to protect the public health, safety and general welfare and is reasonable and proper in accordance with the intent and purposes of Title 17 of the Irwindale Municipal Code.

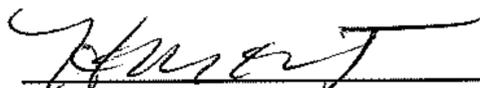
SECTION 5. The documents and materials that constitute the record of proceedings upon which this Ordinance has been based are located at 16102 Arrow Highway, Irwindale, California. The custodian for these records is the Community Development Director. This information is provided in compliance with Public Resources Code section 21081.6.

SECTION 6. This Ordinance shall take effect thirty (30) days after its adoption. The City Council hereby authorizes and directs the Mayor and the Chief Deputy City Clerk to execute this Ordinance on behalf of the City of Irwindale forthwith upon its adoption.

SECTION 7. The Chief Deputy City Clerk shall:

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

**PASSED, APPROVED AND ADOPTED this 10<sup>th</sup> day of March 2021.**

  
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H. Manuel Ortiz, Mayor

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 Ordinance No. 753 was duly introduced by the City Council of the City of Irwindale, at a regular meeting held on the 24<sup>th</sup> day of February 2021, and was duly approved and adopted on second reading at its regular meeting held on the 10<sup>th</sup> day of March 2021, by the following vote of the Council:

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

## EXHIBIT A

### DEVELOPMENT AGREEMENT No. 02-2016

THIS DEVELOPMENT AGREEMENT (this "Agreement") is entered into on \_\_\_\_\_, 2021, by and between the CITY OF IRWINDALE ("City"), a municipal corporation, and ARAKELIAN ENTERPRISES, INC., dba ATHENS SERVICES, a California corporation ("ATHENS") (individually a "Party" and collectively, the "Parties").

#### RECITALS:

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. Any capitalized terms not defined in Article 1 shall have the meaning otherwise assigned to them in this Agreement or apparent from the context in which they are used.

B. Legislation Authorizing Development Agreements. To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the legislature of the State of California (the "Legislature") adopted the Development Agreement Statute, Section 65864 *et seq.*, of the Government Code, authorizing City to enter into an agreement with any person having a legal or equitable interest in real property providing for the development of such property and establishing certain development rights therein.

C. Integrated Waste Management Act. The Legislature, by enactment of the California Integrated Waste Management Act of 1989 (Public Resources Code Section 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, 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.

D. 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.

E. 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 reduce blight and promote industrial development in the Redevelopment Area and fulfill the City’s obligation under the Act, City and ATHENS, along with the former Irwindale Community Redevelopment Agency (“Former RDA”), entered into that certain Memorandum of Understanding regarding the Project (as amended, the “MOU”), including its 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, adopted concurrently herewith by the City Council on February 24, 2021.

F. DDA with Agency. The Project is proposed to be developed on a parcel owned by the Successor Agency to the Irwindale Community Redevelopment Agency (“Agency”), which parcel 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 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. It is anticipated that 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.

G. ATHENS as Qualified Operator. ATHENS is a family owned and operated company that has been providing refuse removal and recycling services in Southern California (the largest in Los Angeles 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.

H. Public Benefits of Project. The grant of development rights hereunder is made in consideration for ATHENS' good faith efforts to complete the development of a MRF/TS to accept, process, recover, and transfer MMW and residue following diversion activities to an appropriate permitted disposal facility. The Project will benefit the City by creating new jobs in the community, diversifying and expanding the City's revenue base, revitalizing a blighted area and the general economy of the City, improving the City's compliance with State-mandated waste reduction requirements, and promoting recycling and refuse rate stability for residents and businesses within the community. The Project will also benefit the public by serving the MMW management needs of other jurisdictions in the region, reducing municipal costs, and protecting public health and safety.

I. Intent of the Parties. The Parties have determined that the Project is a development for which a development agreement is appropriate. The Parties desire to define the parameters within which the obligations of ATHENS for infrastructure and public improvements and facilities will be met, and to provide for the orderly development of the Project, assist in attaining the most effective utilization of resources within the City, and otherwise achieve the goals of the Development Agreement Statute. In consideration of these benefits to City and the public benefits of the development of the Project, ATHENS will receive assurances that the City shall grant all permits and approvals required for total development of the Project in accordance with this Agreement.

J. Public Hearings: Findings. In accordance with the requirements of the California Environmental Quality Act (Public Resources Code Section 21000 *et seq.* ("CEQA")), appropriate studies, analyses, reports or documents were prepared and considered by the City Council and Agency Board for the Project in conjunction with their joint consideration of the DDA. After a public hearing, the City Council and Agency Board, after making appropriate findings, certified a Final Environmental Impact Report for the Project by Resolution No. CC 2021-08-3270 and SA 2021-13-3275 adopted on February 24, 2021 in compliance with CEQA. Also on January 20, 2021, after providing public notice as required by law, the Planning Commission held a public hearing and recommended approval to the City Council and thereafter, on February 24, 2021, after providing public notice as required by law, the City Council held a public hearing to consider ATHENS' application for this Agreement. The Planning Commission and the City Council found on the basis of substantial evidence that this Agreement is consistent with all applicable plans, including the General Plan, and other rules, regulations and official policies of City.

K. Public Improvements. Public improvements determined through the CEQA review process described above and required by this Project include both internal Site improvements benefiting only the Project and area-wide improvements benefiting other property as well. More specifically, these improvements include the construction of or contribution to: drainage and flood control facilities; street improvements; and improvements associated with streets including sidewalks, street lights, utilities, and parkways. A list of the off-site improvements is attached hereto as Exhibit "D" (the "Off-Site Improvements"). ATHENS shall construct all Off-Site Improvements at its sole cost and expense, excepting that ATHENS shall not construct, but rather

pay an in-lieu and Fair-Share fee for, the City's implementation of those Off-Site Improvements listed in Exhibit "D," which Exhibit includes the Estimated Schedule of In-Lieu and Fair-Share Fees to be paid by ATHENS for the Off-Site Improvements identified therein.

L. Other Agreements. The Parties understand that this Agreement is for the development and operation of the Project. 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 – Operations of MRF/TS, governing the use and operation of the MRF/TS ("Franchise Agreement – Operations"), (iv) a Franchise Agreement – Trash Collection and Street Sweeping, dated April 13, 2011 and governing the exclusive right and obligation of Athens to collect solid waste and sweep streets in the City ("Franchise Agreement – Trash Collection and Street Sweeping"), (v) a recorded instrument of Covenants, Conditions and Restrictions on the use of the Site as a MRF/TS (the "CC&Rs"), (vi) an "LADWP Easement Agreement" governing Athens' rights over that certain easement over the Site owned by the Los Angeles Department of Water and Power, (vii) an "SCE Easement Agreement" governing Athens' rights over that certain easement over the Site owned by Southern California Edison, and (viii) 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 ATHENS' operations, and thus the effectiveness of this Agreement is conditioned on approval and execution by the City and ATHENS of each of the Other Agreements. Notwithstanding the foregoing, to the extent the terms of this Agreement conflict with Other Agreements that have previously been executed by the Parties, namely the Reimbursement Agreement and the MOU, the terms of this Agreement shall govern.

M. 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.**

The following words and phrases are used as defined terms throughout this Agreement. Each defined term shall have the meaning set forth below. 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” means the Successor Agency to the Irwindale Community Redevelopment Agency, a California public body, corporate and politic.

1.2 Agreement. “Agreement” means this Development Agreement between the City and ATHENS for the development of the Project.

1.3 Agreements/Other Agreements. “Agreements” means this Agreement and all those other contractual instruments and City ordinances identified in the preceding Recital L of this Agreement. “Other Agreements” include the DDA, MOU, Reimbursement Agreement, the Franchise Agreement – Operations, the Franchise Agreement – Trash Collection and Street Sweeping, and the CC&Rs. To the extent the terms of this Agreement conflict with Other Agreements that have previously been executed by the Parties, namely the Reimbursement Agreement and the MOU, the terms of this Agreement shall govern.

1.4 Applicable Law. “Applicable Law” means all statutes, rules, regulations, guidelines, actions, determinations, permits, orders, or requirements of the federal, 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 Applications. “Application(s)” means a complete application for the applicable land use approvals meeting all current City ordinances, provided that any additional or alternate requirements in said ordinances enacted after the Effective Date which affect the Project application shall apply only to the extent permitted by this Agreement.

1.6 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.

1.7 ATHENS. “ATHENS” means ARAKELIAN ENTERPRISES, INC., dba ATHENS SERVICES, a California corporation.

1.8 ATHENS’ Costs. “ATHENS’ Costs” means ATHENS’ obligation to pay for all costs identified in this Agreement and the Reimbursement Agreement, including but not limited to: all Project Development and Off-Site Improvement construction costs (or in-lieu and Fair-Share fees therefor per Exhibit “E”), all costs of the environmental review, all costs for entitlements, all franchise fees due under the Franchise Agreement – Operations and Franchise Agreement – Trash Collection and Street Sweeping, all Host Fees required hereunder, all operational costs and all other costs identified herein as the responsibility of ATHENS.

1.9 Authorizing Ordinance. “Authorizing Ordinance” means Ordinance No. 719 approving this Agreement.

1.10 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.

1.11 Board. “Board” means the California Integrated Waste Management Board, as established pursuant to the Act (Public Resources Code Section 40000 *et seq.*) or such successor entity to which the duties of the California Integrated Waste Management Board are assigned, including without limitation the Department of Resources Recycling and Recovery (“DRRR”).

1.12 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 recodification thereof.

1.13 CEQA Completion Date. “CEQA Completion Date” means the later date of either: (i) 30 days after the Notice of Determination; or (ii) the date of the final settlement or resolution of any appeal, lawsuit or other action by a third party challenging the Development Approvals or the CEQA process.

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

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

1.16 Claims or Litigation. “Claims or Litigation” means any challenge by adjacent owners or any other third parties (i) to the legality, validity or adequacy of this Agreement, Development Approvals, or other actions of City or Agency pertaining to the Project, (ii) seeking damages against City or Agency as a consequence of the foregoing actions or for the taking or diminution in value of their property, (iii) seeking damages against the City or Agency for injuries, losses or damages due to ATHENS’ use of or operations on the Site, or (iv) otherwise arising from the Project.

1.17 Commencement of Operations Date. “Commencement of Operations Date” means the date that operations commence within the MRF/TS which shall be the day ATHENS first receives fees for services provided at the Site. ATHENS will give City written notice of such date, and the Parties shall countersign the notice thus establishing the date.

1.18 Correction Plan. “Correction Plan” means a plan undertaken by ATHENS and subject to City approval, for the correction or remediation of violations of performance standards and/or nuisance conditions pursuant to Section 6.5 of this Agreement.

1.19 Default. “Default” means any material default, breach, or violation of a provision of this Agreement as defined in Article 10. “City Default” refers to a Default by City, while “ATHENS Default” refers to a Default by ATHENS.

1.20 City's Design Guidelines. "City's Design Guidelines" means applicable design guidelines stated in the City's Municipal Code, including but not limited to those guidelines articulated in the General Plan, or by City's Planning Commission or Planning Division.

1.21 CC&Rs. "CC&Rs" means that form of Declaration of Covenants, Conditions and Restrictions to be recorded against the Site as described in Section 9.6 of this Agreement.

1.22 Development. "Development" means the improvement of the Site for purposes of constructing the structures, improvements, and facilities comprising the Facility including, without limitation: grading; the construction of infrastructure and public facilities related to the Project, whether located within or outside the Site; the construction of structures and buildings of the Facility; and the installation of landscaping at or relating to the Site; but not including the maintenance, repair, reconstruction or redevelopment of any structures, improvements or facilities after the construction and completion thereof.

1.23 Development Agreement Statute. "Development Agreement Statute" means Sections 65864 through 65869.5 of the California Government Code as it exists on the Effective Date, as may be amended.

1.24 Development Approvals. "Development Approvals" means all site-specific (meaning specifically applicable to the Site only and not generally applicable to some or all other properties within the City) plans, maps, permits, and entitlements to use of every kind and nature, whether legislative, administrative or contractual in nature. Development Approvals include, but are not limited to, specific plans, land use contracts, site plans, tentative, vesting tentative and final subdivision maps, variances, zoning designations, planned unit developments, conditional use permits, grading, building, and other similar permits, the Site-specific provisions of general plans, environmental assessments, including environmental impact reports, and any amendments or modifications to those plans, maps, permits, assessments and entitlements. The term Development Approvals does not include rules, regulations, policies, and other enactments of general application within the City.

1.25 Development Plan. "Development Plan" means the Existing Development Approvals, Future Development Approvals, Existing Land Use Regulations, and Schedule of Performance.

1.26 Disposition and Development Agreement ("DDA"). "Disposition and Development Agreement" or "DDA" means the agreement between the Agency and ATHENS to be negotiated based on the MOU for the Agency's conveyance to ATHENS of the Site for development of the MRF/TF.

1.27 Effective Date. Generally, the term "Effective Date" means the date that is thirty (30) days following adoption of the Authorizing Ordinance approving this Agreement as stated on the first page hereof.

1.28 Existing Development Approvals. "Existing Development Approvals" means the Development Approvals which have been previously granted or are granted concurrent herewith, or will be granted pursuant hereto, and include all of the Agreements, and are included in the description of the Project attached in the Scope of Development, at Exhibits "A" and "C".

The term "Existing Development Approvals" shall specifically include all those permits and government approvals listed in Exhibit "F" notwithstanding the fact that such approvals have not been, or may not be, fully approved and in effect until after the Effective Date of this Agreement. Regardless of when the permits and approvals listed in Exhibit "F" actually take effect, the Parties acknowledge and agree that such permits and approvals shall be deemed pre-existing to this Agreement. Immediately upon taking effect, the permits and approvals listed in Exhibit "F" shall be deemed Existing Development Approvals for purposes of this Agreement.

1.29 Existing Land Use Regulations. "Existing Land Use Regulations" means those certain Land Use Regulations applicable to the Property and in effect on or before the Effective Date. The term "Existing Land Use Regulations" shall also include all Agreements identified in Recital K hereto. Regardless of when the Agreements actually take effect, the Parties acknowledge and agree that the Agreements shall be deemed concurrent to the Effective Date of this Agreement because they were specifically contemplated in the governing MOU between the Parties and/or have been conceptually agreed-upon by the Parties in the course of negotiating this Agreement. Immediately upon taking effect, the Agreements shall be deemed Existing Land Use Regulations for purposes of this Agreement.

1.30 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 a household hazardous waste (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. The proposed Project improvements constructed on the Site may be developed in a maximum of three (3) phases.

1.31 Fair-Share. "Fair-Share" means that share of costs for implementing Off-Site Improvements that is proportionate to the size of the impact the Facility will have on such Off-Site Improvements.

1.32 Future Development Approvals. "Future Development Approvals" means those Development Approvals applicable to the Property approved by the City after the Effective Date that pertain to the construction and/or operation of the MRF/TS, including without limitation grading, building, and other similar such Development Approvals.

1.33 Future Land Use Regulations. "Future Land Use Regulations" means Land Use Regulations enacted after the Effective Date of this Agreement.

1.34 Host Fees. "Host Fees" mean payments by ATHENS to City for hosting a MRF/TS within the City limits.

1.35 Land Use Regulations. "Land Use Regulations" means those ordinances, laws, statutes, rules, regulations, initiatives, policies, requirements, guidelines, constraints, codes or

other actions of City which affect, govern, or apply to the Site or the implementation of the Development Plan. Land Use Regulations include the ordinances and regulations adopted by the City which govern permitted uses of land, density and intensity of use and the design of buildings, as applicable to the Site, including but not limited to: the general plan, specific plans, zoning ordinances, development moratoria implementing growth management and phased development programs, ordinances establishing development exactions, subdivision and park codes, any other similar or related codes, building and improvement standards, mitigation measures required in order to lessen or compensate for the adverse impacts of a project on the environment and other public interests and concerns or similar matters. The term Land Use Regulations does not include, however: regulations relating to the conduct of business, professions, and occupations generally; taxes and assessments; regulations for the control and abatement of nuisances; building, health and safety codes; licenses, encroachments and other permits and the conveyances of rights and interests which provide for the use of or entry upon public property; any exercise of the power of eminent domain; the general regulation of municipal affairs or the exercise of the City's police power, or any power of City pursuant to its Charter except as specifically stated in the preceding sentence.

1.36 Local Enforcement Agency or LEA. "Local Enforcement Agency" or "LEA" means the entity designated by the City and certified by the Board 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.

1.37 Mixed Municipal Waste ("MMW") or Refuse. "Mixed Municipal Waste ("MMW")" and "Refuse" mean 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.

1.38 MOU. "MOU" means the June 25, 2008 Memorandum of Understanding between City, Agency, and ATHENS relating to agreements for a solid waste MRF/TS, as such MOU has been amended on April 13, 2011 and again on December 12, 2012.

1.39 Operating Agreements. "Operating Agreements" means, collectively, the Franchise Agreement – Operations and Franchise Agreement – Trash Collection and Street Sweeping agreements approved by the City to exclusively provide for the collection of mixed municipal waste and recycling from properties, and street sweeping services, within the City.

1.40 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.

1.41 Planning Director. "Planning Director" means the Director of Planning or similar officer of City.

1.42 Project. “Project” means the process to issue permits to entitle the MRF/TS, Development of the MRF/TS, the operation of the MRF/TS and general carrying-out of the related Agreements.

1.43 Reimbursement Agreement. “Reimbursement Agreement” means that existing contract, dated October 22, 2008, as amended, and as may be further amended from time to time, between City and ATHENS 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. [

1.44 Reservations of Authority. “Reservation of Authority” shall have the meaning set forth in Article 11 of this Agreement.

1.45 Schedule of Performance. “Schedule of Performance” means the timeline of performance of the Project and is set forth in Exhibit “G”, as may be amended from time to time.

1.46 Scope of Development. “Scope of Development” means the components of, and the documents controlling, the Development of the Project and is set forth in Exhibits “A”, “C”, “F” and “G”.

1.47 Site. “Site” means the real property previously 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 pursuant to the terms of the DDA.

1.48 Term. “Term” means that period of time during which this Development Agreement shall be in effect and bind the Parties, as defined in Section 3.1.

## **ARTICLE 2.0**      **EXHIBITS.**

The following are the Exhibits to this Agreement which are attached hereto and incorporated herein:

- Exhibit A:      Facility Scope & Components
- Exhibit B:      Map and Legal Description of the Site
- Exhibit C:      Project Depiction
- Exhibit D:      List of Off-Site Improvements
- Exhibit E:      In-Lieu and Fair-Share Fee Schedule for Off-Site Improvements
- Exhibit F:      Existing Development Approvals
- Exhibit G:      Schedule of Performance
- Exhibit H:      Schedule of Estimated City Fees
- Exhibit I:      Host Fee Description & Calculation
- Exhibit J:      Form of Assignment and Assumption Agreement
- Exhibit K:      Form of Certificate of Completion

**ARTICLE 3.0        TERM.**

3.1     Term. Unless earlier terminated as provided in this Agreement, this Agreement shall continue in full force and effect for a period of thirty (30) years, which shall run from commencement of the Facility's operations (the "Initial Term"), with provision for a ten (10) year rolling extension (each such 10-year period, an "Extension Term") unless there is an uncured Default at the expiration of the Initial Term or any Extension Term, in which event the term of this Agreement shall be extended to allow for ATHENS to avail itself of all opportunities for notice and cure and pre-termination hearing as set forth in Article 10 herein. If ATHENS cures such Default in accordance with the process set forth in Article 10, then the City shall continue to grant the rolling Extension Terms in accordance with this section. During any Extension Term, should the City seek to terminate this and the Other Agreements for a reason other than a material breach of the Agreements, the term of this Agreement would continue for an additional ten (10) years from and after the giving of the termination notice. Termination or expiration of this Agreement shall not restrict ATHENS from future use of the Site in accordance with the then-applicable zoning of the Site and the City's entitlement process.

3.2     Exclusivity. City shall grant Athens the exclusive right to operate a large-scale MRF/TS facility within City limits pursuant to the terms of Section 2.3 of the Franchise Agreement – Operations.

**ARTICLE 4.0        DEVELOPMENT OF THE PROJECT.**

4.1     Right to Develop. During the Term, ATHENS shall have a vested right to develop the Project to the full extent permitted by this Agreement. Except as provided within this Agreement, the Development Plan shall exclusively control the Development of the Project (including the uses of the Project, the Project scope, the density or intensity of use, the maximum height and size of proposed buildings, the provisions for reservation or dedication of land for public purposes and the design, improvement and construction standards and specifications applicable to the Project).

4.2     Scope of Development. The Project and its components are described in Exhibits "A", "C", "F", and "G", along with the Existing Development Approvals. ATHENS shall construct the Facility in accordance with the final plans and specifications approved by the City. ATHENS shall not make any material changes (i.e., a change of more than  $\pm 5\%$  to any one feature of Facility or minor changes that cumulatively create a  $\pm 2\%$  change in the Facility scope as a whole) to the final plans and specifications without the written consent of the City, such consent not to be unreasonably withheld, conditioned or delayed. Further, ATHENS shall not construct the Facility in a manner which would violate any Existing Development Approvals, permits or Applicable Laws, this Agreement or Other Agreements, or require ATHENS or the City to obtain any additional permits, orders, licenses or approvals not contemplated in this Agreement or to modify Existing Development Approvals. ATHENS shall maintain a copy of the Project's final plans and specifications on the Site during construction and shall update them regularly to indicate any changes subject to the terms of this Section. ATHENS shall also make such plans and specifications available to the City for inspection upon request. As soon as is practicable after completion of Facility construction, ATHENS shall submit to the City as-built

plans and specifications showing the Facility as actually constructed ("As-Built Specifications").

4.3 Project Components. The Project Scope and Components are described and depicted in Exhibits "A" and "C" hereto.

4.4 Project Function/Process. The Site Plan is included with the Scope of Development. All buildings will conform to the City's adopted ordinances, guidelines and policies related to design, and will incorporate the environmental control systems and performance standards described in Article 6.0 below, including all mitigation measures recommended through the CEQA review process. ATHENS proposes to size the MRF/TS to handle up to six thousand (6,000) tons per day that will have 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) Material 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/Organics/Food Waste Area. A green waste area would accommodate collection and grinding of green waste. The green waste would be transferred to outgoing delivery vehicles.

(d) Construction Debris Area. A construction and demolition ("C&D") 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) Administrative Offices and Public Education. 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.

(f) 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.

(g) Maintenance Building. A maintenance building would include two service bays and an adjacent office/parts area.

(h) Fueling Area. Site improvements would include diesel and natural gas fueling operations with public access and sales, a truck wash area, truck scale and scale house,

load-out ramps, truck loading docks, driveways, employee and operation vehicle parking, and landscaping. 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.

(i) Accessory Operations. Site improvements will include a truck wash area, truck scale and scale house, load out ramps, truck loading docks, driveways, employee and operation vehicle parking, and landscaping.

4.5 MRF/TS Construction. ATHENS anticipates that the majority of the MRF/TS will be steel framed to accommodate the large clear spans required for the operation. The steel frames would be clad on the exterior with a variety of materials consistent with City's Design Guidelines. The MRF/TS will incorporate design features as necessary to comply with the City's design guidelines. The entire MRF/TS will incorporate a buffer of screen walls, fencing and landscaping around the Site. The design of the Facility will utilize the elevations included in the Scope of Development (Exhibits "A" and "C") and in the Development Approvals.

4.6 Offsite Improvements. ATHENS shall construct all Off-Site Improvements listed in Exhibit "D" and as required by the Development Approvals, in accordance with the Schedule of Performance, excepting that ATHENS may fulfill its Off-Site Improvement obligations for those Improvements listed in Exhibit "D" via payment of the in-lieu and Fair-Share fees listed in Exhibit "E". With respect to ATHENS' Off-Site Improvement Obligations, the following shall apply:

(a) For Off-Site Improvements at the I-605, northbound off-ramp at Live Oak Avenue, as described in the Final Environmental Impact Report ("FEIR") mitigation program, ATHENS shall deposit one third (33.3%) its Project Fair-Share costs of such improvements with the City (not to exceed \$1,000,000) as a condition to receiving the first building permit for the MRF/TS.

(b) For Off-Site Improvements at the I-605, southbound off-ramp at Arrow Highway, as described in the FEIR mitigation program, ATHENS shall deposit its Project Fair-Share costs of such improvements with the City (not to exceed \$1,000,000) as follows:

- i. ATHENS shall deposit the amount of \$200,000 with the City, no later than January 2, 2025; and
- ii. ATHENS shall deposit the remainder of its Project Fair-Share costs with the City (not to exceed \$800,000), no later than thirty (30) days prior to the planned commencement of construction for such Off-Site Improvements.

(c) For all other Off-Site Improvements, ATHENS shall remit to the City an in-lieu fee in the amount of \$100,000 per year, for a period of five (5) years and payable in quarterly installments of \$25,000, commencing on the first business day of the calendar quarter immediately following the date the City issues a Certificate of Occupancy for the first phase of construction at the Site.

(d) ATHENS shall have the right to review and comment upon the bids and the proposed plans and budgets for any of the Off-Site Improvements prior to remitting the amounts set forth in this Section 4.6, and the City will reasonably cooperate with ATHENS in addressing with Caltrans any concerns raised by ATHENS regarding its Project Fair-Share costs for such Off-Site Improvements. Any funds deposited by ATHENS with the City for the Off-Site Improvements that are not actually expended by the City/Agency for such purpose will be returned to ATHENS. Final Designs shall be subject to CalTrans approval, which approval City cannot, and does not, guarantee or warrant.

4.7 Upgrades. 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 Sections 5.2, 5.3 and 5.4 of the Franchise Agreement – Operations, or (iii) as reasonably required to respond to citizen complaints as required by Section 5.5 of the Franchise Agreement – Operations. Such technology upgrades shall be undertaken at ATHENS' sole cost.

4.8 Development and Acquisition Costs. ATHENS shall be solely responsible for all development costs associated with the Project and other costs identified herein and in the Other Agreements as "Athens Costs," including design, land use entitlements, permitting, CEQA review, construction, rolling stock, equipment, operational costs, public education and information and City staff and consultant expenses related to the Project. Project development and operations will entail extensive, significant costs and capital expenditures due, without limitation, to the Project's size, the magnitude of necessary environmental mitigation measures, need for heavy equipment and complex design and infrastructural elements. Currently, Athens Costs are expected to exceed Thirty Three Million Dollars (\$33,000,000). Further, Athens shall be responsible for paying all of the customary and ordinary fees and costs imposed by the City on the development of an industrial facility like the Project as set forth on the "Schedule of Estimated City Fees" attached hereto as Exhibit "H".

4.9 All Construction to Comply with Laws; Anti-Discrimination. ATHENS shall carry out the construction of the improvements to be constructed by ATHENS in conformity with all applicable laws, including all applicable federal and state labor laws. Not by way of limitation of the foregoing, in developing and constructing the Project, ATHENS shall comply with all applicable development standards in City's Municipal Code and shall comply with all building codes, landscaping, signage, and parking requirements, except as may be permitted through approved variances and modifications.

ATHENS, for itself and its successors and assigns, agrees that in the construction of the improvements to be constructed by ATHENS, it shall not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, marital status, sexual orientation, ancestry or national origin.

4.10 CEQA. The City shall be responsible for obtaining the approval of this Agreement and the Project as required by CEQA; CEQA review and approvals for the Project are or have been completed prior to, or concurrent with, approval of this Agreement by the City

Council. Without limitation of the foregoing, ATHENS specifically acknowledges and agrees that ATHENS shall satisfy all conditions necessary to ensure that the Project conforms to all applicable CEQA requirements.

4.11 Prevailing Wages. ATHENS' purchase price for the Site and cost of developing the Site and constructing all of the on-site and off-site improvements, if any, at or about the Site required to be constructed for the Project shall be borne by ATHENS. ATHENS is aware of the laws of the State governing the payment of prevailing wages on public projects and will comply with same and will indemnify City in the event ATHENS fails to do so. As neither City nor its Successor Agency are providing any direct or indirect financial assistance to ATHENS, the Project should not be considered to be a "public work" "paid for in whole or in part out of public funds," as described in California Labor Code Section 1720. Accordingly, it is believed by the Parties that ATHENS is not required to pay prevailing wages in connection with any aspect of the development or the construction of the Project. However, to the extent that (contrary to the parties' intent) it is determined that ATHENS was required to pay prevailing wage and has not paid prevailing wages for any portion of the Project, ATHENS shall defend and hold Agency and City (which, for purposes of this Section, shall include its related agencies, officers, employees, agents and assigns) harmless from and against any and all increase in construction costs, or other liability, loss, damage, costs, or expenses (including reasonable attorneys' fees and court costs) arising from or as a result of any action or determination that Athens failed to pay prevailing wages in connection with the construction of the Project. City shall reasonably cooperate with ATHENS regarding any action by ATHENS hereunder challenging any determination that the Project is subject to the payment of prevailing wages. Notwithstanding the foregoing, the City retains the right to settle or abandon the matter without ATHENS' consent as to the City's liabilities or rights only, but should it do so, City shall waive the indemnification herein provided such waiver occurs prior to the issuance of any judgment in the matter.

4.12 Rights of Access During Construction. Representatives of the City shall have the reasonable right of access to the Site without charges or fees, at any time during normal construction hours during the period of Project construction, for the purpose of assuring compliance with this Agreement, including but not limited to the inspection of the construction work being performed by or on behalf of ATHENS. Such representatives of City shall be those who are so identified in writing by the City's Public Works Director. Each such representative of City shall identify himself or herself at the job site office upon his or her entrance to the Site, and shall provide ATHENS, or the construction superintendent or similar person in charge on the Site, a reasonable opportunity to have a representative accompany him or her during the inspection. City shall indemnify, defend, and hold ATHENS harmless from any injury or property damage caused or liability arising out of City's exercise of this right of access.

4.13 Indemnification During Construction. During the periods of construction on the Site and until such time as a Certificate of Completion has been issued with respect to the construction of the improvements thereon, ATHENS agrees to and shall indemnify and hold the Agency and the City harmless from and against all liability, loss, damage, costs, or expenses (including reasonable attorneys' fees and court costs) arising from or as a result of the death of any person or any accident, injury, loss, or damage whatsoever caused to any person or to the property of any person which shall occur on the Site and which shall be directly or indirectly

caused by any acts done thereon or any errors or omissions of ATHENS or its agents, servants, employees, or contractors. ATHENS shall not be responsible for (and such indemnity shall not apply to) any acts, errors, or omissions of the Agency or the City, or their respective agents, servants, employees, or contractors. ATHENS shall have the obligation to defend any such action; provided, however, that this obligation to defend shall not be effective if and to the extent that ATHENS determines in its reasonable discretion that such action is meritorious or that the interests of the Parties justify a compromise or a settlement of such action, in which case ATHENS shall compromise or settle such action in a way that fully protects Agency and City from any liability or obligation. In this regard, ATHENS' obligation and right to defend shall include the right to hire (subject to reasonable written approval by the Agency and City) attorneys and experts necessary to defend, the right to process and settle reasonable claims, the right to enter into reasonable settlement agreements and pay amounts as required by the terms of such settlement, and the right to pay any judgments assessed against ATHENS, Agency, or City.

**ARTICLE 5.0**                    **SCHEDULE FOR PROCESSING AND DEVELOPMENT OF THE PROJECT AND PUBLIC IMPROVEMENTS.**

5.1     Schedule of Performance. ATHENS will process the Project and commence and complete construction of the Project in accordance with the Schedule of Performance described in Exhibit "G". It is recognized that ATHENS cannot fully predict the timing or sequencing in which the Project will be developed, since such decisions depend upon numerous factors, many of which are not completely within the control of ATHENS. Accordingly, the Schedule of Performance may be extended upon written approval of City, such approval not to be unreasonably withheld, conditioned, or delayed. In addition, times for performance may be extended due to forces beyond the Parties' reasonable control pursuant to Section 5.10. Once construction is commenced for any phase of the Project, it shall be diligently pursued to completion, and shall not be abandoned for more than thirty (30) consecutive days, except when due to an Enforced Delay. ATHENS shall keep the City informed of the progress of Project construction and submit to the City written reports of the progress of the construction when and in the form reasonably requested by the City.

5.2     Processing.

(a)     Upon satisfactory completion by ATHENS of all required preliminary actions, meetings, submittal of required information and payment of appropriate processing fees, if any, City shall promptly commence and diligently proceed to process all required Development Approvals in accordance with this Agreement. In this regard, ATHENS, in a timely manner which will allow Development of the Project in accordance with the Schedule of Performance, will provide City with all documents, applications, plans and other information necessary for City to carry out its obligations hereunder and will cause ATHENS' planners, engineers and all other consultants to submit in a timely manner all required materials and documents therefor. It is the express intent of this Agreement that the parties cooperate and diligently work to implement any zoning or other land use, site plan, subdivision, grading, building or other approvals for Development of the Project in accordance with the Existing Development Approvals and the Schedule of Performance. Notwithstanding the foregoing, nothing herein shall be construed to require City to process ATHENS' applications ahead of other projects in process in the City. If

ATHENS elects, in its sole discretion, to request City to incur overtime or additional consulting services to receive expedited processing by the City, ATHENS shall pay all such overtime costs, charges or fees incurred by City for such expedited processing.

(b) ATHENS has submitted an application, which requires a General Plan amendment, a zoning ordinance amendment to permit ATHENS' proposed development, and construction, operation, and use of the Site as provided in this Agreement and the Other Agreements, including without limitation the Scope of Development. Most, if not all, of these items are being concurrently approved with the approval of this Agreement. ATHENS shall pay all normal and customary fees and charges applicable to such permits and any fees or charges hereafter imposed by City which are standard for and uniformly applied to similar projects in the City. Additionally, the Project shall require: (i) approval of a "Long Range Property Management Plan" pursuant to California Health & Safety Code § 34191.5 as well as any additional approvals expressly required by the DOF, and (ii) approval of those Future Development Approvals yet to be obtained, and (iii) City's review and approval of the Project in accordance with CEQA, which approval is or has been completed prior to, or concurrent with, approval of this Agreement by the City Council. It is expressly understood by the Parties hereto that City makes no representations or warranties with respect to revision of the General Plan, zoning or approvals required by any other governmental entity or with respect to approvals hereinafter required from City, and City reserving full police power authority over the Project. However, City shall cooperate with ATHENS in procuring the foregoing approvals. Nothing in this Agreement or the Other Agreements shall be deemed to be a prejudgment or commitment with respect to such items or a guarantee that such approvals or permits will be issued within any particular time or with or without any particular conditions.

5.3 City and Other Governmental Permits. Before commencement of construction or development of any buildings, structures, or other works of improvement upon the Site which are ATHENS' responsibility under the Scope of Development, ATHENS shall at its own expense secure or cause to be secured any and all permits which may be required by City or any other governmental agency affected by such construction, development or work. The City shall cooperate with ATHENS in its efforts to obtain such permits and approvals. ATHENS shall not be obligated to commence Project construction if any such permit is not issued despite good faith effort by ATHENS. If there is delay beyond the usual time for obtaining any such permits due to no fault of ATHENS, the Schedule of Performance shall be extended to the extent such delay prevents any action which could not legally or would not in accordance with good business practices be expected to occur before such permit was obtained. The City and ATHENS shall cooperate and use reasonable efforts in coordinating the implementation of the Development Plan with other public agencies, if any, having jurisdiction over the Property or the Project.

5.4 Timing Constraints. The Project will be undertaken consistent with the following timing constraints, each subject to extension for the period of time of any actual delay resulting from the occurrence of any of the events set forth in Section 5.10 or the consent of the City as set forth in the Schedule of Performance at Exhibit "G":

(a) ATHENS will complete rough grading of the Site within three (3) months of obtaining a grading permit from the City.

(b) ATHENS will submit applications necessary to grade and construct the Project, including plans, drawings and specifications necessary to obtain building permits, grading, landscape and street improvements plans, in a timely manner in accordance with Section 5.2 to allow compliance with the timing constraints set forth in the subsections above and the Schedule of Performance.

(c) The Parties project that ATHENS will complete grading and construction of the first phase of the Project within eighteen (18) months after obtaining a building permit for same from the City.

(d) ATHENS' completion of construction of the Project shall not be deemed to preclude ATHENS from subsequently reconstructing any structures or buildings in accordance with the Development Approvals during the Term of this Agreement.

(e) The timing constraints for construction of the Off-Site Improvements shall be as provided in Section 5.4.

(f) Any construction which is commenced shall be completed in accordance with the terms of any permit which is issued in accordance with the Existing Land Use Regulations and this Agreement.

Once ATHENS has completed construction of all improvements, the City shall furnish ATHENS with the Certificate of Completion in the form attached hereto as Exhibit "K" for those improvements within thirty (30) days of ATHENS' written request therefor, provided that the City/Agency can find that ATHENS has completed all Facility construction required for the Site pursuant to the terms of this Agreement, the Other Agreements and Existing Development Approvals. The Certificate of Completion shall be executed and notarized so as to permit it to be recorded in the Office of the Recorder of Los Angeles County. A Certificate of Completion shall be, and shall state that it constitutes, conclusive determination of satisfactory completion of the construction and development of the improvements required by this Agreement upon the Site and the opening of the business, and of full compliance with the terms of this Agreement with respect thereto. The City shall not unreasonably withhold, condition or delay the Certificate of Completion. If the City refuses or fails to furnish a Certificate of Completion within thirty (30) days after written request from Athens or any entity entitled thereto, the City shall provide a written statement of the reasons the City refused or failed to furnish a Certificate of Completion. The statement shall also contain the City's opinion of the action Athens must take to obtain a Certificate of Completion. If the reason for such refusal is confined to the immediate availability of specific items or materials for landscaping, or other minor so-called "punch list" items, the City will issue its Certificate of Completion upon the posting of a bond or other security reasonably acceptable to the City by Athens with the City in an amount representing one hundred fifty percent (150%) of the fair value of the work not yet completed. A Certificate of Completion shall not constitute evidence of compliance with or satisfaction of any obligation of Athens to any holder of a mortgage, or any insurer of a mortgage securing money loaned to finance the improvements, or any part thereof. Such Certificate of Completion is not notice of completion as referred to in the California Civil Code Section 3093. Nothing herein shall prevent or affect Athens' right to obtain a Certificate of Occupancy from the City before the Certificate of Completion is issued.

5.5 Standards of Off-Site Improvement Construction. When ATHENS is required by this Agreement and/or the Development Plan to construct any Off-Site Improvements which will be dedicated to City or any other public agency upon completion, and if required by Applicable Laws to do so, ATHENS shall perform such work in the same manner and subject to the same construction standards as would be applicable to the City or such other public agency should it have undertaken such construction work.

5.6 Moratorium. Except as expressly provided in this Article 5, no subsequent City-imposed moratorium, ordinance, resolution, or other Land Use Regulation or limitation on the conditioning, rate, timing and sequencing of the Development of the Project shall apply to or govern the Development of the Project during the Term hereof, whether affecting parcel or subdivision maps (whether tentative, vesting tentative, or final), building permits, occupancy permits or other entitlements to use issued or granted by City. In the event of any such subsequent action by City, ATHENS shall continue to be entitled to apply for and receive Development Approvals in accordance with the Existing Land Use Regulations, subject only to the exercise of the reservation of authority set forth in Article 11.

5.7 Alterations After Construction of Each Improvement. Subject to Section 4.7 and except as provided below, 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 reasonably 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.

5.8 Host Fees. Upon the commencement of the first year of MRF/TS 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 "T" hereto.

5.9 Failure to Develop Project. Except as expressly provided herein, should ATHENS (i) fail to commence and complete the development of the Project or operation of the Facility within the times set forth in this Agreement, including the Schedule of Performance (as such times for performance may be extended due to forces beyond the Parties' reasonable control pursuant to Section 5.10), or (ii) commit an uncured default leading to a termination pursuant to Article 10.0 hereof, then City shall be entitled to keep the Escrowed Funds, as defined and provided further in Exhibit "T".

5.10 Force Majeure. Notwithstanding the foregoing, in addition to specific provisions

of this Agreement, performance by either Party hereunder shall not be deemed to be in default where delays or defaults are due to war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; supernatural causes; acts of the "public enemy"; epidemics; quarantine restrictions; freight embargoes; lack of transportation; undisclosed subsurface and soils conditions on the Site that would materially extend the timing of construction of the Project; governmental restrictions or priority; litigation; unusually severe weather; inability to secure necessary labor, materials or tools; delays of any contractor, subcontractor or supplier; acts of the other Party; acts or the failure to act of a public or governmental agency or entity (except that acts or the failure to act of City shall not excuse performance by City); or any other causes beyond the reasonable control or without the fault of the party claiming an extension of time to perform. In the event of such a delay (herein "Enforced Delay"), the Party delayed shall continue to exercise reasonable diligence to minimize the period of the delay. An extension of time for any such cause shall be limited to the period of the Enforced Delay, and shall commence to run from the time of the commencement of the cause or fifteen (15) days after execution of this Agreement if such cause has already commenced, provided notice by the Party claiming such extension is sent to the other party within fifteen (15) days of the commencement of the cause or after execution of this Agreement. Failure to provide such notice shall constitute a waiver of the claim. ATHENS' failure to obtain financing for the Project shall not be considered an event or cause beyond the control of ATHENS and shall not entitle ATHENS to an extension of time to perform. Furthermore, no period of Enforced Delay for Phase 1 of the Project shall extend beyond a successful trial court ruling upholding the legality, validity or adequacy of this Agreement, Development Approvals, CEQA review, and all other actions of City or Agency pertaining to the Project. Times of performance under this Agreement may also be extended by mutual written agreement by City and ATHENS. The City Manager shall have the authority on behalf of City to approve such extensions of time.

## **ARTICLE 6.0            OPERATIONAL CRITERIA AND PERFORMANCE STANDARDS**

6.1     Incorporation of Standards Set Forth in Franchise Agreements. ATHENS shall adhere to all "Operational Obligations" and "Performance Standards" as set forth in the Franchise Agreement – Operations and the Franchise Agreement – Trash Collection and Street Sweeping, the terms of which are hereby incorporated into the terms of this Agreement by this reference. In its operation of the MRF/TS, ATHENS shall strictly adhere, without limitation, to all Performance Standards, Hazardous Materials and Environmental standards and permitting, Operational Standards, Reports/Monitoring/Records procedures, restrictions relating to "Unpermitted Waste", Permitting requirements, obligations to refrain from criminal activity, and other terms of the Franchise Agreement – Operations. Such terms of the Franchise Agreement – Operations are incorporated into the terms of this Agreement by this reference such that any uncured violation of the standards set forth in the Franchise Agreement – Operations (subject to all applicable notice and cure periods set forth therein) shall also entail a default under this Agreement.

6.2     Remedies for Failure to Observe Performance Standards and Nuisance Violations. The failure to observe any Performance Standards, the commission of nuisance violations, and the receipt of complaints against ATHENS by members of the public shall be addressed in accordance with those procedures and remedies set forth in Sections 5.5, 5.6 and 5.7 of the Franchise Agreement – Operations and the Franchise Agreement.

## **ARTICLE 7.0            TRANSFER.**

7.1 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 7.3 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 (within the third degree of consanguinity and spouses of such family members), 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.

7.2 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 (not to be unreasonably withheld, conditioned or delayed), 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 the immediately preceding three (3) operating years; (ii) reasonably satisfactory evidence 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) reasonably satisfactory evidence 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) reasonably satisfactory evidence that the transferee’s key principals have no felony criminal convictions; (v) proof that the proposed assignee conducts its MMW 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; and (vi) any other information reasonably required by the City to ensure the proposed transferee can fulfill the terms of this

and the Other Agreements, including the payment of indemnities and damages and provision of bonds and/or performance standards.

7.3 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 entity or utility 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.

7.4 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 assignment and assumption agreement in the form attached hereto as Exhibit "J". 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.

7.5 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, conditioned, or delayed. 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.

7.6 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 8.0 AMENDMENT OF DEVELOPMENT AGREEMENT.**

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

8.2 Procedure. Except as set forth in Section 8.4 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.

8.3 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 and recorded in the Official Records of Los Angeles County.

8.4 Minor Modifications.

(a) Implementation of the Project may require minor modifications of the details of the Development Plan and performance 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 Development Plan 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% in the improvement and construction standards and specifications for the Facility (e.g., for a height limit of 20 feet, a change of less than two feet is deemed non-material), unless otherwise specified herein or in Other Agreements, Permit requirements or Applicable Law.

8.5 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 9.0 LIMITATIONS ON AND RESERVATIONS OF AUTHORITY, INCLUDING FEES AND COSTS.**

9.1 Later Enacted Measures. This Agreement is a legally binding contract which will supersede any statute, ordinance, or other limitation enacted after the Effective Date, except as provided in Section 9.2 below. Any such enactment which affects, restricts, impairs, delays, conditions, or otherwise impacts the implementation of the Development Plan (including the issuance of any Future Development Approvals or permits otherwise applicable to the Project) in any way contrary to the terms and intent of this Agreement shall not apply to the Project unless otherwise provided by State law.

9.2 Limitations, Reservations and Exceptions. Only the following Land Use Regulations adopted by City hereafter shall apply to and govern the Development of the Site ("Reservation of Authority"):

(a) Existing Land Use Regulations and Existing Development Approvals.

(b) Future Land Use Regulations. Future Land Use Regulations which (i) are not in conflict with the Existing Land Use Regulations, or (ii) are in conflict with the Existing Land Use Regulations but the application of which to the Development of the Site has been consented to in writing by ATHENS.

(c) State and Federal Laws and Regulations. Where state or federal laws or regulations enacted after the Effective Date prevent or preclude compliance with one or more provisions of this Agreement, those Agreement provisions shall be modified, through revision or suspension, to the extent necessary to comply with such state or federal laws or regulations.

(d) Public Health and Safety/Uniform Codes. Including the following:

i. Adoption Automatic Regarding Uniform Codes. Future Land Use Regulations or amendments to Existing Regulations adopted by the City which are uniform codes and are based on recommendations of a multi-state professional organization and become applicable throughout City, such as, but not limited to, the Uniform Building, Electrical, Plumbing, Mechanical, or Fire Codes.

ii. Adoption Regarding Public Health and Safety/Uniform Codes. Future Land Use Regulations adopted by the City respecting public health and safety which are applicable throughout City, which are applicable to a significant number of businesses in the City, which are not directed exclusively or primarily against ATHENS, which result from findings by City that failure to adopt such Future Land Use Regulations would result in a serious condition injurious or detrimental to the public health and safety and that such Future General Regulations are reasonably necessary and limited to correct or avoid such injurious or detrimental condition.

iii. Adoption Automatic Regarding State and Regional Programs. Future Land Use Regulations or amendments to Existing Land Use Regulations adopted by the City which are regional codes and are based on recommendations of a state, county or regional organization and become applicable throughout the region.

9.3 Regulation by Other Public Agencies. It is acknowledged by the Parties that other public agencies not within the control of City possess authority to regulate aspects of the Development of the Site separately from or jointly with City and this Agreement does not limit the authority of such other public agencies nor does it in any form create a responsibility for City.

9.4 Limitation. City shall not, without the prior written consent of ATHENS, impose any additional fees, taxes or assessments on all or any portion of the Project, whether as a condition to a Future Development Approval or otherwise, except such fees, taxes and assessments as are described in or required by this Agreement and/or the Development Plan. This Agreement shall not prohibit the application of fees, taxes or assessments as follows:

(a) ATHENS shall be obligated to pay those fees, taxes or assessments which exist as of the date this Agreement is executed by the Parties and any increases or decreases in same as adopted by the City Council and imposed on a City-wide basis.

(b) ATHENS shall be obligated to pay any fees or taxes imposed on a City-wide basis which are not related to construction or Development activities, such as business license fees or taxes and utility taxes which are applicable to a significant number of businesses in the City and which are not directed exclusively or even primarily against ATHENS.

(c) ATHENS shall be obligated to pay all fees applicable to a permit application as charged by the City at the time such application is filed by ATHENS.

(d) ATHENS shall be obligated to pay any fees, taxes or assessments which are imposed on a City-wide basis or area-wide basis such as a utility tax, landscape or lighting assessment, or a community services assessment so long as the tax, fee or assessment was not directed exclusively or even primarily against owners, lessees, businesses, residents or occupants of the Project and which is applicable to a significant number of businesses (as measured by either actual number or magnitude of value) in the City.

(e) ATHENS shall be obligated to pay any fees as imposed pursuant to any assessment district established within the Project, and consented to by ATHENS, or pursuant to any other agreement entered into by ATHENS or otherwise proposed or consented to by ATHENS.

(f) ATHENS shall be obligated to pay any fees, taxes or assessments which were imposed as a condition of the Existing Approvals, including this Agreement.

(g) ATHENS shall be obligated to pay the Host Fee as required by this and Other Agreements.

9.5 Payment of Costs of Agreement. As part of ATHENS' Costs, ATHENS shall be responsible for City's costs of preparing, processing and publishing this Agreement pursuant to the terms of the Reimbursement Agreement.

9.6 Inconsistencies. It is expressly agreed that in the event of any inconsistency between the provisions or conditions of the Existing Land Use Regulations and the provisions of this Agreement, the provisions of this Agreement shall govern. The conditions of such Existing Land Use Regulations shall be interpreted insofar as possible to prevent such inconsistency, and in the event this Agreement is silent concerning an issue, the conditions of the Existing Land Use Regulations shall govern. As between several instruments, Other Agreements and regulations governing the Project, in the event of a clear and explicit conflict which cannot be resolved through interpretation, the following interpretive priorities shall apply: (1) the terms of this Agreement and Other Agreements shall prevail over the provisions of the Existing Land Use Regulations; (2) the terms of the Existing Development Approvals shall prevail over the terms of the Existing Land Use Regulations, except where such Existing Land Use Regulations are legally preemptive; and (3) the terms of the Existing Development Approvals shall take priority over the provisions of the 2020 FEIR approved in conjunction with the Project, except where the 2020 FEIR is legally preemptive.

**ARTICLE 10.0**      **ENFORCEMENT: CONSTRUCTION DEFAULT, REMEDIES AND TERMINATION.**

10.1 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 10.2 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 10.2.

10.2 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 shall meet to develop a written corrective action plan ("Correction Plan") to cure the alleged default and 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 reasonably deemed necessary by the Public Works Director and/or City Manager designee, to reasonably assure that in the future the Facility will be operated in compliance with this Agreement.

The Defaulting Party shall be deemed in "default" under this Agreement, where: (i) the Defaulting Party has failed to cure the default described in the Default Notice within the earlier to occur of (x) thirty (30) days of the Defaulting Party's receipt of the Default Notice or (y) the date for cure set forth in the Correction Plan, 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).

10.3 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:

1.      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;
2.      Notifies the Nondefaulting Party of the Defaulting Party's proposed course of action to cure the default;

3. Promptly commences to cure the default within the thirty (30) day period;
4. Makes periodic reports to the Nondefaulting Party as to the progress of the program of cure; and
5. Diligently prosecutes such cure to completion.

10.4 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 seek termination of this Agreement, in which case the Nondefaulting Party shall provide the Defaulting Party with a written notice of intent to terminate this Agreement and, at the Nondefaulting Party's option, any one or all of the 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 rescinded (i) if the Defaulting Party fully and completely cures all defaults prior to the date of termination, or (ii) pursuant to Section 10.5, below.

10.5 ATHENS' Hearing Opportunity Prior to Termination. If ATHENS is the Defaulting Party pursuant to Section 10.2 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:

1. Decide to terminate this Agreement and, at its option, any one or all of the Other Agreements, except as the City Council shall otherwise direct by resolution; or
2. Determine that ATHENS is innocent of a default and, accordingly, dismiss the Termination Notice and any charges of default; or
3. 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 caused 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.

10.6 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.

10.7 Cross Default. In the event that the City Council, following a hearing on an ATHENS Default pursuant to Section 10.5 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.

10.8 Liquidated Damages. In addition to the remedies for an ATHENS Default provided in this Agreement, the liquidated damages provisions set forth in the Franchise Agreement–Operations and the Franchise Agreement–Trash Collection and Street Sweeping shall apply.

10.9 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 and Development Approvals. To this end, the termination of the Agreement shall terminate, at a minimum and without limitation, the grant-of-franchise effected by the Franchise Agreements. The Host Fee shall terminate when the Facility ceases to be used for the receipt, processing and transfer of MMW.

10.10 Remainder of Term. If this Agreement is terminated for any reason, the City shall remain entitled to retain or collect (i) all the costs due and owing to the City under the Reimbursement Agreement and/or MOU, as well as (ii) any Host Fees due and owing to the City as of the date of termination, *plus* (iii) any Host Fees accruing from ATHENS’ operations of the Facility after the date of termination so long as the Facility is in operation by ATHENS.

**ARTICLE 11.0 INDEMNITY AND ENVIRONMENTAL LIABILITY.**

11.1 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 arising out of or resulting in any way from: (i) City’s approval of this Agreement, (ii) ATHENS’s exercise of the rights under this Agreement, (iii) any claims for personal injury, loss, or damage arising during construction or thereafter due to ATHENS’s operations upon the Site; (iv) 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 household hazardous waste (as such terms will be broadly defined) deposited after the commencement of Project Development at any place where ATHENS delivers, stores, processes, composts, or disposes of solid waste, (v) fines or penalties imposed by the California Integrated Waste Management Board in the event the diversion,

source reduction and recycling goals of AB 939 are not met by City with respect to the waste stream covered by this Agreement or if ATHENS's delays in providing information prevents City from submitting reports required by AB 939 in a timely manner, and (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. Such indemnification shall not cover any Claim 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 resulting directly from ATHENS's services and obligations under the terms of the Agreements and will survive the termination of the Agreements

#### 11.2 Condition of Site and Site Operations.

(a) Disclaimer of Warranties Concerning the Site including the Site. ATHENS understands and agrees that the Site is in an "AS-IS" condition and that ATHENS shall be responsible for addressing at its expense the physical, environmental and geotechnical condition of the Site, and the existence of any contamination, Hazardous Materials, debris, or other structures located on, under or about the Site to the extent necessary to develop and construct the Facility. City specifically disclaims all representations or warranties of any nature concerning the Site made by it, City and its employees, agents and representatives. The foregoing disclaimer includes, without limitation, topography, climate, air, water rights, utilities, present and future zoning, soil, subsoil, existence of Hazardous Materials or similar substances, the purpose for which the Site is suited, or drainage. City makes no representation or warranty concerning the compaction of soil, nor of the suitability of the soil for construction.

(b) 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 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. 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: \_\_\_\_\_

(c) Indemnity. ATHENS shall indemnify and hold harmless City and its officers, employees, agents and representatives (collectively, the “Indemnified Parties”) 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 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.

(d) Definitions. For purposes of this Section 11.2, 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.

### 11.3 Third-Party Litigation.

(a) Non-liability of City. As set forth above, City has determined that this Agreement is consistent with the General Plan, as amended by the Development Approvals, and that the General Plan meets all of the legal requirements of state law. The Parties acknowledge that:

(1) In the future there may be challenges to the legality, validity and adequacy of the General Plan, as amended by the Development Approvals; and

(2) If successful, such challenges could delay or prevent the performance of this Agreement and the development of the Property.

In addition to the other provisions of this Agreement, including, without limitation, the provisions of this Article 13, City shall have no liability under this Agreement for any failure of City to perform under this Agreement or the inability of ATHENS to develop the Project as contemplated by the Development Plan or this Agreement as the result of a judicial determination that on the Effective Date, or at any time thereafter, the General Plan, the Land Use Regulations, this Agreement, or portions thereof, are invalid or inadequate or not in compliance with law.

(b) Revision of Land Use Restrictions. If for any reason the General Plan, Land Use Regulations, this Agreement or any part thereof is hereafter judicially determined as provided above to be not in compliance with the State or Federal Constitutions, laws or regulations and if such noncompliance can be cured by an appropriate amendment thereof otherwise conforming to the provisions of this Agreement, then this Agreement shall remain in full force and effect to the extent permitted by law. The Development Plan and this Agreement shall be amended, as necessary, in order to comply with such judicial decision.

(c) Participation in Litigation; Indemnity. ATHENS agrees to indemnify Agency, City and their 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 which arise during the Term of this Agreement directly relating to ATHENS' occupancy of, or activities on, the Site. City or Agency shall promptly provide ATHENS with notice of the pendency of any such Claims or Litigation and request that ATHENS defend the same. If City or Agency 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/Agency. Claims or Litigation may be defended by the City Attorney's office or use legal counsel of the City's choosing, but ATHENS shall reimburse City or Agency, as appropriate, for any reasonable legal costs incurred by City/Agency. In any case neither City nor Agency shall have 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, conditioned or delayed.

(1) After two (2) years have elapsed from the filing of any court action on any Claims or Litigation without resolution of such action, the Parties agree to meet and confer within thirty (30) days, and to continue to meet and confer for a period of up to six (6) months thereafter (the "Settlement Negotiation Period"), to work in good faith towards a proposed settlement offer to the counterparties in such Claims or Litigation, and negotiate such settlement to a mutually satisfactory resolution (a "Settlement"). Each Party shall be reasonable in its approval or disapproval of any proposed Settlement. Upon the expiration of the Settlement

Negotiation Period, if the Parties are unable to agree upon a mutually-acceptable Settlement proposal to the counterparty(ies), then the City/Agency shall have the unilateral right to settle such Claims or Litigation brought against it in its sole and absolute discretion. If ATHENS opposes the terms of the Settlement entered into by the City/Agency, then ATHENS may elect, in its sole and absolute discretion, to either (a) terminate this Agreement, in which event any amounts paid by ATHENS to the City under the Reimbursement Agreement (or any amendments thereto) and not actually expended by the City or Agency for the purposes set forth therein will be returned to ATHENS, and the Parties shall have no further obligations to one another under this Agreement, or (b) agree to proceed with the Project, as modified by the Settlement.

(2) In the event that ATHENS agrees to proceed with the Project, but the Settlement would result in a material adverse change in the density or intensity of the Project (as reasonably determined by the parties), then the following amounts shall be returned to ATHENS by the City/Agency: (i) any amounts paid by ATHENS to the City under the Reimbursement Agreement (or any amendments thereto) and not actually expended by the City/Agency for the purposes set forth therein will be returned to ATHENS, and (ii) any documented Aggregate Entitlements Defense Costs (defined below) actually paid by ATHENS to the City Attorney or other designated legal representatives of the City/Agency in the subject litigation.

(3) Notwithstanding anything to the contrary set forth herein, if at any time the aggregate costs of attorneys' fees (including those of the City Attorney), court costs and/or consultant fees incurred in the course of defending the legality, validity or adequacy of this Agreement, Development Approvals, or other actions of City or Agency pertaining to the approval of the Project (the "Aggregate Entitlements Defense Costs"), equal or exceed the amount of (i) One Million Dollars (\$1,000,000) *less* (ii) the aggregate amount of any costs actually paid from the "Seventh Deposit" per that Fifth Amendment to the Reimbursement Agreement dated March 9, 2016, and not otherwise returned to ATHENS as set forth in this Section (the "Seventh Deposit Amount"), *then* ATHENS shall have the right (but not the obligation) at any time to terminate this Agreement and the DDA. Any portion of the Seventh Deposit not actually expended by the City or Agency for the purposes set forth in the Reimbursement Agreement will be returned to ATHENS, and the Parties shall have no further obligations to one another under this Agreement. Nothing in this paragraph shall be construed as limiting or waiving, in whole or part, ATHENS' indemnity or hold harmless obligations to the City with respect to damages or other costs for Claims or Litigation that do not qualify as Aggregate Entitlements Defense Costs.

(4) ATHENS shall automatically receive a one (1)-year Rolling Extension under the Franchise Agreement – Trash Collection and Street Sweeping for every Two Hundred Thousand Dollars (\$200,000) funded with respect to both Aggregate Entitlements Defense Costs and the Sixth Deposit Amount, not to exceed five (5) years of cumulative Rolling Extensions, it being understood that the Rolling Extensions granted pursuant to this clause (4) may not be terminated by the City excepting in the case of a default by Developer of this Agreement, the DDA, the Reimbursement Agreement, or any other Project-related Agreement that would otherwise permit the City to terminate the applicable agreement(s) in accordance with its/their terms), are not discretionary in nature, and shall apply without regard to whether the MRF/TS is ultimately developed by ATHENS.

11.4 Survival of Indemnity Objections. Notwithstanding any other provision of this Agreement, ATHENS' release and indemnification as set forth in the provisions of this Article 11, shall survive the termination of this Agreement and shall continue in perpetuity.

**ARTICLE 12.0**      **BODILY INJURY, PROPERTY DAMAGE, AND WORKERS' COMPENSATION INSURANCE.**

12.1 Types of Insurance. Prior to the entry of ATHENS on the Site and the commencement of any construction by or on behalf of ATHENS, 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, during the entire term of such entry or construction, 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 CGL insurance against claims for bodily injury and property damage liability arising from the use, occupancy, disuse, or condition of the Site, improvements, affected by such use of the Site for Five Million Dollars (\$5,000,000.00) combined single limit and in the aggregate annually for bodily injury or property damage. City shall be named as an additional insured on such CGL policy.

(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. ATHENS shall not be required to maintain coverage for earthquake or flood risk.

(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.

12.2 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.

12.3 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 13.0 EFFECT OF AGREEMENT ON TITLE; ESTOPPEL.**

13.1 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, devisees, administrators, representatives, lessees, and all other persons acquiring any rights or interests in ATHENS' Property, 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.

13.2 Enforceability as Covenants. All of the provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land pursuant to Applicable Law.

13.3 Covenants Run with the Land. Each covenant to do or refrain from doing some act on the Site hereunder (i) is for the benefit of and is a burden upon every portion of the Site, (ii) runs with such lands, and (iii) is binding upon each Party and each successive owner during its ownership of such properties or any portion thereof, and each person having any interest therein derived in any manner through any owner of such lands, or any portion thereof, and each other person succeeding to an interest in such lands.

13.4 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.

13.5 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. The Estoppel Certificate shall be in a form reasonably approved by the City Attorney's Office and ATHENS, and ATHENS shall pay all of City's reasonable costs incurred in issuing such Estoppel Certificate.

**ARTICLE 14.0 CITY OFFICERS AND EMPLOYEES: NON-DISCRIMINATION.**

14.1 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.

14.2 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 or regulation.

14.3 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 Development 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, national origin or ancestry.

**ARTICLE 15.0 GENERAL.**

15.1 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.

15.2 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.

15.3 Relationship of Parties. It is specifically understood and agreed by and between the Parties that the Project is a private development, 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 development of private property and the owner of such private property.

15.4 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.

15.5 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.

15.6 Counterparts. This Agreement may be executed by the Parties in counterparts which counterparts shall be construed together and have the same effect as if all of the Parties had executed the same instrument.

15.7 Recording. The City Clerk shall cause a copy of this Agreement or a Memorandum of Agreement to be executed by City and recorded in the Official Records of Los Angeles County no later than thirty (30) days after execution of the Agreement by the Parties. The recordation of this Agreement is deemed a ministerial act and the failure of City to record the Agreement as required by this Section and the Agreement Statute does not make this Agreement void or ineffective.

15.8 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 Development 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.

15.9 Notices. Except as expressly provided to the contrary herein, any notice, consent, report, demand, document or other such item to be given, delivered, furnished or received hereunder shall be deemed given, delivered, furnished, and received when given in writing and personally delivered to an authorized agent of the applicable party, or upon delivery by the United States Postal Service, first-class registered or certified mail, postage prepaid, return receipt requested, or by a national "overnight courier" such as Federal Express, at the time of delivery shown upon such receipt; in either case, delivered to the address, addresses and persons as each party may from time to time by written notice designate to the other and who initially are:

If to Athens:

Athens Services  
P.O. Box 6009  
City of Industry, CA 91716-0009  
Attention: President

With copy to: Manatt, Phelps & Phillips, LLP  
11355 Olympic Boulevard  
Los Angeles, CA 90064  
Attention: Victor De la Cruz

If to Agency: Successor Agency to the Irwindale  
Community Redevelopment Agency  
5050 North Irwindale Avenue  
Irwindale, CA 91706

With copy to: Aleshire & Wynder, LLP  
18881 Von Karman Avenue, Suite 1700  
Irvine, CA 92612  
Attention: Adrian R. Guerra, City Attorney

## **ARTICLE 16.0 MORTGAGEE PROTECTION.**

16.1 Definitions. As used in this Section, the term “mortgage” shall include any mortgage, deed of trust, or other security interest, or sale and lease-back, or any other form of conveyance for financing collateralized by the Site. The term “holder” shall include the holder of any such mortgage, deed of trust, or other security interest, or the grantee under any other conveyance for financing.

16.2 No Encumbrances Except Mortgages to Finance the Project. Notwithstanding the restrictions on transfer in Article 7, mortgages required for any reasonable method of financing of the construction of the Project improvements are permitted before issuance of a Certificate of Completion but only for the purpose of securing loans of funds used or to be used for financing the improvement of the Site, for the construction of Project improvements thereon, and for any other expenditures necessary and appropriate to develop the Site under this Agreement, or for restructuring or refinancing any of same and the reasonable costs and expenses associated therewith, so long as the refinancing does not exceed the then-outstanding balance of the existing financing by an amount in excess of the costs, fees, prepayments and other expenses reasonably incurred in the refinancing. ATHENS (or any entity permitted to acquire title under this Section) shall notify the City in writing prior to any mortgage, if ATHENS or such entity proposes to enter into the same before issuance of the Certificate of Completion. ATHENS or such entity shall not enter into any such conveyance for financing without the prior written approval of the City. Any lender approved by the City shall not be bound by any amendment, implementation, or modification to this Agreement subsequent to its approval without such lender giving its prior written consent thereto. In any event, ATHENS shall promptly notify the City of any mortgage, encumbrance, or lien that has been created or attached thereto prior to issuance of a Certificate of Completion, whether by voluntary act of ATHENS or otherwise.

16.3 ATHENS' Breach Shall Not Defeat Mortgage Lien. ATHENS' breach of any of the covenants or restrictions contained in this Agreement shall not defeat or render invalid the lien of any mortgage made in good faith and for value as to the Site, or any part thereof or

interest therein, but unless otherwise provided herein, the terms, conditions, covenants, restrictions, easements, and reservations of this Agreement shall be binding and effective against the holder of any such mortgage of the Site whose interest is acquired by foreclosure, trustee's sale or otherwise.

16.4 Holder Not Obligated to Construct or Complete Improvements. The holder of any mortgage shall in no way be obligated by the provisions of this Agreement to construct or complete the improvements or to guarantee such construction or completion. Nothing in this Agreement shall be deemed or construed to permit or authorize any such holder to devote the Site or any portion thereof to any uses, or to construct any improvements thereon, other than those uses or improvements provided for or authorized by this Agreement.

16.5 Notice of Default to Mortgagee, Deed of Trust or Other Security Interest Holders. Whenever City shall deliver any notice or demand to ATHENS with respect to any breach or default by ATHENS hereunder, City shall at the same time deliver a copy of such notice or demand to each holder of record of any mortgage who has previously made a written request to City therefor, or to the representative of such lender as may be identified in such a written request by the lender. No notice of default shall be effective as to the holder unless such notice is given.

16.6 Right to Cure. Each holder (insofar as the rights of City are concerned) shall have the right, at its option, within ninety (90) days after the receipt of the notice, to:

- (a) Obtain possession, if necessary, and to commence and diligently pursue said cure until the same is completed, and
- (b) Add the cost of said cure to the security interest debt and the lien or obligation on its security interest;

provided that in the case of a default which cannot with diligence be remedied or cured within such ninety (90) day period, such holder shall have additional time as reasonably necessary to remedy or cure such default.

In the event there is more than one such holder, the right to cure or remedy a breach or default of ATHENS under this Section shall be exercised by the holder first in priority or as the holders may otherwise agree among themselves, but there shall be only one exercise of such right to cure and remedy a breach or default of ATHENS under this Section.

No holder shall undertake or continue the construction or completion of the improvements (beyond the extent necessary to preserve or protect the improvements or construction already made) without first having expressly assumed ATHENS' obligations to City by written agreement satisfactory to City with respect to the Site or any portion thereof in which the holder has an interest. The holder must agree to complete, in the manner required by this Agreement, the improvements to which the lien or title of such holder relates, and submit evidence satisfactory to the City that it has the qualifications and financial responsibility necessary to perform such obligations. Any holder properly completing such improvements shall be entitled, upon written request made to City, to a Certificate of Completion from City.

16.7 City's Rights upon Failure of Holder to Complete Improvements. In any case where one hundred eighty (180) days after default by ATHENS in completion of construction of Project improvements under this Agreement, the holder of any mortgage creating a lien or encumbrance upon the Site or improvements thereon has not exercised the option to construct afforded in this Section or if it has exercised such option and has not proceeded diligently with construction, City may, after ninety (90) days' notice to such holder and if such holder has not exercised such option to construct within said ninety (90) day period, purchase the mortgage, upon payment to the holder of an amount equal to the sum of the following:

- (a) The unpaid mortgage debt plus any accrued and unpaid interest (less all appropriate credits, including those resulting from collection and application of rentals and other income received during foreclosure proceedings, if any);
- (b) All expenses, incurred by the holder with respect to foreclosure, if any;
- (c) The net expenses (exclusive of general overhead), incurred by the holder as a direct result of the ownership or management of the Site, such as insurance premiums or real estate taxes, if any;
- (d) The costs of any improvements made by such holder, if any; and
- (e) An amount equivalent to the interest that would have accrued on the aggregate of such amounts had all such amounts become part of the mortgage debt and such debt had continued in existence to the date of payment by the City.

In the event that the holder does not exercise its option to construct afforded in this Section, and City elects not to purchase the mortgage of holder, upon written request by the holder to City, City agrees to use reasonable efforts to assist the holder selling the holder's interest to a qualified and responsible party or parties (as determined by City), who shall assume the obligations of making or completing the improvements required to be constructed by ATHENS, or such other improvements in their stead as shall be satisfactory to City. The proceeds of such a sale shall be applied first to the holder of those items specified in subparagraphs (a) through (e) hereinabove, and any balance remaining thereafter shall be applied as follows:

- (a) First, to reimburse City, on its own behalf and on behalf of the City, for all costs and expenses actually and reasonably incurred by City, including but not limited to payroll expenses, management expenses, legal expenses, and others.
- (b) Second, to reimburse City, on its own behalf and on behalf of the City, for all payments made by City to discharge any other encumbrances or liens on the Site or to discharge or prevent from attaching or being made any subsequent encumbrances or liens due, to obligations, defaults, or acts of ATHENS, its successors or transferees.

- (c) Third, any balance remaining thereafter shall be paid to ATHENS.

16.8 Right of City to Cure Mortgage, Deed of Trust or Other Security Interest; Default. In the event of a default or breach by ATHENS (or entity permitted to acquire title under this Section) of a mortgage prior to the issuance by City of a Certificate of Completion for the Site or portions thereof covered by said mortgage, and the holder of any such mortgage has not exercised its option to complete the Project, City may cure the default prior to completion of any foreclosure. In such event, City shall be entitled to reimbursement from ATHENS or other entity as appropriate of all costs and expenses incurred by City in curing the default, including legal costs and attorneys' fees, which right of reimbursement shall be secured by a lien upon the Site to the extent of such costs and disbursements. Any such lien shall be subject to:

- (a) Any mortgage for financing permitted by this Agreement; and
- (b) Any rights or interests provided in this Agreement for the protection of the holders of such mortgages for financing;

Provided, however, that nothing herein shall be deemed to impose upon City any affirmative obligations (by the payment of money, construction or otherwise) with respect to the Site in the event of its enforcement of its lien.

16.9 Right of the City to Satisfy Other Liens on the Property After Conveyance of Title. After the conveyance of Title, if applicable, and prior to the recordation of a Certificate of Completion for construction and development, and after ATHENS has had a reasonable time to challenge, cure, or satisfy any liens or encumbrances on the Site or any portion thereof, the City shall have the right to satisfy any such liens or encumbrances; provided, however, that nothing in this Agreement shall require ATHENS to pay or make provision for the payment of any tax, assessment, lien or charge so long as ATHENS in good faith shall contest the validity or amount thereof, and so long as such delay in payment shall not subject the Site or any portion thereof to forfeiture or sale.

16.10 Minor Amendments. City's Planning Director shall be authorized to approve and execute minor non-substantive amendments to this Agreement as may be requested by ATHENS' lender in relation to the protection of such lender's security interest in the Site, without formal approval of the Planning Commission or City Council.

**[SIGNATURES 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: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Two corporate officer signatures required when Contractor is a corporation, with one signature required from each of the following groups: 1) Chairman of the Board, President or any Vice President; and 2) Secretary, any Assistant Secretary, Chief Financial Officer or any Assistant Treasurer. CONTRACTOR'S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO CONTRACTOR'S BUSINESS ENTITY.

## 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

- INDIVIDUAL  
 CORPORATE OFFICER

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

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

#### DESCRIPTION OF ATTACHED DOCUMENT

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

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

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

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

\_\_\_\_\_  
\_\_\_\_\_

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

## 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

- INDIVIDUAL  
 CORPORATE OFFICER

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

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

#### DESCRIPTION OF ATTACHED DOCUMENT

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

\_\_\_\_\_  
 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**

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**

**MAP AND LEGAL DESCRIPTION OF THE SITE**

P M 231-15-18 LOT 2

APN: 8535-001-911

Site Address: 2200 Arrow Highway, Irwindale, CA 91706

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

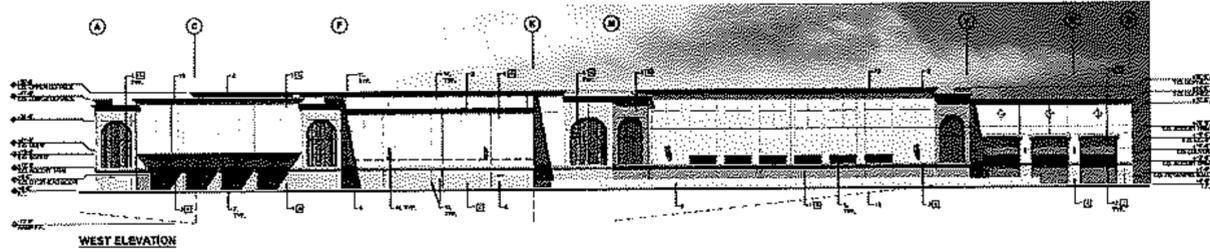
PARCEL 2 OF PARCEL MAP NO. 22152, IN THE CITY OF IRWINDALE, COUNTY OF  
LOS ANGELES, STATE OF CALIFORNIA, AS SHOWN ON MAP FILED IN BOOK 231  
PAGES 15 THROUGH 18 INCLUSIVE OF PARCEL MAPS, IN THE OFFICE OF THE  
COUNTY RECORDER OF SAID COUNTY.

APN: 8535-001-911

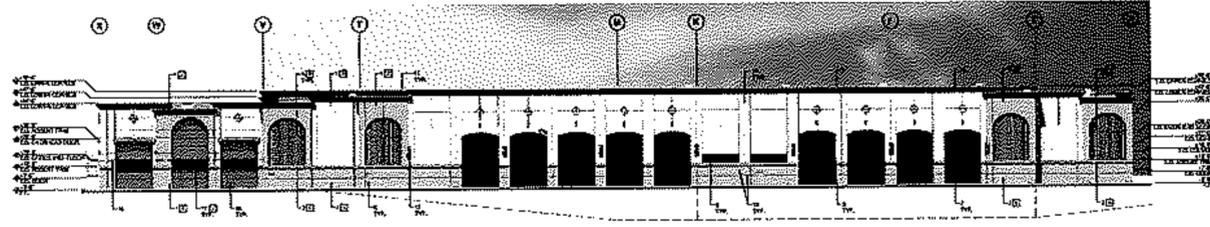




# PROJECT DEPICTION



WEST ELEVATION



EAST ELEVATION

**KEYNOTES**

- |                                     |                                     |
|-------------------------------------|-------------------------------------|
| 1. CONCRETE TILT-UP PANEL EXTERIOR  | 14. CONCRETE TILT-UP PANEL EXTERIOR |
| 2. CONCRETE                         | 15. CONCRETE TILT-UP PANEL EXTERIOR |
| 3. ACCENT TRIM                      | 16. FINISHES TO BE DETERMINED       |
| 4. FINISHES TO BE DETERMINED        | 17. FLOOR FINISH                    |
| 5. WALLS                            | 18. SEE 2ND FLOOR PLAN              |
| 6. CONCRETE TILT-UP PANEL EXTERIOR  |                                     |
| 7. CONCRETE                         |                                     |
| 8. FINISHES TO BE DETERMINED        |                                     |
| 9. CONCRETE TILT-UP PANEL EXTERIOR  |                                     |
| 10. CONCRETE                        |                                     |
| 11. FINISHES TO BE DETERMINED       |                                     |
| 12. CONCRETE TILT-UP PANEL EXTERIOR |                                     |
| 13. CONCRETE                        |                                     |

**FINISH KEYNOTES**

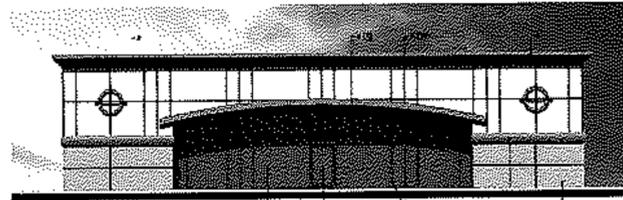
- |                                     |
|-------------------------------------|
| 1. CONCRETE TILT-UP PANEL EXTERIOR  |
| 2. CONCRETE TILT-UP PANEL EXTERIOR  |
| 3. CONCRETE TILT-UP PANEL EXTERIOR  |
| 4. CONCRETE TILT-UP PANEL EXTERIOR  |
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| 10. CONCRETE TILT-UP PANEL EXTERIOR |
| 11. CONCRETE TILT-UP PANEL EXTERIOR |
| 12. CONCRETE TILT-UP PANEL EXTERIOR |
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| 14. CONCRETE TILT-UP PANEL EXTERIOR |
| 15. CONCRETE TILT-UP PANEL EXTERIOR |
| 16. CONCRETE TILT-UP PANEL EXTERIOR |
| 17. CONCRETE TILT-UP PANEL EXTERIOR |
| 18. CONCRETE TILT-UP PANEL EXTERIOR |



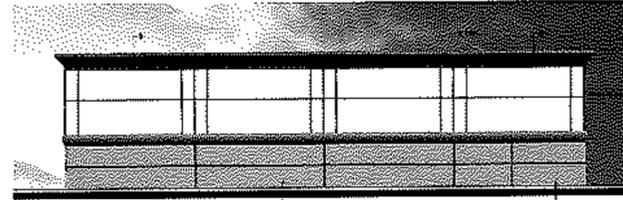
West & East Exterior Elevations  
**Athens Irwindale**  
 Athlete Recovery Facility and Service Station  
 2200 Arrow Hwy, Irwindale, CA

Job No. 3555  
 09.11.2017

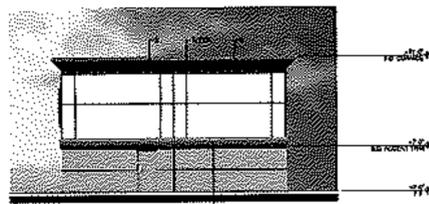
**A5.3**



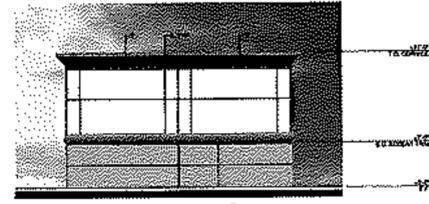
NORTH ELEVATION



SOUTH ELEVATION



WEST ELEVATION



EAST ELEVATION

**KEYNOTES**

- |                                    |
|------------------------------------|
| 1. CONCRETE TILT-UP PANEL EXTERIOR |
| 2. CONCRETE                        |
| 3. ACCENT TRIM                     |
| 4. STURDYWOOD BRANDING             |
| 5. STURDYWOOD BRANDING             |
| 6. STURDYWOOD BRANDING             |
| 7. CONCRETE TILT-UP PANEL EXTERIOR |
| 8. CONCRETE TILT-UP PANEL EXTERIOR |
| 9. ROOF                            |

**FINISH KEYNOTES**

- |                                     |
|-------------------------------------|
| 1. CONCRETE TILT-UP PANEL EXTERIOR  |
| 2. CONCRETE TILT-UP PANEL EXTERIOR  |
| 3. CONCRETE TILT-UP PANEL EXTERIOR  |
| 4. CONCRETE TILT-UP PANEL EXTERIOR  |
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| 10. CONCRETE TILT-UP PANEL EXTERIOR |
| 11. CONCRETE TILT-UP PANEL EXTERIOR |
| 12. CONCRETE TILT-UP PANEL EXTERIOR |
| 13. CONCRETE TILT-UP PANEL EXTERIOR |
| 14. CONCRETE TILT-UP PANEL EXTERIOR |
| 15. CONCRETE TILT-UP PANEL EXTERIOR |
| 16. CONCRETE TILT-UP PANEL EXTERIOR |
| 17. CONCRETE TILT-UP PANEL EXTERIOR |
| 18. CONCRETE TILT-UP PANEL EXTERIOR |



Exterior Elevations - Convergence Station  
**Athens Irwindale**  
 Athlete Recovery Facility and Transfer Station  
 2200 Arrow Hwy, Irwindale, CA

Job No. 3555  
 01.27.2017

**A5.4**

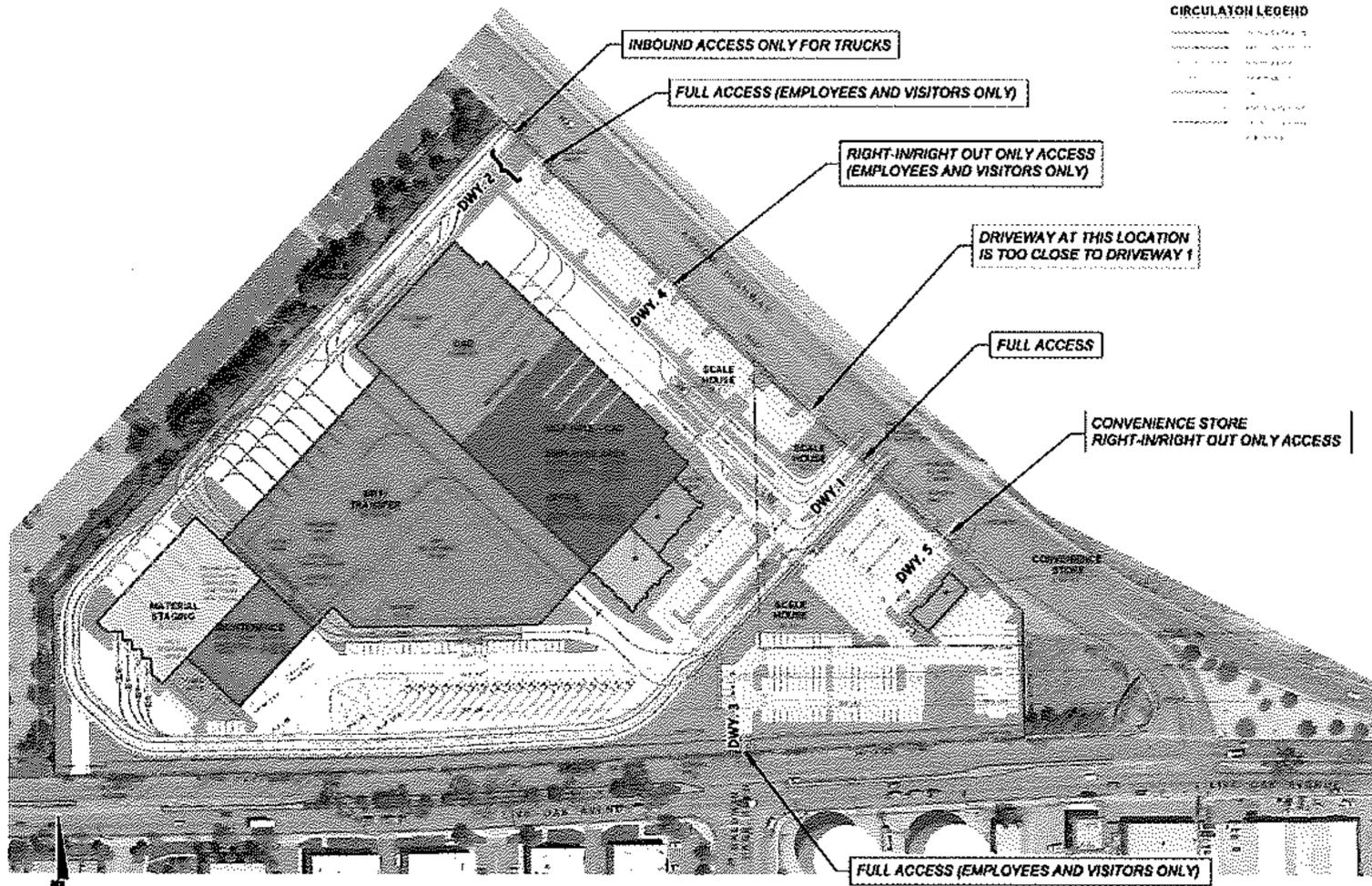
**EXHIBIT D**

**LIST OF OFF-SITE IMPROVEMENTS**

Item Number	Location of Improvement	Description of improvement
1	I-605 NB Off-Ramp (NS) / Live Oak Avenue (Eastbound and Westbound)	Install two new traffic signals per Caltrans standards. Construct a 2 <sup>nd</sup> northbound right turn lane; Resurface and restripe intersection and Off-Ramp; Traffic signal modification to Caltrans signalized intersection at N/B On-Ramp
2	Intersection of Arrow Highway (NS) and Project Driveway 1 (EW)	Construct a concrete intersection per City standard Construct a new traffic signal with the followings geometry: Northbound Approach: One left turn lane (two way turn lane) and two through lanes. Southbound Approach: Two through lanes and one right turn lane Eastbound Approach: One left turn lane and one right turn lane. Westbound Approach: N/A
3	Intersection of Arrow Highway (NS) and Project Driveway 2 (EW)	Construct a concrete intersection per City standard A stop control at driveway 2 Northbound Approach: One left turn lane (two way turn lane) and two through lanes. Southbound Approach: Two through lanes and one right turn lane. Eastbound Approach: One shared left turn and right turn lane. Westbound Approach: N/A
4	Intersection of Live Oak Avenue (EW) and Baldwin Park Boulevard (NS)	Traffic signal modification adding video vehicle detection per City Standard Northbound Approach: Two left turn lanes and one shared through-right turn lane. Southbound Approach: One left turn lane and one shared through-right turn lane. Eastbound Approach: One left turn lane (100-foot pocket length), two through lanes, and one defacto right turn lane Westbound Approach: One left turn lane, two through lanes, and one right turn lane.
5	Intersection of Arrow Highway (NS) and Project Driveway 4 (EW)	Construct a concrete right in / right out concrete intersection per City standard. A stop control at Driveway 4. Northbound Approach: Two through lanes (no left turn

		access). Southbound Approach: One through lane and one shared through-right turn lane. Eastbound Approach: One right turn lane. Westbound Approach: N/A.
6	Intersection of Arrow Highway (NS) and Project Driveway 5 (EW)	Construct a concrete right in / right out concrete intersection per City standard. A stop control at Driveway 5. Northbound Approach: Two through lanes (no left turn access). Southbound Approach: One through lane and one shared through-right turn lane. Eastbound Approach: One right turn lane. Westbound Approach: N/A.
7	I-605 SB Off-Ramp (NS) / Arrow Highway	Traffic Signal Modification per Caltrans Standard Construct a 2 <sup>nd</sup> southbound left turn lane per Caltrans Standard Restripe intersection per Caltrans Standard
8	Intersection of Live Oak Avenue and Arrow Highway (East Intersection)	Traffic Signal Modification adding video vehicle detection per City Standard Resurfacing and restripe intersection per City Standard
9	Intersection of Arrow Highway and Rivergrade Road	Construct a concrete intersection per City standard Traffic Signal Modification adding video vehicle detection per City Standard
10	Intersection of Live Oak Avenue and Rivergrade Road	Construct a concrete intersection per City standard Traffic Signal Modification adding video vehicle detection per City Standard
11	Arrow Highway between Live Oak Avenue and I-605 Fwy	Resurfacing and restripe the street per City Standard
12	Live Oak Avenue between Arrow Highway (East) and I-605 Fwy	Resurfacing and restripe the street per City Standard
13	Rivergrade Road between Live Oak Avenue and Arrow Highway	Resurfacing and restripe the street per City Standard

**EXHIBIT B: ACCESS AND ON-SITE CIRCULATION**



10910 - 001.dwg



**EXHIBIT E**

**IN-LIEU AND FAIR-SHARE FEE SCHEDULE FOR OFF-SITE IMPROVEMENTS**

Item Number	Location of Improvement	Description of improvement	Athens Fair-Share Fee
1	I-605 NB Off-Ramp (NS) / Live Oak Avenue (Eastbound and Westbound)	Install two new traffic signals per Caltrans standards. Construct a 2 <sup>nd</sup> northbound right turn lane; Resurface and restripe intersection and Off-Ramp; Traffic signal modification to Caltrans signalized intersection at N/B On-Ramp	1/3 (33.33%) of total cost for this improvement, which is estimated at One Million Dollars (\$1,000,000). Applicant shall pay the full amount to the City 30 days after approval in connection with Schedule of Performance (Exhibit G) Event 20.
2	Intersection of Arrow Highway (NS) and Project Driveway 1 (EW)	Construct a concrete intersection per City standard Construct a new traffic signal with the followings geometry: Northbound Approach: One left turn lane (two way turn lane) and two through lanes. Southbound Approach: Two through lanes and one right turn lane Eastbound Approach: One left turn lane and one right turn lane. Westbound Approach: N/A	100% of total cost for this improvement. Applicant shall construct and complete this improvement before occupancy.
3	Intersection of Arrow Highway (NS) and Project Driveway 2 (EW)	Construct a concrete intersection per City standard A stop control at driveway 2 Northbound Approach: One left turn lane (two way turn lane) and two through lanes. Southbound Approach: Two through lanes and one right turn lane. Eastbound Approach: One shared left turn and right turn lane. Westbound Approach: N/A	100% of total cost for this improvement. Applicant shall construct and complete this improvement before occupancy.

4	Intersection of Live Oak Avenue (EW) and Baldwin Park Boulevard (NS)	<p>Traffic signal modification adding video vehicle detection per City Standard</p> <p>Northbound Approach: Two left turn lanes and one shared through-right turn lane.</p> <p>Southbound Approach: One left turn lane and one shared through-right turn lane.</p> <p>Eastbound Approach: One left turn lane (100-foot pocket length), two through lanes, and one defacto right turn lane</p> <p>Westbound Approach: One left turn lane, two through lanes, and one right turn lane.</p>	100% of total cost for this improvement. Applicant shall construct and complete this improvement before occupancy.
5	Intersection of Arrow Highway (NS) and Project Driveway 4 (EW)	<p>Construct a concrete right in / right out concrete intersection per City standard.</p> <p>A stop control at Driveway 4.</p> <p>Northbound Approach: Two through lanes (no left turn access).</p> <p>Southbound Approach: One through lane and one shared through-right turn lane.</p> <p>Eastbound Approach: One right turn lane.</p> <p>Westbound Approach: N/A.</p>	100% of total cost for this improvement. Applicant shall construct and complete this improvement before occupancy.
6	Intersection of Arrow Highway (NS) and Project Driveway 5 (EW)	<p>Construct a concrete right in / right out concrete intersection per City standard.</p> <p>A stop control at Driveway 5.</p> <p>Northbound Approach: Two through lanes (no left turn access).</p> <p>Southbound Approach: One through lane and one shared through-right turn lane.</p>	100% of total cost for this improvement. Applicant shall construct and complete this improvement before occupancy.

		Eastbound Approach: One right turn lane. Westbound Approach: N/A.	
7	I-605 SB Off-Ramp (NS) / Arrow Highway	Traffic Signal Modification per Caltrans Standard Construct a 2 <sup>nd</sup> southbound left turn lane per Caltrans Standard Restripe intersection per Caltrans Standard	1/3 (33.33%) of total cost for this improvement, which is estimated at One Million Dollars (\$1,000,000). Applicant shall pay the full amount to the City in accordance with attached Schedule E-1, but no payment shall be required earlier than 30 days after approval in connection with Schedule of Performance (Exhibit G) Event 20.
8	Intersection of Live Oak Avenue and Arrow Highway (East Intersection)	Traffic Signal Modification adding video vehicle detection per City Standard Resurfacing and restripe intersection per City Standard	For item 7 through 12, the applicant shall be responsible for a lump sum payment of \$500,000.00 payable to the City in accordance with a five year payment plan as shown in attached Schedule E-2, but no payment shall be required earlier than 30 days after approval in connection with Schedule of Performance (Exhibit G) Event 20.
9	Intersection of Arrow Highway and Rivergrade Road	Construct a concrete overlay per City standard Traffic Signal Modification adding video vehicle detection per City Standard	Same as No. 7 above.
10	Intersection of Live Oak Avenue and Rivergrade Road	Construct a concrete overlay per City standard Traffic Signal Modification adding video vehicle detection per City Standard	Same as No. 7 above.
11	Arrow Highway between Live Oak Avenue and I-605 Fwy	Resurfacing and restripe the street per City Standard	Same as No. 7 above.
12	Live Oak Avenue between Arrow Highway (East) and I-605 Fwy	Resurfacing and restripe the street per City Standard	Same as No. 7 above.
13	Rivergrade Road between Live Oak Avenue and Arrow Highway	Resurfacing and restripe the street per City Standard	Same as No. 7 above.

**FAIR-SHARE FEE SCHEDULE E-1**

Item Number	Location of Improvement	Description of improvement	Athens Fair-Share Fee
1	I-605 SB Off-Ramp (NS) / Arrow Highway	Traffic Signal Modification per Caltrans Standard Construct a 2 <sup>nd</sup> southbound left turn lane per Caltrans Standard Restripe intersection per Caltrans Standard	1/3 (33.33%) of total cost for this improvement. Applicant shall pay the full amount to the City 12 months in accordance with payment schedule as shown below, but no payment shall be required earlier than 30 days after approval in connection with Schedule of Performance (Exhibit G) Event 20.

Payment Number	Description	Due Date	Amount
1	Initial payment is to start the design of the subject improvement.	January 1, 2025	\$200,000
2	First Payment of the 10% of the remaining \$800,000.00 for the construction of the subject improvement.*	January 1, 2026	\$80,000
3	Second Payment of the 10% of the remaining \$800,000.00 for the construction of the subject improvement.*	January 1, 2027	\$80,000
4	Third Payment of the 10% of the remaining \$800,000.00 for the construction of the subject improvement.*	January 1, 2028	\$80,000
5	Forth Payment of the 10% of the remaining \$800,000.00 for the construction of the subject improvement.*	January 1, 2029	\$80,000
6	Fifth Payment of the 10% of the remaining \$800,000.00 for the construction of the subject improvement.*	January 1, 2030	\$80,000
7	Sixth Payment of the 10% of the remaining \$800,000.00 for the construction of the subject improvement.*	January 1, 2031	\$80,000
8	Seventh Payment of the 10%	January 1, 2032	\$80,000

	of the remaining \$800,000.00 for the construction of the subject improvement.*		
9	Eighth Payment of the 10% of the remaining \$800,000.00 for the construction of the subject improvement.*	January 1, 2033	\$80,000
10	Ninth Payment of the 10% of the remaining \$800,000.00 for the construction of the subject improvement.*	January 1, 2034	\$80,000
11	Tenth Payment of the 10% of the remaining \$800,000.00 for the construction of the subject improvement.*	January 1, 2035	\$80,000

Note \* - The final design plans will incorporate Athens comments that are consistent with the requirement as stated in the approved 2020 Final Environmental Report before submission to Caltrans for final approval.

**FAIR-SHARE FEE SCHEDULE E-2**

Item Number	Location of Improvement	Description of improvement	Athens Fair-Share Fee
7	Intersection of Live Oak Avenue and Arrow Highway (East Intersection)	Traffic Signal Modification adding video vehicle detection per City Standard Resurfacing and restripe intersection per City Standard	For item 7 through 12, the applicant shall be responsible for a lump sum payment of \$500,000.00 payable to the City in accordance with a five year payment plan as shown in attached Schedule E-2, but no payment shall be required earlier than 30 days after approval in connection with Schedule of Performance (Exhibit G) Event 20.
8	Intersection of Arrow Highway and Rivergrade Road	Construct a concrete overlay per City standard Traffic Signal Modification adding video vehicle detection per City Standard	Same as No. 7 above.
9	Intersection of Live Oak Avenue and Rivergrade Road	Construct a concrete overlay per City standard Traffic Signal Modification adding video vehicle detection per City Standard	Same as No. 7 above.
10	Arrow Highway between Live Oak Avenue and I-605 Fwy	Resurfacing and restripe the street per City Standard	Same as No. 7 above.
11	Live Oak Avenue between Arrow Highway (East) and I-605 Fwy	Resurfacing and restripe the street per City Standard	Same as No. 7 above.
12	Rivergrade Road between Live Oak Avenue and Arrow Highway	Resurfacing and restripe the street per City Standard	Same as No. 7 above.

Payment Number	Description	Due Date	Amount
1	First Payment of the 20% of the \$500,000.00 for the construction improvement 7 through 12 as stated above.	December 31, 2018	\$100,000
3	Second Payment of the 20% of the \$500,000.00 for the construction improvement 7 through 12 as stated above.	December 31, 2019	\$100,000
4	Third Payment of the 20% of the \$500,000.00 for the construction improvement 7 through 12 as stated above.	December 31, 2020	\$100,000
5	Forth Payment of the 20% of the \$500,000.00 for the construction improvement 7 through 12 as stated above.	December 31, 2021	\$100,000
6	Fifth Payment of the 20% of the \$500,000.00 for the construction improvement 7 through 12 as stated above.	December 31, 2022	\$100,000

## **EXHIBIT F**

### **EXISTING DEVELOPMENT APPROVALS**

1. Disposition and Development Agreement
2. Oversight Board Resolution
3. State Department of Finance Approval of Sale
4. General Plan Amendment No. 02-2016
5. Zoning Ordinance Amendment No. 04-2016
6. Development Agreement
7. Conditional Use Permit No. 08-2016
8. Franchise & Facility Operations Agreement
9. Site Plan and Design Review Permit No. 06-2016

**EXHIBIT G**

**SCHEDULE OF PERFORMANCE**

All dates currently tolled while litigation is pending. The Parties agree to amend this Schedule of Performance within 90 days of litigation's conclusion in a manner generally consistent with the timelines set forth herein.

<b><u>Event</u></b>	<b><u>Item To Be Performed</u></b>	<b><u>Time For Performance</u></b>	<b><u>Agreement Reference</u></b>
1.	Agency and City conduct duly-noticed public hearing on DDA and FEIR	June 8, 2016	DDA § 216
2.	City files Notice of Determination for FEIR	June 9, 2016	N/A
3.	Oversight Board conducts duly-noticed public hearing on DDA	June 9, 2016	N/A
4.	State of California Department of Finance approves (or is deemed to have approved) or disapproves DDA	June 17, 2016	N/A
5.	Notice Planning Commission public hearing for GPA, ZC, DA, CUP, SP&DR, CUP, and FA	9/8/17	N/A
6.	Planning Commission public hearing for recommendation to City Council	9/20/17	N/A
7.	City notices City Council public hearing	9/28/17	N/A
8.	City Council public hearing (including first reading of ordinances for General Plan Amendment, Zoning Ordinance Amendment, and Development Agreement)	10/11/17	N/A
9.	SP&DR, CUP, and Franchise Agreement become effective	10/31/17	N/A
10.	City Council meeting (second reading of ordinances for General Plan Amendment, Zoning Ordinance	10/25/17	N/A

<b><u>Event</u></b>	<b><u>Item To Be Performed</u></b>	<b><u>Time For Performance</u></b>	<b><u>Agreement Reference</u></b>
	Amendment, and Development Agreement)		
11.	General Plan Amendment, Zone Text Amendment, and Development Agreement ordinances become effective	11/24/17	N/A
12.	Athens submits application to LEA for Solid Waste Facilities Permit (SWFP)	Submitted 5/7/18	DA Recital L
13.	Athens responds to written inquiries received by LEA and/or CalRecycle regarding SWFP application	Within thirty (30) days of receipt of such written inquiry	N/A
14.	Athens prepares and submits to City its schematic design drawings for phase 1 of the Project	By 2/28/19	DA, Exhibit "A"
15.	City reviews and approves or disapproves the schematic design drawings for phase 1	Within thirty (30) days of Event 14 4/1/19	N/A
16.	Athens submits to City 70% plan set and prepares and submits to City design development drawings and landscape and grading plans for the Project	Within ninety (90) days of approval in connection with Event 15	N/A
17.	City reviews and approves or disapproves the 70% design development drawings and landscape plans. City issues grading permit	Within sixty (60) days of Event 16	N/A
18.	Close of Escrow	See DDA	DDA § 405
19.	Athens submits final building plans (construction drawings) for phase 1 of the Project	Within thirty (30) days of approval in connection with Event 17	DA, Exhibit "A"
20.	City reviews and approves or disapproves the final building plans (construction drawings) for phase 1 of the Project	Within sixty (60) days of Event 19	DDA § 404(2)(b)

<b><u>Event</u></b>	<b><u>Item To Be Performed</u></b>	<b><u>Time For Performance</u></b>	<b><u>Agreement Reference</u></b>
21.	Athens commences construction of phase 1 of the Facility	Within sixty (60) days of approval in connection with Event 20	DA, Exhibit "A"
22.	Athens completes construction of phase 1 of the Facility	Within 12 months of Event 21	DA, Exhibit "A"
23.	Athens prepares and submits to City its final building plans (construction drawings) for phases 2 and 3 of the Project.	5/9/22*	N/A
24.	City reviews and approves or disapproves the final building plans (construction drawings) for phases 2 and 3 of the Project	Within ninety (90) days of Event 23 8/8/22*	DDA § 404(2)(b)
25.	Athens commences construction of phases 2 and 3 of the Facility	Within sixty(60) days of approval in connection with Event 24*	DA, Exhibit "A"
26.	Athens completes construction of phases 2 and 3 of the Facility	Within 14 months of Event 25*	DA, Exhibit "A"

It is understood that the foregoing Schedule of Performance is subject to all of the terms and conditions set forth in the text of the Development Agreement, including any events of Enforced Delay. The summary of the items of performance in this Schedule of Performance is not intended to supersede or modify the more complete description in the text; in the event of any conflict or inconsistency between this Schedule of Performance and the text of the Development Agreement, the text shall govern.

\* The time periods set forth in this Schedule of Performance may be altered or amended only by written agreement signed by both Athens and city. The Parties agree that Athens may delay items 23-26 without cause; however, in such case, Athens and City shall negotiate in good faith to amend the Agreement in a manner that provides City alternate sources of revenue while construction is delayed. In addition, minor adjustments may be implemented by the City Manager as needed to conform the above Schedule with the Parties' actual performance of agreements and/or undertaking of Project activities. A failure by either Party to enforce a breach of any particular time provision shall not be construed as a waiver of any other time provisions. The City Manager of the City shall have the authority to approve extensions of time without City Council action, respectively, not to exceed a cumulative total of 180 days. .

**EXHIBIT H**

**SCHEDULE OF ESTIMATED CITY FEES**

[See attached - Insert separately]

## **EXHIBIT I**

### **HOST FEE DESCRIPTION & CALCULATION**

#### **1.     *Advancement of Costs***

As memorialized in the Reimbursement Agreement as amended, ATHENS has advanced to City funds to cover City costs for CEQA compliance, Project review, consultant and legal support and other Project related costs, which funds shall not be reimbursable or charged against any future payments by ATHENS to City as provided herein.

#### **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, then 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.
- c. If the City finds pursuant to Article 10.0 that ATHENS has committed 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, 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 for 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 [based on index for Los Angeles-Riverside-Orange County], 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**

By way of illustration only and without limiting the generality of the foregoing, 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 J**

**FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT**

Recording Requested by and  
When Recorded Return to:

City of Irwindale  
5050 North Irwindale Avenue  
Irwindale, CA 91706

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(Space Above This Line for Recorder's Office Use Only)

**ASSIGNMENT, ASSUMPTION AND CONSENT TO ASSIGNMENT OF  
DEVELOPMENT AGREEMENT**

THIS ASSIGNMENT, ASSUMPTION AND CONSENT TO ASSIGNMENT OF DEVELOPMENT AGREEMENT ("Assignment") is entered into as of this \_\_\_ day of \_\_\_\_\_, 20\_\_ ("Effective Date"), by and between ARAKELIAN ENTERPRISES, INC., dba ATHENS SERVICES, a California corporation ("Assignor"), and \_\_\_\_\_ ("Assignee"), and THE CITY OF IRWINDALE, a municipal corporation ("City").

**RECITALS**

A. City and Assignor are parties to that certain Development Agreement dated \_\_\_\_\_ and recorded \_\_\_\_\_ as Instrument No. \_\_\_\_\_ of Official Records of Los Angeles County, California (the "Agreement"). Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to such terms in the Agreement.

B. The Agreement provides for the development of the Site legally described in Exhibit "A" hereto.

C. Pursuant to Section 7.4 of the Agreement, Assignor (referred to as "ATHENS" in the Agreement) may transfer the Agreement, or the Site or any part of the Site, to another entity upon City's approval of an assignment and assumption agreement.

D. Prior to the Effective Date of this Assignment, Assignor has contracted and sold the Site to Assignee [IF APPLICABLE]. Assignor now wishes to transfer to Assignee the Site along with all of Assignor's rights and obligations under the Agreement with respect to the development and operation of the Site, and Assignor and Assignee desire to obtain City's specific consent to such transfer.

E. Assignor and Assignee hereby represent to City that Assignee shall perform all obligations of Assignor under the Agreement, and that Assignee (a) has the financial strength and

capability to perform such obligations and (b) has sufficient experience and expertise in the planning, financing, development, ownership and operation of similar projects. To this end, all parties warrant that the following information has been provided to the satisfaction of City:

- i. The Assignee's audited financial statements for the immediately preceding three (3) operating years;
- ii. Reasonably satisfactory evidence that the proposed Assignee has municipal solid waste management experience on a scale equal to or exceeding the scale of operations conducted by Assignor; ‘
- iii. Reasonably satisfactory evidence that in the last five (5) years, the proposed Assignee 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 Assignee has provided the City with a complete list of such citations and censures;
- iv. Reasonably satisfactory evidence that the Assignee's key principals have no felony criminal convictions;
- v. Proof that the proposed Assignee conducts its refuse and 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; and
- vi. Any other information reasonably required by the City to ensure the proposed Assignee can fulfill the terms of the Agreement and "Other Agreements" identified therein, including the payment of indemnities and damages and provision of bonds and/or performance standards.

F. Based upon such representation, City wishes to consent to such transfer subject to the terms of this Assignment.

NOW, THEREFORE, in consideration of the mutual promises of the parties hereto and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, City, Assignor and Assignee agree as follows:

1. Representations. Assignor and Assignee represent and certify the following:
  - a. That all of the above recitals are true and correct.
  - b. To the best of Assignor's knowledge, no default presently exists under the Agreement and no state of facts exist which would constitute a default under the Agreement.
2. Assignment. Assignor hereby assigns, sells, and conveys and otherwise transfers to Assignee all of Assignor's interests, rights and obligations under the Agreement with

respect to the Site. This assignment shall be effective on the Effective Date, as first written above, provided that City consents thereto as evidenced by its execution of this Assignment in the space set forth below.

3. Assumption of Agreement. Assignee hereby accepts all of Assignor's interests, rights and obligations under the Agreement with respect to the Site and assumes and agrees to perform all of Assignor's corresponding obligations, terms, covenants, and conditions under the Agreement on, from and after the Effective Date. Assignee acknowledges that (i) it has received a copy of the Agreement and is fully familiar with its terms, and (ii) City has made no representations concerning the Agreement except as expressly provided herein.
4. Due Execution. The person(s) executing this Assignment 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 Assignment on behalf of said party, (iii) by so executing this Assignment, such party is formally bound to the provisions of this Assignment, and (iv) the entering into this Assignment does not violate any provision of any other agreement to which said party is bound.
5. Full Force and Effect. The parties further agree that, except as specifically provided in this Assignment, the terms of the Agreement shall remain unchanged and in full force and effect.
6. New Bonds. Pursuant to Section 13 of the Agreement, City's consent hereto is conditioned on Assignor's providing substitute bonds or other security as may be required by the Agreement.

(Signatures on following page)

IN WITNESS WHEREOF, the parties have executed and entered into this Assignment as of the date first written above.

**“Assignor”**

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

By: \_\_\_\_\_  
Ron Arakelian, Jr., Board Chairman.

By: \_\_\_\_\_  
Michael Arakelian, Vice President/Secretary

**“Assignee”**

\_\_\_\_\_

By: \_\_\_\_\_  
Its: \_\_\_\_\_

By: \_\_\_\_\_  
Its: \_\_\_\_\_

- 
- (Corporations require two signatures; one for each of the following: A. Chairman of Board, President or Vice President; and B. Secretary, Assistant Secretary Treasurer, Assistant Treasurer or Chief Financial Officer.)

**CONSENT TO ASSIGNMENT**

City hereby consents to the foregoing assignment to Assignee of Assignor's interests, rights and obligations in the Development Agreement, dated \_\_\_\_\_, and the corresponding acceptance thereof and assumption by Assignee of Assignor's corresponding interests, obligations, terms, covenants, and conditions made under the Agreement subject to all of the terms, covenants, and conditions set forth in this Assignment.

"City"

ATTEST:

CITY OF IRWINDALE,  
a California municipal corporation

\_\_\_\_\_  
Chief Deputy City Clerk

\_\_\_\_\_  
City Manager

APPROVED AS TO FORM:

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





**EXHIBIT "A" TO:**  
**FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT**

**LEGAL DESCRIPTION OF SITE**

P M 231-15-18 LOT 2

APN: 8535-001-911

Site Address: 2200 Arrow Highway, Irwindale, CA 91706

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 K**

**FORM OF CERTIFICATE OF COMPLETION**

**FREE RECORDING REQUESTED BY**

City of Irwindale  
5050 N. Irwindale Ave.  
Irwindale, CA 91706  
Attn: City Manager

**AND WHEN RECORDED RETURN TO AND  
MAIL TAX STATEMENTS TO:**

Athens Services  
P.O. Box 6009  
City of Industry, CA 91716-0009  
Attention: President

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(Space Above This Line for Recorder's Office Use Only)  
(Exempt from Recording Fee per Gov. Code §6103)

**CERTIFICATE OF COMPLETION**

WHEREAS, pursuant to that certain Development Agreement by and between the CITY OF IRWINDALE, a California municipal corporation ("City") and ARAKELIAN ENTERPRISES, INC., dba ATHENS SERVICES, a California corporation ("Athens"), dated \_\_\_\_\_ (the "Agreement"), Athens has agreed to develop that certain real property situated in the City of Irwindale, California, described on Exhibit "A" attached hereto and made a part hereof ("Site"); and

WHEREAS, as referenced in the Agreement, City shall furnish Athens with a Certificate of Completion upon completion of construction and development and the opening of the business, which certificate shall be in such form as to permit it to be recorded in the Official Records of the County Recorder of the County of Los Angeles, California ("Official Records"); and

WHEREAS, the parties also entered into that certain Disposition and Development Agreement ("DDA") that provided for certain covenants to run with the land, which covenants were incorporated into the Deed (as defined in the DA) or in that certain Declaration of Covenants, Conditions and Restrictions recorded on \_\_\_\_\_ as Instrument No. \_\_\_\_\_ of the Official Records (the "Declaration"); and

WHEREAS, this Certificate of Completion shall constitute a conclusive determination by City of the satisfactory completion by Athens of the construction and development required by the Agreement and of Athens's full compliance with the terms of the Agreement with respect to such construction and development, but not of the other provisions of the Deed or the Declaration, the provisions of which shall continue to run with the land pursuant to their terms; and

WHEREAS, City has conclusively determined that the construction and development on the Site has been satisfactorily completed by Athens in full compliance with the terms of the Agreement and that the business has opened.

NOW, THEREFORE:

1. The improvements required to be constructed have been satisfactorily completed and the business has opened in accordance with the provisions of said Agreement.

2. This Certificate of Completion shall constitute a conclusive determination of satisfaction of the agreements and covenants contained in the Agreement with respect to the obligations of Athens, and its successors and assigns, to construct the improvements and the dates for the beginning and completion thereof.

3. This Certificate of Completion shall not constitute evidence of Athens' compliance with the other provisions of the Agreement, Deed, DDA or the Declaration, the provisions of which shall continue to run with the land.

4. This Certificate of Completion shall not constitute evidence of compliance with or satisfaction of any obligation of the Athens to any holder of a mortgage or any insurer of a mortgage, securing money loaned to finance the improvements or any part thereof.

5. This Certificate of Completion is not a Notice of Completion as referred to in California Civil Code Section 3093.

6. Except as stated herein, nothing contained in this instrument shall modify in any way any other provisions of the Agreement or any other provisions of the documents incorporated therein.

IN WITNESS WHEREOF, the City has executed this Certificate of Completion this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

THE CITY OF IRWINDALE

By: \_\_\_\_\_, Mayor

ATTEST:

By: \_\_\_\_\_  
Its: \_\_\_\_\_

APPROVED AS TO FORM:  
ALESHIRE & WYNDER, LLP

By: \_\_\_\_\_, City Attorney

**CONSENT TO RECORDATION**

ARAKELIAN ENTERPRISES, INC., dba ATHENS SERVICES, a California corporation, which is "Athens" as defined herein and the owner of the Site, hereby consents to the recordation of this Certificate of Completion against the Site.

Dated:

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

By: \_\_\_\_\_ By: \_\_\_\_\_  
Ron Arakelian, Jr., Board Chairman. Michael Arakelian, Vice President/Secretary





**EXHIBIT "A" TO  
FORM OF CERTIFICATE OF COMPLETION**

**LEGAL DESCRIPTION OF SITE**

P M 231-15-18 LOT 2

APN: 8535-001-911

Site Address: 2200 Arrow Highway, Irwindale, CA 91706

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: 8535-001-91