

**FIRST AMENDMENT TO EXCLUSIVE FRANCHISE AGREEMENT  
FOR WASTE HAULING SERVICES**

This FIRST AMENDMENT TO EXCLUSIVE FRANCHISE AGREEMENT FOR WASTE HAULING SERVICES ("Amendment") is entered this 12 day of December 2012, by and between the CITY OF IRWINDALE, a municipal corporation ("City"), and Arakelian Enterprises, Inc., a California corporation doing business as Athens Services ("Athens").

**RECITALS**

A. On April 13, 2011, the City and Athens entered into an Exclusive Franchise Agreement for Waste Hauling Services ("Agreement") for the provision by Athens of solid waste hauling services to the City, its residents and businesses on an exclusive bases.

B The California 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.

C. In response to the Mandatory Commercial Recycling measures adopted under the AB 32 Scoping Plan by the Air Resources Board, the California Legislature adopted Assembly Bill 341 (Chapter 476, Statutes of 2011), as amended by Senate Bill 1018, (collectively, "AB 341"), which became effective July 1, 2012 and requires the City to implement an education, outreach and monitoring program promoting recycling and businesses and public entities that produce four or more cubic yards of solid waste per week and multi-family residential dwellings with five units or more to recycle. To address the requirements of AB 341, Athens has represented that it is able to provide services that will allow the City to comply with AB 341 by providing the necessary education, outreach and monitoring programs and by processing the solid waste from the City's facilities and residential and commercial customers at its Industry MRF/TS pursuant to the terms of this Amendment.

D. The parties further wish to amend the Agreement to implement certain negotiated revised terms in preparation for the planning, evaluation and development of a MRF/TS in the City.

NOW THEREFORE, in consideration of the promises and covenants contained herein, the above recitals, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree to amend the Agreement as follows:

1. **Term and Franchise Term.** Section 4.1, including all subsections thereunder, of the Agreement shall be deleted in its entirety and replaced with the following:

"4.1 Term and Franchise Term.

4.1.1 Effective Date. The term of this Agreement commences on the Effective Date with Franchisee's performance to commence on a date to be agreed upon by the parties within sixty (60) days of the Effective Date and be co-extensive with the term of the Facility Operations Agreement for the operation of the MRF/TS, which will be thirty (30) years after which the Facility Operations Agreement for the MRF/TS will be subject to automatic ten (10) year rolling extensions. Notwithstanding the foregoing, the term of this Franchise Agreement shall be subject to earlier termination as provided hereinbelow. The City is obligated to proceed in good faith towards the development of the MRF/TS subject only to the City's express reservation of its right to exercise its discretion under applicable law pertaining to entitlements and other governmental acts which the City may not waive or assign. In the event either party provides written notice to the other party that it elects not to proceed with the MRF/TS for any reason, then the Term of this Agreement shall be reduced to an initial term of eleven (11) years which shall run from the date on which either party receives notice of the other party's election not to proceed with the MRF/TS (the "Modified Initial Term"). At the conclusion of the Modified Initial Term, this Agreement shall be subject to automatic one (1) year rolling extensions so long as Franchisee shall have met its obligations under this Franchise Agreement (the "Rolling Extensions"). Either party may terminate the Rolling Extensions, with or without cause, by providing written notice at least sixty (60) days prior to the start of the first or next automatic Rolling Extension that such upcoming Rolling Extension will be the final extension and this Agreement will terminate at the end of the period of such extension. Upon the execution of the Facility Operations Agreement by both parties, the term of this Agreement shall be conformed to the term of the Facility Operations Agreement so that the terms of the two Agreements are identical.

2. **Designated MRF/TS**. Subsection 5.1.3 of the Agreement shall be deleted in its entirety and replaced with the following:

"5.1.3 Designated MRF/TS. As part of the efforts to comply with the directives and goals of AB 939 and AB 341, Franchisee shall transport and process all Solid Waste, Recyclables and Green Waste to Franchisee's materials recovery facility in the City of Industry until the MRF/TS is developed in City and operational. When the MRF/TS is operational, Franchisee shall transport all Solid Waste, Recyclables and Green Waste collected hereunder to the MRF/TS. The MRF/TS shall be operational when Phase One of the MRF/TS has been completed (a Certificate of Completion has been issued by the City) and testing of solid waste processing equipment is complete. The MRF/TS Agreements will include specific time frames for completion of Phase One of the MRF/TS, for equipment testing, and for the MRF/TS becoming operational."

3. **Community Benefits**. A new Subsection 5.15, entitled "Community Sponsorship" shall be added to the Agreement to read as follows:

“5.15. Community Sponsorship. In addition to its sponsorship obligation described in Section 4(e) of Exhibit “C”, Franchisee shall sponsor the City’s annual fireworks displays by paying up to a cost of Thirty-Five Thousand Dollars (\$35,000) beginning in 2013, increased annually by CPI, (“Fireworks Sponsorship”) until such time as a notice of termination is given by either party pursuant to the terms of this Agreement. Franchisee shall pay the Fireworks Sponsorship within thirty (30) days of the City’s written request therefor, which request generally occurs by April of each year.”

4. **State Mandate.** Section 6.1 of the Agreement shall be deleted in its entirety and replaced with the following:

“6.1 State Mandate. AB 939 currently sets the directive of Diverting fifty percent (50%) of the City’s Solid Waste from disposal. If the City fails to implement its required plans to achieve the aforementioned directive under AB 939, the California Department of Resources Recycling and Recovery (“CalRecycle”) may impose administrative civil penalties of up to TEN THOUSAND DOLLARS (\$10,000.00) per day until the City implements its plans. AB 341 makes a legislative declaration that it is the policy goal of the State of California that 75% of solid waste generated be source reduced, recycled, or composted by the year 2020 but further provides that CalRecycle shall not establish or enforce a diversion rate on a city or county that is greater than the 50% diversion rate established pursuant to AB 939. AB 341 also requires Commercial Customers generating more than 4 cubic yards of Solid Waste per week and Multi-Family properties with 5 or more Units to arrange for recycling services on and after July 1, 2012. Franchisee shall implement a commercial solid waste recycling program appropriate for the City designed to divert commercial solid waste from Commercial Customers and Multi-Family properties as required by AB 341.

Furthermore, City anticipates that the State Legislature will adopt new legislation that will increase the minimum Diversion requirement. Upon the effective date of any new legislation that affects the Diversion requirements currently imposed by AB 939, Franchisee agrees to implement a revised or new Diversion program meeting such amended legislative requirements and, except as provided below in this Section 6.1 when the MRF/TS is operational, City agrees to adjust the Maximum Rates as may be reasonably necessary to cover the marginal additional cost of meeting such legislative requirement and a reasonable profit thereon. Franchisee will have the right to such price adjustment in the event that Franchisee can demonstrate that any amended legislative requirement or any change in regulations requires a level of effort greater than the level of effort then being undertaken by Franchisee with respect to diversion. Franchisee’s level of effort, combined with other factors applicable in the City, currently result in diversion of at least fifty percent. Until the MRF/TS is operational, to the extent that changes in law or regulation either reduce the amount of diversion by re-characterizing or re-defining diversion or increase diversion requirements above 50% or both, City agrees that it will adjust pricing as may be reasonably

necessary to fund programs to achieve the required diversion percentage. Failure of either party to exercise its best efforts to implement an amended Diversion program based upon new State legislation mandating new Waste Diversion levels shall constitute a default under this Agreement. Commencing when the MRF/TS is operational and the Maximum Rates have been adjusted hereunder to account for the gate fee at the MRF/TS, Franchisee shall only be entitled to an adjustment in the Maximum Rates allowed hereunder to fund programs to achieve the required diversion percentage to the extent that changes in law or regulation either reduce the amount of diversion by re-characterizing or re-defining diversion or increase diversion requirements above 70% or both.

5. **Waste Diversion.** Section 6.3, including all subsections thereunder, of the Agreement shall be deleted in its entirety and replaced with the following:

6.3 Franchisee Waste Diversion Responsibilities.

6.3.1 Cooperation and Education. Franchisee shall cooperate with the Solid Waste Diversion activities of the City and shall coordinate Diversion activities and programs to the extent possible. Franchisee shall cooperate with the City's efforts to develop and implement public education, outreach and information programs designed to promote Source Reduction, Recycling and composting in general as well as specific Waste Diversion strategies in compliance with AB 939 and AB 341. Franchisee shall have a public education and outreach program in place by which it will distribute free educational information about Solid Waste management and Recycling to customers in their regular bills.

6.3.2 Implementation of Strategies and Penalties. Franchisee shall implement the strategies jointly developed and agreed to by the Parties. If Franchisee's failure to perform its obligations under this Section 6.3 results in the imposition of penalties against the City pursuant to the provisions of AB 939 and AB 341, Franchisee shall protect, defend with counsel approved by City, indemnify, and reimburse the City (including its officers, directors, employees and agents) for such fine or penalty within thirty (30) days of its imposition. Excluded from Franchisee's foregoing indemnification and reimbursement obligations for AB 939 and AB 341 fines are any fines or penalties the imposition of which results from, or is attributable to, a determination by City to not implement recommended lawful programs or to eliminate, suspend or reduce existing lawful diversion programs.

6.3.3 Diversion at Franchisee's MRF/TS. Franchisee shall adopt such diversion programs as may be reasonably necessary to meet all mandated diversion requirements.

6.3.4 Waste Diversion Reporting Requirements. Franchisee shall comply with the Waste Diversion reporting requirements established by the City. Franchisee shall provide City with quarterly written reports forty five (45) days after the end of each quarter in a form acceptable to the City and adequate to meet City's

reporting requirements to CalRecycle on compliance with AB 939 and AB 341, including a breakdown of the type and quantity of waste (by weight and volume) hauled by Franchisee, generator type and program area, the type and quantity of Recyclable Materials, HHW (as may be inadvertently received by Franchisee), Green Waste and Bulky Waste, and including a discussion of the quarterly waste Diversion percentages achieved during the year. Franchisee shall report such information on a monthly basis. Monthly records will allow for reporting of seasonal variation in waste quantities and will assist in program operation, improvement and expansion. Franchisee shall reasonably assist the City to meet any County, State, or Federal reporting requirements pertaining to Solid Waste, Recycling, Green Waste or other matters pertaining to this Franchise Agreement.

6.3.5 Meet and Confer Process. If Franchisee fails to Divert the required amount of the City's Solid Waste, as described in this Agreement, where there has not been any legislation that would trigger the process set forth at Section 6.1, above, Franchisee and City shall meet and confer to develop a revised or new Diversion program. If the City and Franchisee fail to agree on a revised or new Diversion program within ninety (90) days of commencing the meet and confer process (which date may be extended by mutual written agreement), notwithstanding anything to the contrary contained herein, City may elect, in its sole discretion, to terminate this Agreement on sixty (60) days written notice. Franchisee agrees to continue performance under this Agreement until City hires a new contractor. Franchisee shall be solely responsible for payment of all penalties and other costs and expenses incurred by the City resulting from inadequate diversion for the period of time during which the City shall have failed to meet applicable diversion requirements.”

6. **Recycling.** Subsection 6.4.1 of the Agreement shall be deleted in its entirety and replaced with the following, with all other Subsections under Section 6.4 remaining unmodified and in full force and effect:

“6.4.1 Recycling. Franchisee shall conduct mixed waste processing of Solid Wastes and Recyclables at Franchisee’s materials recovery facility located in the City of Industry beginning January 1, 2013. Upon request, any customer of a Commercial Unit or City Facility may request the provision of a Bin or Cart (to be provided by Franchisee at a reduced rate as set forth on Exhibit A) dedicated to the discarding and collection of Recyclable paper and/or cardboard items.”

7. **Maximum Rate Schedule.** Exhibit “A” of the Agreement shall be deleted in its entirety and replaced with Exhibit “A” attached to this Amendment and Section 8.1 of the Agreement shall be deleted in its entirety and replaced with the following:

“8.1 Maximum Rate Schedule. In the attached Exhibit A, which is incorporated herein by this reference (“Maximum Rate Schedule”), the City has established the maximum service rates which may be charged by Franchisee to its customers in the City and such rates include the obligation of Franchisee to transport and process all Solid Waste, Recyclables and Green Waste to

Franchisee's materials recovery facility in the City of Industry as required by Section 5.1.3 of the Agreement. The Maximum Rate Schedule shall be in effect at the time of the Effective Date.

8. **AB 939 and AB 341 Education.** Section 12.5 of the Agreement shall be deleted in its entirety and replaced with the following:

“12.5 **AB 939 and AB 341 Education.** Franchisee and City shall jointly develop and implement a public awareness, outreach and education program that is consistent with the City's Source Reduction and Recycling goals as stated in Article 6.”

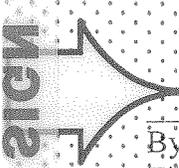
9. **Rate Adjustment.** Exhibit “D” of the Agreement shall be deleted in its entirety and replaced with Exhibit “D” attached to this Amendment.

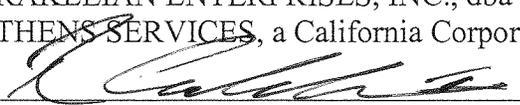
10. **Limited Waiver of Claims.** Franchisee believes it has the exclusive right pursuant to the terms of this Agreement to haul away the food by-products and related waste, which is not intended for human consumption (“food waste”) produced by a City commercial customer, Ready Pac Foods, Inc. (“Ready Pac”). On June 30, 2011, City issued a Notice of Violation to Ready Pac, stating that Ready Pac had violated an Irwindale Municipal Code provision which requires that all solid waste leaving City be hauled by Franchisee. Ready Pac, *inter alia*, maintains that its food by-products are not “waste” requiring hauling or disposal under this Agreement because Ready Pac does not discard them but, instead, ships or has them shipped to ranch and farm customers as food for animals. In response, City determined not to further pursue legal action against Ready Pac for any issue arising out of the matters addressed in the Notice of Violation. Franchisee advised City that it believed the hauling or shipping practices of Ready Pac in existence prior to or on the date hereof with respect to its food by-products continue to violate the provisions of the Irwindale Municipal Code and the terms of the Agreement (the “Dispute”). As material consideration for the City entering into this Amendment, Franchisee hereby agrees to waive any known or unknown, past, present or future, claim, demand, cause of action, damage or loss that it may have against City and each of its members, officials, consultants, attorneys, agents, and employees or Ready Pac and each of its directors, officers, subsidiaries, owners, stockholders, agents, and employees arising directly from the Dispute; provided, however, that Franchisee reserves any rights it may later have against the City or ReadyPac (i) if ReadyPac materially changes its hauling or shipping practices or alters its waste and recycling collection services and (ii) for any additional violations of the Irwindale Municipal Code and/or the Agreement that differ from its current claims relating to the Dispute.

11. **Due Execution.** The person(s) executing this Amendment 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 Amendment on behalf of said party, (iii) by so executing this Amendment, such party is formally bound to the provisions of this Amendment, and (iv) the entering into this Amendment does not violate any provision of any other agreement to which said party is bound.

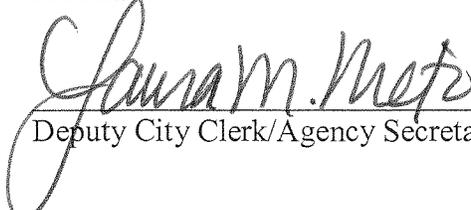
12. **Full Force and Effect.** The parties further agree that, except as specifically provided in this Amendment, the terms of the Agreement shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment as of the date first set forth above.

   
By: Ron Arakelian, Jr.  
Title Chairman of the Board

ARAKELIAN ENTERPRISES, INC., dba  
ATHENS SERVICES, a California Corporation  
  
By: Ron Arakelian, III  
Title Executive Officer

ATTEST:

  
Deputy City Clerk/Agency Secretary

CITY OF IRWINDALE  
By:   
Julian A. Miranda, Mayor

CITY OF IRWINDALE, AS SUCCESSOR TO  
THE IRWINDALE COMMUNITY  
REDEVELOPMENT AGENCY  
By:   
Julian A. Miranda, Chair

APPROVED AS TO FORM:  
ALESHIRE & WYNDER, LLP  
  
City Attorney and Agency Counsel

## Exhibit D – Rate Adjustment

### RATE ADJUSTMENT

Each of the Maximum Rates provided in this Agreement consists of an Operations Component and a Disposal Component.

The Operations Component includes all costs except for disposal of Solid Waste at Puente Hills Landfill. Operational Component costs include, but are not necessarily limited to, collection of Solid Waste, Recyclables, and Green Waste and the cost of hauling materials to Puente Hills Landfill.

The Disposal Component is the per ton Disposal Fee incurred by Franchisee for disposal of all materials collected hereunder. The Disposal Component shall be the cost of disposal at the Puente Hills Landfill.

### Rate Adjustment Formula – Annual COLA

The Operations Component is to be adjusted each January 1st in proportion to the increase or decrease in the cost of living as determined by the percentage change in the Consumer Price Index ("CPI") for the immediately previous twelve month period (December through November) for All Urban Consumers in the Los Angeles/Anaheim/Riverside area, or an equivalent index approved by mutual agreement in the event the CPI as described above is no longer published.

The Disposal Component is not subject to any CPI increase or decrease. Increases and decreases to the Disposal Fee will be reflected by adjustment of the Disposal Component which will be passed through to the consumer and the City (with respect to residential service) as set forth herein.

The Disposal Component shall be the Gate Fee of Franchisee's material recovery facility in the City of Industry and, thereafter, the MRF/TS for processing mixed solid waste which Gate Fee shall be established by Franchisee in accordance with the MRF/TS Agreements. The Gate Fee for Franchisee's material recovery facility in the City of Industry and the MRF/TS shall be divided into a Disposal Component and an Operations Component. The Operational Component shall be adjusted each January 1st in proportion to the increase or decrease in the cost of living as determined by the percentage change in the Consumer Price Index ("CPI") for the immediately previous twelve month period (December through November) for All Urban Consumers in the Los Angeles/Anaheim/Riverside area, or an equivalent index approved by mutual agreement in the event the CPI as described above is no longer published. The Disposal Fee shall be adjusted to reflect changes in the cost of transporting and disposing of residue, subject to the City's right to confirm such costs in accordance with this Agreement and the MRF/TS Agreements.

Franchisee shall provide City a revised schedule of Maximum Rates showing the effect of any increases or decreases in the Operations Component and the Disposal Component of the Maximum Rates charged hereunder. The notice will show the effect of such increases and decreases as to each category of service hereunder. Franchisee shall notify customers of such increases or decreases in by including notice with its periodic billing.

### **Special Rate Adjustment**

In the event circumstances beyond the control of Franchisee impose or generate extraordinary costs in the performance of the Agreement, Franchisee may petition City to determine if an adjustment in compensation is warranted to avoid undue financial hardship on Franchisee. For each such request, Franchisee shall prepare a schedule documenting the extraordinary costs. Such request shall be prepared in a form acceptable to City with support for assumptions made by Franchisee in preparing the estimate of extraordinary costs. City shall review Franchisee's request and, in City's sole judgment, make the final determination on the adjustment, provided, however, that approval of such request shall not be unreasonably withheld.

### **Administrative Rate Adjustments.**

Each Rate Adjustment except a Special Rate Adjustment or a Rate Adjustment under Section 6.1 shall be administrative. Franchisee shall provide the City Manager with calculations setting forth the proposed adjusted rate at least ten days prior to the proposed rate adjustment. The rate adjustment shall go into effect thereafter unless the City Manager shall object in which case the parties shall meet and confer and agree upon the proper application of the adjustment procedures set forth herein. The adjustments to the Maximum Rate that are allowed under this Agreement based on the CPI and on changes in the cost of disposal and transportation are not discretionary, but are a matter of right to Franchisee so long as Franchisee is not in default hereunder.

**City of Irwindale**  
**Schedule of Rates Effective January 1, 2013**  
**EXHIBIT A**

<b>Residential Barrels</b>	<b>New Disposal</b>	<b>New Service</b>	<b>Net</b>	<b>AB939</b>	<b>FF</b>	<b>Gross</b>
2 90 Gallon Barrels	8.31	12.50	20.81	1.24	3.89	25.95
1 Extra 90 Gallon Barrel	4.16	6.26	10.42	0.62	1.95	12.99

<b>Bin</b>	<b>Frequency</b>	<b>New Disposal</b>	<b>New Service</b>	<b>Net</b>	<b>AB939</b>	<b>FF</b>	<b>Gross</b>
1.5	1	24.14	89.10	113.24	6.75	21.17	141.17
1.5	2	48.31	134.26	182.57	10.88	34.14	227.58
1.5	3	72.45	175.83	248.29	14.79	46.43	309.51
1.5	4	96.60	212.27	308.87	18.40	57.75	385.03
1.5	5	120.74	269.69	390.43	23.26	73.01	486.70
1.5	6	144.91	336.34	481.24	28.68	89.99	599.91

<b>Bin</b>	<b>Frequency</b>	<b>New Disposal</b>	<b>New Service</b>	<b>Net</b>	<b>AB939</b>	<b>FF</b>	<b>Gross</b>
2	1	32.20	104.10	136.30	8.12	25.49	169.91
2	2	64.40	153.20	217.60	12.97	40.69	271.25
2	3	96.60	200.59	297.18	17.71	55.57	370.46
2	4	128.82	253.95	382.76	22.81	71.57	477.14
2	5	161.00	295.28	456.27	27.19	85.32	568.78
2	6	193.21	365.65	558.86	33.30	104.50	696.66

<b>Bin</b>	<b>Frequency</b>	<b>New Disposal</b>	<b>New Service</b>	<b>Net</b>	<b>AB939</b>	<b>FF</b>	<b>Gross</b>
3	1	48.31	106.95	155.26	9.25	29.03	193.54
3	2	96.60	163.60	260.20	15.50	48.65	324.35
3	3	144.91	208.08	352.98	21.03	66.00	440.02
3	4	193.21	259.80	453.01	26.99	84.71	564.71
3	5	241.52	313.34	554.86	33.06	103.75	691.68
3	6	289.81	377.96	667.77	39.79	124.86	832.42

<b>Bin</b>	<b>Frequency</b>	<b>New Disposal</b>	<b>New Service</b>	<b>Net</b>	<b>AB939</b>	<b>FF</b>	<b>Gross</b>
4	1	64.40	130.59	194.99	11.62	36.46	243.07
4	2	128.82	187.90	316.71	18.87	59.22	394.80
4	3	193.21	240.55	433.77	25.85	81.11	540.72
4	4	257.61	290.24	547.85	32.64	102.44	682.94
4	5	322.03	349.97	672.00	40.04	125.65	837.69
4	6	386.43	423.22	809.65	48.24	151.39	1,009.28

<b>Bin</b>	<b>Frequency</b>	<b>New Disposal</b>	<b>New Service</b>	<b>Net</b>	<b>AB939</b>	<b>FF</b>	<b>Gross</b>
6	1	96.60	156.15	252.75	15.06	47.26	315.07
6	2	193.21	219.95	413.17	24.62	77.26	515.04
6	3	289.81	272.06	561.87	33.48	105.06	700.42
6	4	386.43	345.54	731.97	43.62	136.87	912.45
6	5	483.03	409.97	893.00	53.21	166.98	1,113.19
6	6	579.64	493.00	1,072.65	63.91	200.57	1,337.13

<b>Roll-off</b>	<b>New Service</b>	<b>Net</b>	<b>AB939</b>	<b>FF</b>	<b>Gross</b>
Standard Roll-off Plus Dump	192.42	192.42	11.47	35.98	239.87
Compactor Roll-off Plus Dump	213.68	213.68	12.73	39.95	266.36
Plus Dump at MRF	74.37	74.37	4.43	13.91	92.71
Wash Out	196.60	196.60	-	36.76	233.36

\* Recycle bin rate is equal to the service component of corresponding rubbish rate above.