

SECOND AMENDMENT TO EXCLUSIVE FRANCHISE AGREEMENT
FOR WASTE HAULING SERVICES

This Second Amendment to Exclusive Franchise Agreement for Waste Hauling Services (“Amendment”) is entered into as of the 22nd day of January, 2014, by and between the City of Irwindale, a municipal corporation (“City”) and Arakelian Enterprises, Inc., a California corporation d/b/a Athens Services (“Franchisee”).

RECITALS

WHEREAS, City and Franchisee previously entered into the Exclusive Franchise Agreement for Waste Hauling Services (the “Agreement”) on April 13, 2011 and amended the Agreement on December 12, 2012;

WHEREAS, City and Franchisee have evaluated and discussed several alternatives to address the recent closure of the Puente Hills Landfill and have concluded that the arrangement described herein is in the best interests of the residents and businesses in the City;

WHEREAS, City and Franchisee now desire to further amend the Agreement as provided in this Amendment;

NOW, THEREFORE, City and Franchisee mutually agree as follows:

1. Section 1.2.33 of the Agreement is hereby amended in its entirety to read as follows:

“1.2.33 Maximum Rate Schedule. "Maximum Rate Schedule" means that schedule of maximum rates to be charged to Residential and Commercial Units located in the City by Franchisee for Franchisee's waste hauling services, which Maximum Rates are effective as of November 1, 2013 and attached hereto at Exhibit A. A Residential Unit is a single family home or each unit in a multi-family property comprised of not more than four units. A Commercial Unit is a single business location.”

2. Section 8.1 of the Agreement is hereby amended in its entirety to read as follows:

“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. The Maximum Rate Schedule shall be in effect as of November 1, 2013.”

3. Section 8.3 of the Agreement is hereby amended in its entirety to read as follows:

“8.3 **Rates for Term of Agreement.** The Maximum Rates established in this Article 8, as adjusted from time to time pursuant to Exhibit D or as otherwise provided in the terms of this Agreement, shall remain effective so long as Franchisee continues to operate the San Bernardino County Waste Disposal System (“SBWDS”) or is able to make a comparable arrangement with another landfill. If Franchisee is no longer operating SBWDS and is unable to make a comparable arrangement with another landfill, City and Franchisee shall meet and confer to agree upon new rate provisions with the objective of identifying the lowest cost alternative for City. If City and Franchisee are unable to agree upon new rate provisions within the later of (a) sixty (60) days or (b) the date that Franchisee is no longer operating SBWDS or has made a comparable arrangement with another landfill, the rate adjustment provisions previously set forth in Exhibit D will be revived to those that existed immediately prior to the date of this Amendment and the then-existing rates will subsequently be adjusted based on those prior adjustment provisions; provided, however, that City and Franchisee will continue to meet regularly until the parties have agreed upon mutually acceptable rate provisions.”

4. A new Section 8.11 shall be added to the Agreement to read as follows:

“8.11 **Disposal Component “Most Favored Nation” Rate.** Franchisee hereby covenants to City that it has not offered a per ton tipping fee at SBWDS for MRF residue to any other City for which Franchisee also has a franchise agreement that is lower than the fee being used in connection with the rates set forth on Exhibit A. Should Franchisee enter into any subsequent agreement during the Term with any other city which provides for a lower per ton tipping fee at SBWDS for MRF residue than the fee being used in connection with the rates set forth on Exhibit A, Franchisee will also offer such fee to City.”

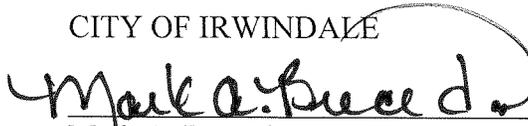
5. Exhibits A and D are hereby amended and replaced in their entirety with Exhibits A and D attached to this Amendment.

6. Other than as set forth in this Amendment, the terms of the Agreement (including all prior amendments thereto) shall remain unchanged and in full force and effect.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties have executed and delivered this Amendment as of the date first written above.

CITY OF IRWINDALE


Mark A. Breceda, Mayor

ATTEST:


John Davidson, City Clerk

ARAKELIAN ENTERPRISES, INC., DBA
ATHENS SERVICES

By: 

By: Ron Arakelian III, Executive Officer

APPROVED AS TO FORM:


Fred Galante, City Attorney

City of Irwindale
Schedule of Rates Effective November 1, 2013
EXHIBIT A

| Residential Barrels | New Disposal | New Service | Net | AB939 | FF | Gross |
|--------------------------|--------------|-------------|-------|-------|------|-------|
| 2 90 Gallon Barrels | 9.14 | 13.75 | 22.89 | 1.36 | 4.28 | 28.54 |
| 1 Extra 90 Gallon Barrel | 4.58 | 6.89 | 11.46 | 0.68 | 2.14 | 14.29 |

| Bin | Frequency | New Disposal | New Service | Net | AB939 | FF | Gross |
|-----|-----------|--------------|-------------|--------|-------|-------|--------|
| 1.5 | 1 | 26.55 | 98.01 | 124.56 | 7.42 | 23.29 | 155.28 |
| 1.5 | 2 | 53.14 | 147.69 | 200.83 | 11.97 | 37.55 | 250.35 |
| 1.5 | 3 | 79.70 | 193.41 | 273.11 | 16.27 | 51.07 | 340.45 |
| 1.5 | 4 | 106.26 | 233.50 | 339.76 | 20.24 | 63.53 | 423.53 |
| 1.5 | 5 | 132.81 | 296.66 | 429.47 | 25.59 | 80.31 | 535.37 |
| 1.5 | 6 | 159.40 | 369.97 | 529.38 | 31.54 | 98.99 | 659.90 |

| Bin | Frequency | New Disposal | New Service | Net | AB939 | FF | Gross |
|-----|-----------|--------------|-------------|--------|-------|--------|--------|
| 2 | 1 | 35.42 | 114.51 | 149.93 | 8.93 | 28.03 | 186.90 |
| 2 | 2 | 70.84 | 168.52 | 239.36 | 14.26 | 44.76 | 298.38 |
| 2 | 3 | 106.26 | 220.65 | 326.91 | 19.48 | 61.13 | 407.52 |
| 2 | 4 | 141.70 | 279.35 | 421.05 | 25.09 | 78.73 | 524.87 |
| 2 | 5 | 177.10 | 324.81 | 501.91 | 29.91 | 93.85 | 625.66 |
| 2 | 6 | 212.53 | 402.22 | 614.75 | 36.63 | 114.95 | 766.33 |

| Bin | Frequency | New Disposal | New Service | Net | AB939 | FF | Gross |
|-----|-----------|--------------|-------------|--------|-------|--------|--------|
| 3 | 1 | 53.14 | 117.65 | 170.79 | 10.18 | 31.93 | 212.90 |
| 3 | 2 | 106.26 | 179.96 | 286.22 | 17.05 | 53.52 | 356.79 |
| 3 | 3 | 159.40 | 228.89 | 388.29 | 23.14 | 72.60 | 484.03 |
| 3 | 4 | 212.53 | 285.78 | 498.31 | 29.69 | 93.18 | 621.18 |
| 3 | 5 | 265.67 | 344.67 | 610.35 | 36.37 | 114.13 | 760.84 |
| 3 | 6 | 318.79 | 415.76 | 734.55 | 43.77 | 137.35 | 915.67 |

| Bin | Frequency | New Disposal | New Service | Net | AB939 | FF | Gross |
|-----|-----------|--------------|-------------|--------|-------|--------|----------|
| 4 | 1 | 70.84 | 143.65 | 214.49 | 12.78 | 40.11 | 267.38 |
| 4 | 2 | 141.70 | 206.69 | 348.39 | 20.76 | 65.14 | 434.30 |
| 4 | 3 | 212.53 | 264.61 | 477.14 | 28.43 | 89.22 | 594.78 |
| 4 | 4 | 283.37 | 319.26 | 602.64 | 35.91 | 112.68 | 751.23 |
| 4 | 5 | 354.23 | 384.97 | 739.20 | 44.05 | 138.22 | 921.47 |
| 4 | 6 | 425.07 | 465.54 | 890.62 | 53.07 | 166.53 | 1,110.22 |

| Bin | Frequency | New Disposal | New Service | Net | AB939 | FF | Gross |
|-----|-----------|--------------|-------------|----------|-------|--------|----------|
| 6 | 1 | 106.26 | 171.77 | 278.03 | 16.57 | 51.99 | 346.58 |
| 6 | 2 | 212.53 | 241.95 | 454.48 | 27.08 | 84.98 | 566.54 |
| 6 | 3 | 318.79 | 299.27 | 618.06 | 36.83 | 115.57 | 770.45 |
| 6 | 4 | 425.07 | 380.09 | 805.17 | 47.98 | 150.55 | 1,003.70 |
| 6 | 5 | 531.33 | 450.97 | 982.30 | 58.53 | 183.68 | 1,224.51 |
| 6 | 6 | 637.60 | 542.30 | 1,179.90 | 70.31 | 220.63 | 1,470.84 |

| Roll-off | New Service | Net | AB939 | FF | Gross |
|------------------------------|-------------|--------|-------|-------|--------|
| Standard Roll-off Plus Dump | 211.66 | 211.66 | 12.61 | 39.58 | 263.85 |
| Compactor Roll-off Plus Dump | 235.05 | 235.05 | 14.01 | 43.95 | 293.00 |
| Plus Dump at MRF | 80.29 | 80.29 | 4.78 | 15.01 | 100.09 |
| Wash Out | 216.26 | 216.26 | - | 40.44 | 256.70 |

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

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 the disposal of Solid Waste at a Disposal Site selected by Franchisee. Operations Component costs include, but are not necessarily limited to, collection of Solid Waste, Recyclables, and Green Waste and the cost of hauling materials to a Disposal Site.

The Disposal Component is the per ton tipping fee charged by a Disposal Site utilized by Franchisee for disposal of all materials collected hereunder.

Rate Adjustment Formula – Annual COLA

The Maximum Rates are to be adjusted each July 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 previous twelve month period (May through April) 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.

Disposal Component Adjustment

In addition to the adjustment provided above, pursuant to Franchisee's agreement for the operation of SBWDS, the County of San Bernardino has the right every three years to conduct a market rate analysis of the fees for import tonnage into similarly situated landfills. As a result, on July 1, 2016 and each third anniversary thereafter, San Bernardino has the right to increase the tipping fees for SBWDS. In the event that the County of San Bernardino exercises this right and the increase in the tipping fees exceeds the CPI adjustment above, there will be an additional adjustment to the Disposal Component of the Maximum Rates; provided Franchisee first delivers to City evidence of such increase implemented by the County of San Bernardino and any explanatory information provided by the County to Franchisee in connection therewith. Should City find that any proposed increase by the County of San Bernardino causes the Disposal Component to significantly exceed disposal fees charged by other available landfills, the parties shall meet to consider lower cost alternative landfills and negotiate an appropriate amendment to this Agreement to implement any such change.

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 by including notice with its periodic billing.

Special Rate Adjustment

Should any extraordinary events 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 events resulting in 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 resulting from the extraordinary events. 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 Disposal Component are not discretionary, but are a matter of right to Franchisee so long as Franchisee is not in default hereunder.