

**AMENDMENT NO. 1
TO THE INTEGRATED SOLID WASTE MANAGEMENT SERVICES AGREEMENT
BETWEEN THE CITY OF NORWALK AND
ARAKELIAN ENTERPRISES, INC. DBA ATHENS SERVICES**

THIS AMENDMENT NO. 1 TO THE INTEGRATED SOLID WASTE MANAGEMENT SERVICES AGREEMENT (the "Amendment No. 1") effective as of the date specified in Section 1 hereof, is made and entered into by and between the City Of Norwalk, California ("City") and Arakelian Enterprises, Inc. dba Athens Services ("Contractor") (collectively, the "Parties").

RECITALS

A. City and Contractor have previously entered into that certain Integrated Solid Waste Management Services Agreement dated May 8, 2018, for exclusive collection, transportation, recycling, processing, and disposal of solid waste and other services related to meeting goals and requirements of the California Integrated Waste Management Act (hereinafter, "Agreement").

B. City and Contractor desire to make certain amendments, which includes allowing Contractor to adjust certain rates and the annual rate adjustments provided under the Agreement.

C. City and Contractor desire to extend the Term of the Agreement.

D. City and Contractor desire to amend the Agreement as set forth herein, to implement the approved rate increases, extend the term, and make other appropriate changes to the Agreement.

AGREEMENT

In consideration of the foregoing and of the mutual covenants of the parties herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

SECTION 1. EFFECTIVE DATE OF AMENDMENT

This Amendment No. 1 to the Agreement shall be effective October 1, 2020 ("Amendment No. 1 Effective Date").

SECTION 2. TERM

Section 2.4 shall be deleted in its entirety and replaced with the following:

2.4 Term of Agreement

The term of this Agreement (the "Term" or "Initial Term") shall be ten (10) years from August 1, 2018 to July 31, 2028, subject to extension as provided in Section 2.5, as applicable. Notwithstanding the foregoing, the unexcused failure or refusal of Contractor to perform any material term, covenant, obligation or condition contained in this Agreement shall give rise to the right, in favor of City, for earlier termination of this Agreement for cause in accordance with the procedures elsewhere contained herein.

SECTION 3. EXTENSION OF TERM

Section 2.5 shall be deleted in its entirety and replaced with the following:

2.5 Extension Terms

Upon at least ninety (90) days before the end of the Initial Term, City shall offer Contractor, in writing, a five (5) year extension to the Initial Term of this Agreement, with the extension period beginning August 1, 2028 to July 31, 2033, (the "Extension Term"); provided that Contractor is in material compliance with all requirements of this Agreement as of the time of such extension offer.

SECTION 4. AB 939 SUPPORT FEE

A new Section 3.5 titled "AB 939 Support Fee" shall be added to the Agreement to read as follows:

3.5 AB 939 Support Fee

Commencing no later than September 1, 2021, and continuing on September 1 of each subsequent year (or if falling on a weekend or holiday, the next business day) thereafter, Contractor shall pay the City a sum of Fifty Thousand Dollars (\$50,000) per year in recognition of City administrative costs to encourage compliance with AB 939 ("AB 939 Support Fee").

SECTION 5. OFFICE SUPPORT FEE

A new Section 3.6 titled "Office Support Fee" shall be added to the Agreement to read as follows:

3.6 Office Support Fee

Contractor shall pay the City a sum of Fifty Thousand Dollars (\$50,000) per year in recognition of the Contractor not having to maintain a local office within the City as provided by the amendment of Section 5.1.1 herein.

SECTION 6. AB 939 COMPLIANCE

Section 4.2.5 is hereby amended in its entirety to read as follows:

4.2.5 Minimum Diversion Requirements

Contractor shall divert from the landfills an amount of waste necessary for the City to meet or exceed the minimum diversion requirements of AB 939, as amended from time to time. For purposes of this Section, diversion includes Recycling, Transformation and other forms of converting Solid Waste into energy only to the extent that such diversion is accepted by the State toward the City's diversion goal under AB 939. Contractor guarantees compliance with the diversion requirements of AB 939 and will indemnify City pursuant to Section 9.4 below. Notwithstanding the foregoing, changes in law relating to the diversion requirements of AB 939 that increase the cost of service shall qualify as extraordinary adjustments pursuant to Section 6.5.

SECTION 7. CUSTOMER SERVICE

Section 5.1.1 is hereby amended in its entirety to read as follows:

5.1.1 Customer Service Line, Response Time

Contractor shall staff a toll-free telephone line with a live representative to assist customers at a minimum from 8:00 a.m. to 5:00 p.m. Monday through Friday, as well as, Saturdays from 8:00 a.m. to 5:00 p.m., excluding holidays. Contractor shall staff a toll-free telephone line to assist Customers, and shall provide a representative, an answering service or answering machine during all other hours. Calls received by answering service or machine shall be responded to on the next business day. Contractor shall provide City with a twenty-four (24) hour emergency number to a live person, not voice-mail.

Contractor's telephone system shall be adequate to handle the volume of calls typically experienced on the busiest days and Customers must be reasonably able to reach Contractor by telephone during these hours. Contractor shall record Customer complaints regarding Customer service personnel in accordance with Section 5.1.2. Customer service representatives receiving multiple complaints are to be transferred from Customer service duties or, with City approval, disciplined and appropriately trained.

SECTION 8. INITIAL MAXIMUM RATES (EXHIBIT 1)

Exhibit 1 of the Agreement is hereby amended by replacing the rate table for Residential Rates on page 1-1 in its entirety with a revised Residential Rate table provided in **Attachment 1** of this Amendment No. 1, attached hereto. For the avoidance of doubt, Residential Rates shall be increased to \$18.90 as of the Amendment No. 1 Effective Date. Commercial and Roll-off Box Rates will remain unchanged as of the Amendment No. 1 Effective Date. All Maximum Rates are subject to adjustment pursuant to Section 6.4.2.

SECTION 9. COST COMPONENTS FOR RATE ADJUSTMENT INDICES

Section 6.4.2 shall be deleted in its entirety and replaced with the following:

6.4.2 Annual Rate Adjustments

For the period beginning September 1, 2021, and annually thereafter on September 1, the approved Contractor Compensation for annual rate adjustments, not including extraordinary rate adjustments, shall be the percentage change in the Consumer Price Index for Trash and Garbage Collection (CUUR0000SEHG02), U.S. City Average, not seasonally adjusted ("CPI"), plus one percent (1%) (i.e., "CPI+1"). If the index provided herein is discontinued, the index will default to the Consumer Price Index for All Urban Consumers (CUUR0000SAOL1E), U.S. City Average, not seasonally adjusted.

Nothing contained herein concerning the City's participation in selecting an alternative index shall be viewed as action by the City to establish or set rates as authorized by this Agreement.

SECTION 10. RATE ADJUSTMENT STEPS

Section 6.4.3 is hereby amended in its entirety to read as follows:

6.4.3 Rate Adjustment Steps

All annual rate adjustments for all services (including Cart, Bin, Roll-Off Box and all other ancillary rates) will be calculated using the formula described below.

Step One – Calculate the percentage increase or decrease in CPI between the twelve (12)-months ended the December prior to the Rate Year anniversary date and the current Rate Year.

Step Two – Add one percent (1%) to the resulting change calculated in Step One above (CPI+1).

Step Three – Multiply the total CPI+1 from Step Two by the existing Customer rates to calculate the increase or decrease to the maximum rates. Add the rate increase or decrease to the existing rates to derive the newly adjusted rates.

SECTION 11. EXTRAORDINARY ADJUSTMENTS ADDITION

Section 6.5 is hereby amended to add the following language at the end of the existing Section.

Nothing contained herein concerning the City's approval of the Contractor's request for extraordinary charges shall be deemed as action by the City to establish or set rates as authorized by this Agreement, but is required solely to verify the accuracy and appropriateness of the requested extraordinary charges by the Contractor.

SECTION 12. EXAMPLE RATE ADJUSTMENT FORMULA EXHIBITS

Exhibit 2A and Exhibit 2B of the Agreement are hereby deleted and replaced in their entirety with a revised Exhibit 2 provided in **Attachment 2** of this Amendment No. 1, attached hereto.

SECTION 13. FAITHFUL PERFORMANCE BOND

The parties desire to replace the Faithful Performance Letter of Credit within Section 9.7 of the Agreement with a corresponding increase in the required amount of the Faithful Performance Bond provided in Section 9.6 of the Agreement.

As such, concurrent with the execution of this Amendment No. 1, Contractor shall deliver to the City a performance bond in the sum of the amount of One Million Five Hundred Thousand Dollars (\$1,500,000.00) in the form provided in Exhibit 4 of the Agreement, which secures the faithful performance of this Agreement, including, without limitation, payment of any penalty and the funding of any work to cure a breach of this Agreement. The bond shall contain the original notarized signature of an authorized officer of the surety and affixed thereto shall be a certified and current copy of his or her power of attorney.

Section 9.7 and Section 9.9 are hereby deleted. All references to the Faithful Performance Letter of Credit (the "LOC") are stricken and shall be ignored as of the Amendment No. 1 Effective Date and provided the Faithful Performance Bond is provided to the City.

SECTION 14. MEET AND CONFER

In order to further discussions of certain contract items not included herein, the Parties agree to meet and confer in good faith regarding further Agreement changes and an Amendment No. 2 beginning on or before April 1, 2021.

SECTION 15. EFFECT

This Amendment contains the entire agreement and understanding between the Parties with respect to the subject matter of this Amendment, and supersedes any and all prior or contemporaneous oral and written representations, warranties, agreements, and understandings between the Parties concerning the subject matter of this Amendment. Except as set forth herein, the remaining terms and conditions of the Agreement shall remain unchanged and in full force and effect.

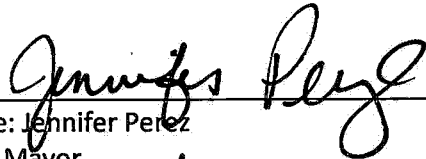
SECTION 16. DUE EXECUTION

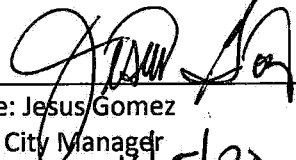
The person(s) executing this Amendment No. 1 on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Amendment No. 1 on behalf of said party, (iii) by so executing this Amendment No. 1, such party is formally bound to the provisions of this Amendment No. 1, and (iv) the entering into this Amendment No. 1 does not violate any provision of any other agreement or law to which said party is bound.

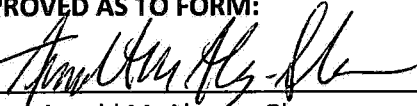
[Signatures on next page]

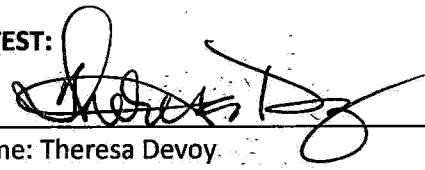
IN WITNESS WHEREOF, City and Contractor have caused this Amendment No. 1 to be executed and attested by their respective officers hereunto duly authorized as of the day and year first above written in Section 1.

CITY OF NORWALK
("City")

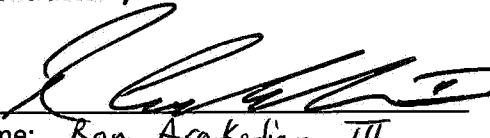
By: 
Name: Jennifer Perez
Title: Mayor
Dated: 11/04/2020

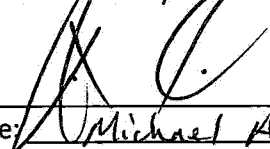
By: 
Name: Jesus Gomez
Title: City Manager
Dated: 11/5/20

APPROVED AS TO FORM:
By: 
Name: Arnold M. Alvarez-Glasman
Title: City Attorney
Dated: 10-27-2020

ATTEST:
By: 
Name: Theresa Devoy
Title: City Clerk
Dated: 11/5/2020

ARAKELIAN ENTERPRISES, INC. DBA
ATHENS SERVICES
("Contractor")

By: 
Name: Ron Arakelian III
Title: Executive Officer
Dated: 11/03/2020

By: 
Name: Michael Arakelian
Title: Secretary
Dated: 11/03/2020

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31. 32. 33. 34. 35. 36. 37. 38. 39. 40.

41. 42. 43. 44. 45. 46. 47. 48. 49. 50.

Attachment 1 of Amendment No. 1

| EXHIBIT 1 | | | |
|--|----------------------|--|-----------|
| MAXIMUM RATES | | | |
| October 1, 2020 through August 31, 2021 | | | |
| Monthly Residential Cart Service Rates* | | | |
| Standard Service includes one refuse, one or more recycling, and up to two green waste carts. | | | |
| Cart Size: | | | 96-Gallon |
| Standard Service - based upon refuse cart size | | | \$18.90 |
| Senior Rate (1) | | | \$4.94 |
| Additional Refuse Cart - above one | | | \$7.62 |
| Additional Recycling Cart | | | \$0.00 |
| Each Green Waste Cart - above two | \$5.64 any size | | |
| Other Residential Cart Rates and Services* (Charged in Addition to Monthly Cart Service Rates) | | | |
| Walk-Out Service - authorized disabled customers | No Charge | | |
| Additional Special Overage Pickup for Automated Cart Customers (in excess of two pickups per year) | \$6.77 per pickup | | |
| Cart Exchange (in excess of free exchanges to be provided under Section 4.5.1.1) | \$19.18 per exchange | | |
| *Including all City fees. | | | |
| (1) Senior rate includes on 32-gallon refuse cart, plus one recycling and one green waste cart (any size recycling or green waste cart). The senior rate shall be made available to qualified senior citizen customers. The qualification criteria is set forth on the City's "Reduced Disposal Fees Application Form", as it now exists or may subsequently be amended. | | | |

Attachment 2 of Amendment No. 1

AGREEMENT EXHIBIT 2 (EXAMPLE RATE ADJUSTMENT FORMULA)

Step One: Calculate the percentage increase or decrease in the CPI.

Rate adjustment indices for Consumer Price Index for Trash and Garbage Collection (CUUR0000SEHG02), U.S. City Average, not seasonally adjusted ("CPI") are calculated using the "average annual change" as demonstrated in the example below, measured for the twelve (12) months ended the December before each rate adjustment, as compared to the twelve (12) months ended the prior December. The Bureau of Labor Statistics publishes these monthly indices.

If, for example, a rate adjustment based on this CPI index were to be implemented as of July 1, 2014, the twelve-month average annual index for the period ended December 2013 of 416.183 would have been the "New Index Value" to be used, and the twelve-month average annual index for the period ended December 2012 of 404.704 would have been the "Old Index Value". This would have resulted in a 2.8% increase in CPI. See example table below:

| Year | Jan | Feb | Mar | Apr | May | Jun | Jul | Aug | Sep | Oct | Nov | Dec | Ave |
|------------------------|---------|---------|---------|---------|---------|---------|---------|---------|---------|---------|---------|---------|---------|
| 2012 | 398.880 | 400.381 | 401.692 | 400.913 | 401.067 | 402.793 | 406.243 | 406.823 | 407.594 | 409.495 | 410.155 | 410.416 | 404.704 |
| 2013 | 411.126 | 411.805 | 412.305 | 413.675 | 414.511 | 414.802 | 416.505 | 417.760 | 418.357 | 419.687 | 421.427 | 422.237 | 416.183 |
| Average Annual Change: | | | | | | | | | | | | | 2.8% |

Step Two: Add one percent (1%) to the resulting factor of 2.8% from Step One to get the CPI+1 factor of 3.8% to be entered in Column B of the table below in Step Three.

Step Three: Multiply the CPI+1 percent change from Step Two by the existing Customer rates to calculate the increase or decrease to the maximum rates.

| | A | B | C | D |
|-----------------------------------|--------------------------------|-------------------------|---|-------------------------------|
| Example Rate Categories | Example Current Customer Rates | CPI+1 Percentage Change | Rate Increase or Decrease (Col A x Col B) | Adjusted Rate (Col A + Col C) |
| Standard Res. Service | \$ 18.90 | 3.8% | \$ 0.72 | \$ 19.62 |
| Senior Rate | \$ 4.94 | 3.8% | \$ 0.19 | \$ 5.13 |
| Additional Res. Refuse Cart | \$ 7.62 | 3.8% | \$ 0.29 | \$ 7.91 |
| Commercial Refuse Cart 1x week | \$ 67.20 | 3.8% | \$ 2.55 | \$ 69.75 |
| 3 cu.yd. bin 1x week | \$ 197.65 | 3.8% | \$ 7.51 | \$ 205.16 |
| 3 cu.yd. bin 2x week | \$ 300.42 | 3.8% | \$ 11.42 | \$ 311.84 |
| Locking Bin Service | \$ 8.00 | 3.8% | \$ 0.30 | \$ 8.30 |
| Standard Roll-off Box - Res. | \$ 616.51 | 3.8% | \$ 23.43 | \$ 639.94 |
| Standard Roll-off Box - Com. | \$ 653.29 | 3.8% | \$ 24.83 | \$ 678.12 |
| Compactor Roll-off Box (40 cu.yd) | \$ 780.35 | 3.8% | \$ 29.65 | \$ 810.00 |
| Extra Roll-Off Ton | \$ 70.00 | 3.8% | \$ 2.66 | \$ 72.66 |