

**AMENDMENT NO. 10
TO THE AMENDED AND RESTATED
AGREEMENT BETWEEN
THE CITY OF WEST COVINA
AND ARAKELIAN ENTERPRISES, INC.
DBA ATHENS SERVICES
FOR THE COLLECTION OF SOLID WASTE
RECYCLABLES, YARD WASTES AND OTHER COMPOSTABLES AND
SETTLEMENT AGREEMENT**

THIS AMENDMENT NO. 10 TO THE AMENDED AND RESTATED AGREEMENT FOR THE COLLECTION OF SOLID WASTE, RECYCLABLES, YARD WASTE AND OTHER COMPOSTABLES AND SETTLEMENT AGREEMENT (the "Tenth Amendment") effective as of the date specified in Section 1 hereof, is made and entered into by and between the City of West Covina ("City") and Arakelian Enterprises, Inc., dba Athens Services ("Contractor").

A. City and Contractor have previously entered into that certain Amended and Restated Agreement, dated June 2, 1999, concerning waste and recyclable collection in the City (hereinafter, "Original Agreement"). The Original Agreement was later amended by Amendment No. 1, dated March 21, 2001, by Amendment No. 2, dated May 27, 2002, by Amendment No. 3, dated September 23, 2003, by Amendment No. 4, dated March 30, 2004, by Amendment No. 5, dated June 7, 2007, by Amendment No. 6, dated December 4, 2007, by Amendment No. 7, dated August 20, 2008, by Amendment No. 8, dated August 20, 2008, and by Amendment No. 9, dated November 1, 2012 (collectively, "Amendments"). The Original Agreement and Amendments are collectively referred to herein as the "Agreement."

B. In or about 2013, Contractor requested a rate adjustment for 2014 to cover the annual increase for CPI and tipping fees. Contractor also requested consideration of a one-time increase of 10% to cover the costs to begin a new trash service to truck the City's waste to San Bernardino landfills in order to save ratepayers additional costs from alternative landfill options.

C. In or about 2015, Contractor requested a rate adjustment.

D. In or about 2016, Contractor requested another rate adjustment. The City and Contractor entered into discussions regarding the requested rate adjustments and a dispute between the parties regarding disposal fees.

E. Notice pursuant to Proposition 218 of the proposed rate increase was mailed to all property owners and customers in the City of West Covina as required by law.

F. On November 1, 2016, the City Council held the required Public Hearing under Proposition 218 to consider public comment and protests.

G. There being no majority protest, the City Council considered the proposed rate increases and approved them.

H. City and Contractor desire to amend the Agreement as set forth herein, to implement the approved rate increases, in order to save ratepayers additional costs from alternative landfill options, and make other appropriate changes to the Agreement.

SECTION 1. EFFECTIVE DATE OF AMENDMENT

This Tenth Amendment to the Amended and Restated Agreement for the Collection of Solid Waste, Recyclables, Yard Waste and Other Compostables shall be effective as of July 1, 2016.

SECTION 2. DEFINITIONS

The following definition is added to Article 1 of the Agreement:

“Organic Waste” shall be defined as set forth in AB 1826 (2014), including “food waste, green waste, landscape and pruning waste, nonhazardous wood waste and food-soiled paper waste mixed in with food waste.”

SECTION 3. ADDITION OF ORGANIC WASTE.

Wherever the Agreement provides for the Contractor to collect and process, make reports about, or otherwise provide for “all solid waste, recyclables, yard waste, and other compostables,” this term shall be deemed to include Organic Waste as defined herein. Contractor shall take all steps necessary to ensure compliance with AB 1826.

SECTION 4. FRANCHISE FEE

In addition to the franchise fee required to be paid under Article 4, section 4.3, Contractor shall pay to City a one-time Franchise Fee payment of \$650,000 within ten (10) days of signing of this Tenth Amendment to the Agreement. This fee represents a compromise settlement between the parties of a dispute relating to implementation of prior contract terms. By mutual consent, both parties agree that this payment of \$650,000 will be paid by Athens directly and not by the rate payers. Except as set forth herein, the remaining terms and conditions of the Agreement shall remain in full force and effect.

SECTION 5. Section 3 of Amendment No. 9 shall be deleted in its entirety. In its place, section 4.4 shall be added to Article 4 of the Agreement to read as follows:

4.4 Annual Payment for Discretionary Use

Contractor agrees to make on November 1 of each year of the term of this Agreement, an annual payment of \$300,000 per year (“Annual Payment”), to be used at the discretion of the City; provided, however, that the requirements of this Section 4.4 shall become void and no further force and effect upon any termination by the City of the one-year renewal and extension period set forth in Section 3.1 of the Agreement. Such payment will be deposited in the City’s general

fund within (5) business days after the execution of this Tenth Amendment to the Agreement, and on November 1st of each succeeding year of the term of this Agreement.

SECTION 6.

Section 5.3 of the Agreement is deleted and replaced in full by the following:

5.3 Residential Solid Waste Collection Services

Contractor shall collect and deliver to the appropriate solid waste facility all solid waste, recyclables, yard waste, organic waste, and other compostables generated at single- and multi-unit residential premises within the City and delivered for collection not less than once per week. Subject to reduced low income/senior citizen rates as set out herein, Contractor shall provide special manual carry-out services for those residents determined to have difficulty-doing so themselves due to physical disabilities (whether permanent or temporary) and/or the configuration of their property. Contractor may charge for this service only where it is requested by an otherwise capable resident solely for his/her convenience.

Upon 24 hours prior request, items for disposal other than ordinary solid waste shall be collected by the Contractor at no extra charge during the next normal weekly pickups. Except as otherwise arranged with Contractor as for move-ins/move-outs, there shall be a limitation that no more than five (5) such bulk item may be included for such pick up each week. Bulky items, in addition to the ordinary solid waste normally picked up each week, shall include but not be limited to:

Furniture - chairs, sofas, mattresses, rugs, etc.

Appliances - washers, dryers, water heaters, plumbing, refrigerators, TVs, small household appliances, etc.

Residential - Wood Waste - tree branches, scrap wood, etc.

Contractor shall use its best efforts to divert/recycle all such items or instruct its customers in appropriate diversion techniques.

These additional materials to be collected specifically exclude auto parts and bodies, liquid waste, manure and rocks, sod, concrete and similar materials.

All bulky items shall be collected at the curb or alley, including those from condominium, stock cooperative or community apartment projects.

In addition to the weekly pick up of bulky items as provided for herein, Contractor shall schedule a quarterly bulk item pick up at all multi-family developments at no additional charge to customers. Contractor shall send notice to each multi-family development of such bulky item pickups at least 30 days in advance of the scheduled event. The five (5) item per week limitation set forth hereinabove shall not apply to the quarterly bulky item pick up provided for in this paragraph.

Additional special rates may be charged by the Contractor for the collection of other items of a dissimilar nature to those included in Section 5.6. Such rates shall be determined by the Contractor, subject to approval by the City Manager or his designee, and paid in advance and

shall be separate from and in no way connected to the regularly scheduled service rates. The fee may include a component for estimation of such rates.

Placement of bins in the street from residential scout service shall be limited to not more than four (4) hours.

Materials shall be properly placed for collection under the requirements of the West Covina Municipal Code. Residents shall be required to bundle and tie all wood waste in lengths not to exceed four (4) feet with a diameter of three (3) feet. Any materials not properly placed for collection shall be tagged by the Contractor with a multilingual red tag explaining the reason for non-collection.

SECTION 7.

Section 7.4 of Article 7 of the Agreement is deleted and replaced with the following:

"Contractor shall indemnify, defend and hold harmless City from and against any and all fines imposed by the California Integrated Waste Management Board ("CIWMB") or other responsible agency(ies) arising from City's failure to meet landfill diversion requirements of AB 939, or substantially similar legislative enactments by the State of California. Contractor agrees this subsection applies to the entire waste stream for which City is accountable by the CIWMB and not just that portion of that waste stream processed by Contractor, pursuant to this Agreement. In the event CIWMB (or any other subdivision or body of the State) provides an administrative process to challenge the imposition of a compliance order or fine or fines, Contractor shall be responsible for engaging (at no cost to the City) consultants and/or attorneys (subject to City's reasonable consensus) to represent the City."

The indemnification set out in Section 9.1 hereof shall not apply to the matters described as set forth in the preceding paragraph of this Section 7.4."

SECTION 8. RATES

Section 8.1 of the Agreement is deleted and replaced with the following:

8.1 RATES

Contractor shall perform the responsibilities and duties described in this Agreement in consideration of the exclusive right to charge and collect from customers for solid waste, recyclables, yard waste, organic waste, and other compostables collection services rendered, at rates fixed by the City Council from time to time. Contractor does not look to the City for payment of any sums under this Agreement.

Following a Proposition 218 hearing held on November 1, 2016, the City Council approved and authorized the following multi-year rate increase, totaling ten percent (10%) over the period from July 1, 2016 to July 1, 2018 (representing increased operating and disposal costs), and the

cumulative CPI increase from 2013 through 2015 of three and five one hundredths percent (3.05%) in year one only. The parties agree that the approved increases satisfy and resolve completely the previous CPI and tipping fee requests from Contractor, including the costs associated with transferring the City's waste disposal to San Bernardino. The authorized rate increases are as follows:

July 1, 2016	4% rate increase + Cumulative CPI from 2013-2015 (3.05%)
July 1, 2017	3% rate increase + CPI
July 1, 2018	3% rate increase + CPI
July 1, 2019	CPI only increase
July 1, 2020	CPI only increase

The increased rates for services to be performed pursuant to this Agreement shall be as set forth in EXHIBIT "E" which is attached hereto and incorporated herein by this reference.

In addition to the revenues authorized by the rates in EXHIBIT "E", Contractor may charge and receive fees for performing special services (e.g., the hauling and disposal of "bulky waste" in excess of the amount or schedule as provided for herein) as agreed upon in separate agreements between Contractor and each customer requesting such special services.

Reduced low income senior citizen rates are to be set out on EXHIBIT "E". These rates may be increased only in an amount approved by City Council.

Except for the rates and charges expressly authorized herein and except for rates charged pursuant to any separate agreement(s) between Contractor and each customer requesting additional special services, Contractor shall not charge customers served under this Agreement any amount in excess of the rates set forth in EXHIBIT "E" as adjusted annually through July 2020. The rates set forth in EXHIBIT "E", as they may be adjusted from time to time, include the cost of any collection of "bulky waste" by Contractor as provided in Section 5.3.

Authorized cost of living adjustments each July 1st shall be the increase or decrease in the cost of living as determined by the percentage change in the Consumer Price Index ("CPI") for the immediately preceding twelve (12) month period of March through February 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 hereinabove is no longer published. Contractor shall provide data and notice to the City within thirty (30) days after the CPI index is available. Contractor shall also notify customers in writing of the CPI adjustments at least sixty (60) days before implementing the adjusted rates.

Any rate increase not provided for herein shall be granted only following a duly noticed public hearing before the City Council, following compliance with Proposition 218. Contractor shall bear all costs and expenses associated with the notice process required by Proposition 218.

SECTION 9.

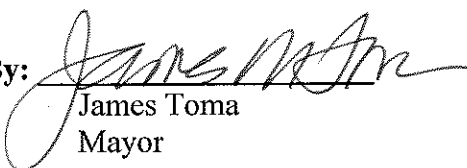
Exhibit F of the Agreement is deleted in its entirety, as well as all references thereto.

SECTION 10.

Except as set forth herein, the remaining terms and conditions of the Agreement shall remain in full force and effect. The parties agree to meet and discuss consolidating the original agreement and all amendments into a new single contract codifying all applicable terms of the parties' agreement, including this Tenth Amendment.


IN WITNESS WHEREOF, City and Contractor have caused this Tenth Amendment to be executed and attested by their respective officers hereunto duly authorized.

CITY OF WEST COVINA

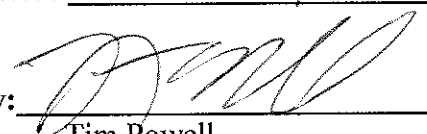
By: 
James Toma
Mayor

Dated: 11-7-16

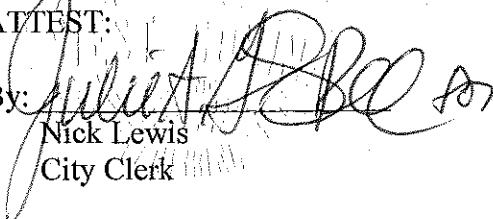
**ARAKELIAN ENTERPRISES
INC. dba ATHENS SERVICES**

By: 
Gary Clifford
Executive Vice President

Dated: 11.2.2016

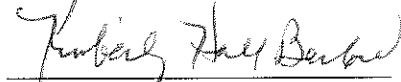
By: 
Tim Powell
COO

Dated: 11-2-2016

ATTEST:
By: 
Nick Lewis
City Clerk

Dated: 11/10/16

APPROVED AS TO FORM:

By: 
Kimberly Hall Barlow
City Attorney