

**SECOND AMENDMENT TO THE AGREEMENT
BETWEEN THE CITY OF BELL GARDENS AND
ARAKELIAN ENTERPRISES, INC. DBA ATHENS
SERVICES FOR SOLID WASTE, RECYCLABLE AND
GREEN WASTE MATERIALS COLLECTION,
PROCESSING, AND DISPOSAL**

THIS SECOND AMENDMENT TO AGREEMENT FOR SOLID WASTE, RECYCLABLE AND GREEN WASTE MATERIALS COLLECTION, PROCESSING, AND DISPOSAL (this “Second Amendment”) effective as of the date specified in Section 5 hereof, is made and entered into by and between the City of Bell Gardens (“City”) and Arakelian Enterprises, Inc., dba Athens Services (“Contractor”).

WHEREAS, City and Contractor have previously entered into that certain Agreement for Solid Waste, Recyclable, and Green Waste Materials Collection, Processing, and Disposal dated December 10, 2008, concerning waste and recyclable collection in the City (hereinafter, “Agreement”).

WHEREAS, City and Contractor further desired to amend the Agreement to include certain additional City/community enhancements for an extension of the existing term of the Agreement and adjustment of solid waste collection rates by executing the First Amendment on May 12, 2014 (hereinafter, the “First Amendment”).

WHEREAS, Subsequent to the Effective Date of the First Amendment, in 2014, the State of California enacted Assembly Bill (AB) 1594. Among other things, AB 1594 amended Public Resources Code Section 41781.3, mandating that as of January 1, 2020, the use of green waste as alternative daily cover (ADC) at landfills will no longer constitute diversion through recycling and will instead be considered disposal for purpose of measuring a jurisdiction’s annual diversion rate.

WHEREAS, Contractor has been delivering the green waste collected from residential premises within the City under the Agreement to Contractor owned American Organics facility in the City of Victorville since January 1, 2020, in order for the City to continue to receive diversion credit for composting the material.

WHEREAS, The City is mindful of the additional costs incurred by Contractor for the composting of green waste, and has therefore, decreased the Minimum Recycling Requirements included in the First Amendment to the Agreement to offset these costs.

WHEREAS, the City and Contractor desire to amend the Agreement as more specifically set forth herein below.

NOW THEREFORE, the City and Contractor hereby agree to amend the Agreement as follows:

SECTION 1. The definition of “Green Waste” in Section 1.1 of the Agreement shall be amended to read:

“Green Waste shall mean green waste materials, which can be reused or processed into a form suitable for reuse through reprocessing and are source separated for collection including, but not limited to, leaves, grass, weeds, and wood materials from trees and shrubs, and similar materials that fit within a cart and are generated at any premises. Yucca leaves, palm fronds, tree stumps and tree roots are not considered green waste.”

SECTION 2. Section 3.6.3 of the First Amendment to the Agreement is hereby amended to replace the reference to “Contractor’s MRF” with “American Organics,” located in the City of Victorville as the Designated Green Waste Facility.”

SECTION 3. Section 3.10.6 (Minimum Recycling Requirements) first added to the Agreement by way of the First Amendment is hereby amended in its entirety to now state the following:

“Contractor shall divert from landfilling a minimum of 35% of all Solid Waste it collects under this Agreement. Solid Waste collected shall only be considered to have been Recycled or diverted as required under this Agreement if it is deemed to be diversion by the California Department of Resources Recycling and Recovery (formerly the California Integrated Waste Management Board) in connection with efforts to meet City’s diversion goals. Contractor shall provide documentation to the City within thirty (30) days of the end of each calendar year stating and supporting that calendar year’s diversion rate. Diversion from sources other than Contractor’s collection and diversion efforts (such as Recyclable Materials diverted by other Solid Waste enterprises and collection of materials that are not the subject of this Agreement) is not to be counted as diversion achieved by Contractor. In the event that City approves a future rate adjustment for single family residential customers of 4.62% as described in Section 6.3, the Minimum Recycling Requirement shall increase to 50% of all Solid Waste Contractor collects under this Agreement.”

SECTION 4. Section 3.11.3(c) of the Agreement is amended to read:

“(c) In no event dispose of Recyclable Materials, Christmas trees or Green Waste in a landfill, and/or Transformation Facility unless the Recyclable Materials, Christmas trees or Green Waste is contaminated (as determined by Contractor) and cannot be reused or processed into a form suitable for diversion or as otherwise approved by the Director in writing.”

SECTION 5. Article 6 of the Agreement is hereby amended to add the following provisions:

6.3 Rate Adjustment for Green Waste Composting

The City performed a study in 2020 of the cost impacts to Contractor for composting the Green Waste collected under this Agreement. The study concluded that a 4.62% increase (Exhibit 1) to residential rates for fiscal year 2021 would fully compensate Contractor for the additional costs associated with composting the Green Waste, and the adjustment met the criteria set forth in Section 6.5 of the Agreement. In lieu of the rate adjustment, the City decreased the Contractor's Minimum Recycling Requirements in Section 3.10.6 from 50% to 35%, reflecting an anticipated reduction in transformation of refuse and less intensive processing of residential mixed waste, but with continued composting of all green waste. In the event that City approves a 4.62% rate increase at a future date, then the Minimum Recycling Requirement shall be returned to 50% as described in Section 3.10.6.

SECTION 6. Except as otherwise set forth in this Second Amendment, the Agreement as amended by way of the First Amendment shall remain binding, controlling, and in full force and effect. Section 12.12 (Entire Agreement) of the Agreement notwithstanding, this Second Amendment, together with the Agreement and the First Amendment, shall constitute the entire, complete, final, and exclusive expression of the parties with respect to the matters addressed in both documents.

SECTION 7. The provisions of this Second Amendment shall be deemed a part of the Agreement as amended by way of the First Amendment and except, as otherwise provided under this Second Amendment, the Agreement, the First Amendment and all provisions contained therein shall remain binding and enforceable. In the event of any conflict or inconsistency between the provisions of this Second Amendment and the provisions of the Agreement or the First Amendment, the provisions of this Second Amendment shall govern and control, but only in so far as such provisions conflict with the Agreement or the First Amendment and no further.

SECTION 8. The person(s) executing this Second Amendment on behalf of the Parties hereto warrant(s) that (i) such Party is duly organized and existing, (ii) such person(s) are duly authorized to execute and deliver this Second Amendment on behalf of said Party, (iii) by so executing this Second Amendment, such Party is formally bound to the provisions of this Amendment, and (iv) entering into this Second Amendment does not violate any provision of any other agreement to which said Party is bound.

[Signatures on the following page]

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

CITY OF BELL GARDENS

By: _____
Michael B. O'Kelly, City Manager

Date: _____

ATTEST:

By: _____
Jane Halstead, City Clerk

APPROVED AS TO FORM:

By: _____
Rick Olivarez, City Attorney

**ARAKELIAN ENTERPRISES, INC.
dba Athens Services**

By: _____

Its: _____

Date: _____
