

OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
411 West Ocean Boulevard, 9th Floor
Long Beach, CA 90802

1 FIRST AMENDMENT TO NON-EXCLUSIVE FRANCHISE AGREEMENT NO. 32124

2 **32124**

3 THIS FIRST AMENDMENT TO NON-EXCLUSIVE FRANCHISE
4 AGREEMENT NO. 32124 is made and entered, in duplicate, as of September 17, 2019,
5 for reference purposes only, pursuant to a minute order adopted by the City Council of the
6 City of Long Beach at its meeting on August 13, 2019, by and between ARAKELIAN
7 ENTERPRISES, INC. DBA ATHENS SERVICES, a California corporation ("Franchisee"),
8 with a place of business at 14048 Valley Blvd., City of Industry, California 91746, and the
9 CITY OF LONG BEACH, a municipal corporation ("City").

10 WHEREAS, City and Franchisee (the "Parties") entered into Agreement No.
11 32124 (the "Agreement") whereby Franchisee agreed to provide integrated waste
12 management services for commercial and multi-family establishments in the City of Long
13 Beach; and

14 WHEREAS, the Parties desire extend the term and update the required
15 operational standards;

16 NOW, THEREFORE, in consideration of the mutual terms, covenants, and
17 conditions herein contained, the Parties agree as follows:

18 1. Section 3.1.1 of the Agreement is hereby amended to read as follows:

19 "3.1.1 Option to extend Agreement. If Franchisee is not in default of
20 any provision of this Agreement, including payment of any moneys due City, and
21 provides proof satisfactory to City in its sole discretion by October 1, 2012 that one
22 hundred percent (100%) of the vehicles used by Franchisee to haul refuse in Long
23 Beach are Alternative Fuel Vehicles, the term of this Agreement will be extended by
24 three (3) years, until September 30, 2019. If Franchisee is not in default of any
25 provision of this Agreement, including payment of any moneys due City, and
26 provides proof satisfactory to City in its sole discretion by October 1, 2013 that one
27 hundred percent (100%) of the vehicles used by Franchisee to haul refuse in Long
28 Beach are Alternative Fuel Vehicles, the term of this Agreement will be extended by

1 two (2) years, until September 30, 2018.”

2 2. Section 3.1.2 of the Agreement is hereby amended to read as follows:

3 “3.1.2 Additional options to extend Agreement. After the initial term
4 and options to extend have been exhausted, effective October 1, 2019, the
5 Agreement may be extended for one (1) additional three-year period, with further
6 options to extend for two (2) additional one-year periods, at the discretion of the City
7 Manager.”

8 3. Section 3.1.3 of the Agreement is hereby amended to read as follows:

9 “3.1.3 The City has the right to terminate if Franchisee fails to be in
10 compliance with State Law(s), including but not limited to SB 1383, AB 939 and AB
11 1826.”

12 4. Section 4.1.3.a.(ii) of the Agreement is hereby amended to read as
13 follows:

14 “(ii) Recycling Services. Franchisee will provide each account they
15 service with Recycling Services. If a Customer requests an additional container(s)
16 or Service(s), Franchisee agrees to provide it within one (1) week of request. The
17 Franchisee shall develop a written plan to ensure this Service is provided to all their
18 accounts. The Franchisee will have the plan available to review with the City. The
19 City will provide a standard template for this plan.

20 Recycling Services Commodity Collection. The City may choose to
21 specify the commodities to be included in the Franchisee’s recycling collection
22 program and may require the Franchisee to utilize this list. The City shall
23 communicate with the Franchisee prior to implementation.”

24 5. Section 4.1.3.a.(iii) of the Agreement is hereby renumbered to be
25 4.1.3.a.(iv) and amended to read as follows:

26 “(iv) Solid Waste Handling Services for Special Events may only be
27 provided by Permitted Haulers. If Franchisee provides Solid Waste Handling
28 Services for a Special Event, that has received a Special Event Permit, Franchisee

1 shall provide source-separated public and back-of-house collection containers for
2 refuse, recycling and, when appropriate, organics. Additionally, Franchisee shall
3 provide signage on all containers and review the signage with the City for its prior
4 approval.

5 Franchisee shall provide a Recycling Plan at least 30 days prior to the
6 Permitted Special Event that includes at a minimum: documentation of service level,
7 event map that documents paired placement of garbage and recycling containers
8 and copies of education signs (with images as to material type allowed in each
9 container), to be placed with the bins.

10 Franchisee shall include this information in their monthly report and
11 document total tonnage of material collected from the Permitted Special Event.”

12 6. Section 4.1.3.a.(iii) of the Agreement is hereby amended to read as
13 follows:

14 “(iii) Organics Services. The Franchisee will provide each account
15 they service impacted by AB 1826, SB 1383, and/or any other state or local law with
16 Organics Service. Franchisee must develop a written plan to ensure Organics
17 Service is provided to accounts impacted by AB 1826, SB 1383 and any other local
18 or state law. The Franchisee will have the plan available to review with the City upon
19 request. The City will provide a standard template for this plan.

20 Franchisee shall monitor the organics containers for contamination in
21 all manners that comply with state law.”

22 7. Section 4.1.3(v) is added to the Agreement to read as follows:

23 “(v) The City desires that all Franchises have uniform in bins colors
24 compliance with the regulations delineated in SB 1383. At the time of this contract
25 the colors are: Grey/Back for Refuse, blue for recycling, and green for organics. The
26 City will develop a plan for compliance during the contract period. Effective
27 immediately, the Franchisee shall ensure that all containers/bins for organics are
28 green.”

1 8. Section 4.1.3(v) of the Agreement is renumbered to be 4.1.3(vi) and
2 is hereby amended to read as follows:

3 “(vi) Display Franchisee’s name, telephone number in legible
4 lettering no less than two inches (2”) in height as well as language warning against
5 illegal dumping and Un-permitted Waste (include Hazardous Waste) or special
6 waste disposal, as required by 14 Cal. Code Regs. 17317. Additionally, each
7 container must be marked with each Customer’s service address (City and zip code
8 not required) within ninety (90) days of this Amendment.”

9 9. Section 4.1.3(vi) of the Agreement is renumbered to be 4.1.3(vii).

10 10. Section 4.1.3(vii) of the Agreement is renumbered to be 4.1.3(viii).

11 11. Section 4.1.3(ix) is added to the Agreement to read as follows:

12 “(ix) All containers and bins in use in the City must be labeled. In the
13 event the City implements a uniform labeling system, Franchisee must utilize this
14 system. If the City does not implement such a system, Franchisee is responsible for
15 ensuring that labels comply with all state laws, and must obtain approval from the
16 City prior to use. All labels shall comply with all State laws and receive approval
17 from the City prior to use. At a minimum, this includes, but is not limited to, all bins
18 and containers used at commercial, multi-family, special events, and construction
19 and demolition locations.”

20 12. Section 4.2.1 of the Agreement is hereby amended to read as follows:

21 “4.2.1 Excess or Overflow Waste. Franchisee will collect excess Solid
22 Waste at the Commercial Set-out Site on the Customers’ regularly scheduled
23 service day or any other date agreed to between the Customer and Franchisee, but
24 in no event later than forty-eight (48) hours of receipt of the request for collection
25 from the Commercial Customer or from the City, unless otherwise directed by the
26 City. Franchisee will collect all excess Waste at the Site on regular pick-up day(s)
27 and not leave any waste or litter at the Site.”

28 13. Section 4.2.2 of the Agreement is hereby amended to read as follows:

1 “4.2.2 Bulky Waste. Franchisee will provide at a minimum the same
2 level of collections the City provides for Bulky Waste (as defined in Exhibit 1
3 Definitions section) at no additional charge to the Customer. As of September 1,
4 2019, the City provides four (4) pick-ups with a maximum of eight (8) bulky items or
5 twenty-five (25) bags/bundles/boxes of garbage per pick up. The City may change
6 service level expectations during term of agreement and will notify Franchisee if
7 changes are made. Franchisee shall provide additional collections upon request, at
8 a rate determined by Franchisee. Franchisee will collect Bulky Waste at the
9 Commercial Set-out Site on the Customer's next regularly scheduled Collection Day
10 or other date agreed to between the Customer and Franchisee, not later than seven
11 (7) days of receipt of the request for collection from the Commercial Customer or
12 from the City, unless otherwise directed by the City. Franchisee shall maintain a log
13 of such requests for Bulky Waste Pick-ups and provide it in the monthly report.
14 Annually, Franchisee will provide a breakdown of the number of requests and the
15 total amount of pick-ups they received. Pick-ups of illegally dumped items do not
16 count toward the included Bulky Waste pick-ups.

17 (a) Bulky Waste Collection Promotion. Franchisee will promote
18 and educate Customers about this new service at least four (4) times during the
19 year. Each promotion will occur every three months and the first one must occur
20 within forty-five (45) days of the contract execution. Franchisee will provide
21 promotional material to the City for approval before promoting the service and allow
22 the City to promote this service on behalf of the Franchisee.

23 (b) Dumped Bulky Waste. Franchisee will clean up dumped Bulky
24 Waste within a 10-foot (10') radius of the Set-out Site and from any area of the
25 service account. Franchisee will ensure that each Collection Vehicle carries
26 appropriate tools at all times for this purpose or can communicate the request with
27 appropriate staff to get the material collected.”

28 14. Section 4.3.2 of the Agreement is hereby amended to read as follows:

1 “4.3.2 Litter. Franchisee will clean up litter caused by Franchisee
2 employees. Franchisee will also clean up all litter within a 10-foot (10’) radius of the
3 Set-Out Site and from any area of the service account when collecting any Bulky
4 Waste and excess Solid Waste. Franchisee will ensure that each Collection Vehicle
5 carries appropriate tools at all times for this purpose.”

6 15. Section 4.6 of the Agreement is hereby amended to read as follows:

7 “4.6 Franchisee Billing. Franchisee will provide the City with the copy of
8 the Customer bill within fifteen (15) days of signed Customer contract renewal, and submit
9 it annually as part of the Transportation Permit Renewal Process (“TPRP”). The TPRP
10 requires Franchisees to submit a permit renewal application, including a copy of their
11 insurance, business license, transportation permit renewal fee, DMV registration for
12 vehicles used in Long Beach and information on each vehicle, and updated contact
13 information. Franchisee will bill and collect Service Fees, however Franchisee is prohibited
14 from itemizing the Franchise Fee and any other City-imposed fee as part of the Customer's
15 bill. Failure to observe this provision shall result in the imposition of liquidated damages.”

16 16. Section 6.1 of the Agreement is hereby amended to read as follows:

17 “6.1 Diversion. Franchisee must reach a minimum diversion rate of twenty-
18 five percent (25%) by September 30, 2020, thirty-five percent (35%) diversion rate by
19 September 30, 2021, and forty percent (40%) diversion rate by September 30, 2022. The
20 Director of Public Works, or designee, may revise minimum diversion rates based on
21 market conditions and industry considerations.”

22 17. Section 7.3 of the Agreement is hereby amended to read as follows:

23 “7.3 Compliance with Applicable Law. Franchisee shall ensure all
24 accounts impacted by AB 341, AB 1826, SB 1383 are in compliance. Franchisee is
25 required to ensure compliance with any and all State laws. The City Manager, or designee,
26 has the authority to develop additional contract amendments to further define requirements
27 and expectations of haulers to ensure state law compliance.”

28 18. Section 8.2.1 of the Agreement is hereby amended to read as follows:

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“8.2.1 Monthly. Monthly. Franchisee will submit Monthly Reports to the City no later than thirty (30) days from the end of the month for which collection service was provided. The City shall develop an online Monthly Reporting system, which Franchisee must use. The City may add or subtract questions to this report as needed.”

19. Section 8.2.2 of the Agreement is hereby amended to read as follows:

“8.2.2 Annual. Franchisee will submit Annual Reports to the City as directed or approved by the City. Online reporting may be required.”

20. Section 10.2.2 of the Agreement is hereby amended to read as follows:

“10.2.2 Franchise Fee. In consideration for City’s granting Franchisee the franchise described in Section 4, Franchisee will pay the City a Franchise Fee as established by resolution of the Long Beach City Council, and amended from time to time. The Franchise Fee was established at eight percent (8%) of the Gross Revenues received from providing the Franchise Services received after December 1, 2009 through 2011. As of October 1, 2011, the Franchise Fee increased to ten percent (10%).”

21. Section 15.1.3 of the Agreement is hereby amended to read as follows:

“15.1.3 Address:
To City: Craig Beck, Director of Public Works
City of Long Beach
411 West Ocean Blvd., 5th Floor
Long Beach, California 90802
Telephone: (562) 570-6771
Email: Craig.Beck@longbeach.gov

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1 With a copy to: Erin Rowland
2 Environmental Services Bureau
3 2929 East Willow Street
4 Long Beach, California 90808
5 If to Franchisee: ARAKELIAN ENTERPRISES, INC. DBA ATHENS SERVICES
6 14048 Valley Blvd.
7 City of Industry, California 91746

8 Parties may change their contact information above upon Notice to the
9 other Party.”

10 22. Section 16 of the Agreement is hereby renumbered to be Section 22.

11 23. Section 16 is hereby added to the Agreement to read as follows:

12 “16. ZERO WASTE PLAN. If Franchisee services two hundred (200) or
13 more accounts in the City, Franchisee shall pay the City the sum of Seven Thousand Five
14 Hundred Dollars (\$7,500) to support the development of the Zero Waste Plan. If Franchisee
15 services one hundred ninety-nine (199) accounts or fewer, Franchisee shall pay to the City
16 the sum of Three Thousand Five Hundred Dollars (\$3,500). These Customer counts will
17 be considered as of July 31, 2019.”

18 24. Section 17 is hereby added to the Agreement to read as follows:

19 “17. ADDING NEW COMMERCIAL AND MULTI-FAMILY ACCOUNTS. If
20 Franchisee adds a new account, Franchisee must ensure Customer complies with AB 341
21 and AB 1826. Prior to taking on the account, the Franchisee must provide documentation
22 to the City (Customer Service Call Center Manager) that includes: current service level,
23 proposed service level, container type(s), and a recycling plan that includes all
24 commodities to be recycled. If Customer will be impacted by AB 1826 Franchisee must
25 document that the service will be included as part of taking on the new account. The City
26 will provide a template to be used by the Franchisee to document this requirement. The
27 City must review and approve this information prior to the Franchisee executing a new
28 agreement with the Customer. The City may assess liquidated damages if these terms are

1 not met.”

2 25. Section 18 is hereby added to the Agreement to read as follows:

3 “18. FOOD RESCUE AND FOOD DONATION. The City is requiring the
4 Franchisee to develop a food rescue and food donation plan that complies with rules and
5 regulations set forth in SB 1383 and any other applicable state law. At a minimum,
6 Franchisee shall identify at least one (1) entity meeting the requirements in SB 1383 to
7 partner with to promote food donation from their food service Customers. This must be
8 completed and approved by the City prior to January 1, 2021.”

9 26. Section 19 is hereby added to the Agreement to read as follows:

10 “19. ORGANIC WASTE RECOVERY EDUCATION AND OUTREACH.
11 Franchisee shall annually provide organic waste recovery education and outreach in a
12 manner that complies with SB 1383 and any other state law. The Franchisee will review
13 with the City all material and outreach strategies prior to implementation of this provision.”

14 27. Section 20 is hereby added to the Agreement to read as follows:

15 “20. BRANDING. City shall establish consistent branding for all waste,
16 recycling, organics collection containers/bins, and education and outreach material within
17 the City of Long Beach.”

18 28. Section 21 is hereby added to the Agreement to read as follows:

19 “21. PROCUREMENT. Franchisee shall annually report the amount of
20 Renewable CNG it uses to run its fleet in the City of Long Beach.”

21 29. Except as expressly modified herein, all of the terms and conditions
22 contained in Agreement No. 32124 are ratified and confirmed and shall remain in full force
23 and effect.

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Long Beach, CA 90802

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IN WITNESS WHEREOF, the Parties have caused this document to be duly executed with all formalities required by law as of the date first stated above.

ARAKELIAN ENTERPRISES, INC. DBA
ATHENS SERVICES, a California
corporation

October 7th, 2019

By *Adam Arakelian*
Name Adam Arakelian
Title _____

OCTOBER 7,, 2019

By *Mike Arakelian*
Name Mike Arakelian
Title _____

"Franchisee"

CITY OF LONG BEACH, a municipal
corporation

Nov. 8, 2019

By *Rebecca G. Garner*
Name Rebecca G. Garner
Title City Manager

EXECUTED PURSUANT
TO SECTION 301 OF
THE CITY CHARTER

This First Amendment to Non-Exclusive Franchise Agreement No. 32124 is approved as to form on 11-6, 2019.

CHARLES PARKIN, City Attorney

By *Charles Parkin*
Deputy