

**CITY OF SANTA PAULA
MEMORANDUM**

To: Honorable Mayor and Members of the City Council

From: Michael Rock, City Manager
John Ilasin, Interim Public Works Director

Subject: Consent to Assignment of Franchise Agreement and Third Amendment

Date: July 17, 2017

Recommendation: It is recommended that City Council: 1) Consent to the assignment of the Franchise for Residential, Commercial, Industrial and Multi-family Residential Solid Waste Collection from Recology Los Angeles to Araco Enterprises, LLC dba Athens Services subject to certain conditions and approval of the Third Amendment to the Franchise Agreement; (2) Adopt Resolution No. 7066 approving the Consent to Assignment and Third Amendment to the Franchise Agreement for Residential, Commercial, Industrial and Multi-Family Residential Solid Waste Collection; and (3) Take such additional, related action that may be desirable.

Report by: Michael Rock, City Manager
John L. Ilasin, Interim Public Works Director/City Engineer
Caesar Hernandez, Regulatory Compliance Specialist

Fiscal Impacts: Recology Los Angeles is required to pay all direct and indirect expenses to cover the evaluation process. Expenses include staff time, consultant fees, and attorney fees incurred for reviewing the documentation and qualifications of the prospective transferee. A deposit of \$50,000 is required to cover such expenses. Upon the City Council approval of the assignment, the transferee, Araco Enterprises, LLC, dba Athens Services, must pay the City a transfer fee of \$50,000 or five percent (5%) of gross revenues for the first twelve months whichever is greater. The estimated five percent of gross revenues is \$152,929. The transfer fee will be submitted into the General Fund. This assignment would not increase customer rates.

Personnel Impacts: None.

General Discussion: On April 18, 2011, the City and Crown Disposal entered into a Franchise Agreement for Residential, Commercial, Industrial and Multi-Family Residential Solid Waste Collection (the "Franchise Agreement"). The Franchise Agreement is set to expire on May 31, 2018. At the City's sole option, the City may extend the Franchise Agreement through May 31, 2022.

The Franchise Agreement contains provisions regarding the assignment of the Franchise Agreement to another solid waste hauler. On December 4, 2014, Crown Disposal requested for the City consent to the assignment of the Franchise Agreement to Recology Los Angeles and Recology has satisfactorily performed since that date.

On April 18, 2017, Recology Los Angeles notified the City of its intention to sell its assets to Araco Enterprises, LLC dba Athens Services (Athens Services) and requested for the City consent to assignment of the Franchise Agreement to Athens Services. Section 26.02 of the Franchise Agreement requires Recology Los Angeles to demonstrate it has the financial and technical ability to provide the services required under the Franchise Agreement. Section 26.02 also authorizes the City to impose conditions on the transfer including requiring an amendment to the Franchise Agreement. These conditions are in addition to the \$50,000 deposit and the transfer fee as required by Section 26.04.

In order to assist in the evaluation of Athens Services' qualifications, the City hired a solid waste consultant, Solid Waste Solutions Inc. to review the qualifications and the submitted documentation from Araco Enterprises, LLC. Along with the consultant, City Staff would determine if Athens is qualified to perform the services required by the Agreement, has goals and values that are consistent with the City of Santa Paula, and is a company that can conduct its business and operations on a daily basis. The evaluation included the review of (1) references from ten current public agencies, (2) financial statements, (3) any past legal actions and/or litigation, and (4) company goals and values for alignment with the City's needs, see attached SWS Report dated 7/3/2017. The following discussion is the findings of the evaluation.

Company Background

Araco Enterprises, LLC is the designated affiliate of Athens Services. Athens Services possesses significant experience of providing solid waste services, but primarily in the Los Angeles County area. Its closest operations to the City are currently located in eastern part of the county. Araco Enterprises, LLC is a family-owned company that has been involved in the residential and commercial solid waste and recycling business for over 60 years. It is currently the largest, independent solid waste recycling company in Los Angeles County. The Arakelian family owned Athens Services for over 60 years. Although Araco Enterprises, LLC will have its own stand-alone operations and related assets, Athens Services would support all of Araco Enterprises, LLC obligations under the Franchise Agreement. Athens Services is committed to building goodwill with its customers. Athens Services currently provides service to the cities of Covina, Glendora, Irwindale, Monrovia, Palos Verdes Estates, San Gabriel, San Marino, Sierra Madre, South Pasadena, and South El Monte.

Financial and Technical Stability

Athens Services elected not to release their financial data to the City due to privacy concerns. As an alternative, a meeting was arranged between Athens' Corporate Controller and the Cities' solid waste consultant, SWS, at their Sun Valley facility. The parties reviewed the last three years of financial statements. According to the SWS report, the financial statements indicate that the company is showing positive cash flow on a year over year basis. Moreover, the annual purchases that are being conducted, are not impacting the company's bottom line. Their goal is to keep all facilities and operations current while maintaining a positive cash flow to debt ratio.

Athens Services possesses all equipment and personnel necessary to serve the City and can easily expand as the City grows into the east area. Athens Services' equipment would be re-branded for use in the City. Athens is anticipated to provide additional resources available for expansion. Athens expanded its operations in the region beyond the assets acquired from Recology Los Angeles, which potentially could provide greater local support for operations in Santa Paula.

Past and Pending Lawsuits

Arakelian Enterprises vs. City of Montebello. BS138950:

This case was an administrative writ compelling the Mayor of Montebello to sign a contract he refused to sign, even though the City Council voted 3-2 to approve the contract. The Mayor ProTem signed the contract, the writ was denied and this case was closed.

Wiese, et al (City of Monterey Park) vs. Athens Disposal Company GC044216:

This case was a motor vehicle accident between an Athens employee and a Monterey Park City employee, both on duty. Our insurance company, settled, handled the case and all claims were paid in full. Case closed.

City of Riverside vs. Arakelian Enterprises. et al. RIC100Z2417:

This case was an eminent domain case where the City of Riverside redeveloped an area that had an adverse effect on a piece of property owned by Athens in Riverside. Ultimately the case settled and the City agreed to pay for the property taken. Case closed.

Torres vs. City of Montebello et al (Arakelian Enterprises Inc.) BS120272:

This case involved a citizen suing the City of Montebello where Athens became a third party of interest because the citizen (Torres) was suing the city (Montebello) for entering into an exclusive contract with Athens. It was later found that the citizen (Torres) was backed and funded by several small haulers in the Montebello and San Gabriel Valley region. The small haulers were upset that the City Council voted 3-2 to give Athens the exclusive contract right, and gave notice to the other multiple haulers to cease waste hauling activities in a period of time. Torres sued on many counts. The final ruling was procedural because the Mayor refused to sign the contract (he was on the losing end of the 3-2) the Mayor Pro-Tem signed. The court

ruled the Mayor must sign all contracts when present. Since the Mayor refused to sign the contract, the contract was deemed unenforceable. Case closed.

City of Montebello vs. Vasquez et al, BC488767:

This case was between the City and three former City Council members and one City administrator. The City claimed these aforementioned individuals were involved in conflict of interest campaign that led to a 3-2 vote for awarding a contract to Athens. The case was resolved against the City and in favor of the former City Council members and the City administrator on an an Anti-SLAPP motion. The result rejected any notion of a conflict of interest or wrong doing by Athens Services or the former City Council members. Case was closed in early February 2017.

Arakeiiian Enterprises Inc. vs. SCQAMD and state of California BS 116043 and KC05368S:

The Athens Materials Recovery Facility had been the subject of odor complaints with the South Coast Air Quality Management District (SCAQMD), pursuant to which the SCAQMD Hearing Board signed an abatement order against Athens on July 24, 2008. In response, Athens filed a petition for preemptory writ against the Hearing Board (Case No. BS116043) with the Los Angeles Superior Court on July 25, 2008, which was denied. Subsequently, the SCAQMD filed a complaint for civil penalties and preliminary and permanent injunction against Athens (Case No. KCOS368S) in Los Angeles Superior Court on August 21, 2008. This matter was settled and Athens agreed to a civil penalty and to enclose the facility and install a state-of-the art ventilation and filtration system. The facility continues to operate in full compliance with SCAQMD.

Reference Checks

Reference checks were conducted with the cities of Covina, Glendora, Irwindale, Monrovia, Palos Verdes Estates, San Gabriel, San Marino, Sierra Madre, South Pasadena, and South El Monte. Reference checks were conducted to determine any areas of concern or negative trends and receive any positive feedback. Questions were asked related to customer service, program implementation, and experience working with Athens Services. The cities were also requested to rate the performance. See the table below.

Review of Athens Services / Ranking by Points

Number of Questions	8	
Maximum Score	11	
Total score	88	
City	Points	Grade
Glendora	88	100%
Monrovia	83	94%
Covina	73	83%

Sierra Madre	72	82%
San Marino	72	82%
San Gabriel	60	68%
So. Pasadena	44	50%
Palos Verdes Estates	-	0%
So. El Monte	-	0%
Irwindale	-	0%

Seven of the ten cities responded to the reference check survey. Most of the cities provided Athens Services a grade between 68 and 100 percent. Overall, Athens Services received a total score of 88. On a scale of one to 11, the cities appeared very satisfied with the service provided to the community, communication between the hauler and the City and program implementation.

Transition Timeline

Athens Services proposes all vehicles, containers, and employee uniforms used to service the City will be rebranded to Athens Services, following the closing date of the transaction with no interruption to service levels. Athens Services will pool from a collection fleet of over 350 vehicles within 100 miles of Santa Paula to supplement and provide fleet backup services, as needed. Below is the anticipated timeline for Recology’s rebranding efforts.

Athens Rebranding Timeline	
Within 30 days from the closing of the acquisition	Rebrand employee uniforms
Within 90 days from the closing of the acquisition	Rebrand containers
Within 180 days from the closing of the acquisition	Rebrand collection equipment

As part of this transition, staff will coordinate with Recology Los Angeles to communicate the change of service provider to the community.

Based on the information provided by Athens Services and the evaluation of the company, staff recommends that the City Council consent to the assignment of the Franchise Agreement for the remaining term. Although, the Franchise Agreement is set to expire on May 31, 2018, the City at its sole option may extend the Franchise Agreement through May 31, 2022. Therefore, the term of this Assignment will serve as performance evaluation period from the time of execution through December 31, 2017.

Alternatives:

- A. Approve recommendation
- B. Deny recommendation
- C. Provide staff with additional direction

Attachments:

Resolution No. 7066 - Consent to Assignment Franchise Agrmt Athens

3rd Amendment to Franchise Agreement-final

20110418_FRANCHISE AGREEMENT_Solid Waste Collection_Crown Disposal

201401104_Consent to Assignment and 1st Amendment to Franchise Agreement

20150225_Consent to Assignment and 2nd Amendment to Franchise Agreement

EXECUTED

Athens Letter_6.21.2017

Solid Waste Solutions Review of Athens_7-3-2017