

**CONSENT TO ASSIGNMENT AND THIRD AMENDMENT TO THE FRANCHISE AGREEMENT FOR RESIDENTIAL, COMMERCIAL, INDUSTRIAL AND MULTI-FAMILY RESIDENTIAL SOLID WASTE COLLECTION**

THIS CONSENT TO ASSIGNMENT AND THIRD AMENDMENT (“Amendment”) is made and entered into this            day of July, 2017, by and between the CITY OF SANTA PAULA, a general law city and municipal corporation existing under the laws of California (“CITY”), and ARACO ENTERPRISES, LLC, an affiliate of ARAKELIAN ENTERPRISES, Inc. (aba ATHENS SERVICES), Inc., a California corporation (“ATHENS”).

1. **RECITALS.** This Amendment is made with reference to the following facts and objectives:
  - A. On April 18, 2011, the CITY and Crown Waste Disposal entered into non-exclusive solid waste franchise agreement relative to the collecting, transferring, recycling, composting, and disposing of solid waste from all residential, commercial and industrial premises within CITY’s jurisdiction (the “Agreement”). On October 21, 2013, the parties amended the Agreement to extend the initial term through May, 2018, and delay any escalation in solid waste fees until July 1, 2015;
  - B. On November 24, 2014, Crown Waste Disposal notified the City of its intention to sell its assets to Recology Los Angeles, a Northern California-based waste hauler, and that Recology would continue Crown’s operations under the Agreement;
  - C. On February 2, 2015, the Santa Paula City Council approved and consented to assignment of the agreement from Crown to Recology Los Angeles, subject to the provisions of the Second Amendment. Recology provided solid waste services in the City since that date;
  - D. On April 18, 2017 Recology notified the City of its intention to sell its assets to ATHENS, a Los Angeles-based waste hauler, and that ATHENS would continue Recology’s operations under the Agreement;
  - E. Section 26.01 of the Agreement prohibits the transfer of the Agreement without the consent of the City as expressed by written resolution of its City Council. Section 26.02 of the Agreement authorizes the City to impose conditions on the transfer, including requiring an amendment to the Agreement;
  - F. CITY, in order to assess whether ATHENS possesses the financial and technical ability to provide the services required by the Agreement, requested from ATHENS and Recology Los Angeles information regarding the proposed transfer and the qualifications of the proposed Transferee.

- G. The CITY has reviewed the information submitted by Recology Los Angeles and ATHENS and determined that ATHENS possesses the financial, operational, and technical ability to provide required services;
  - H. CITY is willing to consent to the assignment of the Agreement to ATHENS only if ATHENS guaranties the timely and full performance by ATHENS, and any of its affilitates, including Araco Enterprises, LLC, of its obligations, including the payment of money, required by the Agreement; and
  - I. The CITY and ATHENS now mutually desire by this Third Amendment to the Agreement (“AMENDMENT”) to amend the terms of the Agreement.
- 2. CONSENT TO ASSIGNMENT.** On July 17, 2017, the Santa Paula City Council approved and consented to the assignment of the Agreement from Recology Los Angeles to ATHENS, subject to the provisions of this Amendment.
- 3. EFFECTIVE DATE.** This Consent to Assignment and Third Amendment becomes effective upon (1) the execution of this Third Amendment and (2) satisfaction of the following conditions:
- A. ATHENS must pay the transfer fee required by Section 26.04 of the Agreement, estimated to be \$152, 292.
  - B. ATHENS must guarantee the performance of Araco Enterprises, Inc. by executing and acknowledging a guarantee of performance in the event that Araco Enterprises, Inc. fails to perform.
  - C. ATHENS must furnish to the CITY a surety bond in an amount equal to one hundred thousand dollars (\$100,000) in compliance with Section 24.01 of the Agreement.
  - D. Recology Los Angeles must remove all vehicles and any related operating equipment, including among others, all containers, carts and bins, from the property located at 903 Corporation Street.
- 4. AMENDMENT.** In consideration of the foregoing, the Agreement is amended as follows:
- A. **MANDATORY COMMERCIAL RECYCLING.** Section 22.04 is added to the Agreement as follows:  
  
“Mandatory Commercial Recycling. FRANCHISEE must provide all reporting as required to meet AB 341 related to mandatory commercial recycling programs as they relate to FRANCHISEE’s operations. Such requirements include, but are not limited to:  
a) tracking which multi-family and business customers have recycling programs, and

whether such recycling programs are provided by FRANCHISEE or (to FRANCHISEE's knowledge) through other means; and b) tracking which multi-family and business customers, both with and without recycling programs, meet the CalRecycle threshold requirements that require participation. FRANCHISEE must conduct on-going outreach and site visits to existing and potential recycling customers to increase recycling participation, and shall track such visits. Customers will be notified at least annually regarding mandatory recycling programs through Franchisee's public outreach in Section 10.21. Reporting of the information described above shall be provided to City on request in formats acceptable to the City. The above described services shall all be provided at no additional cost to the City or rate payers."

5. **COUNTERPARTS.** This Amendment may be executed in any number or counterparts, each of which will be an original, but all of which together constitutes one instrument executed on the same date.
4. **ORIGINAL AGREEMENT.** Except as modified by this Amendment, all other terms and conditions of the Agreement remain the same.

IN WITNESS WHEREOF the parties hereto have executed this contract the day and year first hereinabove written.

CITY OF SANTA PAULA

RECOLOGY LOS ANGELES.

\_\_\_\_\_  
Jenny Crosswhite,  
Mayor

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Donald Gambelin,  
Senior Director, Business Development

ATTEST:

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Lucy Blanco  
City Clerk

APPROVED AS TO FORM:

LEWITT, HACKMAN, SHAPIRO,  
MARSHALL & HARLAN

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John C. Cotti, City Attorney

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John B. Marshall