



CITY COUNCIL AGENDA REPORT



DEPARTMENT: Public Works

MEETING DATE: October 7, 2014

PREPARED BY: Carl E. Hassel, P.E., Director

AGENDA LOCATION: AR-5

TITLE: First Amendment to the Agreement for Non-Exclusive Commercial Waste Collection, Recycling and Disposal Services with Arakelian Enterprises, Inc., dba Athens Services

OBJECTIVE: To amend the Athens Services Non-Exclusive Commercial Franchise Agreement

BACKGROUND: The City of Monrovia and Arakelian Enterprises, Inc., dba Athens Services ("Athens Services") entered into a Non-Exclusive Commercial Waste Collection, Recycling, and Disposal Services Franchise Agreement on April 11, 2012. The current agreement is set to expire on June 30, 2016. Amendments to the commercial agreement are being proposed to provide consistency between program contracts and to remedy several contract issues. Additionally, the City's residential franchise agreement with Athens Services included a reopener to address alternative waste disposal and diversion facilities needed as a result of the Puente Hills Landfill closure on October 31, 2013. In a letter dated November 29, 2012, the City of Monrovia notified Athens Services of its intent to exercise the reopener clause and initiate negotiations. As a result of these negotiations, the contract terms for both the Commercial and Old Town franchise agreements are proposed to be extended to June 30, 2033.

ANALYSIS: The following revisions to the Non-Exclusive Commercial Franchise Agreement with Athens Services are recommended:

- Addition of definition of Minimum Waste Diversion Rate (Section 1.1)
- Extension of Contract Term until June 30, 2034 (Section 1.3)
- Additional language amending non-exclusive rights; (Section 1.4)
- Update the principal collector representative information (Section 1.5.A)
- Revisions made pertaining to service contracts the hauler executes with its customers to provide services authorized by this agreement (Section 2.1)
- Updates pertaining to Compliance with Applicable Law (Section 4.1)
- Revise language to make contract consistent with Municipal Ordinance, and AB 341 (Sections 2.1 and 4.16)
- Amend language pertaining to Waste Disposal and Diversion Plan for consistency with other City of Monrovia solid waste contracts (Section 4.17.C)
- Amend language pertaining to Minimum Waste Diversion language to include provisions for rate adjustments for new or expanded programs due to changes in State laws or regulations (Section 5.12.C)
- Amend language to allow Commercial Agreement to be consistent with the Residential Agreement regarding Failure to Achieve or Maintain Minimum Diversion Rates (Section 5.12.D)
- Clarification of language limiting the use of Transformation to conform to the Public Resource Code (Section 5.12.F)
- Update Waste Characterization Profiles to satisfy May 2013 Hauler Audit recommendations (Section 5.12.G)

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- Update language on failure to Achieve or Maintain Minimum Waste Diversion Rates (Sections 5.12.D, and 6.4.F and G)
- Revision pertaining to termination language if material breach by Collector occurs (Section 6.2)
- Revise calculation of Collector Fees based on a percentage of gross receipts (13.3%), rather than the total tonnage diverted or disposed, consistent with other solid waste contracts (Section 11.1)
- Amend Minimum Levels of Insurance to meet current City Insurance Standards(Section 12.1.B)
- Amend how audits of Collector's books and records are conducted, including execution of a confidentiality agreement with the Collector as provided in Exhibit 6 (Section 13.4),
- Amend the schedule of submittals (Exhibit 5)
- Addition of Confidentiality Agreement form for auditors to utilize (Exhibit 6)

Amendments to the Non-Exclusive Commercial Waste Collection, Recycling and Disposal Services with Arakelian Enterprises, Inc., dba Athens Services may be found in Exhibit A of this staff report.

ENVIRONMENTAL IMPACT: The commercial solid waste and recycling program support the Monrovia Environmental Accords goals to increase waste diversion from landfills (Action Item #4), to increase user friendly recycling programs to reduce per-capita waste disposal (Action Item #6), and to reduce greenhouse gas emissions (Action Item #3).

FISCAL IMPACT: The change in the method of calculating the franchise fees will result in an increase of approximately \$16,800.00 in gross revenue to the Waste Management Fund in Fiscal Year 2014-2015, for waste reduction and recycling and educational programs over the amended term of the contract.

OPTIONS: The following options are provided for consideration:

1. Approve the First Amendment to the Agreement for the Non-Exclusive Commercial Waste Collection, Recycling and Disposal Services with Athens Services.
2. Reject the First Amendment to the Agreement for the Non-Exclusive Commercial Waste Collection, Recycling and Disposal Services with Athens Services, and direct Staff accordingly.

RECOMMENDATION: Staff recommends Option 1; approve the first Amendment to the Agreement for the Non-Exclusive Commercial Waste Collection, Recycling and Disposal Services with Athens Services.

COUNCIL ACTION REQUIRED: If the City Council concurs, the appropriate action would be a motion to approve the first amendment to the Agreement for the Non-Exclusive Commercial Waste Collection, Recycling and Disposal Services with Arakelian Enterprises, Inc., dba Athens Services, and authorize the City Manager to execute the necessary documents.

EXHIBIT A

FIRST AMENDMENT TO THE
AGREEMENT FOR NON-EXCLUSIVE COMMERCIAL
WASTE COLLECTION, RECYCLING,
AND DISPOSAL SERVICES

FIRST AMENDMENT TO THE
AGREEMENT FOR NON-EXCLUSIVE COMMERCIAL WASTE COLLECTION,
RECYCLING, AND DISPOSAL SERVICES
BETWEEN THE CITY OF MONROVIA, CALIFORNIA
AND ARAKELIAN ENTERPRISES, DBA ATHENS SERVICES

This First Amendment ("Amendment") to the Agreement for Non Exclusive Commercial Waste Collection, Recycling, and Disposal Services, dated as of April 11, 2012 (the "Agreement"), dated for reference the 7th day of October, 2014, is by and between the City of Monrovia, a municipal corporation ("CITY") and Arakelian Enterprises, Inc., a California corporation, dba Athens Services ("COLLECTOR").

RECITALS

WHEREAS, CITY and COLLECTOR previously entered into the Agreement, dated April 11, 2012;

WHEREAS, CITY and COLLECTOR desire to amend the Agreement to make changes conforming the Agreement to CITY'S current solid waste and recycling program, and to extend the term;

NOW, THEREFORE, THE PARTIES AGREE TO THE FOLLOWING:

1. **Section 1.1. DEFINITIONS AND TERMS**, the following definition is added to Section 1.1, in alphabetical order:

"Minimum Waste Diversion Rate" shall mean the diversion rate specified in Section 5.12.A."

2. **Section 1.3. TERM OF AGREEMENT**, is re-stated in its entirety as follows:

"This Agreement shall become effective on April 16, 2012, and shall remain in force through June 30, 2034, unless earlier terminated as provided herein. All rights and privileges granted to COLLECTOR by this Agreement shall terminate on June 30, 2034."

3. **Section 1.4 NON-EXCLUSIVE RIGHTS**, is amended by adding the following language after the last sentence thereof:

"Notwithstanding anything to the contrary contained herein, during the term of this Agreement, CITY shall not grant any additional authority, right, privilege or license, other than those currently outstanding under agreements existing as of July 1, 2014 (which shall include this Agreement), to collect, transport, process or dispose of Solid Waste and Recyclables generated or accumulated on those Commercial Premises within the CITY."

4. **Section 1.5.A. REPRESENTATIVES OF PARTIES AND SERVICE OF NOTICES**, is re-stated in its entirety as follows:

"A. The representatives of the parties who are primarily responsible for the administration of this Agreement, and to whom formal notices, demands and communications shall be given, are as follows:

The principal representative of CITY shall be:

City Manager
City of Monrovia
415 South Ivy Avenue
Monrovia, CA 91016

The principal representative of COLLECTOR shall be:

Gary Clifford
Athens Services
14048 Valley Boulevard
City of Industry, CA 91746

5. **Section 2.1. SERVICE CONTRACTS**, is re-stated in its entirety as follows:

"COLLECTOR shall be responsible for ensuring that all service contracts COLLECTOR executes with its customers to provide the services authorized by this Agreement are consistent with the terms of Monrovia Municipal Code Chapter 8.10, Title 14, Chapter 9.4 of the California Code of Regulations, and this Agreement."

6. **Section 4.1. Compliance with Applicable Law**, is re-stated in its entirety as follows:

"4.1 Compliance with Law.

A. General. In providing the services required under this Agreement, COLLECTOR shall at all times, at its sole cost (except as otherwise provided in this Agreement), comply with all applicable laws of the United States, the State of California, County of Los Angeles and the City of Monrovia. COLLECTOR shall maintain compliance with the Monrovia Municipal Code, including but not limited to Chapter 8.10 (as it exists currently or as it may be subsequently amended), and with all applicable regulations promulgated by federal, state, regional or local administrative and regulatory agencies, now in force and as they may be enacted, issued or amended during the term of this Agreement. CITY shall notify COLLECTOR of any changes, modifications or amendments to the Municipal Code that materially affect the circumstances under which this Non-Exclusive Commercial Franchise is granted.

- B. **Solid Waste Facilities.** As part of its obligations under this Agreement, COLLECTOR covenants that it shall transport all Solid Waste and Recyclable Materials collected pursuant to this Agreement to solid waste facilities (as defined in the Act) fully permitted under the guidelines of state, federal and local laws and regulations, which are in compliance with applicable law, and which are not being considered for inclusion on a state or federal Superfund list. COLLECTOR shall arrange for and secure proper disposal and processing of collected Solid Waste and Recyclable Materials at such facilities. All landfills utilized by COLLECTOR to dispose of Solid Waste under this Agreement must be properly permitted by the Regional Water Quality Board, and classified as a Class 3 landfill (landfills designated to receive only municipal Solid Waste).
- C. **No Relief from Obligations.** Nothing herein shall be construed to relieve COLLECTOR of any obligations imposed by applicable law, including, but not limited to, the Municipal Code. In the event of any inconsistency between the Municipal Code and this Agreement, the more stringent provision shall apply."

7. **Section 4.16. RECYCLING**, is re-stated in its entirety as follows:

"COLLECTOR shall offer to provide recycling services to all of its Customers in CITY, and shall furnish all labor, material and equipment, including recycling containers, necessary to collect, process, and market Recyclables collected from those Customers that request recycling services. If any of COLLECTOR'S Customers that generate four (4) or more cubic yards of Solid Waste and Recyclable Materials per week refuse or decline to participate in COLLECTOR'S recycling services, COLLECTOR shall notify CITY within thirty (30) days of the Customer's refusal to participate in COLLECTOR'S recycling services by providing CITY with the name of the Customer and the name and telephone number of the Customer's representative."

8. **Section 4.17.C**, is re-stated in its entirety as follows:

"COLLECTOR has submitted a Waste Disposal and Diversion Plan to the CITY with its application for a non-exclusive commercial waste collection, recycling, and disposal collector agreement. That plan is incorporated into this Agreement by reference. COLLECTOR shall provide CITY with an update of this plan by March 31 of each year throughout the term of this Agreement and any extensions granted by CITY. The updates to this plan shall (i) clearly demonstrate that COLLECTOR has made provisions to provide secure disposal capacity that is adequate to meet the waste disposal needs of COLLECTOR'S Customers for the one (1) year period commencing on July 1 of the year of submittal of the plan, (ii) describe the tentative plans of COLLECTOR regarding disposal capacity arrangements for the five (5) year period commencing on July 1 of the year of submittal (for the avoidance of doubt, COLLECTOR shall only be required to secure disposal capacity for the one (1) year period commencing on July 1 of the year of submittal) and (iii) shall include the following information:

- A. The names of the waste disposal facilities that COLLECTOR plans to utilize for disposal of Solid Waste collected that is not diverted from disposal.
- B. The capacity arrangements that have been made by COLLECTOR with the owners of the disposal and processing facilities that COLLECTOR proposes to utilize, including the specific amount of disposal and processing capacity that COLLECTOR has secured for COLLECTOR'S Customers, and the contractual arrangements that exist between COLLECTOR and the owners of the disposal and processing facilities that COLLECTOR proposes to utilize. COLLECTOR shall identify the expiration date of any such contractual arrangements, the options for renewing the terms of these contractual arrangements, and the conditions under which these contractual arrangements could be terminated prior to the expiration dates either by COLLECTOR or the owners of these facilities.
- C. Contingency plans COLLECTOR has made in the event that the facilities COLLECTOR proposes to use or is currently using for disposal or processing of Solid Waste are not available to COLLECTOR.
- D. The methods, processes, and programs that COLLECTOR will employ to maintain the Minimum Waste Diversion Rate specified in this Agreement.

The plan and all updates must be reasonably acceptable to CITY; COLLECTOR shall consider all comments of CITY staff on the proposed plans.

COLLECTOR shall deliver Solid Waste and Recyclables collected pursuant to this Agreement solely to the landfill and processing facilities listed in the waste disposal and diversion plan submitted to CITY, unless COLLECTOR first notifies CITY of a proposed additional or alternate landfill or facility to be used.

If at any time the plan submitted by COLLECTOR fails to demonstrate that COLLECTOR has made provisions to provide secure disposal capacity that is adequate to meet the waste disposal needs of COLLECTOR'S Customers for the one (1) year period commencing on July 1 of the year of submittal of the plan, CITY shall inform COLLECTOR that COLLECTOR'S plan failed to demonstrate the availability of adequate disposal capacity, and direct COLLECTOR to revise the plan and resubmit it to CITY within thirty (30) days. If COLLECTOR fails to submit an adequate plan by March 31 of each year, or fails to submit an adequate revised plan within 30 days of being directed to do so by CITY, COLLECTOR shall be subject to liquidated damages as described in Exhibit 4 of this Agreement until such time that COLLECTOR submits a plan that demonstrates the availability of adequate disposal capacity."

9. **Section 5.12.C.** is re-stated in its entirety as follows:

"C. CITY reserves the right to increase COLLECTOR'S minimum waste diversion requirements, or to require COLLECTOR to implement new or

expanded programs in response to changes in state or federal laws or regulations. In such cases, COLLECTOR shall provide CITY with a written report which describes COLLECTOR'S plan for achieving the new Minimum Waste Diversion Rate or implementing the new or expanded programs and indicates how COLLECTOR'S current service rates will be affected. If COLLECTOR proposes an increase in its current service rates, COLLECTOR shall provide CITY with verifiable documentation of its costs associated with the proposed increase in the Minimum Waste Diversion Rate or implementation of the new or expanded programs. The CITY shall evaluate COLLECTOR'S proposal and if CITY finds it acceptable and determines that an adjustment of COLLECTOR'S service rates greater than that allowed in Section 10.3 A and B is justified, process an adjustment of COLLECTOR'S service rates pursuant to Section 10.3. The increased minimum waste diversion requirements or new or expanded programs will be in effect after there is an agreement between City and Collector on an adjustment to the Service Rates."

10. **Section 5.12.D.** is re-stated in its entirety as follows:

"D. Failure of COLLECTOR to achieve and maintain the Minimum Waste Diversion Rate required by this Section 5.12 in any calendar year will require COLLECTOR to pay to CITY liquidated damages as specified in Exhibit 4 of this Agreement. Failure of COLLECTOR to achieve or maintain the Minimum Waste Diversion Rate required by this Section 5.12 for two (2) consecutive years will be considered a material breach of this Agreement and may result in termination of this Agreement by CITY. COLLECTOR shall not be deemed to have failed to achieve or maintain the Minimum Waste Diversion Rate if such failure arises primarily from an event or circumstance outside of COLLECTOR'S exclusive control."

11. **Section 5.12.F.** is added as follows:

"F. COLLECTOR shall not utilize transformation or biomass conversion, as those terms are defined in Sections 40201 and 40106 respectively, of Title 14 of the Public Resources Code, for more than the percentage of the total waste diversion that CITY is permitted under the Act to include in meeting the diversion requirement imposed thereby. Transformation and biomass conversion facilities utilized by COLLECTOR to report waste diversion to CITY shall meet the requirements of Sections 41783 and 41783.1 of Title 14 of the Public Resources Code."

12. **Section 5.12.G.** is added as follows:

"Sorting of Solid Waste. If COLLECTOR utilizes a material recovery facility or similar type of recycling or processing facility to sort Solid Waste collected in CITY for the purposes of recovering Recyclable Materials, COLLECTOR shall base its calculations of the amount of Recyclable Materials recovered from the Solid Waste sorted on the actual characteristics of the Solid Waste sorted. To

determine the characteristics of the waste sorted, COLLECTOR shall develop characterization profiles for each type of Solid Waste that is sorted, such as construction and demolition debris, and other waste from Commercial Premises.

These characterization profiles shall identify the components of each waste type, and shall be updated at least once every five (5) years or whenever CITY presents COLLECTOR with evidence of a significant change in the generation of Solid Waste in CITY. The plan and schedule for developing these characterization profiles shall be reviewed with CITY. The initial characterization profiles shall be developed and presented to CITY for review by October 31, 2014."

13. **Section 6.2. Termination** is re-stated in its entirety as follows:

"Upon the occurrence of a material breach by COLLECTOR specified in Section 6 of this Agreement, the City Council may terminate this Agreement, provided that not less than fifteen (15) days advance written notification is given to COLLECTOR to remedy the breach, and COLLECTOR has failed to provide notice to City of COLLECTOR'S intent to cure the material breach, and the time by which cure (which may include the payment of money damages to City) is to be accomplished. In the absence of exceptional circumstances, cure shall be accomplished not later than thirty (30) days from receipt of notice of material breach. In the event that COLLECTOR agrees that a material breach has occurred, but asserts that cure of the material breach is not reasonably possible within thirty (30) days, then COLLECTOR may submit, in writing, a statement of reasons why cure is not reasonably possible within thirty (30) days and request additional time to fully cure the material breach.

In the event that this Agreement is terminated by CITY, COLLECTOR shall within five (5) days of the notice of termination issued to COLLECTOR by CITY:

- A. Notify all COLLECTOR'S Customers that this Agreement has been terminated and that any service agreements between COLLECTOR and its Customers are also terminated; and
- B. Remove all COLLECTOR'S bins and other equipment at Customer facilities."

14. **Section 6.4.F. and G.** are added as follows:

"F. Failure of COLLECTOR to achieve or maintain the Minimum Waste Diversion Rate required by this Agreement for two (2) consecutive years. COLLECTOR shall not be deemed to have failed to achieve or maintain the Minimum Waste Diversion Rate if such failure arises primarily from an event or circumstance outside of COLLECTOR'S exclusive control.

G. The repeated violation of provisions of this Agreement."

15. **Section 11.1. COLLECTOR FEES** is re-stated in its entirety as follows:

"11.1 CALCULATION OF COLLECTOR FEES. COLLECTOR shall pay Collector Fees to CITY that will be calculated as thirteen and three-tenths percent (13.3%) of COLLECTOR'S monthly gross receipts.

Gross Receipts shall include any and all revenue, and compensation in any form, received by COLLECTOR or subsidiaries, parent companies or other affiliates, or subcontractors of COLLECTOR, for the collection and transportation of Solid Waste and Recyclable Materials pursuant to this Agreement, in accordance with generally accepted accounting principles, without subtracting disposal or processing fees, CITY fees or other fees or any other cost of doing business, exclusive of revenue from the sale of Recyclable Materials."

16. **Section 12.1.B. Minimum Levels of Insurance** is re-stated in its entirety as follows:

"Minimum Limits of Liability. COLLECTOR shall maintain limits no less than:

- (1) A Broad Form Comprehensive Commercial General Liability (occurrence) policy (form CG 0001 or its equivalent), with minimum limits of \$5,000,000 aggregate and \$5,000,000 per occurrence, per year.
- (2) An Insurance Services Office form number CA 0001 (Ed. 1/87 or its equivalent) covering Automobile Liability, including Code 1 (any auto) and endorsement CA 0025, with minimum limits of \$2,000,000 aggregate and \$2,000,000 per occurrence, per year.
- (3) The minimum limits of the Commercial General and Automobile Liability policies shall be increased annually on the anniversary of the Effective Date of this Agreement by an amount which is equal to the then minimum limit times the CPI Change. The amount shall not be reduced lower than the amount that is set forth above.
- (4) Workers' Compensation insurance as required by the State of California.
- (5) Employer's Liability Insurance with a minimum limit of Two Million Dollars (\$2,000,000) per accident for bodily injury or disease."

17. **Section 13.4. AUDIT OF COLLECTOR'S BOOKS AND RECORDS**, is re-stated in its entirety as follows:

"CITY, as well as any consultants engaged by CITY for this purpose, shall have the right, upon written notice, to review any and all documents relating to COLLECTOR'S operational performance of and gross receipts for services provided pursuant to this Agreement. COLLECTOR shall have no obligation to provide any confidential information to any consultant engaged by CITY for this purpose unless the consultant first executes a confidentiality agreement with COLLECTOR, substantially in the form attached hereto as Exhibit 6."

18. **Exhibit 4, LIQUIDATED DAMAGES** is hereby superseded by the Schedule of Liquidated Damages attached to this Amendment.
19. **Exhibit 5, SCHEDULE OF SUBMITTALS** is hereby superseded by the Schedule of Submittals attached to this Amendment.
20. **Exhibit 6, FORM OF CONFIDENTIALITY AGREEMENT** in the form attached to this Amendment, is hereby attached to the Agreement.
21. Except as set forth in this Amendment, the terms of the Agreement shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed and attested by their proper officers thereunto duly authorized

CITY:

City of Monrovia,
a California municipal corporation

COLLECTOR:*

Arakelian Enterprises, Inc., dba Athens
Services, a California corporation

By: _____

Name: Francis M. Delach
Title: Interim City Manager

By: _____

Name: _____
Title: _____

By: _____

Name: _____
Title: _____

ATTEST:

By: _____

Name: Alice D. Atkins, CMC
Title: City Clerk

APPROVED AS TO FORM:

By: _____

Name: Craig A. Steele
Title: City Attorney

***The signature(s) of COLLECTOR require notarization and shall be accompanied by a Resolution of the business authorizing the given signature.**

EXHIBIT 4 **LIQUIDATED DAMAGES**

The following liquidated damages shall apply and be due and payable by COLLECTOR for breaches of the terms of this Agreement by COLLECTOR.

	Breaches of this Agreement	Liquidated Damage
1.	Failure of COLLECTOR to achieve and maintain annual waste diversion rate of at least 50% or the remaining term of this Agreement	\$5,000 per year for each year that the required waste diversion rate is not achieved or maintained
2.	Failure to provide a monthly report or other required submittal by the due date	\$100 per day that the report or submittal is not submitted
3.	Submittal of false or inaccurate information on a report or form	\$500 per incident per report
4.	Failure to provide verification of insurance or copies of inspections or certifications requested by city by the due date	\$250 per incident
5.	Failure to remit Collector Fees by the due date	\$250 per day for each day past the due date
6.	Failure to clean-up litter or spills from COLLECTOR'S vehicles as specified in this Agreement	\$250 per incident
7.	Failure to provide an acceptable annual update to COLLECTOR'S Waste Disposal Plan	\$500 per incident
8.	Failure to utilize alternative fuel vehicles as required in this Agreement	\$5,000, plus \$5,000 for every five days that one or more vehicles not using alternative fuel is utilized in the CITY
9.	Failure to remove bins and other containers from Commercial Premises upon expiration of the term of this agreement or upon notification that this Agreement has been terminated by the City Council	\$500 per day

**EXHIBIT 5
SCHEDULE FOR SUBMITTALS**

Report or Submittal	Due Date
1. Certification regarding actions related to obtaining or entering into this Agreement (Section 1.7)	Completed
2. Copies of marketing materials for distribution to potential customers	Completed
3. Certification that all customer service contracts are consistent with Chapter 8.10 of the Monrovia Municipal Code, and Title 14, Chapter 9.4 of the California Code of Regulations	Completed
4. Proof of insurance – initial	Completed
5. Proof of insurance – revisions or updates	Within ten days of the effective date of any change or revision
6. Collector Fees	30 days after the end of the month
7. Monthly report	30 days after the end of the month
8. Monthly compliant log	30 days after the end of the month
9. Identification of customers that generate 4 or more cubic yards of Solid Waste per week and refuse to participate in COLLECTOR'S recycling programs	Within 30 days of customer refusal to participate
10. Annual update to Waste Disposal Plan	By March 31 of each year of the Term of this Agreement
11. Customer list which indicates the volume of waste (cubic yards of bin capacity) collected weekly from each customer location and the type of recycling program in which the customer is participating	By March 31 of each year of the Term of this Agreement
12. Results of the annual customer satisfaction survey	By March 31 each year for the balance of the term of this Agreement
13. Initial updates to waste characterization profiles used for sorted waste (Section 5.12.G)	October 31, 2014

EXHIBIT 6
FORM OF CONFIDENTIALITY AGREEMENT

[ATHENS LETTERHEAD]

_____, 20__

[Consultant's Name—Include all entities]

[Consultant's Address]

Attention:

Ladies and Gentlemen:

At the request of the City of Monrovia (the "City"), you are being provided with information concerning Arakelian Enterprises, Inc, dba Athens Services and/or its subsidiaries, affiliates or divisions (collectively, "Athens") in connection with your evaluation, for the exclusive benefit of the City, of the services provided by Athens to the City (the "Evaluation").

1. Confidentiality. In consideration for, and as a condition of, such information being furnished to you and your directors, officers, employees, agents, advisors, representatives, and affiliates (collectively, "Representatives"), you agree to treat any and all information marked by Athens as confidential or oral information communicated by Athens in connection therewith ("Evaluation Material") in accordance with the provisions of this letter agreement ("Agreement"), and to take or abstain from taking the other actions hereinafter set forth. Evaluation Material shall include any notes, analyses, summaries, compilations or other materials prepared from or containing the confidential information provided or communicated by Athens.

2. Use of Information. You hereby agree that you and your Representatives will (a) use the Evaluation Material solely for the purpose of the Evaluation, which may include providing a summary of the Evaluation Material to the City, and not for any other purpose, (b) keep the Evaluation Material confidential and (c) not disclose any of the Evaluation Material in any manner whatsoever without the prior written consent of Athens; provided, however, that you may disclose any of such information to your Representatives (i) who need to know such information for the sole purpose of the Evaluation, (ii) who are informed by you of the confidential nature of such information and (iii) who are provided with a copy of this Agreement and agree to act in accordance with its terms to the same extent as if they were parties hereto; provided further that you may disclose any of such information for the sole purpose of the Evaluation to such Representatives of the City of Monrovia who are aware of and involved in the Evaluation. You will be responsible for any breach of this Agreement by any of your Representatives and you agree to take all reasonable measures (including, but not limited to, court proceedings) to restrain your Representatives from disclosure or improper use of the Evaluation Material.

3. Third Party Requests to Disclose Information. In the event that you or any of your Representatives are legally required to disclose any Evaluation Material

pursuant to a subpoena, court order, civil investigative demand or similar judicial process or similar request issued by a court of competent jurisdiction or by a governmental or regulatory authority, you will promptly notify Athens in writing by email and certified mail, of the existence, terms and circumstances surrounding such request, so that Athens may seek a protective order or other appropriate remedy or waive compliance with the applicable provisions of this Agreement. You agree to reasonably cooperate with Athens in connection with seeking any such order or other appropriate remedy. If and to the extent, in the absence of a protective order or the receipt of a waiver by Athens, you are legally required to disclose any Evaluation Material to any court or governmental or regulatory authority or else suffer exposure to censure or civil or criminal fine or penalty, you will only disclose that portion of the Evaluation Material that you are legally required to disclose and shall use reasonable efforts (at Athens's expense) to obtain reliable assurances that confidential treatment will be accorded to any Evaluation Material that you are so required to disclose in accordance with the terms of this Agreement.

4. Competitive Value of Information. You acknowledge the competitive value of the Evaluation Material and the damage that could result to Athens if the Evaluation Material were used or disclosed except as authorized by this Agreement.

5. Return or Destruction of Evaluation Material. Once the Evaluation has been completed, you will promptly notify Athens of such completion. In that case, or prior to that time if you are in violation or breach of the terms of this Agreement, you will either (a) promptly destroy all copies of the Evaluation Material in your or your Representatives' possession (including expunging all Evaluation Material from any computer or other storage media or device containing such information, provided that neither you nor your Representatives will be required to expunge any system back-up media such as copies of any computer records or files containing Evaluation Material which have been created pursuant to automatic archiving or back-up procedures on secured central storage servers and which cannot reasonably be expunged) or (b) promptly deliver to Athens all remaining copies of the Evaluation Material in your and your Representatives' possession. In addition, you agree promptly to certify to Athens that you have complied with your obligations under this paragraph. Notwithstanding the return or destruction of the Evaluation Material, you and your Representatives will continue to be bound by your obligations hereunder.

6. Specific Performance. You acknowledge that money damages would not be a sufficient remedy for any breach of this Agreement by you or any of your Representatives and you consent to a court of competent jurisdiction entering an order finding that Athens has been irreparably harmed as a result of any such breach and to the granting of injunctive relief without proof of actual damages as a remedy for any such breach, and you further waive any requirement for the securing or posting of any bond in connection with any such remedy. Such remedies shall not be deemed to be the exclusive remedies for a breach by you of this Agreement but shall be in addition to all other remedies available at law or equity to Athens. In the event of litigation relating to this Agreement, if a court of competent jurisdiction determines in a final non-appealable order that you or any of your Representatives have breached this Agreement, then you will reimburse Athens for the reasonable legal fees and expenses

incurred by Athens in connection with enforcing its rights hereunder, including any appeal therefrom.

7. Governing Law; Jurisdiction.

(a) This Agreement and all disputes or controversies arising out of or related to this Agreement shall be governed by and construed in accordance with the internal laws of the State of California, without reference to its conflicts of law principles.

(b) Each party irrevocably agrees that any legal action or proceeding arising out of or relating to this Agreement brought by the other party or its successors or assigns shall be brought and determined in any California State or federal court sitting in Los Angeles County, California (or, if such court lacks subject matter jurisdiction, in any appropriate California State or federal court), and each party hereby irrevocably submits to the exclusive jurisdiction of the aforesaid courts for itself and with respect to its property, generally and unconditionally, with regard to any such action or proceeding arising out of or relating to this Agreement.

8. Miscellaneous.

(a) The term "person" as used in this Agreement shall be broadly interpreted to include the media and any corporation, partnership, group, individual or other entity.

(b) No provision in this Agreement can be waived or amended except by the written consent of Athens. Any attempted waiver or modification in violation of this provision shall be void.

(c) It is understood and agreed that no failure or delay by Athens in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or future exercise thereof or the exercise of any other right, power or privilege hereunder.

(d) The provisions of this Agreement shall be severable in the event that any of the provisions hereof are held by a court of competent jurisdiction to be invalid, void or otherwise unenforceable, and the remaining provisions shall remain enforceable to the fullest extent permitted by law.

(e) This Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed original, and all such counterparts shall together constitute one and the same instrument.

(f) This Agreement and the rights and obligations herein may not be assigned or otherwise transferred, in whole or in part, by either party without the express written consent of the other party.

Please confirm your agreement with the foregoing by signing and returning one copy of this Agreement to the undersigned, whereupon this Agreement shall become a binding agreement between you and Athens.

Very truly yours,

Arakelian Enterprises, Inc, dba Athens
Services

By: _____
Name: _____
Title: _____

Accepted and agreed as of the date
first written above:

By: _____
Name: _____
Title: _____