

FIRST AMENDMENT TO SOLID WASTE REMOVAL CONTRACT

This First Amendment to Solid Waste Removal Contract (the "Amendment") is made and entered into as of June 14, 2004, by and between the City of Sierra Madre, a municipal corporation, ("City"), and Arakelian Enterprises, Inc., a California Corporation, dba Athens Services ("Contractor").

RECITALS

WHEREAS, City and USA Waste of California, Inc. entered into that certain "Solid Waste Removal Contract August 2001" (the "Agreement") on August 10, 2001, and Contractor became a party to the Agreement by virtue of an assignment from USA Waste dated February 10, 2003; and

WHEREAS, additional programs are needed to meet the diversion requirements mandated by AB 939 and Contractor has proposed programs to assist City in achieving the required diversion rate without an increase in the rates for the services provided by Contractor; and

WHEREAS, in order to facilitate the implementation of such programs, the parties hereto desire to amend the Agreement on the terms and subject to the conditions set forth herein.

NOW, THEREFORE, based on the Recitals set forth above and in consideration of the mutual covenants and agreements herein contained, City and Contractor do hereby agree as follows:

1. Amendment to Term of the Agreement. Section 5 of the Agreement shall be deleted in its entirety and replaced with the following provision:

5. **TERM.** Prior Agreements and Term: It is mutually understood between the parties that this agreement, as amended by the First Amendment hereto, supercedes and replaces in its entirety all prior agreements or understandings between City and Contractor with respect to the subject matter hereof and, as a result, all such prior agreements and understandings are null, void and of no further force or effect. The term of this agreement shall be fifteen (15) years from the earlier of (i) the date that Contractor begins performing Street Maintenance Services (as defined in Section 6 below) and (ii) sixty (60) days after the date that Contractor is authorized to begin performing Street Maintenance Services; provided, however, that in no event will the term of this Agreement expire later than July 1, 2022.

2. Discontinuation of Multifamily Complex Recycling Program. Section 6(d) of the Agreement shall be deleted in its entirety and replaced with the following provision:

(d) **Multifamily Complex Collection:**

Contractor will not be obligated to offer residential recycling services, in the form of a source-separated recycling program, to any Multifamily Complexes within the City. Instead, Contractor will transport sufficient tons of refuse and solid waste collected from Multifamily Complexes to a Materials Recovery Facility such that City achieves the 50% diversion rate mandated by AB 939.

3. Rate Adjustment Provisions. Section 25(b) and (d) of the Agreement shall be deleted in its entirety and replaced with the following provisions:

(b) **Disposal Rate Adjustment – Fees** found in the rate table attached as Exhibit "A" to the agreement reflect a \$31.67 per ton blended disposal rate. In conjunction with the annual rate adjustment authorized by subparagraph (d) of this Section, Contractor will submit all necessary documentation requested by the City Manager to establish the net change in tipping fees. This net change in tipping fees will be added to or subtracted from the Customer Service Rate Adjustment Request and will be based upon the then current gate fee for the Scholl Canyon landfill. Contractor may also request a rate adjustment to reflect increases in its actual and reasonable costs of transportation, processing, government-mandated fees, and taxes (other than state or federal income taxes) provided that sufficient documentation of these costs is submitted to the City with the Rate Adjustment request authorized by subparagraph (d) hereof. In the event the Los Angeles County Sanitation District (LACSD) has not announced landfill increases by May 1st of any year, Contractor may make a second rate adjustment request in such year provided that such second request is limited to increases in tipping fees and is submitted to the City with the documentation required by this subparagraph (b) within ten days of the date the LACSD announces an increased tipping fee. Should the LACSD announce more than one tipping fee increase in a calendar year, the second and further tipping fee increases in such calendar year shall be addressed pursuant to subparagraph (c) of this Section.

(d) **Rate Adjustment Schedule and Procedure –** Except as authorized by subparagraphs (b) and (c) of this Section, Contractor shall submit any request for a rate adjustment to the City in the manner required by subparagraph (b) by May 1st of each year. City shall respond to such a request in writing by the later of May 30th or 30 days of the receipt of the request, stating the City Manager's recommendation to the

City Council with respect to the request. The City Council shall act upon the City Manager's recommendation by the later of July 1st of any year or 60 days after receipt of the request. New rates shall be effective on the later of August 1st of each calendar year or 90 days after receipt of the rate adjustment request; provided that the new rates shall be calculated in such a manner as to adequately compensate Contractor for costs actually incurred during the period subsequent to the date of the rate adjustment request.

4. Addition of AB 939 Compliance Programs to the Agreement. A new Section 28 shall be added to the Agreement to read as follows:

28. AB 939 COMPLIANCE:

(a) Compliance Programs: Notwithstanding other provisions of this agreement to the contrary, in order to assist City in achieving the diversion rate mandated by AB 939, so that the City achieves and maintains a 50% diversion rate in each calendar year during the term of this agreement, Contractor shall be required to implement the programs set forth in subparagraphs (i) and (ii) below, provided, however, that Contractor is only required to continue such programs to the extent necessary to achieve a 50% diversion rate in each calendar year and, provided further, that City acknowledges that, while the new programs will be implemented throughout calendar year 2004, it is unlikely such diversion rate will be achieved during calendar year 2004 due to the date programs are being initiated.

(i) Contractor will annually transport up to 10% of City's base year generation tonnage (which is presently 1,800 tons) of refuse and solid waste collected from residential customers to the Commerce Waste-to-Energy facility; and

(ii) Contractor will transport sufficient tons of refuse and solid waste collected from multifamily complexes and commercial and industrial customers to a Materials Recovery Facility such that City achieves the 50% diversion rate mandated by AB 939.

(b) Change in Mandatory Diversion Rate: In the event that the mandatory diversion rate of 50% under AB 939 is increased by legislative or regulatory action, then City and Contractor agree to meet and negotiate in good faith with respect to necessary compliance programs and corresponding rate increases needed to fund such programs.

(c) Performance Review: The City shall have the following rights to enable it to exercise oversight of the services provided by Contractor:

(i) At City's sole option, upon 60 calendar days notice, City may elect (but no more often than once every 24 months) to hold a public hearing at which Contractor shall be present and shall participate, to review Contractor's performance and quality of service, collection and recycling systems and other services. In addition, any customer may submit comments or complaints during the review meetings, either orally or in writing, and these shall be considered.

(ii) At any time (but no more often than once every 12 months), upon written request from City, Contractor shall, within 60 calendar days, submit a report to City with the following information:

(1) All solid waste collection, composting and recycling services reported in solid waste collection and recycling industry trade journals that are being commonly provided on an operational basis, excluding tests and demonstrations, to communities in the United States with comparable populations, that are not provided to City; provided that Contractor shall only be required to provide information that is reasonably available without significant expenditures.

(2) Changes recommended to improve City's ability to meet State-mandated waste diversion goals.

(3) A marketing synopsis of the value of recyclables and the cost of providing recycling services.

(iii) Not later than 60 days after the conclusion of each system and service review hearing, or review of information submitted by Contractor, City shall issue a report.

5. Addition of School Recycling/Diversion Programs to the Agreement. A new Section 29 shall be added to the Agreement to read as follows:

29. SCHOOL RECYCLING/DIVERSION PROGRAMS: Green waste and commingled recycling containers will be provided by Contractor to all of the private elementary education schools located within the City of Sierra Madre free of charge. Size of the specified green waste/recycling containers are to be determined by each individual school and they may choose the 32-gallon, 64-gallon or 96-gallon size. Recycling containers at such schools shall be serviced in the same locations as the existing trash containers.

6. Street Sweeping Agreement. City shall grant Contractor the right to begin providing, on or before July 1, 2007, the street maintenance services (the "Street Maintenance Services") described and set forth in that certain City of Sierra Madre Agreement for Public Works Maintenance Services, dated June 21, 2002, between City and California Street Maintenance, predecessor to CleanStreet ("CleanStreet"), as amended on April 23, 2003 (the "Street Sweeping Agreement"). Contractor will perform

the Street Maintenance Services for the same compensation presently provided to CleanStreet and on substantially similar terms as those set forth in the Street Sweeping Agreement; provided that the terms of the Street Sweeping Agreement that are different than or conflict with the terms of the Agreement will be conformed to be consistent with the terms of the Agreement. Contractor acknowledges that City has notified Contractor that, due to recent developments, the Street Sweeping Agreement may in the future be subject to payment of prevailing wages. City and Contractor agree that, if the Street Sweeping Agreement is determined to be subject to the payment of prevailing wages, City and Contractor shall negotiate in good faith an adjustment to the compensation payable under the Street Sweeping Agreement to compensate Contractor for such determination.

7. Express Changes Only. The parties hereto intend hereby to amend the Agreement only as set forth herein, and the parties hereto agree that, except as expressly amended hereby, all other terms and conditions of the Agreement shall remain in full force and effect.

8. Governing Law. This Amendment shall be governed by, and construed, interpreted and enforced in accordance with, the laws of the State of California without regard to conflict of laws principles.

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment to Solid Waste Removal Contract dated August 10, 2001 on the date first above written.

CITY OF SIERRA MADRE

By: Tamara S. Gates
Tamara S. Gates, City Manager

ARAKELIAN ENTERPRISES, INC.
dba Athens Services

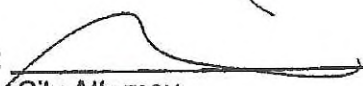
By: Dennis M. Chiappetta
Name: Dennis M. Chiappetta
Title: Executive Vice President

ATTEST:

By: Nancy Sue Shollenberger
City Clerk

APPROVED AS TO FORM:

By:


City Attorney

6/28/04

30341481_4.DOC