

**AMENDED AND RESTATED  
SOLID WASTE REMOVAL AGREEMENT**

This Amended and Restated Solid Waste Removal Agreement (this "Agreement") is made and entered into as of February 1, 2010 by and between the City of Sierra Madre, a municipal corporation ("City"), and Arakelian Enterprises, Inc., a California corporation dba Athens Services ("Contractor").

Based on the premises set forth below and in consideration of the mutual covenants and agreements herein contained, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, agree as follows:

1. **RECITALS:** This Agreement is made and entered into with regard to the following facts:

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

(b) City and Contractor amended the terms of the Original Agreement pursuant to that certain First Amendment to Solid Waste Removal Contract on June 14, 2004.

(c) City and Contractor now desire to amend and restate the Original Agreement as set forth herein.

2. **DEFINITIONS:** The following words and phrases used in this Agreement shall be defined as follows except where the context otherwise requires:

(a) "AB 939" shall mean the California Integrated Waste Management Act of 1989, as amended (Public Resources Code Section 40000 *et seq.*), and implementing regulations of the California Integrated Waste Management Board.

(b) "BULKY ITEMS" shall mean discarded household furniture, furnishings or appliances, including white goods; automobile parts, rock or brick in reusable form; carpets; mattresses; large branches; trunks; stumps of trees, limbs of trees in bundles not exceeding eighteen (18) inches in diameter or four (4) feet in length and other items the size and weight of which precludes or complicates their handling by normal collection, processing or disposal methods.

(c) "C.M." or "CITY MANAGER" shall mean the City Manager of the City.

(d) "CODE" shall mean the Sierra Madre Municipal Code as it now exists or may hereafter exist.

(e) "COMMERCIAL AND/OR INDUSTRIAL CUSTOMER" shall mean the owner and/or operator (or their agents) of commercial establishments, industrial establishments,

business establishment of any kind, mobile home parks, construction sites, demolition sites and federal, state and local governmental facilities now existing or hereafter constructed within the City during the term of this Agreement.

(f) "CPI" shall mean the Consumer Price Index for all Urban Consumers as prepared and announced from time to time by the United States Department of Labor for the Los Angeles/Anaheim/Riverside area.

(g) "GARBAGE" shall be defined as set forth in the Code.

(h) "GREEN WASTE" shall mean and include but shall not be limited to grass, tree, shrub, bush, and other lawn trimmings, weeds, branches, plants, flowers, /eaves, and other vegetation matter originating from a Residential Customer.

(i) "HAZARDOUS WASTE" shall mean any waste materials or mixture of wastes defined as such pursuant to the Resource Conservation and Recovery Act, 421 U.S.C. Section 6901 *et seq.*, as amended or the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. Section 9601 *et seq.*, as amended. The term also means and includes any waste material defined as such by the California Environmental Protection Agency or the California Integrated Waste Management Board, or either of them. Where there is a conflict in the definitions employed by two or more agencies having jurisdiction over hazardous or solid waste, the term "Hazardous Waste" shall be construed to have a broader, more encompassing definition.

(j) "MECHANIZED WASTE CONTAINER" shall mean a container which is capable of being emptied by mechanical means provided by the Contractor to a Customer.

(k) "MULTIFAMILY COMPLEX" shall mean any parcel of land which has been improved with six (6) or more Residential Units.

(l) "RECYCLABLE MATERIAL" shall mean any material generated on or emanating from residential or commercial and/or industrial units which is no longer wanted and which is collected, transported and disposed of, or processed for no net charge to the generator, and which is reused or processed into a form suitable for reuse through reprocessing or remanufacture, consistent with the requirements of the California Integrated Waste Management Act. In addition, no load of recyclable material shall contain by volume more than ten percent (10%) residual non-recycled material. For purposes of this Agreement, types of materials which will be treated as Recyclable Materials are set forth in Exhibit "B" which Exhibit may be amended from time to time by mutual Agreement of the City and the Contractor.

(m) "REFUSE" shall mean and include both garbage and rubbish.

(n) "RESIDENTIAL CUSTOMER" shall mean the owner and/or occupant(s) of a residential household who receives the benefit of the services provided (or made available) by the Contractor which are subject to the provisions of this Agreement and the City Solid Waste Ordinance, or the owner of the Residential Premise.

(o) "RESIDENTIAL UNIT" shall mean any building or portion thereof, which is designed for use as a residence by one family.

(p) "RUBBISH" shall be defined as set forth in the Code.

(q) "SOLID WASTE" and solid waste as the words may appear, are both terms, which have the meaning as ascribed to them in Public Resources Code Section 40191.

(r) "SPECIAL WASTE" means any item or element of solid waste identified in 22 California Code of Regulations Section 66740, or any material which because of its source of generation, physical, chemical, or biological characteristics or unique disposal practices, is specifically conditioned in the solid waste facilities permit for handling and/or disposal.

3. **SERVICES:** Contractor is hereby granted the exclusive right and franchise to collect, transport, recycle and dispose of all refuse, solid waste, special waste, green or horticultural waste, construction waste and demolition debris and recyclable materials generated at residential units, multi-family, commercial and/or industrial customers, construction sites, demolition sites and municipal facilities, and to the extent permitted by law, federal, state, county and other governmental facilities, now existing or hereafter constructed within the City during the term of this Agreement.

4. **REVENUE TO THE CITY:** Contractor agrees to pay to the City 15% of the net rates set forth on Exhibit A attached hereto and collected by the Contractor for the term of this contract and continuing on any extension by exercise of the option by the Contractor hereunder.

(a) **Residential Recycling:** The Contractor shall collect, assemble and resell all City Recyclable Materials collected pursuant to City's residential and commercial recycling programs. Such work shall be at the sole cost and expense of the Contractor. In addition to the 10% franchise fee noted above, fifty percent (50%) of the salvage value of all Recyclable Materials collected in the City pursuant to such recycling programs shall be returned to the City, due payable on the first Friday of October and the first Friday of April of every year.

(b) **Commercial Recycling:** Contractor shall retain all revenues received from the sale of Recyclable Materials placed in commercial recycling containers, with the exception of those commercial recycling containers located at City facilities.

5. **TERM:** The term of this Agreement shall commence on the date hereof and shall continue until July 1, 2026.

6. **COLLECTION:**

(a) **Commercial and/or Industrial Collection:** Contractor shall collect all combined refuse, as hereinafter described, from all commercial and industrial establishments within the City. The fees for the provision of refuse collection services to all places operated for commercial and industrial purposes, as defined in Section 2 of this Agreement, shall be those contained in Exhibit "A" of this Agreement.

The service frequency and volume shall be subject to negotiation and agreement between the Contractor and management of each particular business operating a commercial or industrial establishment. In no case shall the frequency and volume of service be less than once a week and 96 gallons, respectively. In the event the parties are unable to agree, then the question or questions in dispute shall be submitted to the City Manager, who shall arbitrate the dispute and render a decision. In the event that either party is dissatisfied with the City Manager's decision, either party may appeal that decision to the City Council. The City Council's decision shall be final and the contractor shall abide by the decision so made.

(b) **Residential Services:** The Contractor shall provide the following services beginning on a date agreed to by the Contractor and the City. Contractor will develop and present a detailed implementation plan acceptable to the City Manager prior to the beginning of the new services.

(i) **Solid Waste:**

Contractor shall provide to each Residential Customer one (1) 96-gallon, 64-gallon or 35-gallon Mechanized Waste Container, as selected by the Residential Customer, for the storage and collection of residential Solid Waste and no more than one (1) replacement solid waste container during the term of this Agreement.

Residential Customers will be allowed to exchange the Mechanized Waste Container for another size at no charge during the first sixty (60) days after the initial delivery. Exchanges requested after the sixty days will be charged at the rate specified in Exhibit "A" hereto.

All residential Solid Waste placed for collection will be contained in the Mechanized Waste Container(s) provided by the Contractor.

Additional Mechanized Waste Containers will be provided upon request to Residential Customers, at the rates specified in Exhibit "A" hereto.

Residential Customers with a driveway exceeding seventy-five feet in length or with a steep slope may upon request, receive two 35-gallon Mechanized Waste Containers in exchange for the standard 64-gallon size, or three 35-gallon Mechanized Waste Containers in exchange for the oversize 96-gallon size at no additional cost. Residents that are physically unable to utilize the 96-gallon or 64-gallon containers will be eligible to utilize multiple 35-gallon containers (three in place of a 96-gallon and two in place of a 64-gallon) at no additional cost. Contractor shall make every reasonable effort to meet the special needs of Sierra Madre customers.

The maximum weight of the Solid Waste that may be placed in an Individual Mechanized Waste container for collection shall not exceed one hundred and fifty (150) pounds for 96-gallon containers, 100 pounds for 64-gallon containers, and 75 pounds for 35-gallon containers.

(ii) **Green Waste:**

Contractor shall provide to each Residential Customer as of the commencement date of the Mechanized Residential Waste program, a minimum of one (1) 64-gallon Mechanized Green Waste Container for storage and collection of Green Waste and no more than one (1) replacement Mechanized Green Waste Container during the term of this Contract. One additional 64-gallon Mechanized Recycling Container will be available to each Residential Customer upon request at no additional charge. Green Waste Containers will be green in color. Customers may obtain additional 64-gallon Mechanized Green Waste Containers above the two allowed for the rate specified in Exhibit "A".

All residential Green Waste placed for collection will be contained in the Mechanized Green Waste Container(s) provided by the Contractor.

Green Waste collected will be recycled or reused in the Los Angeles County Sanitation District Alternate Day Cover program or other reuse programs) as may be mutually agreed upon between the City and Contractor.

Mechanized Green Waste Containers, which contain Solid Waste or Recyclable Materials, will not be serviced. The Customer will be notified by placing a tag directly on the container(s) explaining the reason(s) the container(s) was not serviced. An additional collection service or attempt to provide such service prior to the next regularly scheduled collection day will be charged as an "extra pick-up" at the rate specified in Exhibit "A".

The maximum weight of the Green Waste which may be placed in an individual Mechanized Green Waste Container for collection shall not exceed one hundred and fifty (150) pounds for 96-gallon containers, 100 pounds for 64-gallon containers, and 75 pounds for a 35-gallon container.

Residents that are physically unable to utilize the 64-gallon containers will be eligible to utilize two 35-gallon containers at no additional cost.

Contractor will collect, transport and recycle as much of landfill alternate day cover, Christmas trees which are placed at the curbside from all Residential Units on the two scheduled collection days following Christmas Day. Artificial Christmas trees, trees containing decorations, ornaments, tinsel, debris, support stands or other foreign matter of trees not meeting the requirements of the Los Angeles County Sanitation District Christmas Trees Recycling Program will be excluded from this program.

(iii) **Recyclable Material:**

Contractor shall furnish to each Residential Customer in the City, one (1) 64-gallon Mechanized Recycling Container for the storage and collection of recyclable materials. One additional 64-gallon Mechanized Recycling Container will be available to each Residential Customer upon request at no additional charge. Customers may obtain additional 64-gallon Mechanized Recycling Containers above the two allowed for the rate specified in Exhibit "A".

All Recyclable Material placed for collection will be contained in the Mechanized Recycling Container(s) provided by the Contractor.

Mechanized Recycling Containers which contain Solid Waste or Green Waste will not be serviced. The Customer will be notified by placing a tag directly on the container(s) explaining the reason(s) the container(s) was not serviced. Any additional collection service or attempt to provide such service prior to the next regularly scheduled collection day will be charged as an "extra pick-up" at the rate specified in Exhibit "A".

The maximum weight of the Recyclable Materials which may be placed in a Mechanized Recycling Container for collection shall not exceed one hundred (100) pounds for a 64 gallon and 75 pounds for a 35-gallon container.

Residents that are physically unable to utilize the 64-gallon containers will be eligible to utilize two 35-gallon containers at no additional cost.

Contractor and City agree that the list of materials to be collected in the residential recycling program shall reviewed from time to time and may be modified by the mutual agreement of both parties.

(iv) **Special Residential Services:**

**Bulky Items:** On an as-needed, on-call basis, the Contractor will respond to up to four (4) requests per year from single-family-detached Residential Units for collection of Bulky Items on the regular collection day each week at no extra charge. Multi-family complexes with six or fewer units will be entitled to two bulky item collections per each unit. The entitlement for residential properties, which include more than six units will be determined on a case-by-case basis as agreed to by the Contractor and City Manager. Each Bulky Item collection, will be limited to a maximum volume of approximately three cubic yards or an amount that two persons can load in approximately fifteen minutes. Collections in excess of three cubic yards or in excess of the allotted amount annually will be charged at the rate specified in Exhibit "A" hereto.

(c) **Commercial and/or Industrial Recycling:**

Contractor will make available bins for recycling to commercial and/or industrial units in the City. Those materials listed in Exhibit "B" to this Agreement will be the minimum to be collected. Contractor will make reasonable efforts, as determined by the City Manager, to design custom programs and recycle additional materials where volumes and material value make it practical. A reasonable effort shall mean that at a minimum each commercial and/or industrial customer not participating in Contractor's recycling program will receive two direct mailings per year. Each mailing will be followed up by a telephone contact by Contractor to confirm that the mailing has been received and to further describe the programs available. Each contact will be documented and the results of each campaign will be summarized for the City. A list of businesses opting not to participate in Contractor's recycling programs will be provided to the city. Commercial and/or Industrial Customers may, where practicable, participate in the Residential Recycling Program. Maximum rates for collection of recyclable materials from Commercial and Industrial units are those set out in Exhibit "A" to this Agreement.

(d) **Multifamily Complex Recycling:**

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.

(e) **Construction Waste and Demolition Debris:**

Contractor shall provide for the collection, transportation, recycling (at Contractor's option) and disposal of Construction waste and demolition debris collected from projects occurring on private property. Contractor shall provide twenty and thirty yard containers, or such containers, bins, impoundments or vehicles as agreed with the Customer. The initial rates to be charged for such services are set forth in Exhibit "A" hereto.

7. **COLLECTION SUPERVISION:** The collection and removal of refuse shall be under the general supervision of the C.M. whose orders, directions and instructions to Contractor, not inconsistent with the terms of this Agreement, and shall be promptly complied with by Contractor. City reserves the right to inspect any and all of Contractor's equipment upon reasonable notice to Contractor and for good cause determine that a particular piece of equipment should be repaired before further use.

8. **MANNER OF COLLECTION:** All Contractor's work shall be done in a good workmanlike and sanitary manner. All refuse collected shall be conveyed by Contractor in suitable vehicles, each equipped with a cover so as to prevent leakage or droppage of refuse therefrom. Each vehicle shall be so covered and/or closed as to prevent as far as possible, access thereto by flies or other insects. All vehicles used by contractor shall be kept by contractor clean and in good working order.

9. **CITY SERVICE:** The Contractor shall provide receptacles for facilities owned or operated by the City, and shall collect refuse placed therein no less frequently than once per week. Facilities owned or operated by the City shall be deemed to include :

(a) **City Hall:** Contractor shall furnish two 3-cubic yard containers and shall pick-up and remove the contents of said container once a week.

(b) **Library:** Contractor shall furnish one 3-cubic yard container and shall pick-up and remove the contents of said container once a week.

(c) **Police Department:** Contractor shall furnish one 3-cubic yard container and shall pick-up and remove the contents of said container once a week.

(d) **Public Works Department:** Contractor shall furnish up to two 40-cubic yard containers (drop-off body) as required by the Director of Public Works at the City Yard and shall pick-up and remove the contents of said container no more than once per week, per container. Said containers shall not be loaded in excess of eight tons.

(e) **Water Division:** Contractor shall furnish one 3-cubic yard container at 621 E. Sierra Madre Blvd. and shall pick-up and remove the contents of said container once a week.

(f) **Recreation Center:** Contractor shall furnish two 3-cubic yard containers and shall pick-up and remove the contents of said container once a week.

(g) **City Parks:** Contractor shall:

(i) Furnish one 3-cubic yard container at Sierra Vista Park and shall pickup and remove the contents of said container once a week; and

(ii) Furnish one 3-cubic yard container at Bailey Canyon Park and shall pickup and remove the contents of said container once a week.

(h) **City Facilities:** Collection of recyclable materials from City facilities as follows:

(i) **City Hall:** Contractor shall furnish two 3-cubic yard containers for recyclable materials (one for computer paper and the other for white paper) and on 96-gallon container for newspapers. The contractor shall pickup and remove the contents of said containers once a month and assure that such recyclables material is indeed recycled.

(ii) **Library:** Contractor shall furnish two 3-cubic yard containers for recyclable materials (one for computer paper and the other for white paper) and shall pickup and remove contents of said containers once a week and assure that such recyclable material is indeed recycled.

(iii) **Recreation Center:** Contractor shall furnish two 3 cubic yard containers for recyclable materials (one for computer paper and the other for white paper) and shall pickup

and remove the contents of said containers once a week and assure that such recyclable material is indeed recycled.

(iv) **Other Facilities:** City may request additional recycling services at other City Facilities based on mutual consent of the parties.

10. **COMMUNITY SERVICES:** Contractor shall provide the following complimentary services to support annual community events:

(a) Huck Finn Day in April requires one standard and one handicapped accessible toilet.

(b) Mt. Wilson Trail Race in May requires three standard and one handicapped accessible toilet.

(c) 4th of July on July 4th requires ten standard and two handicapped accessible - toilets. At least four toilets shall include sinks.

(d) Art Fair in May (three days) requires eight standard and two handicapped accessible toilets. At least four toilets shall include sinks.

(e) Wisteria Fete in March requires ten standard and two handicapped accessible toilets. At least four toilets shall include sinks.

(f) Provide recyclable trashcans and liners for the above events, up to 25 per event

11. **CARE OF CONTAINERS:** Contractor shall use reasonable and proper care in the handling of all containers and any and all damage caused thereto by the negligence of Contractor shall be immediately (48 hours) repaired or replaced. All refuse spilled by Contractor on private or public property shall be immediately cleaned up by Contractor. All receptacles after emptying shall be set down in a place consistent with good practice so as not to interfere with other services, not to interfere with the use of any driveway or walkway. Contractor shall not be responsible for loss or damage to any cardboard, wood or paper containers.

12. **DURATION OF STORAGE:** Contractor shall be governed and conform to the requirements of any ordinances of the City relating to the storage of rubbish.

13. **DUTY OF PROPERTY OWNERS RE COLLECTION:** The City shall not permit other waste disposal entities other than the Contractor as defined in this Agreement, or the City, to gather, collect or remove any garbage or rubbish from any residential premises within the City.

14. **REPORTING:** The parties hereto agree that it is essential that Contractor or its designated agent shall contact the designated representative of City, either in person or by telephone periodically so that said representative may transmit to Contractor any complaint or corrections of such complaints as may have been filed with the City's representative by citizens relating to Contractor's services.

The Contractor will report to the City each month the total tons of solid waste disposed of, total tons of each Recyclable Material collected, total tons of green waste collected, and the number of participating units. The monthly report will be prepared to the best of the Contractor's ability, in a format prescribed by the City.

The Contractor or its designated agent shall on behalf of the City prepare all reports necessary for meeting California Integrated Waste Management Board diversion requirements under AB 939.

15. **UNIFORMS:** All employees of Contractor shall wear clean, neat uniforms while engaging in collection within the City.

16. **PICKUP REFUSAL:** Any and all refuse that is refused for pickup by Contractor must be tagged with a card indicating thereon the reason for refusal.

17. **COMPLIANCE WITH LAWS:** All work under this Agreement shall be performed in accordance with all applicable laws.

18. **INSURANCE:** Contractor agrees to obtain and keep in force during the term of this Agreement, public liability and property damage insurance issued by a company admitted to do business in the State of California, with a Best's rating of at least A+8 to be approved by the City Attorney in an amount of not less than \$5,000,000.00 public liability, and \$1,000,000.00 property damage, said policy or policies shall require the carrier to give the City 30 days written notice prior to cancellation. Sufficient Workers' Compensation Insurance, as required by State Law, shall be carried by Contractor for all personnel employed by it. The Contractor shall cause a certificate of insurance to be filed with the City showing such insurance covered hereinabove described.

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19. **LIABILITY:**

(a) **General Liability:** Contractor shall indemnify, defend, and save harmless the City, its officers, agents and employees, for and from any and all loss, liability, claim, demand, action or suit, of any and every kind and description, arising or resulting from or in any way connected with any operations of Contractor in exercising any license or privilege granted to it by the contract or by any ordinance of the City, or arising or resulting from the failure of Contractor to comply in all respects with the provisions and requirements of the contract, or all applicable laws. Contractor shall, upon demand of the City, and at its sole cost and expense, defend and provide attorneys to defend City, its officers, agents and employees against any and all claims, actions or suits brought against the City, its officers, agents and employees, arising or resulting from or in any way connected with the above mentioned operations of Contractor or Contractor's failure to comply with the contract and with the ordinances and laws hereinabove mentioned. If the City provides its own defense against any such action or suit, Contractor will reimburse the City for all reasonable attorney's fees and other costs incurred by the City.

(b) **CERCLA Liability:** Contractor shall indemnify, defend and hold harmless the City, its officers, employees and agents for all claims, actual damages, natural resources damages, injuries, costs, response, remediation and removal costs, losses, liabilities, cause of action, interest and expenses (including but not limited to reasonable attorneys' and experts' fees)

of any kind whatsoever paid, incurred, or suffered by or against the City arising from or attributable to any repair, clean up, removal action or response action undertaken pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 et seq. (CERCLA), the California Health and Safety Code ("H&S Code") or other similar federal, state or local law or regulations, with respect to the Contractor's collection, handling, and transportation of solid waste as accepted for collection by the Contractor from Customers pursuant to this Agreement and with respect to Contractor's disposal of such solid waste at the following landfill or processing sites: Puente Hills Landfill in Los Angeles County, Scholl Canyon in Glendale, Bradley Landfill and Recycling Center in Sun Valley, Lancaster Landfill and Recycling Center in Lancaster, Los Angeles County Waste to Energy Facility in Commerce, Brea/Olinda Landfill in Brea, El Sobrante Landfill in Riverside, Waste Transfer and Recycling Transfer Station in Los Angeles, and CVT Materials Recovery Facility in Anaheim. The indemnity contained in this Section 19(b), is intended to operate as an agreement of the Contractor pursuant to Section 107(e) of CERCLA and the H&S Code Section 25364 to defend, protect, hold harmless and indemnify the City. Subject to the scope of this indemnification and upon demand of the City made by and through the City Attorney, the Contractor shall appear in and defend the City and its officers, employees and agents in any claims or actions, whether judicial, administrative or otherwise arising out of this Agreement. The obligations of the Contractor to the City which arise under this Section 19(b) shall survive the expiration of the grant of the right and privilege by the City which authorize the Contractor to provide the services described in this Agreement.

Contractor will notify the City prior to disposing of solid waste at any facility other than those listed in this Section 19(b), describe the reason for the change in facilities, the impact on rates and the extent to which the change will affect this indemnity, if any. The City will have the right to object to any such change and offer alternate sites for consideration.

(c) **AB 939 Liability:** The Contractor shall indemnify, protect, defend and hold the City harmless against all fines and penalties imposed by administrative order of the California Integrated Waste Management Board or any successor entity (the "Board) against the City pursuant to AB 939 as specifically provided in this Section 19(c). This specific or special indemnity obligation of the Contractor is limited to fines and penalties imposed by the Board which are associated with a failure of the Contractor to implement programs or services set forth in this Agreement, which, in turn, prevents the City from achieving a diversion, source reduction or recycling goal mandated by AB 939 with respect to the solid waste stream handled by Contractor under this Agreement. The Contractor further agrees to reimburse the City its pro rata share of all costs and expenses attributable to any administrative proceedings or litigation relating to the imposition of fines or penalties against the City by the Board. The obligation of the Contractor to indemnify, protect, defend and hold the City harmless as provided in this Section 19(c) shall include but not be limited to paying all reasonable legal fees and costs incurred by legal counsel designated by the City to represent the City in connection with any such administrative proceedings or litigation by the Board. In connection with this specific or special indemnity obligation of the Contractor, the City acknowledges that it may be necessary to allocate or equitably apportion the responsibility of the Contractor to respond to the terms of an AB 939 administrative order of the Board (or to pay for the cost of such a response by way of fines and penalties) in light of the extent to which a failure by the Contractor to implement one or more of the services or programs set out in this Agreement may be responsible for the failure of

the City to achieve a state-mandated goal under AB 939 with respect to the municipal solid waste stream handled by the Contractor under this Agreement. Contractor acknowledges that this subparagraph (c) is volunteered by Contractor and not demanded by the City. The specified indemnity shall extend for the entire term of this contract and shall be assumed by any authorized assignee or assignment.

(d) **Waste Stream Monitoring:** Contractor shall train its collection employees in hazardous waste and special waste monitoring methods at least annually. Contractor will perform a Household Hazardous Waste Audit annually, which will consist of a visual inspection and documentation of the contents of a random sampling of single-family homes within the City. The results of the Audit will be recorded and reported to the City. Any unauthorized material discovered in the Audit will be tagged and returned to the resident along with information on proper disposal options along with the dates and location for Household Hazardous Waste Roundups sponsored by Los Angeles County.

20. **RIGHTS OF PARTIES IN EVENT OF TERMINATION:** In the event the Contractor should breach this contract; should it appear that any information submitted to City by the Contractor at the time of contract award or during the term of the contract be false or fraudulent; should the Contractor become bankrupt; make an assignment of this contract for benefit of creditors' allow a receiver or other officer to be placed in charge of Contractor's office or equipment and not cause removal within ten (10) days; incur a substantial number of recurring complaints, as determined by the City Manager, as to Contractor's service due to Contractor's failure to perform as herein provided; or should Contractor fail to correct any other deficiency in performance including those herein before mentioned within fifteen (15) days after notice in writing by the City Manager to do so; City may cancel and terminate this contract and Contractor shall have no further rights under or with respect to this contract. However, Contractor shall have the right, upon written request, to have a determination by the City Manager that Contractor has failed to perform agreed upon services as provided for herein, reviewed by the City Council at Contractor's request, at any regular Council meeting held within fifteen (15) days after Contractor has received notice that this contract has been terminated. In the event of such termination, the Contractor and his sureties shall be jointly and severally liable to the City for any damages, expenses or losses sustained by the City in the performance of the Contractor's obligations hereunder, in the collection of refuse within the City, for the readvertising or letting of another contract therefore, and for the difference, if any, between the contract price as provided by this contract and the amount which City is obligated to pay under the new contract, including, but not limited to all reasonable costs and attorney's fees incurred by the City in the termination of this contract and the negotiation of a new contract provided further, however that the extent of the sureties' liability shall be the amount of the faithful performance bond provided for in these specifications. A decision of the City Manager to refer to a matter to the City Council may not be appealed. Except as otherwise provided in the Agreement, Contractor may appeal any decision, order or action by the City Council under this Section 20, by filing a legal action with a Court having jurisdictional authority within ten (10) days of receipt of the decision by the City Council.

21. **FAITHFUL PERFORMANCE BOND:** Upon execution of the contract Contractor shall furnish to City and shall file with the City Clerk a corporate surety bond, or letter of credit, approved by the City Manager and approved as to form by the City Attorney;

executed by Contractor as principal and by a corporate surety as surety, in the sum of One Million Dollars (\$1,000,000), conditioned upon the faithful performance by Contractor.

22. **ASSIGNMENT:** No part of any duties to be performed by Contractor under this Agreement shall be delegated or assigned without the written approval of the City, being first obtained. Any change of Contractor's principals, or transfer of ten percent (10%) or more of the stock in its corporation, during the term of the contract shall be treated in the same manner as an assignment and shall be subject to the prior approval of the City Council's express resolution.

23. **RIGHT OF CITY TO AUDIT CONTRACTOR'S FINANCIAL RECORDS:** The City may audit the receipts from financial records of Contractor between January 15 and April 15 of the previous year's receipts and payments.

24. **CITY LICENSE REQUIRED:** Contractor shall be required to maintain a City Business License.

25. **AUTHORIZED RATES AND ADJUSTMENTS TO CHARGES FOR CONTRACTORS SERVICES TO RESIDENTIAL AND COMMERCIAL AND INDUSTRIAL CUSTOMERS:**

(a) **Maximum Rates and Annual Adjustment:** The rates set forth in Exhibit "A" to the Agreement are the maximum rates as of January 1, 2010 that can be charged by Contractor for the collection services provided herein. The service component of such rates shall automatically adjust up or down on each January 1 commencing January 1, 2011. The adjustment on January 1, 2011 shall be based upon the percentage change in the Consumer Price Index (CPI) for the period from March 31, 2009 to October 1, 2010. Thereafter, the annual adjustment on January 1 shall be based upon the percentage change in the CPI for the twelve months ended the previous October 1st.

(b) **Disposal Rate Adjustment:** The rates set forth in Exhibit "A" to the Agreement reflect a \$ 48.99 per ton disposal rate as of January 1, 2010 Commencing January 1, 2011, and once annually each January 1, or as soon thereafter as the information is available, Contractor shall submit documentation to the City Manager with evidence of the net change in tipping fees based on the then current published gate fee for the Scholl Canyon landfill. The net change in tipping fees will be added to or subtracted from the disposal component of the maximum rates to be effective January 1st of that year or the next billing cycle after written notification to the City.

(c) **Extraordinary Rate Adjustments:** In addition to the above, the contractor may request in writing an increase in the service charges above the CPI and disposal costs based upon extraordinary increases in labor, fuel, government mandated fees and taxes, and other operating costs as documented by the Contractor and agreed to by the City Manager. The contractor's request will be submitted to the City Council as an agenda item within thirty (30) days of the receipt of an extraordinary rate adjustment and supporting documentation. The City Council shall determine whether to grant the requested adjustment within thirty (30) days after the item is first placed on their agenda. If the City determines that a ballot or voter approval process is required, the City shall conduct the ballot or other process, Contractor shall pay for all costs, including staff time, of the ballot or other process but Contractor may recover those costs via a

temporary increase in rates. Contractor will be allowed no more than one extraordinary rate adjustment request during any twelve-month period. Extraordinary, as used herein means a totally unexpected and sudden major change not included in subparagraph (b) and (c.) City's rights described in Section 20 shall apply to any submission of false or fraudulent information by Contractor in connection with an adjustment to rates pursuant to this Section 25(c).

(d) **No Further Rate Adjustments:** Except as authorized by subsections (a), (b) and (c) of this Section, Contractor shall not increase rates.

26. **NOTICE** under this Agreement shall be given by United States National Postage Prepaid, address as follows:

(a) **City:**

City Manager  
City of Sierra Madre, City Hall  
232 W. Sierra Madre Blvd.  
Sierra Madre, CA 91024

(b) **Contractor:**

Athens Services  
5355 Vincent Avenue  
Irwindale, CA 91706  
Attn: Chief Operating Officer

27. **PROGRAM IMPLEMENTATION:**

(a) **Informational Publications:** The Contractor shall, at its expense, prepare and provide to City customers program description brochures, flyers, post cards and other written communications necessary for the educating and informing City customers about the new waste program. All such publications shall be reviewed and approved by City staff prior to the release of that information to the public.

(b) **Staffing of Telephone Hotline:** The Contractor shall provide its own staff to assist the City with manning a telephone hotline during the rollout period of the proposed program. Said Contractor staff will be located at Sierra Madre City Hall and shall be available during regular City business hours to answer customer questions and resolve customer complaints. Rollout period shall be from August 1 to 60 days beyond the last initial delivery of trash containers to City customers.

28. **STATE LAW DIVERSION AND REDUCTION 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 the legally required diversion rate in each calendar year at rates determined pursuant to subsection (b) of this Section if applicable.

(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 or Required Programs:** In the event that the mandatory diversion rate of 50% under AB 939 is increased or other diversion or waste reduction requirements are imposed 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. Without limiting the foregoing, Contractor agrees that, with respect to the incremental processing of solid waste currently being processed at Contractor's City of Industry materials recovery facility that is required to comply with any such increase in the diversion rate or such other programs provided by Contractor directly or indirectly as may be required to comply with new state-mandated diversion or waste reduction requirements, the rate for such incremental processing or other programs provided by Contractor directly or indirectly shall not be higher than the lowest rate for the same incremental processing or programs provided to other municipalities by Contractor based upon comparable features and cost factors, and if at any time the rate for the same incremental processing or programs with comparable features and cost factors provided by Contractor directly or indirectly to another municipality is lower than the rate at which City is charged, then the rate applicable to City shall immediately and automatically be lowered to such lower rate.

(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.

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.

30. **PROPOSITION 218 NOT APPLICABLE:** The parties agree that the rates to be charged by Contractor to Customers are set by Contractor as a private contractor in the market place. The City's role with respect to rate setting is to establish rate ceilings for the protection of Customers given the exclusive status afforded Contractor by this Agreement and given the nature of the services it is to provide. Accordingly, the parties agree that this Agreement shall be construed to maintain the status of the rates Contractor chooses to charge its Customers as privately-established rates and not as property-related fees within the scope of Article XIII D of the California Constitution or taxes within the scope of Articles XIII A and XIII C of the California Constitution.

31. **SETTLEMENT OF PAYMENT OF RETROACTIVE UUT:** The parties acknowledge that, without assigning any fault or liability between the parties for the failure to collect, the residents and other customers receiving services under the Agreement should have paid a Utility Users Tax in connection with the fees paid for such services during the period commencing on July 1, 2008 and ending on July 31, 2009, in the aggregate amount of \$112,535.69 (the "UUT Amount"). In partial consideration of the amendments reflected in this Agreement, Contractor hereby pays to City, concurrently with the execution of this Agreement, the UUT Amount. Notwithstanding the foregoing, the parties agree that the UUT Amount shall not be passed through to or collected from the residents and other customers of the City.

32. **STREET SWEEPING AGREEMENT:** City granted Contractor the right to provide, and Contractor began providing, on 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, as amended on April 23, 2003 (the "Street Sweeping Agreement"). Contractor is performing the Street Maintenance Services 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 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.

IN WITNESS WHEREOF the parties hereto have set their hands this day and year first above written.

APPROVED AS TO FORM: CITY OF SIERRA MADRE, a municipal corporation

By: \_\_\_\_\_

City Attorney

ATTEST:

By: \_\_\_\_\_  
Elaine Aguilar, City Manager

\_\_\_\_\_  
City Clerk

ARAKELIAN ENTERPRISES, INC., a California corporation dba Athens Services

By: \_\_\_\_\_  
*[Name]*

100746786\_5.DOC

**Exhibit "A"**

MAXIMUM RATES

[See attached.]

City of Sierra Madre  
Schedule of Rates  
Effective February 1, 2010

Service	New Service Component	New Disposal Component	2010 Billing Retro	New Net Rate	15.00% Franchise Fee *	10.00% User Utility Tax	New Gross Total
<i>Residential</i>							
35/64/96	12.34	4.45	0.51	17.29	2.59	1.73	21.61
64/64/96	13.19	6.54	0.82	20.55	3.08	2.06	25.69
96/64/96	15.12	8.86	1.22	25.19	3.78	2.52	31.48
Extra 35 Waste	3.12	0.61	0.18	3.90	0.58	0.39	4.87
Extra 64 Waste	3.82	1.25	0.28	5.36	0.80	0.54	6.70
Extra 96 Waste	4.49	1.96	0.41	6.86	1.03	0.69	8.58
Extra 64 Recycle	1.48	-	0.04	1.52	0.23	0.15	1.90
Extra 96 Green	2.17	0.27	0.10	2.53	0.38	0.25	3.16
Barrel Exchange	17.68	-	0.48	18.16	2.72	1.82	22.70
Bulky Collection	29.49	-	0.80	30.29	4.54	3.03	37.87
Extra Pick-up	23.59	-	0.64	24.23	3.64	2.42	30.29
Replace Barrel	58.94	-	1.59	60.53	9.08	6.05	75.66
Scout Service	50.93	-	1.37	52.30	7.85	5.23	65.38
<i>Units Bins</i>							
3 Yard 1X	78.46	37.15	7.07	122.69	18.40	12.27	153.37
3 Yard 2X	114.58	74.28	13.49	202.35	30.35	20.24	252.94
3 Yard 3X	167.98	111.46	20.40	299.83	44.97	29.98	374.79
3 Yard 4X	186.86	148.60	26.37	361.82	54.27	36.18	452.28
3 Yard 5X	213.13	185.75	32.52	431.41	64.71	43.14	539.27
2 Yard 1X	73.86	24.77	5.13	103.75	15.56	10.38	129.69
2 Yard 2X	119.60	49.53	10.00	179.13	26.87	17.91	223.91
2 Yard 3X	165.33	74.28	14.88	254.49	38.17	25.45	318.11
2 Yard 4X	211.07	99.08	19.76	329.91	49.49	32.99	412.39
2 Yard 5X	245.50	123.84	24.32	393.66	59.05	39.37	492.07
<i>Commercial Bins</i>							
3 Yard 1X	77.94	37.15	7.56	122.66	18.40	12.27	153.33
3 Yard 2X	114.06	74.28	13.97	202.32	30.35	20.23	252.90
3 Yard 3X	167.47	111.46	20.90	299.82	44.97	29.98	374.77
3 Yard 4X	186.34	148.60	26.85	361.79	54.27	36.18	452.24
3 Yard 5X	212.63	185.75	33.02	431.40	64.71	43.14	539.25
2 Yard 1X	73.34	24.77	5.61	103.72	15.56	10.37	129.65
2 Yard 2X	119.08	49.53	10.49	179.10	26.86	17.91	223.87
2 Yard 3X	164.82	74.28	15.36	254.46	38.17	25.45	318.08
2 Yard 4X	210.56	99.08	20.24	329.88	49.48	32.99	412.35
2 Yard 5X	244.98	123.84	24.80	393.63	59.04	39.36	492.03
2 Yard Extra Dump	22.16	5.70	1.44	29.29	4.39	2.93	36.61
3 Yard Extra Dump	33.25	8.57	2.16	43.98	6.60	4.40	54.98
Commercial Cans	14.60	8.86	1.70	25.16	3.77	2.52	31.46
Roll-off	194.80	256.70	42.94	494.44	74.17	49.44	618.05

\* Franchise Fees are calculated at 15% of New Net Rate

**Exhibit "B"**

**LIST OF RECYCLABLE MATERIALS  
CITY OF SIERRA MADRE**

**CURBSIDE RECYCLING PROGRAM**

**Recycling Container:**

- All aluminum and steel cans
- All colors of glass bottles and jars
- Clear, colored, and white plastic containers if labeled on the bottom  
(PET-HDPE Natural, HDPE Colored)
- Newspapers and inserts
- Junk mail
- White ledger paper
- Corrugated cardboard
- Magazines Colored and construction paper
- Cereal boxes (with liners removed)
- Telephone books

**Green Waste Container:**

- Grass clippings
- Leaves
- Brush
- Shrubbery pruning
- Sawdust
- Tree trimmings
- Tree limbs, 4" diameter maximum