

THIRD AMENDMENT TO AGREEMENT FOR STREET SWEEPING BETWEEN THE CITY OF HERMOSA BEACH AND ARAKELIAN ENTERPRISES, INC., DBA ATHENS SERVICES

This THIRD AMENDMENT to the AGREEMENT FOR SWEEPING/CLEANING OF STREETS, ALLEYS, WALKSTREETS, PARKING LOTS AND THE PIER IN HERMOSA BEACH (“Amendment” or “Amendment No. 3”) is made by and between the CITY OF HERMOSA BEACH, a general law city and California municipal corporation (“City”) and ARAKELIAN ENTERPRISES, INC., dba Athens Services, a California corporation (“Athens Services” or “Athens”). City and Athens Services may hereinafter be individually referred to as “Party” or collectively as the “Parties.”

RECITALS

A. City and Athens Services have previously entered into that certain Agreement for Sweeping/Cleaning of Streets, Alleys, Walkstreets, Parking Lots and the Pier in Hermosa Beach dated October 12, 2010 as amended by those certain first and second amendments dated March 26, 2013 and September 25, 2018 (“Agreement”) and that certain Agreement for Integrated Waste Management Services dated March 20, 2013, as amended by that certain first amendment dated September 17, 2018 (“Solid Waste Franchise”);

B. WHEREAS, City intends to enter into an amendment to the Solid Waste Franchise to address certain new laws pertaining or relating to solid waste handling with which the City must comply, including Assembly Bill Nos. 341, 901, 1594, 1826, and Senate Bill Nos. 341 and 1383, creating the need for the City to improve efforts to divert solid waste from landfills, including recyclable materials and organic waste;

C. WHEREAS, the City Council has determined that it is in the best interest of the City for Athens Services to implement certain operational changes pertaining to the provision of services in the City in accordance with this Amendment to ensure street sweeping services are appropriately tailored to meet the aims of the City’s needs and its integrated waste management programs, including but not limited to the implementation of an organic waste collection program under the Solid Waste Franchise; and

NOW, THEREFORE, in consideration of the promises and covenants contained herein, the above recitals, the Solid Waste Franchise, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree to amend the Agreement as follows:

1. **Effective Date.** The effective date of this Amendment is [insert date] (“Amendment Effective Date”).

2. **Term of Agreement.** Section C.2 is hereby deleted and in replaced in its entirety as follows:

C.2 Time of Performance

This Agreement shall expire June 30, 2032 (“Initial Term”). Notwithstanding the foregoing, the unexcused failure or refusal of Collector to perform any material term, covenant, obligation or condition contained in this Agreement shall give rise to the right, in favor of City, for earlier termination of this Agreement for cause in accordance with the procedures elsewhere contained herein. The Term may be extended for up to three (3) additional extensions, with each extension for a period of three (3) to five (5) years (each a “Successive Term”), following the expiration of the Initial Term or each Successive Term, upon mutual written agreement of the Parties made not less than ninety (90) days prior to the end of the Initial Term or any Successive Term.

3. **Payment for Services.** Section C.3 is hereby deleted and in replaced in its entirety as follows:

C.3 Payment for Services

CONTRACTOR shall be compensated in an amount not to exceed \$720,000 for services provided from the date of the Third Amendment to the Agreement. Compensation shall under no circumstances be increased except by written amendment of this Agreement. CONTRACTOR shall be paid within thirty (30) days of presentation of an invoice to CITY for services performed to CITY’s satisfaction. CONTRACTOR shall submit invoices monthly describing the services performed, the date services were performed, a description of reimbursable costs, and any other information requested by CITY.

4. **Working Time Limits.** Section 5.1.7 is hereby deleted and in replaced in its entirety as follows:

5.1.7 Working Time Limits

Residence Districts shall be swept between the hours of 8:00 AM and 4:00 PM in accordance with the schedule provided by the Public Works Superintendent on Monday through Thursday, provided, however (i) sweeping of The Strand shall start at 7:30 AM and end no later than 9:30 AM; (ii) sweeping in Residence Districts shall be scheduled in three (3) hour “window” periods; (iii) CONTRACTOR shall sweep around areas where cars are illegally parked or any other obstruction that prevents sweeping in the normal course of performance; and (iv) no later than January 1, 2023, the City updates street signage such that the end time for sweeping is one hour earlier than currently posted.

5. **Clean Team.** A new Section 5.1.24 entitled “Clean Team Service” is hereby added to the Agreement as follows:

5.1.24 Clean Team Service

The CONTRACTOR will, as specified herein, provide a porter one day per week to clean and patrol (“Clean Team Service”) the following locations: Hermosa Avenue, from Herondo Street to 22nd Street; Pier Avenue, from the Pier Avenue to Valley Drive; and the parking structure located at Parking Lot C (“Additional Porter Area”). Cleaning Team Service will include litter removal, weed removal, and general and spot area cleaning. City will alert CONTRACTOR in writing of areas that require special cleaning or pressure-washing in the Additional Porter Area, which CONTRACTOR shall provide as soon as possible but no later than ____ () business day of City’s request. Clean Team Services will be provided on a regularly scheduled business day determined by City between the hours of [REDACTED] a.m. and [REDACTED] p.m.

6. **Other Added Services.** A new Section 5.1.25 entitled “Other Added Services” is hereby added to the Agreement as follows:

5.1.25 Other Added Services

Notwithstanding any provision in this Agreement to the contrary, Contractor shall perform the following additional services:

Area	Service	Frequency	Schedule	Months
Valley Park (2521 Valley Dr.)	Contractor will empty all outdoor trash cans and replace with plastic liners, as necessary	Once daily, as specified	<u>Weekends</u> Saturday and Sunday <u>Summer</u> Monday through Friday	<u>Weekends</u> January through December <u>Summer</u> May through September
Clark Field (861 Valley Dr.)	Contractor will empty all outdoor trash cans and replace with plastic liners, as necessary	Once daily, as specified	<u>Weekends</u> Saturday and Sunday <u>Summer</u> Monday through Friday	<u>Weekends</u> January through December <u>Summer</u> May through September

South Park (425 Valley Dr.)	Contractor will empty all outdoor and restroom trash cans and replace with plastic liners, as necessary	Once daily, as specified <i>Parties to coordinate service time to provide optimum coverage of daily activities (i.e., morning, midday, late afternoon)</i>	Saturday and Sunday	January through December
Strand wall	Pressure washing (or equivalent)	Once per month	Day and time to be determined by City and Contractor	January through December

7. **Due Execution.** The person(s) executing this Amendment on behalf of a Party hereto warrant(s) that (i) such Party is duly organized and existing; (ii) such person(s) are duly authorized to execute and deliver this Amendment on behalf of said Party; (iii) by so executing this Amendment, such Party is formally bound to the provisions of this Amendment; and (iv) entering into this Amendment does not violate any provision of any other agreement to which said Party is bound.

8. **Continuing Effect.** Except as amended by this Amendment, the provisions of the Agreement shall remain unchanged and in full force and effect. From and after the date of this Amendment. In the event of any conflict between the Agreement and this Amendment, this Amendment shall apply.

9. **Entire Amendment.** This Amendment contains the entire agreement and understanding between the Parties with respect to the subject matter of this Amendment and supersedes any and all prior or contemporaneous oral and written representations, warranties, agreements, and understandings between the Parties concerning the subject matter of this Amendment.

10. **Counterparts.** This Amendment may be executed in counterparts, each of which shall be considered an original.

[Signatures page follows]

IN WITNESS WHEREOF, the Parties have executed this Amendment as of the date first set forth below.

CITY OF HERMOSA BEACH

ARAKELIAN ENTERPRISES, INC.,
a California corporation

INSERT

Mayor

Ron Arakelian III

Executive Officer

Date

Date

ATTEST

INSERT

City Clerk

Date

APPROVED AS TO FORM

By: **INSERT**

City Attorney

Date

**SECOND AMENDMENT TO THE AGREEMENT BETWEEN THE CITY OF
HERMOSA BEACH AND ARAKELIAN ENTERPRISES, INC., DBA ATHENS
SERVICES FOR INTEGRATED WASTE MANAGEMENT SERVICES**

This SECOND AMENDMENT to the AGREEMENT FOR INTEGRATED WASTE MANAGEMENT SERVICES (“Amendment” or “Amendment No. 2”) is made by and between the CITY OF HERMOSA BEACH, a general law city and California municipal corporation (“City”) and ARAKELIAN ENTERPRISES, INC., dba Athens Services, a California corporation (“Athens Services” or “Athens”). City and Athens Services may hereinafter be individually referred to as “Party” or collectively as the “Parties.”

RECITALS

A. WHEREAS, City and Athens Services have previously entered into that certain Agreement for Integrated Waste Management Services dated March 20, 2013, as amended by that certain first amendment dated September 17, 2018 (the “Agreement”) and that certain Agreement for Sweeping/Cleaning of Streets, Alleys, Walkstreets, Parking Lots and the Pier in Hermosa Beach dated October 12, 2010 as amended by that certain first amendment dated March 26, 2013 (“Street Sweeping Contract”).

B. WHEREAS, the Legislature of the State of California, by enactment of California Public Resources Code §§ 40000 et seq., declares that it is within the public interest to authorize and require local agencies to make adequate provision for solid waste handling within their jurisdictions;

C. WHEREAS, the Legislature of the State of California has enacted certain new laws pertaining or relating to solid waste handling with which the City must comply, including Assembly Bill Nos. 341, 901, 1594, 1826, and Senate Bill Nos. 341 and 1383, creating the need for the City to improve efforts to divert solid waste from landfills, including recyclable materials and organic waste; and

D. WHEREAS, the foregoing changes in law necessitate certain modified or additional services in order to bring the City into compliance with applicable law; as a result, the cost of collecting, disposing of, and diverting solid waste, recyclables, green waste, and organic waste to Athens Services is anticipated to increase;

E. WHEREAS, the City Council has determined that it is in the best interest of the City for Athens Services to implement certain operational changes pertaining to the provision of services in the City in accordance with this Amendment to ensure integrated waste management programs, including but not limited to the implementation of an organic waste collection program, and street sweeping services, are appropriately tailored and aligned to meet the aims of the City’s needs and environmental objectives; and

NOW, THEREFORE, in consideration of the promises and covenants contained herein, the above recitals, the Street Sweeping Contract, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree to amend the Agreement as follows:

1. **Effective Date.** The effective date of this Amendment is January 1, 2023 (“Amendment Effective Date”).

2. **Community Investment Payment.** No later than fifteen (15) days following the Amendment Effective Date, Contractor shall tender a one-time community investment payment to the City in the amount of One-Hundred Thousand Dollars (\$100,000) (“Community Investment Payment”). In the event this Amendment is deemed by a final, unappealable decision of a court of competent jurisdiction to be void, invalid, or otherwise null, the Community Investment Payment shall be returned to Contractor within fifteen (15) days of such decision.

3. **Definitions.** Unless specified otherwise, all capitalized terms in this Amendment hereby refer to those defined terms specified in Chapter 8.14 of the Hermosa Beach Municipal Code (Mandatory Recycling and Organic Waste Disposal Reduction) and 14 California Code of Regulations § 18982. If any term defined in this Amendment has been previously defined in the Agreement, the definition in this Amendment shall control. Unless specified otherwise, in the event of a conflict between a definition in this Amendment and a definition in 14 California Code of Regulations § 18982, the definition in Section 18982 shall control.

4. **Organic Waste.** The term “Green Waste” shall mean “Organic Waste” with respect to the following sections of the Agreement: Section 1.6 (Definitions; Bulky Waste); Section 1.30 (Definitions; Green Waste Processing Facility); Section 1.47 (Definitions; Solid Waste); Section 2.9 (Grant and Acceptance of Franchise; Limitations to Scope); Section 4.1.4 (Direct Services; Walk-Out Service); Section 4.2.3 (Direct Services; Commercial Recyclables Collection; Warning Notice); Section 4.4.1.1 (Container Selection, Distribution and Exchanges; Residential Container Distribution); Section 4.4.1.4 (Container Selection, Distribution and Exchanges; Capacity); Section 4.4.1.7 (Container Selection, Distribution and Exchanges; Container Colors); Section 4.5.1 (City Services; City Facilities Collection); Section 4.5.3 (City Services; School Facilities Collection); Section 4.6.1.3 (Operations; Missed Pickups); Section 4.7 (Transportation of Solid Waste); Section 5.2.2 (Education and Public Awareness; Implementation and On-going Education Requirements); Section 7.3 (Route Audit); Section 8.2.3 (Records; Solid Waste Records); Section 8.3.2 (Reports; Monthly Reports); Section 8.3.3 (Report; Annual Report); Section 11.1 (Default, Remedies and Liquidated Damages; Events of Default); and Section 11.3 (Liquidated Damages).

5. **Term of Agreement.** Section 2 is hereby deleted and replaced in its entirety as follows:

2.4 Term of Agreement

The term of this Agreement (the “Term”) shall commence on July 1, 2013, and expire December 31, 2032 (“Initial Term”), subject to extension as provided in Section 2.5, as applicable. Notwithstanding the foregoing, the unexcused failure or refusal of Collector to perform any material term, covenant, obligation or condition contained in this Agreement shall give rise to the right, in favor of City, for earlier termination of this Agreement for cause in accordance with the procedures elsewhere contained herein.

6. **Options to Extend.** Section 2.5 is hereby deleted and replaced in its entirety as follows:

2.5 Options to Extend

The Term may be extended for up to three (3) additional extensions, with each extension for a period of three (3) to five (5) years (each a “Successive Term”), following the expiration of the Initial Term or each Successive Term, upon mutual written agreement of the Parties made not less than one hundred (180) days prior to the end of the Initial Term or any Successive Term.

7. **Parking Lot Fencing.** Sections 4.1.14 and 4.12 are hereby deleted and replaced in their entirety as follows:

4.14.4 Transfer of Parking Lot Fencing

Effective January 1, 2023, Contractor hereby transfers to City all of Contractor’s right to, title to and interest in the enclosure fencing at or surrounding City Parking Lots A and B, as depicted in Exhibit 11 (“Parking Lot Fencing”). City acknowledges that Contractor is selling and City is purchasing the Parking Lot Fencing on an “as is with all faults” basis, and, except as noted below, City is not relying on any representations or warranties or any kind whatsoever, express, implied, or statutory from Contractor, its agents, or brokers as to any matters concerning such personal property, including, without limitation, any warranties as to title or implied warranties of merchantability or fitness for a particular purpose. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, CITY ACKNOWLEDGES THAT CONTRACTOR EXPRESSLY DISCLAIMS AND NEGATES, AS TO THE PARKING LOT FENCING TRANSFERRED HEREBY: (A) ANY IMPLIED OR EXPRESS WARRANTY OF MERCHANTABILITY; (B) ANY IMPLIED OR EXPRESS WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; AND (C) ANY IMPLIED OR EXPRESS WARRANTY OF CONFORMITY TO MODELS OR MATERIALS. Notwithstanding the foregoing, Contractor is unaware of any defect or asserted or unasserted claim by any third party related to the Parking Lot Fencing.

* * *

4.12 Parking Lot Enclosure Fee

Upon transfer of title to the Parking Lot Fencing, City shall be solely responsible for the operation, maintenance, cleaning and insurance of the Parking Lot Fencing and the enclosed area thereof

("Enclosure Area") and Contractor will have no liability in connection therewith. Effective January 1, 2023, all of Contractor's rights and duties with respect to the Parking Lot Fencing and Enclosure Area will terminate and Contractor will have no further liability in connection therewith, including for claims arising prior to such date; provided, however, that in order to support the City's operation, cleaning, maintenance, and responsibility for the foregoing, for each Customer utilizing the Enclosure Area, Contractor shall collect and remit to City a "Enclosure Support Fee" in an amount equal to (\$) per month. No later than the third (3rd) day of every month, City shall identify and provide a written list to Contractor Customers utilizing the Enclosure Area for the prior month. City shall provide written notice of any change in such customers within five (5) days of learning of any change. Contractor will retain the first \$11,225.34 collected from the Enclosure Support Fee in consideration of purchase price for the Parking Lot Fencing sold to City as specified in Section 4.1.14. The Enclosure Support Fee will be remitted to the City in accordance with Section 3.5.

8. **Minimum Diversion Requirements.** Section 4.2.5 is hereby deleted and replaced in its entirety as follows:

4.2.5 Minimum Diversion Requirements

City requires Contractor to achieve fifty percent (50%) citywide diversion in accordance with the mandated minimum annual CalRecycle diversion required of the City under Public Resources Code Section 41780 ("Diversion Requirement"). In furtherance of the Diversion Requirement, at a minimum, Contractor shall ensure that its individual waste stream diversion programs include the following: (i) collection of source-separated Organic Waste generated at Residential Premises and delivery to an Organic Waste Processing Facility selected by Contractor; (ii) collection of source-separated Recyclable Materials generated at Residential and Commercial Premises and delivery to a MRF or certified recycling facility selected by Contractor; (iii) collection of Refuse generated at Residential Premises and delivery to landfill, but at Contractor's option, diverted to a MRF or a certified transformation facility (refuse to energy); (iv) collection all mixed waste generated at Commercial Premises and Multi-Family Dwellings or otherwise collected in roll-off containers and delivery to a MRF selected by Contractor; (v) collect and deliver all source-separated Organic Waste generated Commercial Premises and Multi-Family Dwellings to an Organic Waste Processing Facility; (vi) collection of all Construction and Demolition Debris collected by Contractor and delivery of all such material to a certified Construction and

Demolition Debris facility selected by Contractor that meets California Green Building Standards Code (CALGreen) requirements of sixty-five percent (65%) minimum diversion; and (v) collection of all material from roll-off inert containers and delivery to a certified inert facility selected by Contractor.

9. **Organic Waste Program.** Sections 4.3.1 and 4.3.7 are hereby deleted and replaced in its entirety as specified below and Attachments 1-3 of this Amendment, which shall be Exhibits 3, 3A, and 3B of the Agreement:

4.3.1 Organic Waste Program

Contractor will provide an Organic Waste program for all generators in the City, as specified in Exhibits 3, 3A, and 3B.

* * *

4.3.7 SB 1383 Guarantee

Upon notice from City, Contractor shall be deemed in material breach of the Agreement subject to at least thirty (30) days to cure, in the event CalRecycle determines that the requirements of SB 1383 have not been satisfied: (i) due to the failure of Contractor to meet its obligations under this Agreement; or, (ii) due to Contractor's delay in providing information required under this Agreement that prevents City from submitting reports to CalRecycle in a timely manner (alternatively, a "Noncompliance Event"). Upon any Noncompliance Event, City shall be entitled to the reimbursement of penalties and/or fines assessed by CalRecycle against City to the extent the penalties and/or fines arise from the Noncompliance Event. Notwithstanding other provisions of this Agreement, Contractor's obligations hereunder shall be limited by Public Resources Code Section 40059.1.

10. **Bin Scout Service.** Section 4.1.9 is hereby deleted and replaced in its entirety as follows:

4.1.9 Bin Scout Services

Scout service requires Contractor to utilize specialized trucks to transport a Customer's Bins to and from the point of Collection by a Collection vehicle. Contractor may charge Customers for scout service if operationally required to service any Bin or upon Customer request. Any charge for scout service shall be assessed in accordance with maximum rates specified in Exhibit 2 and calculated for each Bin serviced, the frequency of such service per Bin, and the distance travelled by Contractor for each fifty (50) feet any Bin must be moved, beginning ten (10) to fifty (50) feet,

for fifty-one (51) to one hundred (100) feet, and each fifty (50) feet thereafter. In the event of a disagreement concerning the need for scout service or any charged assessed hereunder, the City Manager shall make the final decision.

11. **Cart Push-out Service.** Section 4.1.10 is hereby deleted and replaced in its entirety as follows:

4.1.10 Cart Push-out Services

Push-out service requires Contractor to utilize Contractor personnel to push-out Customer Carts from Customer enclosures or other storage locations to and from the point of Collection by a Collection vehicle. Contractor may charge Customers for push-out service if operationally required to service any Cart or upon Customer request. Any charge for push-out service shall be assessed in accordance with maximum rates specified in Exhibit 2 and calculated for each Cart serviced, the frequency of such service per Cart, and the distance travelled by Contractor for each fifty (50) feet any Cart must be moved, beginning ten (10) to fifty (50) feet, for fifty-one (51) to one hundred (100) feet, and each fifty (50) feet thereafter. In the event of a disagreement concerning the need for push-out service or any charged assessed hereunder, the City Manager shall make the final decision.

12. **Abandoned Item Collection.** Section 4.5.6 is hereby deleted and replaced in its entirety as follows:

4.5.6 Abandoned Item Collection

Because time is of the essence, City crews will typically Collect items abandoned in the City and dispose of those items at City yard. Contractor will Collect such items from City yard and properly divert from landfilling or dispose of such items in accordance with Sections 4.1.16 and 4.1.17. To assist City crews, City may request that Contractor Collect abandoned items within 24 hours of request up to twenty (20) times per month at no additional charge.

13. **Approved Facilities.** Section 4.8 is hereby deleted and replaced in its entirety as follows:

4.8 Approved Facilities

No later than January 1, 2023, and anytime thereafter upon any changes or as requested by City, Contractor shall submit a list of all facilities it intends to utilize in connection with the disposal and processing of Solid Waste, Recyclable Materials, and Organic

Waste. All facilities selected by will be operated in accordance with 14 CCR Article 6.2 and Hermosa Beach Municipal Code Section 8.14.090, as applicable. Notwithstanding the foregoing, to the extent a facility is not owned or operated by Contractor, Contractor shall be in compliance with this Section 4.8 if, as directed by City, Contractor requests a statement from the owner or operator of a facility that it is operated in accordance with 14 CCR Article 6.2 or Hermosa Beach Municipal Code Section 8.14.090, as applicable. In the event Contractor discovers any facility used in connection with this Agreement is not permitted or operated in compliance with applicable law, Contractor shall designate an alternative facility that is permitted and in compliance with applicable law (“Alternative Facility”). Contractor shall immediately inform City in writing in the event of any noncompliance, and City, in its sole discretion, shall have the right to require the use of an Alternative Facility, to be selected by Contractor. If an Alternative Facility is not available within a radius of twenty-five (25) miles of the facility previously used by Contractor, the Parties shall meet and confer to discuss costs due to use of such an Alternative Facility.

14. **Complaint Log.** The last paragraph of Section 5.1.2 is hereby deleted and replaced in its entirety with a new Section 5.1.2.1, titled “Production and Inspection of Complaint Log,” as follows:

5.1.2.1 Production and Inspection of Complaint Log

All Customer service records and logs kept by Contractor shall be available to City upon request. Contractor shall supply its log of Customer complaints log to on a quarterly basis and as part of its annual report required under Section 8.3.3. City shall, during regular Office Hours, have access to Contractor’s Customer service department for purposes that may include monitoring the quality of Customer service or researching Customer complaints.

15. **Community Support.** Section 5.4 is hereby deleted and replaced in its entirety as follows:

5.4 Community Support

Contractor shall support the following events:

- Fiesta Hermosa - through annual sponsorship and through providing employee volunteers at event
- Hermosa Beach Education Foundation - Contractor shall match contributions to this foundation made by any Contractor

employee, provide four \$500 scholarships per year, and provide volunteer hours for foundation events.

- Hermosa Beach Historical Society - Business membership of \$50
- Hermosa Beach Sister Cities - Corporate membership of \$250
- Hermosa Beach Friends of the Library - Annual donation of \$500
- Hermosa Beach Friends of the Park - Annual donation of \$500
- Pier Ave. Holiday Decorations - Annual fund of \$5,000
- Other non-profit organizations - Additional \$10,000 (funding or in-kind services) to be distributed to organizations as directed by the City.

16. **Schedule of Future Adjustments; Approval Process.** Section 6.3.2 is hereby deleted and replaced in its entirety as follows:

6.3.2 Approval Process

Annual adjustment to the maximum rates calculated in accordance with Section 6.4.2 and Section 6.4.3 is subject to the approval of the City Manager, with any other adjustments subject to approval of City Council. If a rate adjustment requested per this Section 6.3 is determined by the City to be accurately calculated in accordance with Agreement procedures, and would otherwise have been approved by the City Council, but is prevented from implementation due to a protest under Proposition 218, then Contractor is permitted to terminate this Agreement upon 24-month written notice to City, but shall not be entitled to compensation from City or Customers for lost revenue due to the Proposition 218 protest.

17. **Rate Adjustments.** Sections 6.4.2 and 6.4.3, and Exhibits 3A, 3B, and 3C, are hereby deleted and replaced in their entirety as follows:

6.4.2 Annual Rate Adjustment

Beginning July 1, 2023, and annually thereafter on July 1, Contractor may request an adjustment to the maximum rates in accordance with the Annual Rate Adjustment. For the purposes of this Section 6.4, "Annual Rate Adjustment" means the annual adjustment of maximum rates set forth in Exhibit 2 by the percentage increase in Trash CPI for the prior 12-month period (March of the prior year to March of the current year) plus one

percent (1%) (i.e., Trash CPI +1), where “Trash CPI” means the Consumer Price Index for Trash and Garbage Collection (CUUR0000SEHG02), U.S. City Average (not seasonally adjusted) or an equivalent index approved by mutual agreement in the event said index is no longer published.

6.4.3 Rates Phase-in

Notwithstanding any provision in this Agreement to the contrary, for the rate periods beginning July 1, 2023 and July 1, 2024, respectively, in addition to any other rate adjustment permitted under this Agreement, including the Annual Rate Adjustment, the rates for provided in Exhibit 2 shall be subject to supplemental adjustments such that net rates for (i) Single-Family generators increase fifteen percent (15%) each rate period; and (ii) Commercial generators increase eighteen and thirty-three hundredths percent (18.3%) each rate period.

18. **Maximum Rate Schedule.** Exhibit 2 (Maximum Rate Schedule) is hereby deleted and replaced in its entirety with Exhibit 2, which is provided herein as Attachment 4 of this Amendment.

19. **Due Execution.** The person(s) executing this Amendment on behalf of a Party hereto warrant(s) that (i) such Party is duly organized and existing; (ii) such person(s) are duly authorized to execute and deliver this Amendment on behalf of said Party; (iii) by so executing this Amendment, such Party is formally bound to the provisions of this Amendment; and (iv) entering into this Amendment does not violate any provision of any other agreement to which said Party is bound.

20. **Continuing Effect.** Except as amended by this Amendment, the provisions of the Agreement shall remain unchanged and in full force and effect. From and after the date of this Amendment. In the event of any conflict between the Agreement and this Amendment, this Amendment shall apply.

21. **Entire Amendment.** This Amendment contains the entire agreement and understanding between the Parties with respect to the subject matter of this Amendment and supersedes any and all prior or contemporaneous oral and written representations, warranties, agreements, and understandings between the Parties concerning the subject matter of this Amendment.

22. **Counterparts.** This Amendment may be executed in counterparts, each of which shall be considered an original.

[Signatures page follows]

IN WITNESS WHEREOF, the Parties have executed this Amendment as of the date first set forth below.

CITY OF HERMOSA BEACH

ARAKELIAN ENTERPRISES, INC.,
a California corporation

INSERT

Mayor

Ron Arakelian III

Executive Officer

Date

Date

ATTEST

INSERT

City Clerk

Date

APPROVED AS TO FORM

By: **INSERT**

City Attorney

Date

(Amendment, Attachment 1)

EXHIBIT 3

ORGANIC WASTE PROGRAM

1. **General.** Contractor shall (i) provide account site visits and reviews, and the tracking thereof; (ii) support public education and outreach efforts in the City; (iii) meet with CalRecycle staff; (iv) provide Organic Waste tonnage data to both City and CalRecycle; and (v) provide Organic Waste collection services, as provided herein.

2. **Default Organic Waste Service.**

A. **Residential.** Contractor shall provide all Single-Family generators Source Separated Organic Waste service with 35-, 64-, or 96-gallon Green Containers, as determined by Contractor. Customers shall be charged for Organic Waste Collection based upon the number and size of Green Containers necessary for customer to comply with SB 1383 in accordance with the approved rate schedule.

B. **Commercial.** For Commercial generators, including the Hermosa Beach City School District, Contractor shall collect one (1) 35-gallon container for Source Separated Organic Waste one (1) time per week. Based on a waste assessment performed by Contractor, Contractor may adjust the foregoing default level of service to any one of the following container types: (i) one (1) container of 64 gallons in size; (ii) one (1) bin of 1.5 to 2 cubic yards in size; and (iii) one (1) metal roll-off container with a capacity of 10 or more cubic yards.

C. **Acceptable Materials.** Notwithstanding any provision in this Agreement to the contrary, the Organic Waste materials that are to be accepted for collection in a Green Container are set forth in Exhibit 3A, and Recyclable Materials that are to be accepted for collection in a Blue Container are set forth in Exhibit 3B. City and Contractor agree that the list of acceptable Organic Waste and Recyclable Materials may be modified from time to time with the written approval of City.

D. **Collection Routes.** Contractor may collect Source Separated Organic Waste from multiple cities within one Organic Waste route and, if so, will report to City source-separated Organic Waste tonnage among the cities by volume.

E. **Service Changes.** Contractor may reduce or increase any Organic Waste service level, including service frequency and container types, based on inspection, audit, or review at any time, subject to the City Manager's right to review and disapprove. Contractor may assess additional charges for Organic Waste services above the default service level and/or above the minimum collection frequency for a given Customer.

3. **Education and Outreach.** Contractor and City have a shared responsibility to cooperatively provide education and outreach activities and to create and disseminate educational materials that comply with 14 CCR Section 18985.1 to Customers. In accordance

with the foregoing, Contractor will provide the education information required by this Section by including it with regularly scheduled notices, education materials, billing inserts, or other information disseminated to Customers. Contractor shall maintain records of its education and outreach activities and provide this information upon request to City. Education and outreach provided by Contractor to Customers per this provision shall include:

A. Information on the Organic Waste Customer's requirements to properly separate materials in appropriate containers.

B. Information on methods for: the prevention of Organic Waste generation, recycling Organic Waste on-site, sending Organic Waste to community composting, and any other local requirements regarding Organic Waste.

C. Information regarding the methane reduction benefits of reducing the landfill disposal of Organic Waste, and the methods of Organic Waste recovery contemplated by the Agreement.

D. Information regarding how to recover Organic Waste.

E. Information related to the public health and safety and environmental impacts associated with the landfill disposal of Organic Waste.

F. The above information will be provided, at a minimum, through print and/or electronic media, and may also be provided through workshops, meetings and/or on-site visits.

G. Educational materials provided pursuant to the above shall be translated into Spanish.

4. **Reporting.**

A. Notwithstanding any provision in this Agreement to the contrary, Contractor will provide an annual report of the following: (i) the average daily gross tons of Organic Waste collected by route, with a map of routes; (ii) the total number of generators that receive each type of Organic Waste collection service provided by Contractor; (iii) the number of Organic Waste collection containers distributed by size and Customer type; and (iv) annual totals of Organic Waste processed, including facility name(s) and location(s).

B. For the Outreach and Education provision of Section 3 of this Exhibit, Contractor shall provide: (i) copies of all such information (including flyers, brochures, newsletters, invoice messaging, website and social media postings, emails, and other electronic messages); and (ii) the date the information was disseminated or the direct contact made (for website and social media postings, this shall be the date posted).

C. For the Route Reviews and Compliance Reviews provisions of Sections 8 and 9 this Exhibit, Contractor shall provide: (i) the dates that each such review was conducted; (ii) the name and title of each person conducting the review; (iii) a list of the account names and addresses covered by the review; (iv) a description of each Hauler Route reviewed, including

Contractor's route number and a description of the Hauler Route area; (v) the results of such review (i.e. the addresses where any Prohibited Container Contaminants were found), and any photographs taken; (vi) the results of such review (i.e. Contractor's findings as to whether the customers reviewed are subscribed for Organic Waste Collection Service, have an applicable waiver, or neither), and any relevant evidence supporting such findings (e.g. account records); (v) copies of any educational materials issued pursuant to such reviews; (vi) documentation relating to observed Prohibited Container Contaminants, whether observed during Route Reviews or otherwise; (vii) copies of the form of each notice issued to generators for Prohibited Container Contaminants, as well as, for each such form, a list of the Customers to which such notice was issued, the date of issuance, the Customers name and service address, and the reason for issuance; (viii) the number of times notices were issued to Customers for Prohibited Container Contaminants; (ix) the number of Containers where the contents were disposed due to observation of Prohibited Container Contaminants; and (x) a description of Contractor's process for determining the level of Container contamination under the Agreement.

D. The Parties shall meet and confer if City elects to modify the records and reports required of Contractor pursuant to this Exhibit with respect to type of report, number, content, format (including digital submission), or frequency. Contractor shall provide records to City within ten (10) business days of a request. Contractor shall provide City with business hours access to and any necessary training for use of a Contractor-hosted records systems in order to validate Contractor performance in accordance with the Organic Waste Program specified in this Exhibit.

5. **Senate Bill No. 1383 Procurement.** As part of City's efforts to satisfy annual procurement requirements specified in SB 1383, Contractor shall have the option to, at levels commensurate with those required in the City under SB 1383, (i) provide compost or mulch from qualifying organic waste sources, as approved by CalRecycle, delivered to location(s) selected by City and agreed upon by Contractor, and/or (ii) assist City in the procurement of Renewable Natural Gas (RNG) from qualifying organic waste sources for collection vehicles used by Contractor in City, such that the Contractor's providing of mulch, compost, or RNG will meet no less than 25% of the City's annual SB 1383 organic waste product procurement target ("Procurement Target"). Notwithstanding the foregoing, annually, upon the request of City, City and Contractor will meet and confer to discuss and determine the specific levels of compost, mulch, and/or RNG that City would like Contractor to provide in furtherance of the Procurement Target for the upcoming calendar year. If Contractor and City cannot reasonably agree on the Procurement Target, Contractor may elect the mix from SB 1383 qualifying sources as outlined in this Section. Should products such as greater quantities of compost or mulch, other or additional biofuels, or different forms of electricity be needed for City to satisfy its procurement requirements, and if City requests that Contractor provide the same, City and Contractor shall meet and confer to discuss an amendment to the Agreement prior to such procurement. Further, any compost provided hereunder shall be provided free of charge and in addition to compost provided to the City in accordance with Section 4.3.6.

6. **Container Color and Labeling.**

A. **Container Color.** Notwithstanding any provision in this Agreement to the contrary, all new containers put into service as of the Amendment Effective Date must comply

with the color requirements specified in 14 CCR Section 18984.7. Additionally, no later than January 1, 2036, all containers provided to Customers must comply with the color requirements specified in 14 CCR Section 18984.7. Containers shall be colorfast and resistant to fading as a result of weathering or ultraviolet degradation, and the lids and bodies shall be uniform for each container type, as follows: (i) Solid Waste container bodies and/or lids shall be black or gray; (ii) Recyclable Materials container bodies and/or lids shall be blue; and (iii) Organic Waste Container bodies and/or lids shall be green. Hardware such as hinges and wheels on the containers may be a different color than specified herein.

B. **Container Labeling.** Beginning on the Amendment Effective Date, Contractor shall, in accordance with 14 CCR Section 18984.8, imprint or place a label on the body or lid of each new container that has been provided to a Customer that includes language or graphic images, or both, indicating the primary materials accepted and the primary materials prohibited in that container. Imprints or labels shall clearly indicate items that are prohibited container contaminants for each container.

7. **Route Reviews.** Contractor shall on a quarterly basis, commencing as of the Agreement Effective Date, conduct hauler route reviews for “Prohibited Container Contaminants” consistent with and as defined in 14 CCR Section 18984.5(b) in a manner deemed safe by Contractor. Containers may be randomly selected along hauler routes. Contractor shall develop a hauler review methodology in compliance with 14 CCR Section 18984.5(b) and submit it to City not more than annually upon the request of City. Contractor shall conduct a Route Review for each Hauler Route. For each Route Review of a Hauler Route, Contractor shall inspect at least the following minimum number of Containers but may inspect more if Contractor wishes. Each inspection shall involve lifting the Container lid and observing the contents but shall not require Contractor to disturb the contents or open any bags. For the avoidance of doubt, Contractor shall not be required to annually inspect every Container on a Hauler Route. Contractor shall include the results of each Route Review in its next regularly scheduled report to City, as required by Section 4 of this Exhibit.

<u>Route Size (# garbage accounts/ week)</u>	<u>Minimum Number of Containers</u>
Less than 1,500	25
1,500-3,999	30
4,000-6,999	35
7,000 or more	40

8. **Compliance Reviews.** At least once annually, commencing as of the Amendment Effective Date, Contractor shall review the records of its Commercial and Multi-Family Dwelling Customers in City that are subscribed for at least two (2) cubic yards per week of combined Refuse, Organic Waste and Recyclable Materials collection service, to determine whether such customers are subscribed for Organic Waste collection service or have an applicable waiver. Contractor shall include the results of each compliance review in its next regularly scheduled report to City, as required by Section 4 of this Exhibit.

9. **Facilities Waste Evaluations.** Contractor shall at least twice per year but no more than quarterly, commencing as of the Amendment Effective Date, conduct waste evaluations that meet the requirements of 14 CCR Section 17409.5.1 with respect to waste

delivered to an Contractor-owned or -controlled facility or with respect to information otherwise accessible to Contractor that permits it to perform characterization studies. City maintains the right to observe, or hire a third party to observe, the waste evaluations.

10. **Contamination Protocols.** In order to prevent Prohibited Container Contaminants, Contractor shall implement the protocols, as specified herein.

A. **First and Second Events.** Upon the first and second discoveries of Prohibited Container Contaminants within a given calendar year starting January 1, Contractor will collect the contaminated waste if safe to do so, treat the waste as Refuse for handling and billing purposes, and affix a “Contamination Violation Notice” to any container with contaminated waste. Contractor shall also report issuance of any such notices to City. The Contamination Violation Notice will contain instructions on the proper procedures for sorting waste, and Contractor must notify the Customer by phone, by U.S. mail, by email, in person, or by tag of the following: (i) for the third and subsequent discovery of Prohibited Container Contaminants, the Customer may be charged a contamination fee for each contaminated container, and (ii) for the fifth and subsequent discoveries of Prohibited Container Contaminants, the Customer may be charged a contamination fee for each contaminated container, and Contractor may increase the size of the Customer’s Refuse container or require an additional container(s). Contractor must also contact the Customer by phone, by U.S. mail, by email, in person, or by tag to ensure that the Customer has the appropriate level of service for proper collection of waste.

B. **Third and Fourth Events.** Upon the third and fourth discoveries of Prohibited Container Contaminants within a given calendar year starting January 1, Contractor will collect the waste in the contaminated container(s) if safe to do so, treat the waste as Refuse for handling and billing purposes, and affix a Contamination Violation Notice to the contaminated container. Contractor may also elect to charge the then-maximum contamination fee for the discovery of Prohibited Container Contaminants. For any assessed contamination fee, Contractor must provide digital/visual documentation of Contractor’ discovery of Prohibited Container Contaminants to the Customer and City.

C. **Five or More Events.** Upon each of the fifth and any subsequent discoveries of Prohibited Container Contaminants within a given calendar year starting January 1, Contractor will collect the waste in the contaminated container(s) if safe to do so, treat the waste as Refuse for handling and billing purposes, and charge a contamination fee for each event. For any assessed contamination fee, Contractor must provide to the customer and the city digital/visual documentation of Contractor’ discovery of Prohibited Container Contaminants. Upon five (5) business days’ notice to City and the Customer, Contractor may (i) increase the size of the Customer’s Refuse container, require additional Refuse containers for excessive Prohibited Container Contaminants, or increase collection frequency of Refuse containers; (ii) impose the then-maximum contamination fee; and/or (iii) provide notice that Contractor has recommended that City commence any applicable code enforcement action against the Customer. City will consult with Contractor and consider, and pursue as applicable, appropriate legal remedies against offending Customers in order to secure discontinuance of the Prohibited Container Contaminants. All City costs of such action shall be recovered from the offending Customers.

D. Disputes. If a Customer disputes, in writing, an assessment of a contamination fee within 30 days of the assessment, Contractor will temporarily halt any such assessment and Contractor may request a ruling by the City Manager to resolve the dispute. A request by Contractor to the City Manager to render a decision on any such dispute must be filed within ten (10) business days of receipt of a Customer's written dispute, and Contractor must include written documentation and digital/visual evidence of ongoing overall problems. Upon receipt of such documentation, the City Manager will rule on the dispute within ten (10) business days, and the City Manager's decision resolving the dispute between the Customer and Contractor will be final.

11. Waivers. Upon Contractor's request, City may provide Contractor waivers as follows: (a) in the event of a disaster, City may grant Contractor a waiver of some or all discarded materials collection requirements under this Agreement and 14 CCR, Division 7, Chapter 12, Article 3 in the disaster-affected areas for the duration of the waiver, provided that such waiver has been approved by CalRecycle; (b) Contractor may, but is not required to, separate or recover Organic Waste that City removes from homeless encampments and illegal disposal sites as part of an abatement activity to protect public health and safety; and/or (c) Contractor may dispose of rather than process specific types of Organic Waste and/or Recyclable Materials that are subject to quarantine and meet the requirements described in 14 CCR Section 18984.13(d) for a period of time specified by City or until City provides notice that the quarantine has been removed and directs Contractor to transport the materials to facilities designated by Contractor for such material.

12. Organic Waste Ordinance; Enforcement. City may implement an Organic Waste ordinance that will require all Customers to subscribe to Organic Waste services. Contractor shall coordinate with City by providing, upon City request, notice to City of any and all persons refusing Organic Waste services. Contractor shall cooperate with City in implementing the Organic Waste ordinance and shall provide support to the City in establishing the administrative record of Contractor's outreach, education, site visits, and communications with any Customers that may ultimately be subject to City enforcement. City shall bear the responsibility for code enforcement actions such as notices of code violation and assessment of penalties per the Organic Waste ordinance. Contractor shall not be liable for any claims, actions, obligations, demands, damages, liabilities, costs, or expenses for any damages or injuries caused by or arising from (i) the failure of Customers to accept Organic Waste services, or (ii) the suspension or termination of services upon nonpayment in whole or in part by Customers, provided Contractor reports such instances of noncompliance or nonpayment to City for code enforcement.

13. Program Changes. If additional or modified Organic Waste services are directed by City or required due to a change in law and Contractor will otherwise incur additional costs, such as but not limited to changes in service frequency requirements mandated by applicable law adopted or implemented after the Amendment Effective Date, Contractor may be entitled to a rate adjustment as set forth in Section 6.5 of the Agreement. Nothing in this Agreement shall be construed as obligating Contractor to provide additional or modified services prior to City and Athens Services having first agreed in writing to any such change.

(Amendment, Attachment 2)

EXHIBIT 3A

**LIST OF ACCEPTABLE ORGANIC WASTE MATERIALS
FOR GREEN CONTAINERS**

GREEN WASTE

- Flower and hedge trimmings
- Grass clippings
- Leaves and branches
- Lumber, scrap wood, and plywood (not painted or treated)
- Weeds

FOOD SCRAPS

- Bread, rice, and pasta
- Cheese and dairy
- Coffee grounds and filters
- Fruits and vegetables
- Flowers and herbs
- Meat, bones, and poultry
- Seafood and soft shells
- Pet food (nonmedicated)

FOOD-SOILED PAPER*

- Food-stained paper
- Paper egg cartons
- Paper napkins and kitchen paper towels
- Pizza boxes
- Plates
- To-go boxes (no coating)
- Wood and fiber-based utensils

*Must be 100% fiber-based. No materials with - plastic, wax, or bioplastic coating, liner, or laminate.

UNACCEPTED ITEMS

- All plastics
- Cacti, succulents, and yucca
- Compostable plastics (bioplastics)
- Coffee cups and pods
- Fats, oils, and grease
- Food stickers (please remove from items)

- Gloves
- Hard shells (clams, mussels, oysters)
- Medication
- Palm fronds
- Paper napkins and paper towels with cleaning chemicals
- Parchment and wax paper
- Pet waste
- Rocks and soil
- Rubber bands and twist ties
- Tea bags
- Textiles
- Tissues and wet wipes

(Amendment, Attachment 3)

EXHIBIT 3B

LIST OF ACCEPTABLE RECYCLABLE SOLID WASTE MATERIALS FOR BLUE CONTAINERS

PLASTICS

- Plastics number 1 as bottle or clamshell
- Plastics numbers 2, 4, 5, and 7
- Soda, juice, and water bottles
- Beverage and detergent jugs

METALS

- Aluminum foil and pie tins (clean)
- Scrap metal
- Steel cans, dishware, etc.
- Tin and aluminum cans

PAPER

- Paper (clean and dry, white and mixed color)
- Envelopes
- File folders (paper only)
- Junk mail and magazines
- Newspaper
- Paper grocery bags
- Telephone books

Acceptable (but may not be recycled)

- Cereal boxes (no plastic insert)
- Egg cartons (paper only and clean)
- Frozen food boxes

- Soup, milk, and juice cartons

CARDBOARD (or similar)

- Cardboard and corrugated boxes

GLASS

- Amber, green, and mixed-color glass
- Clear food glass jars
- Soda, tea, and liquor bottles

No window glass, porcelain, or non-food-related glass.

(Amendment, Attachment 4)

EXHIBIT 2

RATE AND FEE SCHEDULE

[Athens to insert]

DRAFT