

**EXCLUSIVE REFUSE SERVICE AGREEMENT**

**CITY OF SOUTH PASADENA**

**AND**

**ARAKELIAN ENTERPRISES, INC. (dba Athens Services)  
(as successor to South Pasadena Disposal Company)**

## EXCLUSIVE REFUSE SERVICE AGREEMENT

This Agreement is made and entered into by and between the CITY OF SOUTH PASADENA, a municipal corporation ("City") and ARAKELIAN ENTERPRISES, INC. (dba Athens Services), a California corporation (as successor to South Pasadena Disposal Company) ("Contractor").

WHEREAS, City and Contractor are parties to that certain agreement dated November 6, 1996 whereby Contractor provides exclusive Refuse and Recyclable Materials (both defined below) collection, transportation and disposal for Backyard Service (defined below) to single-family residences within City (the "Backyard Service Agreement");

WHEREAS, City and Contractor are parties to that certain agreement dated November 6, 1996 whereby Contractor provides exclusive Refuse and Recyclable Materials collection, transportation and disposal for Bin Service (defined below) to non-residential and multi-residential properties within City (the "Bin Service Agreement");

WHEREAS, pursuant to the Backyard Service Agreement, City gave Contractor notice of City's intent to terminate that agreement;

WHEREAS, as partial consideration for City to agree to extend the term of the Backyard Service Agreement, Contractor agrees to provide City with Street Sweeping Service (defined below), at no charge, for the term of the Bin Service Agreement;

WHEREAS, City agrees to extend the term for Contractor to provide exclusive Backyard Service to the affected residents;

WHEREAS, City and Contractor agree to amend and restate the Bin Service Agreement and Backyard Service Agreement to memorialize, in one document, the parties' agreements for (i) Bin Service, (ii) Backyard Service and (iii) Street Sweeping Service for City and its residents and businesses ("Refuse Service Agreement"); and

WHEREAS, pursuant to this Refuse Services Agreement, Contractor shall have the sole right to collect, transport and dispose of all residential and non-residential Refuse and responsibility to sweep all public streets in City in accordance with the terms and conditions of this Refuse Service Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained in this Refuse Service Agreement City and Contractor do hereby agree as follows:

I. DEFINITIONS

- A. "Backyard Service" shall mean collection of Refuse, Recyclable Materials (defined below) and Green Waste (defined below) (not exceeding two hundred twenty (220) gallons per Customer per week) from containers supplied by that Customer (defined below) and stored in, and returned to, that Customer's backyard (or particular substitute location mutually and reasonably agreed to among Contractor, the Public Works Director (defined below) and that Customer, but in no event in the City's public right-of-way) for (i) single-family, two-family, three-family and four-family residential properties, and (ii) subject to the reasonable agreement of Contractor and that Customer, other multi-family residential properties.
- B. "Bin Service" shall mean collection of Refuse, Recyclable Materials and Green Waste from bins or roll-off containers supplied by Contractor and stored by the Customer in a location reasonably accepted by Contractor, the Public Works Director and any Customer within City not utilizing Backyard Service (but in no event in the City's public right-of-way).
- C. "Bin" shall mean a container (1.5 or 3 cubic yard capacity) provided by Contractor for the deposit and collection of Refuse, Recyclable Materials and Green Waste typically found at commercial and multi-residential properties.
- D. "Chief of Police" shall mean City's Chief of Police, or the authorized designee.
- E. "City Manager" shall mean City's City Manager, or the authorized designee.
- F. "City Attorney" shall mean City's City Attorney.
- G. "City Council" shall mean City's City Council.
- H. "CIWMA" shall mean the California Integrated Waste Management Act of 1989, as it may be amended from time to time (sometimes commonly referred to as AB 939).
- I. "CIWMB" shall mean the California Integrated Waste Management Board and any successor agency.
- J. "Compost" shall mean the product resulting from the controlled biological decomposition of organic wastes, either source separated from Refuse, or separated at a centralized facility, and may include vegetables, food, paper and yard and wood wastes, none of which are Hazardous Waste (defined below).

- K. "Customer" shall mean any individual, person or organization, utilizing and paying for Contractor's Refuse collection service within the City.
- L. "Green Waste" shall mean Refuse which is typically produced by, but not limited to, lawn trimmings, discarded yard plants, pruned branches of trees and bushes and fallen or green leaves or wood waste, all of which is not Hazardous Waste (defined below); provided, it shall not include those materials which are not appropriate for Compost (such as tree trunks, more than four inches (4") in diameter or four feet (4') in length, or palm fronds).
- M. "Hazardous Waste" shall mean a waste or combination of wastes defined as a hazardous waste or hazardous substance under any federal or state law, regulation or rule, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601 *et seq.*), as amended ("CERCLA") or the Resource Conservation and Recovery Act (42 U.S.C. § 6901 *et seq.*), as amended ("RCRA").
- N. "Materials Recovery Facility" ("MRF") shall mean a materials recovery facility used for purposes of recycling materials.
- O. "Public Works Director" shall mean City's Director of Public Works or the authorized designee.
- P. "Recyclable Materials" shall mean Refuse, including demolition and construction wastes, which can be or has been separated from Refuse and can be returned to the economic mainstream in the form of raw material for new, reused or reconstituted products which meet the quality standards necessary to be used in the marketplace.
- Q. "Refuse" shall mean all putrescible and non-putrescible solid and semi-solid wastes, including, but not limited to, garbage, trash, paper, rubbish, ashes, industrial wastes, demolition and construction wastes and other discarded solid and semi-solid wastes; provided, that low-level radioactive waste regulated by the California Health and Safety Code (commencing with § 25800) and Hazardous Waste shall not be included in this definition.
- R. "South Pasadena Municipal Code" ("SPMC") shall mean the laws, rules and regulations of the City.
- S. "Special Services" shall mean any Refuse collection, transportation and disposal services provided by Contractor to a Customer, other than regular service provided hereunder.

- T. "Street Sweeping Service" shall mean regular and emergency (such as after major storms and no more than twelve (12) traffic accidents per calendar year) mechanical cleaning of Refuse, soil, sand, leaves and other plant material and standing water from City's vehicular travel-ways, including public streets, alleys and parking lots, to a level of reasonable quality typical to the community, which complies with applicable storm water discharge, local Air Quality Management District, and all other applicable State and Federal, rules and regulations.
- U. "Tipping Fees" shall mean the costs or charges imposed by a properly permitted disposal site, and Contractor's MRF, for dumping or processing of Refuse or Recyclable Materials at the site or facility.

## II. EXCLUSIVE FRANCHISE

- A. Grant of Franchise. Subject to the SPMC, as amended, California Public Resources Code section 40059 (a) (1), applicable State and Federal laws, rules and regulations, as well as provisions, hereof, this Refuse Service Agreement grants to Contractor an exclusive right for collection, MRF processing, transportation and disposal of discarded Refuse, Recyclable Materials and Green Waste within City; provided, that any person may donate, sell or otherwise dispose of Recyclable Materials or other materials of monetary value that person produces, subject to applicable Federal and State laws, rules and regulations.
- B. Franchise Area. This Refuse Service Agreement applies to all property within the jurisdictional boundary of City.
- C. Acceptance; Waiver. With the exception of this Refuse Services Agreement, City and Contractor agree to the mutual termination of all previous agreements between the parties and their predecessors relating to Refuse, Recyclable and Green Waste collection, transportation and disposal, including, but not limited to, the Backyard Service Agreement and the Bin Service Agreement.
- D. Amortization of Existing Licensed, Non-franchised Refuse Haulers. City and Contractor acknowledge City has notified, pursuant to Public Resources Code section 49520, the licensed non-franchised Refuse haulers, which operated within City on November 6, 1996, Contractor is City's exclusive Refuse collection franchisee. The five-year amortization period provided by section 49520 ends on March 27, 2002.

### III. SCOPE OF WORK

In exchange for the compensation described in Article VII, hereof, Contractor shall provide all labor, materials, equipment and services, and pay all costs it incurs in performing the same, for:

- A. Collection, transportation and disposal of Refuse by Backyard Service from the premises, described in I.A., above, in the City, at the regularly scheduled intervals reasonably agreed to by Contractor and the Public Works Director, but no less than once a week, and at the rates provided herein;
- B. Collection, transportation and disposal of Refuse from premises within City for those Customers who do not receive Backyard Service, by regularly scheduled Bin Service as reasonably agreed to by Contractor and Customer (subject to Article IV of this Refuse Service Agreement), but no less than once a week and, at the rates provided herein;
- C. Separation of all Refuse collected by Contractor within City at Contractor's MRF; provided, that Customer shall be required to separate and store, at the same location as the containers used for Backyard Service or Bin Service, whichever is applicable, only Green Waste from other Refuse; provided, that materials which are not able to be processed for inclusion as compost material (*i.e.*, trunks, more than four inches (4") in diameter and four feet (4") in length, or palm fronds) are not to be separated from other Refuse by the Customer;
- D. Provision of Street Sweeping Service within City at least once every other week, at times and days approved by the Public Works Director, and transportation and disposal of Refuse collected while providing Street Sweeping Service;
- E. Collection, transportation and disposal of all Refuse produced by City at any of City's public facilities; provided, that City shall be required to separate and store, at the same location as the containers used for Refuse only Green Waste from other Refuse;
- F. Payment of City's cost for preparation and filing of CIWMA, as amended, reports and waste generation studies and adjustments to base year calculations; provided, that (i) City shall hire a consultant to prepare such reports and studies, (ii) City shall file the reports and (iii) City and Contractor shall reasonably cooperate to determine the content of the reports and studies;
- G. Disposal of residual Refuse (that remaining after MRF processing at Contractor's MRF) collected within the City at a landfill or transformation facility permitted by the CIWMB reasonably approved by the Public Works Director and the overall cost for such facility, including fees and transportation costs, shall be no more than the lowest cost incurred to transport and dispose of Refuse at another available CIWMB permitted facility;

H. Provision of free Christmas tree collection for all residential properties, including multi-family dwellings;

I. Provision of one annual dumpster day (on a date reasonably determined by the City Manager) for collection of bulky items, including, but not limited to, all large or difficult to handle objects such as couches, refrigerators, rugs and carpets, water heaters, washing machines and other items, excluding typical or ordinary Refuse items. Contractor shall also provide free pick-up of those items from senior citizens' residences within City, as coordinated by City; provided, that if pick-ups for any annual dumpster day exceed one hundred (100), then City and Contractor shall negotiate a reasonable charge for such excess pick-ups;

J. Provision of community outreach programs to educate Customers about the importance of recycling and proper Hazardous Waste disposal and other waste management issues. These programs shall consist of, but not be limited to, production and printing of flyers, brochures, posters and inserts to be included in City's newsletter, speaking to service clubs and elementary schools, and other educational programs deemed necessary to carry out this program. All printed material shall be reviewed and approved by the Public Works Director prior to distribution;

K. Provision of collection, transportation and disposal of Refuse for City's Fourth of July celebration and ten (10) other special events, such as concerts in the park, farmer's market (provided the market is operated by the City or a non-profit corporation) and other community celebrations; and

L. Provision, at no extra cost to Customer, of collection, transportation and disposal of Green Waste generated by Customer through regular gardening and yard maintenance and minor tree and bush trimming, subject to the two hundred twenty (220) gallon limit.

Notwithstanding any of the forgoing, Contractor shall not be required to remove building materials and other Refuse materials from the construction, alteration, repair, moving or demolition of buildings, in the ordinary course of the Customer's regular Refuse collection. Customer will be required to enter into separate collection arrangements with Contractor for the collection of such materials; provided, that Customers may put out such materials for collection by Contractor if the alteration or repair work is minor in nature and is performed individually by Customer; provided, further, that such materials meet the volume and weight restrictions applicable to regular collection of Refuse.

#### IV. COLLECTIONS HOURS AND DAYS

The collection of Refuse shall only occur between the hours of 7:00 a.m. and 5:00 p.m., Monday through Friday and between the hours of 7:00 a.m. and 12:00 p.m., Saturday. If the regular collection day falls on a legal holiday, then Contractor shall collect the Refuse regularly scheduled for that holiday on the next workday following that holiday. The other Customers regularly scheduled for that next workday may also be postponed until the following workday; provided, that Refuse collection may be postponed in this manner as necessary to accommodate the holiday, but in no event shall more than six (6) consecutive collection days be postponed. Collection earlier than 7:00 a.m. may be authorized upon written approval of the City Manager; provided, that Contractor gives written notice to the affected Customers at least ten (10) days prior to the earlier collection. To the extent reasonably possible, collections on each route shall commence at the same point, at the same time and follow the same route each time collections are made. Contractor shall provide sufficient personnel and equipment to complete within one day the collection of all Refuse placed for collection in any mutually agreed upon collection district within City on the given collection day.

#### V. COLLECTION AND STREET SWEEPING SERVICE ROUTES AND SCHEDULES

A. The schedule and routes for Refuse collection and Street Sweeping Service shall be subject to reasonable approval of the Public Works Director. Contractor shall prepare and file with the Public Works Director a Refuse collection and Street Sweeping Service schedule, together with a complete map of the Refuse collection and Street Sweeping Service districts within City. The Public Works Director shall indicate thereon in an appropriate and easily understandable manner the days on which Refuse collection and Street Sweeping Service shall be made.

B. The Refuse collection and Street Sweeping Service routes and schedule, when approved by the Public Works Director shall be maintained unless changed, in writing, by the parties.

C. Prior to the start of any new Refuse collection or Street Sweeping Service schedule or route, as approved by the Public Works Director, Contractor shall, at Contractor's own expense, provide a written notice to be included, by City, as an insert with regular billings to notify each affected Customer of the day or days of the week on which Refuse shall be collected or streets swept. The notice shall contain the day or days of the week upon which Refuse collections and Street Sweeping Services will be made, the name, address and telephone number of Contractor, and other information and be provided to each Customer affected unit not less than fourteen (14) days prior to the change of any Refuse collection and Street Sweeping Service schedule. Contractor shall also cause the schedule and route of Refuse collection and Street Sweeping Service to be published twice in a responsible newspaper of local circulation once each week for two (2) successive weeks immediately prior to the change in the Refuse collection and Street Sweeping Service schedule or route in a district. The published schedule and route shall



contain the same information as the written notice outlined above, and shall clearly indicate the precise area involved in the change.

D. Contractor shall conduct same day collection of all Refuse collected pursuant to this Refuse Service Agreement, including Green Waste.

## VI. TERM

Subject to the notice provisions contained in this Article, this Refuse Service Agreement shall have a term of eleven (11) years, commencing as of November 6, 2000; provided, however, that on November 6, 2004 and on each November 6, thereafter, the term of this Refuse Service Agreement shall be extended one (1) year, so that the full term of this Refuse Service Agreement shall remain seven (7) years. If either party desires this Refuse Service Agreement to terminate, then that party must give ninety (90) days' written notice of its desire for termination to the other party and termination, pursuant to that notice, shall not be effective until seven (7) years after the date of that notice. (For example: (i) if a party desires to terminate this Refuse Service Agreement, then the earliest date that termination can be effective is November 6, 2011 and to be so effective as of that date, written notice of termination must be given to the other party no sooner or later than November 6, 2004 or (ii) if a party does not give notice to terminate until, for example, February 1, 2005, then that termination could not be effective until February 1, 2012.) Thirty (30) days after receipt of a notice of termination, either party may request to meet and confer regarding the termination and any notice of termination shall not be effective, unless the party which sent the notice of termination meets and confers, in good faith at least twice (or provides opportunities to do so), with the other party after the other party's timely request to do so.

## VII. RATES AND BILLING

A. As of the effective date of this Refuse Service Agreement and until June 30, 2002, the rates charged for Backyard and Bin Services shall be as set forth on Exhibit A hereto; provided, that City retains the unilateral right to reduce or increase the AB 939 authorized fee charged by City; and provided, further, that such fee shall be retained in full by City and such receipts shall not be included in the gross receipts calculations for Contractor.

B. Subject to Exhibit B, hereto, Contractor may increase, but shall decrease, those rates for the period July 1, 2002 to June 30, 2003.

C. Subject to Exhibit B, hereto, on each July 1, after 2002, until the termination of this Refuse Service Agreement, Contractor may increase, but shall decrease, the rates for each period of July 1 to June 30.

D. Contractor shall not make or grant any preference or advantage to any Customer or potential customer, nor subject any Customer or potential customer, to prejudice or disadvantage with respect to rates, fees, charges, service, facilities, rules, regulations, or any other respect.

E. Special Services shall be charged only based on the list described in F., below.

F. Contractor shall provide, upon request, a complete list of the rates for the various types of services, including Special Services, provided by Contractor, a statement indicating how to file a complaint and how complaints are resolved, as well as the possibilities of recourse available to Customers, the holiday schedule, and any other information necessary to assist residents as reasonably determined by the City Manager.

G. City shall bill for all Bin Service, Backyard Service and Special Services on a bi-monthly basis, as part of the regular utility bill. It is the responsibility of Contractor to inform City of the level of trash service provided to each Customer so City may accurately bill. On the first business day of each month, City shall remit to Contractor an amount equal to the billing for service rendered during the preceding month, minus the applicable franchise fee provided for in Article VIII. The franchise fee shall be calculated by City and deducted from the total amount of billings and an amount equal to the balance shall then be submitted to Contractor. The payments shall be accompanied by a report providing reasonable documentation and support for the payments.

#### VIII. FRANCHISE FEE

A. For the entire term of this Refuse Service Agreement, City shall retain, as a franchise fee for this Refuse Service Agreement, nine and four-tenths percent (9.4%) of the gross receipts City collects for Bin Service, Backyard Service and Special Services payments, pursuant to this Refuse Service Agreement; provided, that the amounts collected as Contractor's recycling rate and Green Waste rate shall not be included as part of the gross receipts upon which the franchise fee is based.

B. In addition, for processing the Customer's payments, City shall retain three percent (3%) of the gross receipts City collects for Bin Service, Backyard Service and Special Services, pursuant to this Refuse Service Agreement; provided, that the amounts collected as Contractor's recycling rate and Green Waste rate shall not be included as part of the gross receipts upon which the franchise fee is based.

C. In addition, on a quarterly basis (within forty-five (45) days after each quarter), Contractor shall remit (or cause the operator of the MRF at which Contractor deposits Refuse collected within City) to City twenty-five percent (25%) of the net revenue generated from sale of Recyclable Materials collected by Contractor within City. For purposes of this Section, net revenue shall mean gross revenue generated from such sale minus any amounts paid to the users of the Recyclable Materials as incentives to divert materials. Contractor shall, on an annual basis, provide to City a report describing the

quantity of Recyclable Materials, the dollar value of those sold and the net revenue paid to City, and explain the reasons, therefor.

IX. OFFICE, INQUIRIES AND COMPLAINTS

A. Contractor shall maintain a local telephone number and maintain telephone listings in the directories of the telephone companies servicing Customers in the name by which the firm is most commonly known.

B. Contractor shall have at all times during the hours between 7:00 a.m. and 5:00 p.m. Monday through Friday and between 7:00 a.m. through 12:00 p.m. Saturday, an employee at Contractor's office to answer inquiries and to receive complaints; provided, that for holidays and special dumpster days Contractor shall have an employee at Contractor's office to answer inquiries and to receive complaints until collection services are completed.

C. Contractor shall maintain a written record of all complaints received, including the name, address, and telephone number of the customer, a description of the complaints, the time the complaint was received, the action taken in response to the complaint, and the time the responsive action was taken. Contractor shall provide City with a copy of the written log of complaints upon request by the City Manager, upon reasonable advance notice.

D. In the event any Customer reports to the City Manager a complaint or claim, for a damaged container, has not been resolved to the Customer's reasonable satisfaction, the City Manager may require Contractor to present a detailed report outlining the nature of the complaint and remedies proposed or action taken to resolve the complaint or claim. If, in the reasonable opinion of the City Manager, Contractor's remedies proposed and action taken are insufficient to resolve adequately the complaint or claim, then the City Manager may require Contractor to carry-out an alternative reasonable remedy process intended to resolve the complaint or claim. The remedies will be carried out at no cost whatsoever to City, unless otherwise specified by the City Manager.

X. CUSTOMER SERVICE PERFORMANCE STANDARDS

A. The Contractor shall not repeatedly allow Customer service calls to be put on hold for longer than two minutes.

B. Contractor shall not repeatedly allow Customer service calls to ring more than ten times.

C. Contractor's Customer service representatives will treat all customers in a friendly and courteous manner.

D. Contractor's Customer service representatives will be fully knowledgeable about this Refuse Service Agreement and the services provided hereunder.

XI. VEHICLES AND EQUIPMENT

A. All trucks and other equipment used to collect, transport or dispose of Refuse or to provide Street Sweeping Service shall at all times be kept clean, in good repair, and well and uniformly painted, to the reasonable satisfaction of the Public Works Director.

B. Each truck shall be constructed and used so that refuse, oil or grease will not blow, fall or leak out of the truck onto the street. All refuse shall be transported by means of vehicles equipped with water-tight bodies fitted with close fitting metal covers. If any refuse is dropped or spilled in collecting, transferring or transporting, it shall be immediately cleaned up. A broom and shovel shall be carried on each truck at all times for this purpose. If Contractor has not cleaned up such droppings or spill within a reasonable time after receipt of notice of same, then all expenses incurred by City in the collection and disposal of any such spilled or dropped refuse shall be paid to City, on demand, by Contractor.

C. Contractor's name and telephone number shall be painted on each side of the body of each truck. The letters shall be in a color contrasting sharply with the color of the truck, and shall not be less than six inches in height and four inches in width.

D. Upon the City Manager's request, Contractor shall submit to City a copy of the most recent CHP B.I.T. report within ten (10) working days after Contractor has received such report.

E. Each vehicle of three or more axles used for collecting, hauling or disposing of residential and commercial refuse in the City shall be maintained in compliance with the Motor Carrier Safety Regulations set forth in Title 13 of the California Administrative Code, as amended, (Motor Vehicles).

F. The Chief of Police, Public Works Director or City Manager may authorize the removal of any vehicle from service if said vehicle is found to be in noncompliance with the California Vehicle Code. Vehicles shall not be returned to service until duly authorized by the Chief of Police or the Public Works Director.

G. Each vehicle used for collecting, hauling or disposing of refuse shall be equipped with an audible warning device that is activated when the vehicle is backing up.

## XII. CONTAINERS

- A. All Refuse containers shall be placed upright. Containers shall not be placed or thrown on streets, alleys, highways or adjoining property.
- B. Contractor and Contractor's agents or employees shall not cause Refuse containers to be thrown from the truck to the pavement or parkway, or in any other way break or damage or roughly handle the same.
- C. Any claim for damage to Backyard Service containers, resulting from misuse or rough handling of the containers by Contractor, shall be presented to Contractor by Customer. Contractor shall make a decision concerning settlement within five (5) business days after receipt of such claim.

## XIII. TITLE TO REFUSE

Title to Refuse collected by Contractor shall pass to Contractor at the time Contractor takes physical possession of the Refuse and such title shall pass to the owner/operator of the disposal site where such refuse is deposited.

## XIV. LICENSES, MEMBERSHIP AND INSURANCE

- A. Contractor shall obtain and keep current all required Federal, State and County solid waste hauler permits and licenses.
- B. Contractor shall maintain a valid City business license.
- C. Contractor must maintain an active Chamber of Commerce membership.
- D. Contractor shall, at all times during the term of this Refuse Service Agreement, obtain, and maintain in full force and effect, at its own expense, a valid and unexpired policy of public liability and property damage insurance and comprehensive automobile liability, including coverage of City, its officers, boards, commissioners, agents and employees, as additional insureds, with a California licensed company rated A- or better, protecting City and all persons against liability for loss or damage for personal injury, death and property damage, occasioned by the operations of Contractor under this Refuse Service Agreement with a minimum of not less than Ten Million Dollars (\$10,000,000); provided, that, at Contractor's sole discretion such coverage may be provided through a commercial umbrella liability policy with the same terms, definitions, conditions and exclusions as the underlying comprehensive general liability policy of at least Two Million Dollars (\$2,000,000) and comprehensive auto liability policy of at least One Million Dollars (\$1,000,000) and with no broader coverage than the underlying policies. Such policies shall be endorsed as set forth in Exhibit C. Failure to file or maintain the policy(ies) of insurance shall be deemed a breach of the Agreement, and shall be grounds for termination of this Refuse Service Agreement by City if the policy is not provided

within thirty (30) days after notice from City to Contractor of Contractor's failure to comply with this subsection.

E. Contractor shall at all times keep fully insured, at Contractor's own expense, all persons employed by Contractor in connection with the performance of this Agreement as required by the provisions of the Labor Code of the State of California relating to Workers' Compensation Insurance and shall defend, indemnify and hold harmless, City from all liability arising by reason of injuries of any employee of Contractor incurred in the course of employment hereunder.

#### XV. INDEMNIFICATION

A. In consideration of the terms and provisions of this Refuse Service Agreement, Contractor hereby agrees to, and hereby does relieve, release, indemnify, defend, hold harmless and forever discharge City and its officers, agents, employees, servants, insurers, successors, heirs and each of them ("Indemnitees"), from any and all claims, rights, debts, liabilities, demands, obligations, liens, promises, acts, agreements, costs and expenses (including but not limited to, attorneys' fees and costs), damages, actions and causes of action (collectively, "Claim") arising from Contractor's services pursuant to this Refuse Service Agreement, excluding only such matters which arise from City's sole negligence or willful acts or omissions; provided, that Indemnitees shall be defended, indemnified and held harmless from any Claims related to Hazardous Waste or federal or state environmental laws, rules or regulations, exclusively, pursuant to subsections B. and C., below.

B. In addition, Contractor shall indemnify, defend and hold harmless Indemnitees from and against any and all claims, fines, rights, debts, liabilities, demands, obligations, liens, promises, acts, agreements, costs and expenses (including but not limited to, attorneys' fees and costs), damages, actions and causes of action and administrative proceedings arising from the handling of Hazardous Waste from the time it is collected by Contractor until the time it is validly deposited by Contractor at an appropriate disposal site. The parties acknowledge and agree this subsection may be affected by subsection (e) of § 9607 of CERCLA and § 25364 of the California Health and Safety Code

C. In addition, Contractor shall indemnify, defend and hold harmless City from and against any and all fines imposed by CIWMB arising from City's failure to meet landfill diversion requirements of AB 939, or substantially similar legislative enactments by the State of California, which do not mandate landfill diversion of more than fifty percent (50%) from the base year. Contractor agrees this subsection applies to the entire waste stream for which City is accountable by the CIWMB and not just that portion of that waste stream processed by Contractor, pursuant to this Agreement. In the event CIWMB provides an administrative process to challenge the imposition of a compliance order or a fine or fines, Contractor shall be responsible for engaging consultants and or attorneys (chosen with City's reasonable consensus) to represent City. Contractor shall also be

responsible for the retention of and payment to any consultants engaged to perform waste diversion studies. Any funds expended by Contractor, pursuant to this subsection, for fines and expenses (including consultant fees, attorneys' fees and costs) shall not be passed on to Customers as part of a rate increase or otherwise.

## XVI. TERMINATION

A. Subject to Section B., below, in addition to any other remedy herein provided, or provided by law, City may terminate this Refuse Service Agreement if Contractor is in material breach of any term or provision hereof; provided, that before such right of termination may be exercised by City, City shall give to Contractor written notice of such breach, specifying the particulars in which Contractor is in breach, and if such breach is cured within a thirty (30) days, or if a breach which cannot be reasonably cured within thirty (30) days, then commenced to be cured within thirty (30) days and such cure is diligently pursued and completed within one hundred twenty (120) days after such written notice, this Refuse Service Agreement may not be terminated by City.

B. Acts of God, nature or persons (other than Contractor and Contractor's officers, employees, agents, representatives, affiliates or subsidiary or parent entities) or combinations, thereof, over which Contractor has no reasonable control ("Separate Acts") will extend the time periods set forth in Section A. above, but only for the express time of the delay caused by the Separate Acts. Contractor is responsible to show evidence of the Separate Acts to benefit from this Section B.

C. If this Refuse Service Agreement is terminated for any reason, then all accounts receivable and records, including route records, shall immediately become the property of City; provided, that any payments received for billings made for services satisfactorily provided by Contractor prior to the date of termination shall be paid to Contractor pursuant to sections VII and VIII of this Agreement.

## XVII. REPORTS REQUIRED

A. Contractor shall provide the City Manager, at the times and in a form reasonably prescribed by the City Manager, reports with respect to Contractor's operations as may be reasonably necessary or appropriate to the performance of any of the rights, functions or duties of City in connection with this Refuse Service Agreement.

B. Such reports shall include the following, which shall be submitted to the City Manager no later than sixty (60) days following City Manager's request for same:

1. A current list of all vehicles used for collecting, hauling or disposing of residential and commercial refuse in City including the make, type, year, license number, identification number and ownership.
2. The names, titles and addresses of the officers and directors of the firm.

3. The names and titles of all employees used in providing refuse service for City.

4. A description of all cases of property damage and personal injury that have occurred while providing services for City pursuant to this Agreement in the immediate past calendar year.

5. A copy or description of all traffic citations received while providing services for City pursuant to this Agreement in the immediate past calendar year.

C. Within forty-five (45) days after the end of each City quarter and fiscal year, Contractor shall provide City with a written report which shall include:

1. Total tonnage of Refuse collected within City during the previous quarter.

2. Total tonnage breakdown of Recyclable Materials and Green Waste collected within City limits during the previous quarter.

#### XVIII. EQUAL OPPORTUNITY EMPLOYMENT

In providing refuse service for City, Contractor shall not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex or sexual orientation. Contractor shall take affirmative action to ensure such non-discrimination. Contractor shall post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause. Contractor shall, in all solicitation or advertisements for employees placed by or on behalf of Contractor, state that qualified applications will receive consideration for employment without regard to race, creed, color, national origin, sex or sexual orientation.

#### XIX. EMPLOYEES FINGERPRINTED

Subject to written notice by City, Contractor may be required to submit to the Chief of Police, for fingerprinting, all employees involved in collecting, hauling or disposal of refuse, subject to any conditions imposed by Contractor's Labor Agreement.

#### XX. NON-ASSIGNABILITY

A. This Agreement shall not be sublet or assigned, nor shall any of the rights or privileges herein granted or authorized be leased, assigned, sold or transferred, either in whole or in part, nor shall title thereof, either legal or equitable, or any right, interest or property therein, pass to or vest in any person through the sale of stock or otherwise, except Contractor, nor shall any change of control or ownership of Contractor occur, either by act of Contractor or by operation of the law ("Transfer"), without the prior



written consent of City; provided, that City consent of an intra-family Transfer is not required, as long as City is notified in writing within thirty (30) days after that Transfer. For the purposes of this Section, Transfer will exist upon sale or hypothecation of more than fifty percent (50%) of Contractor's ownership, stock, or other control. The granting of consent for a Transfer by City shall not be unreasonably withheld.

B. Contractor shall promptly notify City of any proposed Transfer. Any Transfer shall make the Agreement null and void unless and until the City shall have consented, thereto, or shall be immediate grounds for termination, pursuant to Article XVI. For the purpose of determining whether it will consent to any Transfer, City may inquire into the qualifications of the prospective controlling party, and Contractor shall assist City in any such inquiry. City may condition the Transfer upon reasonable terms and conditions City deems appropriate.

C. Contractor, at least sixty (60) days prior to any Transfer, shall file with City a copy of the deed, agreement, mortgage, lease or other written instrument evidencing the Transfer, certified and sworn to as correct by Contractor.

D. Every Transfer, whether voluntary or involuntary, shall be deemed void and of no effect unless Contractor shall have filed such certified copy as is required and City has given written approval.

E. Subject to Article XVI, failure to obtain the approval of City, as required by this Article, shall entitle City to terminate this Refuse Service Agreement.

#### XXI. RIGHTS RESERVED TO CITY AND CONTRACTOR

A. At all reasonable times, Contractor shall permit City's authorized representatives to examine all property of Contractor, and to examine and transcribe any and all records kept or maintained by Contractor under Contractor's control which pertain to this Refuse Service Agreement. At all reasonable times, City shall permit Contractor's authorized representatives to examine all property of City, and to examine and transcribe any and all records kept or maintained by City under City's control which pertain to this Refuse Service Agreement.

B. Neither this Refuse Service Agreement nor any provision hereof shall constitute a waiver or bar to the exercise of any governmental right or power of City.

#### XXII. MISCELLANEOUS

A. The Contractor shall comply with all applicable laws of the City, County, State and Federal Governments.

B. The provisions of the SPMC relating to collection and disposal are hereby incorporated into and made a part of this Refuse Service Agreement, and whenever the provisions of the SPMC conflict with the terms of this Refuse Service Agreement, the terms of the SPMC shall supersede the provisions of this Refuse Service Agreement. If a change in the SPMC results in a demonstrable operating cost increase, Contractor may seek recovery of those costs.

C. Time shall be of the essence of this Refuse Service Agreement. Contractor shall not be relieved of the obligation to comply promptly with any of the provisions of this Refuse Service Agreement by any failure of City to enforce prompt compliance.

D. Unless a party notifies, in writing, the other party of a change in address, any notice required to be given under this Refuse Service Agreement shall be given by placing such notice in the United States mail, postage prepaid, addressed as noted below:

To City:

City of South Pasadena  
1414 Mission Street  
South Pasadena, California 91030  
Attention: Sean Joyce, City Manager

Copy to:

Kane, Ballmer & Berkman  
515 S. Figueroa Street, Suite 1850  
Los Angeles, California 90071-3301  
Attention: Joseph W. Pannone, City Attorney

To Contractor:

Athens Services  
P.O. Box 60009  
City of Industry, California 91715-0009  
Attention: Dennis Chiappetta, Chief Operating Officer

E. This Refuse Service Agreement shall be binding on, and accrue to, the benefit of the heirs, executors, assigns and successors in interest of the parties hereto.

F. Any waiver by either party of any breach of this Refuse Service Agreement shall not be construed as a waiver of any other prior or subsequent breach. Failure of either party to require full and complete compliance with any term of this Refuse Service Agreement shall not be construed as any change to the provision hereof or as an estoppel to enforce any provision hereof.

G. No amendment to this Refuse Service Agreement may be made, except in writing and as approved by Contractor and the City Council.

H. If any section, subsection, sentence, clause or phrase of this Refuse Service Agreement is for any reason held illegal, invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions hereof.

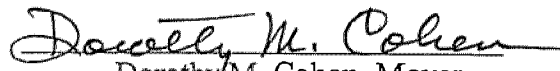
I. This Refuse Service Agreement may be signed in counterparts and all the counterparts taken together shall be deemed to constitute one and the same instrument.

XXIII. EFFECTIVE DATE

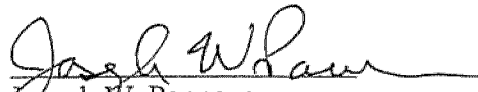
This Refuse Service Agreement is effective and operative as of November 6, 2000 and as of that date shall supersede all prior agreements heretofore executed by and between the parties concerning any portion of the subject matter hereof, and shall operate as a discharge of all obligations incurred by either party under any agreements thus superseded.

CITY OF SOUTH PASADENA

Date: Feb. 7, 2001

  
Dorothy M. Cohen, Mayor

APPROVED AS TO FORM:

  
Joseph W. Pannone,  
City Attorney

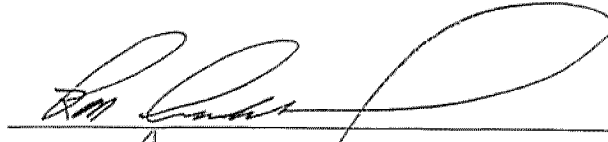
[Signatures continued on page 19]

[Signatures continued from page 18]

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

Date: 2/6, 2001

By:


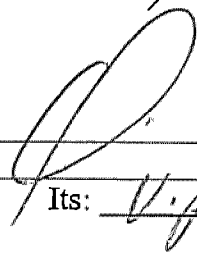
A large, stylized handwritten signature in black ink, written over a horizontal line.

Its:

pres.

Date: \_\_\_\_\_, 2001

By:

A large, stylized handwritten signature in black ink, written over a horizontal line.  
A large, stylized handwritten signature in black ink, written over a horizontal line.

Its:

v.p.

Athens\agreement6

CITY OF SOUTH PASADENA  
RATE ADJUSTMENT  
EFFECTIVE JULY 2000

E X H I B I T A

APRIL 1999 CPI 166.60  
APRIL 2000 CPI 170.60  
INCREASE 2.40%

RESIDENTIAL:  
PRIOR LANDFILL FEE 27.13  
NEW LANDFILL FEE 27.13  
INCREASE 0.00%

COMMERCIAL:  
PRIOR MRF LANDFILL FEE 44.71  
NEW MRF LANDFILL FEE 45.46  
INCREASE 1.68%

SERVICE	CURRENT DISPOSAL COMPONENT	TIPPING ADJMENT	NEW DISPOSAL COMPONENT	CURRENT OPERATIONS COMPONENT	2.40% CPI ADJMENT	NEW OPERATIONS COMPONENT	NEW NET RATE	LESS 3% BILLING	NEW GROSS RATE	2.22 @ 2.40% RECYCLE RATE	CUSTOMER RATE
STANDARD	4.18	0.30	4.18	17.29	0.42	17.71	21.89	21.23	24.24	2.27	26.51
1 YARD WASTE				2.41	0.06	2.47	2.47	2.47	2.47	N/A	2.47
MULTI UNITS 1X											
2	5.48	0.39	5.57	27.62	0.66	28.28	33.85	32.83	37.48	2.27	39.75
3	6.69	0.11	6.80	33.56	0.81	34.37	41.17	39.93	45.58	2.27	47.85
4	7.89	0.13	8.02	39.49	0.95	40.44	47.01	45.58	53.66	2.27	55.93
5	9.07	0.15	9.22	45.36	1.09	46.45	55.67	54.00	61.64	2.27	63.91
6	9.84	0.17	10.01	49.36	1.19	50.55	60.56	58.74	67.05	2.27	69.32
7	10.53	0.18	10.71	52.64	1.26	53.90	64.61	62.67	71.54	2.27	73.81
8	11.14	0.19	11.33	55.95	1.34	57.29	68.62	66.56	75.98	2.27	78.25
9	11.82	0.20	12.02	59.27	1.42	60.69	72.71	70.53	80.51	2.27	82.78
10	12.47	0.21	12.68	62.56	1.50	64.06	76.74	74.44	84.98	2.27	87.25
11	13.14	0.22	13.36	65.88	1.58	67.46	80.82	78.40	89.50	2.27	91.77
12	13.78	0.23	14.01	69.16	1.66	70.82	84.83	82.29	93.94	2.27	96.21
MULTI UNITS 2X											
6	16.53	0.38	16.81	82.90	1.99	84.89	101.70	98.65	112.61	2.27	114.88
7	17.26	0.39	17.55	86.61	2.08	88.69	106.24	103.05	117.64	2.27	119.91
8	17.99	0.40	18.29	90.30	2.17	92.47	110.76	107.44	122.65	2.27	124.92
9	18.74	0.41	19.05	94.00	2.26	96.26	115.31	111.85	127.68	2.27	129.95
10	19.48	0.43	19.81	97.69	2.35	100.04	119.85	116.25	132.71	2.27	134.98
11	20.23	0.44	20.57	101.38	2.43	103.81	124.38	120.65	137.73	2.27	140.00
12	20.93	0.45	21.28	105.08	2.52	107.60	128.88	125.01	142.71	2.27	144.98
1.5 ADD PER UNIT											
1X	1.12	0.02	1.14	5.58	0.13	5.71	6.85	6.64	7.58	N/A	7.58
2X	1.68	0.03	1.71	8.36	0.20	8.56	10.27	9.96	11.37	N/A	11.37
3X	2.21	0.04	2.25	11.16	0.27	11.43	13.68	13.27	15.15	N/A	15.15
4X	2.74	0.05	2.79	13.96	0.34	14.30	17.09	16.58	18.93	N/A	18.93
3 YARD											
1.5 YARD	3.94	0.07	4.01	19.72	0.47	20.19	24.20	23.47	26.79	N/A	26.79
1.5 YARD	1.94	0.03	1.97	9.86	0.24	10.10	12.07	11.71	13.37	N/A	13.37
COMMERCIAL 3YD											
1X	24.23	0.11	24.64	62.51	1.50	64.01	88.65	85.99	98.16	2.27	100.43
2X	48.46	0.11	49.27	73.91	1.77	75.68	124.95	121.20	138.36	2.27	140.63
3X	72.70	1.22	73.92	85.24	2.05	87.29	161.21	156.37	178.50	2.27	180.77
4X	96.93	1.03	98.56	101.69	2.44	104.13	202.69	196.61	224.44	2.27	226.71
5X	121.16	2.03	123.19	120.76	2.90	123.66	246.85	239.44	273.33	2.27	275.60
6X	145.40	2.44	147.84	132.17	3.17	135.34	283.18	274.68	313.56	2.27	315.83
COMMERCIAL 1.5YD											
1X	12.11	0.20	12.31	41.49	1.00	42.49	54.80	53.16	60.68	2.27	62.95
2X	24.20	0.41	24.61	75.30	1.81	77.11	101.72	98.67	112.64	2.27	114.91
3X	36.32	0.61	36.93	93.79	2.25	96.04	132.97	128.98	147.24	2.27	149.51
4X	48.43	0.81	49.24	112.24	2.69	114.93	164.17	159.24	181.78	2.27	184.05
5X	60.55	1.02	61.57	130.73	3.14	133.87	195.44	189.58	216.42	2.27	218.69
6X	72.64	1.22	73.86	149.21	3.58	152.79	226.65	219.85	250.97	2.27	253.24
MINIMUM COMMERCIAL	5.45	0.09	5.54	27.71	0.67	28.38	33.92	32.90	37.56	2.27	39.83

## EXHIBIT B

### RATE INCREASE FORMULA

Each of the rates provided by this Agreement consists of an Operations Component and a Disposal Component.

The Operations Component includes the costs of collection of all Refuse, including Recyclable Materials and Green Waste for all customers described in SECTION III according to the terms set forth in this Agreement. Also included in the Operations Component are the costs to haul all Refuse, including Recyclable Materials, to the MRF and to haul all Green Waste to a disposal site.

The Disposal Component shall be based on the per ton costs incurred by Contractor for disposal and processing of all Refuse, including Recyclable Materials at the Contractor's MRF (which costs are defined on a per ton basis as the 'MRF Gate Fee') and for its disposal of Green Waste at a disposal site.

#### Rate Adjustment Formula

The Operations Component is to be adjusted in proportion to the increase or decrease in the cost of living as determined by the percentage change in the Consumer Price Index ("CPI") for the immediately previous twelve month period (May through April) for All Urban Consumers in the Los Angeles/Anaheim/Riverside area, or an equivalent index approved by mutual agreement in the event the CPI as described above is no longer published.

The Disposal Component is to be adjusted in proportion to the increase or decrease in disposal costs as determined by the percentage change in the MRF Gate Fee or the tipping fee for Green Waste. Contractor agrees it will not be entitled to any increase in the Disposal Cost Component due to an increase in the MRF Gate Fee other than due to the occurrence of one or more of the following, (1) an adjustment in the non-disposal portion of the MRF Gate Fee directly proportional to the percentage change in the CPI, as described above, and (2) an increase in the tipping fee for residue from the MRF at disposal sites used by Contractor location which complies with III. G.

#### Special Rate Adjustment

In the event circumstances beyond the control of Contractor impose or generate extraordinary costs in the performance of the Agreement, Contractor may petition City to determine if an adjustment in compensation is warranted to avoid undue financial hardship on Contractor. For each request, Contractor shall prepare a schedule documenting the extraordinary costs. Such request shall be prepared in a form acceptable to City with support for assumptions made by Contractor in preparing the estimate of extraordinary costs. City shall review Contractor's request and, in City's sole judgment, make the final determination on the adjustment, provided, however, that approval of such request not be unreasonably withheld.

**EXHIBIT C**

**SPECIAL INSURANCE ENDORSEMENT - CITY OF SOUTH PASADENA**

Notwithstanding any inconsistent expression in the policy to which this endorsement is attached, or in any other endorsement now or hereafter thereto, or made a part thereof, it is agreed that the policy shall and does:

1. Include the City of South Pasadena (the "City") and its officers and employees as additional insureds in the policies described on the attached Certificate of Insurance as they may be held liable for injuries, death or damage to property arising out of or in connection with the contract, executed by the named insured and the City. It is further agreed, this policy shall be primary and noncontributing with any other insurance or self insurance program available to the City and includes a severability of interest clause; and
2. Provide that the naming of the additional insureds as herein provided shall not affect any recovery to which such additional insureds would be entitled under this policy if not named as such additional insureds; and
3. Provide that the additional insureds named herein shall not be held liable for any premium or expense of any nature on this policy or any extension thereof; and
4. Provide that the additional insureds named herein shall not by any reason of being so named be considered a Member of any mutual insurance company for any purpose whatsoever; and
5. Provide that the provisions of the policy shall not be changed, canceled or otherwise terminated as to the interest of the additional insureds named herein without first giving thirty (30) days written notice thereof to the City Attorney of the City by certified mail, return receipt request, and addressed as follows:

City Attorney  
 City of South Pasadena  
 1414 Mission Street  
 South Pasadena, CA 91030

This endorsement is effective \_\_\_\_\_, 20\_\_ when signed below by an Authorized Representative of \_\_\_\_\_ and when issued to Agency shall be valid and form part of Policy(ies) No. \_\_\_\_\_ insuring \_\_\_\_\_ expiring on \_\_\_\_\_, and shall be in the same amount for the same coverage as the Policy(ies) to which is attached.

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

\_\_\_\_\_  
 Name and Title  
 (Or Name Of Agent Or Broker)

\_\_\_\_\_  
 Address  
 By: \_\_\_\_\_  
 Signature Of Authorized Representative

(If signed by other than insurer, proof of authority to bind insurer must accompany this form.)