ORDINANCE NO. 3744

AN ORDINANCE OF THE CITY OF HUNTINGTON BEACH GRANTING TO RAINBOW DISPOSAL AND RAINBOW TRANSFER AND RECYCLING COMPANIES A FRANCHISE TO COLLECT REFUSE

The City Council of the City of Huntington Beach does hereby ordain as follows:

SECTION 1. The Rainbow Disposal and Rainbow Transfer and Recycling Companies are hereby awarded a franchise to collect refuse within the City of Huntington Beach. The terms and conditions of the franchise awarded by this ordinance are contained in the "Revised and Restated Refuse Collection and Disposal Services Franchise Agreement By and Between The City of Huntington Beach and the Rainbow Disposal and Rainbow Transfer and Recycling Companies," a copy of which is attached hereto as Exhibit "A" and incorporated by reference herein as though fully set forth in this Section 1.

SECTION 2. The City Clerk shall certify to the passage of this ordinance and cause same to be published within fifteen days of its adoption in a newspaper of general circulation.

PASSED AND ADOPTED by the City Council of the City of Huntington Beach at a regular meeting thereof held on _____, 2006.

_____
Mayor

ATTEST

_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney
4/19/06 6/19/06

REVIEWED AND APPROVED:

_____
City Administrator

INITIATED AND APPROVED:

_____
Director of Public Works

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APPROVED FOR INTRODUCTION
7-3-06

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EXHIBIT A

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REVISED AND RESTATED
REFUSE COLLECTION AND DISPOSAL SERVICES FRANCHISE AGREEMENT BY AND BETWEEN THE CITY OF HUNTINGTON BEACH AND THE RAINBOW DISPOSAL AND RAINBOW TRANSFER AND RECYCLING COMPANIES

THIS REVISED AND RESTATED FRANCHISE AGREEMENT is made and entered into this _____ day of _____, 2006, by and between the CITY OF HUNTINGTON BEACH, a California municipal corporation, hereinafter referred to as "CITY," and the RAINBOW DISPOSAL COMPANY, INC., joined by RAINBOW TRANSFER AND RECYCLING, INC., both California corporations, hereinafter referred to collectively as "CONTRACTOR."

WHEREAS, CITY and CONTRACTOR have previously entered into a franchise agreement, dated February 5, 1990, wherein CONTRACTOR was awarded the right to provide refuse collection and disposal services for CITY; and

CITY and CONTRACTOR have adopted several supplemental agreements, addendums, and amendments to the 1990 Franchise Agreement; and

CITY and CONTRACTOR are desirous of revising and restating the 1990 Franchise Agreement to include all previously adopted supplemental agreements, addendums and amendments as are still appropriate, and to provide for additional new matters to be included within this Revised and Restated Agreement,

NOW, THEREFORE, the parties hereto do hereby agree as follows:

1. DEFINITIONS

"AGREEMENT" shall mean this franchise agreement, entered into between CITY and CONTRACTOR.

"BASIC LEVEL OF SERVICE" shall mean the amount of refuse generated by an average family within a UNIT OF SERVICE.

"CITY COUNCIL" shall mean the City Council of the City of Huntington Beach, California.

"COMMERCIAL SERVICE" shall mean collection service pursuant to an agreement between CONTRACTOR and his CUSTOMER by which dumpsters or drop-off-bodies are rented to CUSTOMER.

"CUSTOMER" shall mean a user of CONTRACTOR'S services.

"DIRECTOR" shall mean the Director of Public Works of CITY or his designated representatives.

"REFUSE" means garbage and solid waste.

"RESIDENTIAL UNIT OF SERVICE" shall mean each single-family residence and each dwelling unit within a duplex, a triplex, or a fourplex receiving noncommercial refuse collection service.

2. LEGAL COMPLIANCE

A. This AGREEMENT shall be governed by the laws and regulations of the State of California, the County of Orange, and CITY both as to interpretation and performance. Specific reference is made to Chapter 8.21 of the Huntington Beach Municipal Code as it now exists or may be amended.

B. If any provision of this AGREEMENT shall be declared illegal, void or unenforceable, the other provisions shall not be affected but shall remain in full force and effect.

C. CONTRACTOR shall, at its own expense, secure or cause to be secured any and all permits and approvals which may be required by any governmental agency affected by the work to be performed by CONTRACTOR pursuant to this Agreement, including but not limited to, necessary zoning entitlements, building permits and all approvals required under the California Environmental Quality Act ("CEQA").

3. TERM; ANNUAL EXTENSION OF TERM

A. The term of this AGREEMENT is fifteen (15) years.

B. Subject to DIRECTOR'S annual evaluation, as provided in Section 3(C) herein, the term of this AGREEMENT shall be annually extended one (1) year, on the 1st of July of each succeeding year, commencing July 1, 2007. Such annual extension may also be terminated by either party in their sole discretion, without cause, by notification in writing (the "Notice of Termination of Annual Extension.") The Notice of Termination of Annual Extension will not terminate the entire AGREEMENT, but rather, will serve to only terminate the annual one-year extension of this AGREEMENT, and the AGREEMENT shall remain in effect, from the effective date of such notice, for the balance of the fifteen-year term outstanding. Any Notice of Termination

of Annual Extension shall not be effective until three years after the date of such Notice.

C. Sixty (60) days prior to the date for each annual one-year extension described in Paragraph 3(B) herein, DIRECTOR shall perform an evaluation of the services provided by CONTRACTOR. Said evaluation may consider the kind and number of complaints made against CONTRACTOR by its CUSTOMERS and the condition of CONTRACTOR'S facility and equipment. If deficiencies are discovered, DIRECTOR will provide CONTRACTOR with a written list of same and require corrective action prior to the effective date of the extension. Until the deficiencies are corrected to the satisfaction of DIRECTOR, an annual extension of this AGREEMENT may be held in abeyance.

D. CITY reserves the right to cancel this AGREEMENT upon thirty (30) days written notice to CONTRACTOR, in the event that CONTRACTOR shall be in default, following notice and reasonable opportunity to cure, in any material terms, covenants or conditions set forth in this AGREEMENT, or in the event that CONTRACTOR shall fail to comply and abide by all of the requirements and provisions of Chapter 8.21 of the Huntington Beach Municipal Code, as the same now exists, or may hereafter be amended.

E. Any termination of this AGREEMENT for cause, or because of expiration of the term, or otherwise, shall constitute a discontinuation of the right of CONTRACTOR to provide refuse disposal services within CITY.

4. EXCLUSIVENESS OF CONTRACT

A. CONTRACTOR shall have the exclusive duty, right and privilege to collect, remove and retain all REFUSE; residential, commercial, or industrial, including construction, originating within CITY limits as they may now or hereinafter exist.

B. This AGREEMENT shall not prohibit collectors of REFUSE originating outside the city from hauling said refuse over city streets, provided such collectors comply with any governing laws or ordinances.

5. SUPERVISION OF AGREEMENT

A. Performance of each of the provisions of this AGREEMENT shall be under the supervision of DIRECTOR. CONTRACTOR shall furnish DIRECTOR every reasonable opportunity of ascertaining

whether or not the work herein assigned is performed in accordance with the requirements of this AGREEMENT.

B. CONTRACTOR shall designate a person to serve as agent and liaison between CONTRACTOR and CITY, and shall maintain a toll free telephone for communication with CITY'S staff.

C. DIRECTOR may inspect CONTRACTOR'S operations and equipment at any reasonable time. CONTRACTOR shall admit DIRECTOR to make such inspections at any reasonable time and place.

6. SERVICE STANDARDS; COLLECTIONS

A. During the term hereof, CONTRACTOR shall provide the BASIC LEVEL OF SERVICE to each RESIDENTIAL UNIT OF SERVICE within CITY. This shall include the normal amount of plant clippings and trimmings generated by a RESIDENTIAL UNIT OF SERVICE.

B. CONTRACTOR shall be responsible for picking up plant prunings and trimmings that are securely bundled in lengths not in excess of four (4) feet and that weigh no more than forty (40) pounds until such time as automated collection service is implemented and made available to the CUSTOMER. Thereafter, plant prunings and trimmings generated by a RESIDENTIAL UNIT OF SERVICE must be placed unbundled in the appropriate greenwaste container for collection. CUSTOMER shall be required to place all materials set out for collection in the appropriate automated container in an appropriate manner consistent with the "Implementation and Administrative Regulations," a copy of which is attached hereto as Exhibit "D," as hereinafter defined, as they currently exist or may be amended from time to time.

C. CONTRACTOR agrees that upon removing REFUSE from receptacles, said receptacles will be replaced, including the lids alongside thereof; and that no REFUSE will be allowed to spill while handling same, and proper care will be used in the handling of said receptacles.

D. CONTRACTOR shall, at all times during the term of this AGREEMENT, keep and maintain in good operating order, and in good appearance, sufficient trucks and other equipment to properly and adequately provide the services described herein.

E. CONTRACTOR shall maintain a local telephone number to which all service complaints from CUSTOMERS may be directed. The

telephone shall be staffed from 8:00 a.m. until 5:00 p.m. Monday through Friday and from 8:00 a.m. until noon Saturday.

F. Each quarter, upon request, CONTRACTOR shall provide DIRECTOR a written summary report of all complaints received and the action taken in response to said complaints.

G. CONTRACTOR shall make at least one (1) weekly collection at all places of residence and commercial and industrial establishments qualifying for the minimum can collection service on a schedule approved by CITY. Extended commercial and industrial service accounts shall be collected at a frequency for which they shall contract, provided it is adequate in the opinion of DIRECTOR to maintain the premises so served in a healthful and unlittered condition.

H. At no cost to CITY, CONTRACTOR shall supply and unload dumpsters and drop-off bodies at CITY owned or operated facilities as requested by DIRECTOR, and shall empty the 40-gallon trash cans in the downtown commercial area at the frequency set forth in the "Downtown Commercial Area Collection Matrix," a copy of which is attached hereto as Exhibit "C." Exhibit "C" may be amended from time to time upon mutual agreement of CONTRACTOR and DIRECTOR. CONTRACTOR shall pay for the deposit of CITY generated REFUSE, including street sweepings, grass clippings and tree trimmings, at Rainbow Transfer. However, the total dollar value of all such services provided by CONTRACTOR to CITY shall not exceed $870,000 during the calendar year 2006. This figure shall be adjusted in subsequent years by an amount equal to CONTRACTOR'S annual rate increase, as shown in Sections 11 and 12 herein.

I. Upon the request of a CUSTOMER, CONTRACTOR shall make up to four (4) special collections each year of large household items such as furniture, water heaters, strollers, bicycles, bundled tree branches, large boxes, additional bags of household waste (weighing less than 40 lbs each), and similar household items, at no cost to the homeowner. Each CUSTOMER shall be limited to a maximum of ten (10) such bulky items on any single special collection occasion. Items not acceptable for collection under this paragraph include construction debris, as well as other items as determined by CONTRACTOR with approval by DIRECTOR.

J. The hours of collection shall be 6:30 A.M. to 6:30 P.M. except on advance specific waiver of DIRECTOR.

K. Should CONTRACTOR fail to collect and dispose of REFUSE set out or placed for collection as herein provided, or at the times herein required, CITY may, after notification to CONTRACTOR and within a reasonable time not to exceed twenty-four (24) hours, collect and dispose of said REFUSE at CONTRACTOR'S sole cost and expense.

L. Collection of REFUSE shall not be required on Sundays or on the following legal holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day; excepting in cases of emergency and upon the express direction of DIRECTOR. Whenever a regular collection day falls on such a holiday, then collection shall be made on the day following. Should a holiday fall on a Sunday, then the following Monday shall be observed as the holiday. Any additional holidays requested by CONTRACTOR shall be submitted in writing to CITY for approval.

M. All COMMERCIAL SERVICE containers shall be of a design and size sufficient to contain their contents, at all times, in such a manner as to promote the best possible housekeeping conditions. All containers supplied by CONTRACTOR shall, at all times, be maintained in a well-kept appearance. CUSTOMERS shall be responsible for the cleanliness, sanitation and deodorizing of such containers.

N. CONTRACTOR shall not, nor shall it permit any agent, employee or subcontractor employed by it, to request, solicit, demand, or accept, either directly or indirectly, any compensation or gratuity for the collection of REFUSE as herein defined, except such compensation as may be herein provided to be paid by CITY. It is further provided, however, that CONTRACTOR may make available special storage and loading containers, provide additional collections not required by these specifications, or pick up REFUSE at points other than as required in these specifications, at the request of the person or business being served. CONTRACTOR may make a direct charge in each instance for such additional service under a written agreement which shall be subject to the approval of DIRECTOR, and at such rates as are reasonable, just and uniform for all persons or businesses being served. All charges for such services shall be collected by CONTRACTOR.

O. CONTRACTOR is authorized to implement a system of automated collection for residential CUSTOMERS now receiving manual collection services. CONTRACTOR shall retain the discretion to determine the features of the automated

residential collection program, subject to the provisions of Paragraph 5, requiring that performance of each of the provisions of this AGREEMENT shall be subject to the approval the DIRECTOR. CONTRACTOR shall develop Implementation and Administrative Regulations that are necessary and convenient for the implementation and administration of the automated collection program, along with an enumeration of any incidental container-related charges that may be assessed. The regulations and incidental container-related charges, the initial terms of which are attached hereto as Exhibit "D," shall be subject to the approval of DIRECTOR. The parties envision and intend that the standard level of service for residential accounts receiving automated collection services shall be three (3) ninety-five (95) gallon containers, one (1) each for the deposit of greenwaste, commingled recyclables, and refuse. Automated containers shall be supplied by CONTRACTOR. A CUSTOMER or CONTRACTOR, as the case may be, may elect to reduce the number of containers or the size of containers without cost, provided that in all cases, each CUSTOMER receiving service shall have at least one (1) container each for the deposit of refuse and recyclables. Upon the request of any CUSTOMER, CONTRACTOR shall supply an additional container of appropriate size for greenwaste or recyclables without additional charge. Additional containers for the deposit of refuse shall also be delivered upon request by a CUSTOMER, in exchange for a one-time delivery and handling charge which is to be approved by DIRECTOR. CONTRACTOR shall replace lost or damaged containers without charge, unless it is determined that damage thereto is the result of negligence or intentional misuse by the CUSTOMER, in which case CONTRACTOR shall be authorized to charge a replacement or repair fee as authorized by DIRECTOR.

7. RESIDENTIAL HAZARDOUS WASTES

CONTRACTOR shall provide a residential hazardous waste transfer station at CONTRACTOR'S current site. Said station will be a regional facility and be made available free of charge to the residents of CITY, unless current funding sources do not continue. In the event these funding sources are not available, CONTRACTOR may levy user fees to individual users as approved by CITY. In the event governmental regulations or operational costs make it impractical to operate such a station, CONTRACTOR and CITY shall have the right to terminate operation of the facility by mutual agreement.

8. RECYCLING PROGRAM

CONTRACTOR shall provide a solid waste processing facility designed to specifically recycle residential and commercial waste.

A. COMPENSATION

1. CITY shall collect and pay to CONTRACTOR, for operation of a solid waste processing facility, the sum of Three Dollars ($3.00) per month for each RESIDENTIAL UNIT OF SERVICE rendered in CITY.

2. CONTRACTOR may collect a monthly fee for the operation of said facility from COMMERCIAL UNITS OF SERVICE in an amount not to exceed a rate schedule approved by CITY.

B. ADJUSTMENT

1. CITY and CONTRACTOR agree to meet at least sixty (60) days prior to June 30 of each year of this AGREEMENT to review the compensation for the operation of the solid waste processing facility and to make such adjustments as are deemed necessary. Changes in compensation for each subsequent year shall not exceed the percentage of increase or decrease in the Los Angeles-Anaheim-Riverside All Urban Consumer Price Index (CPI) or any relevant successor for the Orange County area, from March to March of the preceding twelve (12) months.

2. No more than one negotiated rate change shall be made in any twelve (12) month period. However, either CITY or CONTRACTOR may propose modification of an established rate in order to assure the overall fairness of the rate structure.

3. Should a dispute arise over the setting of a new rate or rate schedule, CITY and CONTRACTOR agree to continue the compensation plan then in effect until the dispute is resolved with the provision that the settlement be retroactive to the beginning of the payment period.

C. REPORTING REQUIREMENTS

1. CONTRACTOR shall, as part of this AGREEMENT, maintain such records on the composition and disposition of materials collected at the solid waste processing facility as may be required for reporting purposes by the California Integrated Waste Management Board.

2. CONTRACTOR also agrees to provide CITY with such statistical data on the operation of the facility and/or the materials processed by same as CITY may deem necessary.

D. OTHER PROVISIONS

1. CONTRACTOR shall be free to establish service rates for refuse processed by the facility but collected outside the CITY limits so long as those rates are never less than the rates charged for this same service to service users within CITY.

2. CONTRACTOR shall become owner of all solid waste delivered to the facility and shall have the exclusive right to market all recyclable materials reclaimed therein.

3. CONTRACTOR shall, at all times, be solely liable for any and all expenses incurred pursuant to the marketing of said materials.

4. CONTRACTOR warranties the ability of the facility to meet the diversion quota established for same in the CITY'S Integrated Waste Management Plan in conjunction with other diversionary and reduction programs. Should CONTRACTOR fail to meet the quota, then CONTRACTOR shall be liable, to the maximum extent permitted by law, to pay any fine or penalty levied against CITY by the California Integrated Waste Management Board for failure to perform, subject to the provisions of California Public Resources Code Section 40059.1. The parties intend that the provisions of this subparagraph shall apply to any modification in the level of diversion required under Section 41780 of the Public Resources Code.

5. Upon implementation of automated residential collection, CONTRACTOR shall incorporate such enhancements to its solid waste processing facility as necessary in order to process source-separated recyclables from the residential waste stream. CONTRACTOR shall continue to process commingled residential and commercial waste at its facility.

9. <u>LABOR RELATIONS</u>

A. CONTRACTOR shall, at all times during the term of this AGREEMENT, abide by all laws and regulations of the State of California regarding the employment of labor.

B. In the event that there occurs any period in which CONTRACTOR fails to maintain required REFUSE collection and disposal services pursuant to this AGREEMENT by reason of a strike by CONTRACTOR'S employees or similar labor dispute, CITY shall have the exclusive right of first refusal to rent and operate any or all trucks, trailers, tractors, bulldozers, other equipment and facilities used by CONTRACTOR in the performance of the work specified in this AGREEMENT. Such rental shall be upon a reasonable basis until other arrangements can be made by CITY. In determining the rental amount to be paid CONTRACTOR, the parties shall take into consideration the cost, age, and condition of the equipment thus utilized so as to afford CONTRACTOR fair and just compensation for such use. All money due CONTRACTOR for such rental may at the option of CITY be applied to the reduction of any lien or encumbrance on the rented chattels.

10. UNIT OF SERVICE COUNT

A. An annual count of the RESIDENTIAL UNITS OF SERVICE shall be agreed upon by CITY and CONTRACTOR. Said count shall include all single family, duplex, triplex, and fourplex residential units that are provided noncommercial trash service. Groups of more than four (4) residential units are deemed to be nonresidential and will be charged in accordance with COMMERCIAL SERVICE provisions below. This annual residential count shall be the basis for determining the number of dwelling units for which CITY shall compensate CONTRACTOR.

B. CONTRACTOR agrees to submit to DIRECTOR, on a monthly basis, a list of all residential units which have either: (1) contracted for COMMERCIAL SERVICE, or (2) discontinued COMMERCIAL SERVICE with CONTRACTOR. Such listing shall be kept confidential by CITY.

C. CITY shall bill all single family, duplex, triplex and fourplex units that are provided noncommercial trash service by CONTRACTOR; CONTRACTOR shall bill those units that are provided COMMERCIAL SERVICE by CONTRACTOR.

D. DIRECTOR shall multiply the established rate per RESIDENTIAL UNIT OF SERVICE by the total monthly count of all single family, duplex, triplex and fourplex units that are provided noncommercial trash service to arrive at the monthly payment to CONTRACTOR. It is recognized that the total number of UNITS OF SERVICE will vary from month to month. Therefore, the

number of UNITS OF SERVICE in any month shall be determined as above.

E. DIRECTOR is responsible for authorizing the Finance Department to make monthly payments to CONTRACTOR based upon the total monthly count of all single family, duplex, triplex and fourplex residential units that are provided noncommercial trash service. CITY shall compensate CONTRACTOR no later than fifteen (15) days after the end of the month in which service was rendered.

11. COMPENSATION - RESIDENTIAL

A. CITY shall pay to CONTRACTOR for services provided under the terms of this AGREEMENT, the sum of $17.22 per month for each RESIDENTIAL UNIT OF SERVICE rendered in CITY, which amount includes the recycling compensation in Paragraph 8.A.1 herein, and excludes CITY'S administrative charge.

B. Changes in compensation for each subsequent year will be based on the formula provided below and shall take effect on July 1st of each succeeding year beginning on July 1, 2007. A change in compensation will be determined by the three factors in the following formula:

1. The percentage of increase in the Los Angeles-Anaheim-Riverside All Urban Consumer Price Index (CPI) or any relevant successor for the Orange County area from March to March of the preceding twelve (12) months. This factor shall constitute seventy-six percent (76%) of a rate adjustment.

2. The County of Orange landfill tipping fees. This factor shall constitute sixteen percent (16%) of a rate adjustment, and be based upon the tipping fee adopted by said County for the subsequent fiscal year.

3. The average per gallon price of diesel fuel as paid by CONTRACTOR during the March to March time frame noted above. This factor shall constitute eight percent (8%) of a rate adjustment. An example of this formula is provided on the attached Exhibit "B." No more than one negotiated rate change shall be made in any twelve (12) month period. However, either DIRECTOR or CONTRACTOR may propose modification of an established rate in order to assure the overall fairness of the rate structure to both CITY and CONTRACTOR. In the event that CONTRACTOR converts to alternative fueled vehicles, the factor shall be based on a CNG/diesel fuel equivalent.

C. In the event CONTRACTOR becomes obligated in the performance of this AGREEMENT to pay any fees or charges not presently required, such as those imposed by toll roads, for the transit of REFUSE to landfills; or if CONTRACTOR is required to travel additional distances to an approved landfill site due to the closing of an existing facility; or if the County of Orange raises the landfill tipping fee more than once during a year, then the parties agreed to negotiate in good faith for an adjustment in the existing monthly unit rate prior to the implementation of such charges.

D. As an inducement to enable CITY to effectively monitor and respond to instances of illegal container interference (HBMC 8.21.110) or illegal scavenging (HBMC 8.21.220), CONTRACTOR agrees to annually reimburse CITY, in an initial amount of Seventy-five Thousand Dollars ($75,000.00), for the hiring of additional staff dedicated exclusively to the enforcement of CITY'S Municipal Code provisions set forth above. Said payment shall be made on an annual basis commencing with the first month following the date of hiring said personnel. Upon notice from DIRECTOR, CONTRACTOR agrees to increase the reimbursement set forth in this paragraph commensurate with increased costs to CITY for future cost-of-living adjustments received by all employees within the employee's bargaining group.

12. COMPENSATION - COMMERCIAL

A. CONTRACTOR shall establish and publish a schedule of rates for all COMMERCIAL SERVICE accounts based on frequency of collection per week and size of container. Said schedule shall be shown as Exhibit "A" of this AGREEMENT for which the current rates are shown that are in effect as of the date of this AGREEMENT.

B. CONTRACTOR shall be exclusively responsible for making contracts for COMMERCIAL SERVICE with CUSTOMERS within CITY. All charges will be billed to and collected from each CUSTOMER by CONTRACTOR.

C. Changes in compensation for COMMERCIAL SERVICE for each subsequent year will be based on the formula provided below and shall take effect on July 1st of each succeeding year. A change in compensation will be determined by three factors in the following formula:

1. The percentage of increase in the Los Angeles-Anaheim-Riverside All Urban Consumer Price Index (CPI) or any relevant successor for the Orange County area from March to March of the preceding twelve (12) months. This factor shall constitute seventy-six percent (76%) of a rate adjustment.

2. The County of Orange landfill tipping fees. This factor shall constitute sixteen percent (16%) of a rate adjustment, and be based upon the tipping fee adopted by said County for the subsequent fiscal year.

3. The average per gallon price of diesel fuel as paid by CONTRACTOR during the March to March time frame noted above. This factor shall constitute eight percent (8%) of a rate adjustment.

An example of this formula is provided on the attached Exhibit "B." No more than one negotiated rate change shall be made in any twelve (12) month period. However, either CITY or CONTRACTOR may propose modification of an established rate in order to assure the overall fairness of the rate structure to both CITY and CONTRACTOR.

13. COMMERCIAL SERVICE FRANCHISE FEE

A. CONTRACTOR shall pay CITY a franchise fee of five percent (5%) of its paid gross receipts from COMMERCIAL SERVICE. However, in all instances, the fee shall be added to the rate schedule only after the compensation formula has been applied.

B. Said payment shall be made on a monthly basis and be received by CITY no later than fifteen (15) days after the end of each calendar month in which CONTRACTOR'S invoices were issued. Any late payments shall be assessed in accordance with Chapter 3.48 of the Huntington Beach Municipal Code.

14. TRANSFER STATION USER FEE

A. CONTRACTOR shall pay CITY a transfer station user fee of two percent (2%) of all paid receipts for refuse deposited at the transfer station, as reimbursement to CITY for damage caused to CITY'S roadways by CONTRACTOR'S collection and transfer vehicles. Fees shall be deposited in the General Fund and then budgeted for infrastructure purposes.

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B. Said payment shall be made on a monthly basis and be received by CITY no later than fifteen (15) days after the end

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of each calendar month in which CONTRACTOR'S invoices were issued. Any late payments shall be assessed in accordance with Chapter 3.48 of the Huntington Beach Municipal Code.

15. PERFORMANCE BOND

CONTRACTOR shall, at all times, during the life of AGREEMENT keep on file with CITY a bond in the sum of One Million Dollars ($1,000,000.00) to the effect that CONTRACTOR will faithfully perform this AGREEMENT.

16. INDEMNIFICATION, DEFENSE, HOLD HARMLESS

CONTRACTOR hereby agrees to protect, defend, indemnify and hold harmless CITY, its officers, elected or appointed officials, employees, agents, and volunteers from and against any and all, claims, damages, losses, expenses, judgments, demands defense costs, and consequential damage or liability of any kind or nature, however caused, including those resulting from death or injury to CONTRACTOR'S employees and damage to CONTRACTOR'S property, arising directly or indirectly out of the obligations or operations herein undertaken by CONTRACTOR, caused in whole or in part by any negligent act or omission of the CONTRACTOR, any subcontractors, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, including but not limited to concurrent active or passive negligence, except where caused by the active negligence, sole negligence, or willful misconduct of the CITY. CONTRACTOR will conduct all defense at its sole cost and expense and CITY shall approve selection of CONTRACTOR'S counsel. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by CONTRACTOR.

17. WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY INSURANCE

Pursuant to California Labor Code Section 1861, CONTRACTOR acknowledges awareness of Section 3700 et seq. of this Code, which requires every employer to be insured against liability for workers' compensation; CONTRACTOR covenants that it will comply with such provisions prior to commencing performance of the work hereunder.

CONTRACTOR shall obtain and furnish to City workers' compensation and employer's liability insurance in an amount of not less than the State statutory limits.

CONTRACTOR shall require all subcontractors to provide such workers' compensation and employer's liability insurance for all of the subcontractors' employees. CONTRACTOR shall furnish to CITY a certificate of waiver of subrogation under the terms of the workers' compensation and employer's liability insurance and CONTRACTOR shall similarly require all subcontractors to waive subrogation.

18. INSURANCE

In addition to the workers' compensation and employer's liability insurance and CONTRACTOR'S covenant to defend, hold harmless and indemnify CITY, CONTRACTOR shall obtain and furnish to CITY, a policy of general public liability insurance, including motor vehicle coverage covering all operations to be performed under this Agreement. This policy shall indemnify CONTRACTOR, its officers, employees and agents while acting within the scope of their duties, against any and all claims arising out or in connection with the operations to be performed under this Agreement, and shall provide coverage in not less than the following amount: combined single limit bodily injury and property damage, including products/completed operations liability and blanket contractual liability, of Ten Million Dollars ($10,000,000) per occurrence. If coverage is provided under a form which includes a designated general aggregate limit, the aggregate limit must be no less than Ten Million Dollars ($10,000,000) for operations to be performed under this Agreement. This policy shall name CITY, its officers, elected or appointed officials, employees, agents, and volunteers as Additional Insureds, and shall specifically provide that any other insurance coverage which may be applicable shall be deemed excess coverage and that CONTRACTOR'S insurance shall be primary.

Under no circumstances shall said above-mentioned insurance contain a self-insured retention, or a "deductible" or any other similar form of limitation on the required coverage.

19. CERTIFICATES OF INSURANCE; ADDITIONAL INSURED ENDORSEMENTS

Prior to commencing performance of the work hereunder, CONTRACTOR shall furnish to CITY certificates of insurance subject to approval of the City Attorney evidencing the foregoing insurance coverage as required by this Agreement; the certificates shall: a) provide the name and policy number of each carrier and policy; b) state that the policy is currently in force; and c) promise to provide that such policies will not

be canceled or modified without thirty (30) days' prior written notice of CITY.

CONTRACTOR shall maintain the foregoing insurance coverage in force during the entire term of this Agreement.

The requirement for carrying the foregoing insurance coverage shall not derogate from the CONTRACTOR'S defense, hold harmless and indemnification obligations as set forth under this Agreement. CITY or its representative shall at all times have the right to demand the original or a copy of all the policies of insurance. CONTRACTOR shall pay, in a prompt and timely manner, the premiums on all insurance hereinabove required.

CONTRACTOR shall provide a separate copy of the additional insured endorsement to each of CONTRACTOR'S insurance policies, naming CITY, its officers, elected and appointed officials, employees, agents and volunteers as Additional Insureds, to the City Attorney for approval prior to any payment hereunder.

20. TRANSFER

A. CONTRACTOR shall not sell, assign, or transfer this AGREEMENT or any interest therein, or permit same to be transferred by operation of law, without first obtaining the consent of CITY. Any such unauthorized transfer shall allow CITY, at its option, to terminate this AGREEMENT.

B. Until the adoption of any ordinance to the contrary by CITY, CONTRACTOR may sell or otherwise dispose of refuse materials after the same have been collected.

21. FINANCIAL RECORDS

At the request of DIRECTOR, CONTRACTOR shall make his complete financial records available for examination by CITY or its designated agents. Such records shall be kept confidential.

22. ALTERNATIVE FUELS FUELING STATION

In the event CONTRACTOR shall construct and operate an alternative fuels fueling station at CONTRACTOR'S operations yard, CONTRACTOR agrees to provide CITY with unlimited access thereto and to make available such fueling station or facility at rates favorable to the CITY, the precise amount of which shall be agreed upon by the parties, which shall be at CONTRACTOR'S cost, which will include facility operating expenses.

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23. FLOW CONTROL

Upon thirty (30) days written notice, CITY has the right to direct that One Hundred Percent (100%) of the refuse collected pursuant to this Franchise be delivered to any of the landfills owned by the County of Orange located within the boundaries of the County.

24. DIRECT PAYMENT PERMIT

CONTRACTOR will apply for a Direct Payment Permit from the California Board of Equalization and designate the City of Huntington Beach as the point of sale for all purchases including, but not limited to, the purchase of construction goods and materials, to the extent permitted by law.

25. WATER QUALITY COMPLIANCE GRANT

CONTRACTOR agrees to annually pay CITY a cash grant of One Hundred Fifty Thousand Dollars ($150,000.00) for programs and projects to further CITY'S compliance with the Federal Clean Water Act (NPDES). Said payment shall be made on an annual basis commencing on July 1, 2007, and continuing each subsequent July 1 thereafter. CONTRACTOR agrees to annually increase the cash grant set forth in this section commensurate with any percentage of increase in the Los Angeles-Anaheim-Riverside All Urban Consumer Price Index (CPI-U) or any relevant successor for the Orange County area from March to March of the preceding twelve (12) months.

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25. ENTIRETY

The foregoing, and Exhibits "A," "B," "C," and "D" attached hereto, sets forth the entire AGREEMENT between the parties.

IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT to be executed on the day, month and year first above written at Huntington Beach, California.

RAINBOW DISPOSAL COMPANY, INC., a California corporation

President

Secretary

RAINBOW TRANSFER AND RECYCLING, INC., a California corporation

President

Secretary

CITY OF HUNTINGTON BEACH a California municipal corporation

Mayor

City Clerk

APPROVED AS TO FORM:

City Attorney 6/19/06

6/19/06

6/19/06

REVIEWED AND APPROVED:

City Administrator

INITIATED AND APPROVED:

Director of Public Works

G-1B . 20

PDA:06Agree:Rainbow:Rainbow Franchise 2006 (final)
RLS 2005-462

EXHIBIT A

EXHIBIT A
DUMPSTER SERVICE RATE SCHEDULE

RAINBOW DISPOSAL COMMERCIAL SERVICE RATES
CITY OF HUNTINGTON BEACH, EFFECTIVE JULY 1, 2006

Standard Service (shown in dollars per month): *

	Bin Size:	1 Cubic Yard	2 Cubic Yard	3 Cubic Yard
Pickups Per Week:	1 x Week	$ 65.35	$106.76	$135.15
	2 x Week	$103.75	$155.50	$206.96
	3 x Week	$131.33	$198.35	$285.30
	4 x Week	$146.37	$235.09	$341.12
	5 x Week	$172.19	$289.84	$435.88
	6 x Week	$199.73	$334.16	$510.79

*Contractor may make extra charges for special or additional services in accordance with Section 8.21.170 (b) of the Huntington Beach Municipal Code.

Compacted Service (3 Cubic Yard Only Add 25% for 4 Cubic Yard):
(Pickups per week shown over Cost per month)

1 x Week	2 x Week	3 x Week	4 x Week	5 x Week	6 x Week
$273.04	$420.17	$583.04	$700.64	$894.69	$1,049.16

Temporary Service:

Service Size	Service Time	Service Rate
3 Cu. Yd. Rent-A-Bin	Two (2) days	$ 51.00 per load
3 Cu. Yd. Rent-A-Bin	Weekend	$ 62.00 per load
40 Yard Drop Off Box*	Four (4) days	$ 380.00 per load
10 Yard Drop Off Box**	Four (4) Days	$ 402.00 per load

*Highside (6 tons max.). **Lowside (8 tons max.). Any container that exceeds these tonnage limitations is subject to additional dump fees, and the customer may have to order an additional container to comply with State of California weight limitation laws. (Extra days for 40 and 10-yard DOB's are $15.00 each.) It is the customer's responsibility to reload any containers which is overweight or is not level full. Rental charges will stay in effect until container is reloaded and removed.

EXHIBIT B

EXHIBIT B
EXAMPLE OF FORMULA

For the purpose of illustration and by way of example only, assume that: On May 1, 2007, the CPI increase for the period March 1, 2006, through March 1, 2007, is determined to be 5.0%; Landfill Tipping fees were increased during said period from $22.00 to $23.00 per ton (a 4.55% increase); and the Diesel Fuel Price increased during said period from $2.317 to $2.640 per gallon (a 13.94% increase). The following is a statement of the Formula for an increase in the charges based upon the foregoing illustration:

(76% x 5.0%) + (16% x 4.55%) + (8% x 13.94%)

equals: 3.80% + 0.73% + 1.12% = 5.65%

Thus the collection charges would be increased, commencing on July 1, 2007, by an additional 5.65%.

G-1B . 24

EXHIBIT C

EXHIBIT C
DOWNTOWN COMMERCIAL AREA COLLECTION MATRIX

Month	Mon.	Tues.	Wed.	Thurs.	Fri.	Sat.	Sun.
January	1		1		1 (+1)	1 (+1)	1
February	1		1		1 (+1)	1 (+1)	1
March	1		1		1 (+1)	1 (+1)	1 (+1)
Easter Week	1	1	1	1	2 (+1)	2 (+1)	2 (+1)
April	1		1		1 (+1)	1 (+1)	1 (+1)
May	1		1	1	2 (+1)	2 (+1)	2 (+1)
June	1	1	1	1	2 (+1)	2 (+1)	2 (+1)
July	1	1	1	1	2 (+1)	2 (+1)	2 (+1)
August	1	1	1	1	2 (+1)	2 (+1)	2 (+1)
September	1	1	1	1	2 (+1)	2 (+1)	2 (+1)
October	1		1		2 (+1)	2 (+1)	2 (+1)
November	1		1		1 (+1)	1 (+1)	
December	1		1		1 (+1)	1 (+1)	

Notes:

- Numbers shown in the matrix indicate the number of times each day that Rainbow will empty 96 designated refuse containers along the public sidewalks in the Downtown Pier Commercial area on, and in the vicinity of, Main Street.

- Additional pick-ups previously donated by Rainbow Disposal are noted in parentheses and are incorporated into the regular, permanent schedule per the amended franchise for which monetary consideration has been provided by an increase in the City's refuse cap allowance (Franchise Paragraph 6.H.) against which Rainbow will charge the agreed-upon unit charge per container.

G-1B . 26

EXHIBIT D

EXHIBIT D
IMPLEMENTATION AND ADMINISTRATIVE REGULATIONS FOR AUTOMATED RESIDENTIAL REFUSE COLLECTION

Adopted July 3, 2006
Revised _____ __, _____

(Terms are in effect as of July 3, 2006 and subject to change)

1. STARTING/CHANGING SERVICE

A. New Single-family Residential Customer:

1. Customer must contact City of Huntington Beach ("City") to establish City residential trash service.
2. Customer will contact Rainbow to order carts and schedule delivery.
3. City will provide Rainbow Disposal ("Rainbow") written confirmation of each new service order by 8:00 a.m. of the following workday.
4. Rainbow will confirm each scheduled delivery against city report to confirm that service is authorized prior to delivering carts.
5. Rainbow will provide City with list of all cart deliveries for new service one time weekly, by 9:00 a.m. each Monday, for all orders originating the prior week.

B. Change Service Type (Commercial to Residential and Vice Versa):

1. Owner of any single-family residence, duplex, triplex, or fourplex must first contact City to initiate a change from Commercial to Residential collection, and vice versa.
   a. All dwelling units within a duplex, triplex, or fourplex must utilize the same type of service, either Commercial or Residential, and the same size cart for all dwelling units within a building. Under no circumstances will property owner be allowed to mix and match services or sizes.
2. Customer must then contact Rainbow directly to establish or discontinue Commercial service and to schedule cart delivery.
3. City will provide written confirmation by 8:00 a.m. of the following workday of residential service changes to Rainbow. Rainbow will not initiate such changes without written

notification from City that residential service has been established or cancelled.

2. BASIC SERVICE LEVEL

The Basic Level of Service is one set of three (3) 95-gallon carts per household, provided by Rainbow. Carts remain the property of Rainbow.

A. One (1) each Recyclable (Blue) cart, to be used ONLY for the following materials:

1. Newspaper
2. Cardboard
3. Magazines
4. Telephone books
5. Junk mail
6. Office paper, computer paper, other white and colored paper
7. Chipboard (cardboard of same type used for 12-pack cartons)
8. School notebooks / tablets
9. Empty food containers
   a. Plastic bottles and jars
   b. Metal cans—aluminum, tin, and steel
   c. Glass bottles and jars

B. One (1) each Green Waste (Green) cart to be used ONLY for the following materials:

1. Grass
2. Leaves
3. Branches
4. Flowers
5. Shrubbery
6. Potted plant soil, houseplants

C. One (1) each Trash (Brown) cart to be used for the disposal of the following materials:

1. Plastic film, wraps, bubble wrap, and bags
2. Odd plastics, such as toys, Plexiglas
3. Contaminated paper, pizza boxes, diapers, sanitary napkins, other bathroom waste
4. Sheet or plate glass
5. Full or unopened food containers
6. Foam items, such as Styrofoam, packing peanuts and similar packing materials, closed cell foam, upholstery foam
7. Animal waste, rodent bedding, and cat litter

G-1B.29

8. Palm fronds
9. Any remaining items not eligible for placement in Recyclable or Green Waste carts

D. Customer may elect to forego delivery of Green Waste cart if their residence has no vegetation and/or is subject to Association or other similar landscape maintenance and such cart is not necessary.

E. Customer must place carts for collection each week on scheduled collection day, subject to requirements of HBMC 8.21.100 - Containers Location.

F. Carts placed for collection must be placed with lids completely closed. Customers placing cart(s) for collection with lids open or ajar may be served written warning by Rainbow with the affixing of a label to the cart(s) indicating the violation. Warnings must be documented by Rainbow with digital photography and/or written log noting date of warning, service address, and serial number of cart.

G. To accommodate need for greater or lesser waste capacity, Customer may elect to change service to include Optional Service Levels described herein.

H. Service Level changes will be permitted one time per household per year.

3. BULKY ITEM COLLECTION

Residential Customer may schedule up to four (4) special collections each year of large household items. Items qualifying for collection under this program include:

A. Furniture, mattresses and box springs, area rugs (rolled and secured, not to exceed 6′ in length)

B. Household appliances – range, oven, cooktop, refrigerator, dishwasher, water heater, clothes washer or dryer, trash compactor

C. Pool equipment.

D. Moving boxes and shipping cartons in excess of Recycling cart capacity.

E. Bagged trash in excess of Trash cart capacity - not to exceed 40 lbs. per bag.

F. Securely bundled palm fronds, or tree trimmings/branches in excess of Green Waste cart capacity - not to exceed 4 ft. in length and 40 lbs. per bundle.

G. Universal and hazardous waste items are not eligible.

H. Remodeling items such as intact vanity cabinets, sinks, toilets, bathtubs, intact windows and doors; cast iron tubs are not eligible.

I. Construction and demolition waste is not eligible, including items such as roofing, lumber, concrete, masonry, stucco, tile, carpet cuts, remnants, or pull-ups.

4. OPTIONAL SERVICE LEVEL 1: CART SIZE

Two (2) alternate cart sizes will be available to households, upon request, to accommodate Trash, Green Waste, and Recyclables:

a. 65-gal.
b. 35-gal.

A. If customer elects Level 1 service change, an appropriate number of carts will be provided by Rainbow to accommodate normal household accumulation of trash.

B. Depending upon size of household, demonstrated capacity needs and size of container selected, one household may be allowed up to three (3) carts of each type.

5. OPTIONAL SERVICE LEVEL 2: ADDITIONAL GREEN WASTE & RECYCLING CARTS

Customer may request one (1) additional cart each for Recycling and Green Waste.

A. Additional carts must be of the same size as other carts assigned to household.

B. The additional Green Waste and Recyclable carts will provided at no charge.

C. No additional monthly rate will apply for collection of additional Green Waste and/or Recyclable carts.

D. Rainbow may repossess Level 2 Green Waste and Recycling carts if customer does not utilize the cart or does not use cart for intended material.

1. Households utilizing Level 2 Recycling and/or Green Waste carts, which are found to contain improper materials, may be served written warning by Rainbow prior to repossession with the affixing of a label to the cart(s) indicating the violation. Warnings must be documented by Rainbow with digital photography and/or written log noting date of warning, service address, and serial number of cart.

2. After not less than two (2) warnings in a six (6) month period, Rainbow may repossess the cart(s). Upon repossession of cart(s), Rainbow must deliver a notification in writing to resident, either by posting notice at the premises or by regular mail, and provide copy of said notice to Department of Public Works.

E. Level 2 Green Waste and Recycling carts need not be placed for collection every week, and, at the discretion of the resident, may be placed for collection only when full, provided that material contained therein is not odorous or harbors harboring insects or vermin.

6. OPTIONAL SERVICE LEVEL 3: ADDITIONAL TRASH CART

A. Customer may request one additional cart for Trash, subject to a one-time delivery and handling charge of $75. Additional cart must be same size as other Trash carts assigned to household.

B. No additional monthly rate will apply for collection.

C. A maximum of one additional Trash cart will be issued per household.

7. CART MAINTENANCE AND REPAIRS

Carts assigned to households remain the property of Rainbow Disposal.

A. Rainbow shall repair or replace carts damaged by ordinary wear and usage at no charge to customer.

B. Stolen carts will be replaced at no charge to customer. Incidents of repeated, frequent theft of carts from the same household may be subject to replacement charge.

C. Carts damaged by intentional abuse or misuse will be repaired or replaced by Rainbow Disposal at the expense of the customer.

1. Repairs will be charged at a rate of $25 per repair.

2. Replacement charge, based upon the size of the cart, is as follows:

a. 95-gal. - $75.00
b. 65-gal. - $70.00
c. 35-gal. - $65.00

D. Resident shall make reimbursement payments for intentional damage directly to Rainbow Disposal.

8. SCAVENGING

Recycling (Blue) cart shall be affixed with a semi-permanent label placed on the underside of the lid, providing a Public Works Department telephone number for customers to call to report scavenging. Label shall instruct customer NOT to report such activities to other City departments. In particular, customers should not call the either the Police Department or 9-1-1 emergency dispatch except in the event of a life-threatening emergency. Label may be generic in that it may contain clearly marked contact phone numbers for other cities served by Rainbow in addition to the City of Huntington Beach Public Works phone number.

G-1B.33