

AGREEMENT CON 06-28
FOR
RUBBISH COLLECTION, DISPOSAL AND RECYCLING

THIS REVISED AND RESTATED FRANCHISE AGREEMENT is made and entered into this 3rd day of October 2006, by and between the CITY OF FOUNTAIN VALLEY, a municipal corporation, hereinafter referred to as "CITY" and RAINBOW DISPOSAL COMPANY, INC., a California corporation, hereinafter referred to as "CONTRACTOR."

WHEREAS, CITY and CONTRACTOR have previously entered into an Agreement, dated March 5, 1991, as amended August 2, 1994, March 18, 1997, and June 18, 2002, wherein CONTRACTOR was awarded the exclusive rights to provide garbage collection and disposal services for CITY; and

WHEREAS, during the term of that Agreement, as amended, the residents of the CITY OF FOUNTAIN VALLEY have received excellent quality service from CONTRACTOR; and

WHEREAS, Public Resources Code Section 40059 provides that a city may determine whether garbage collection and disposal services are to be provided by an exclusive franchise, contract or license, and may determine to do so without competitive bidding; and

WHEREAS, Fountain Valley Municipal Code (hereinafter "F.V.M.C") Section 6.08.030 authorizes the award of an exclusive franchise for garbage collection and disposal; and

WHEREAS, the City Council has reviewed the performance of Rainbow Disposal Company over the past 41 years as the City's exclusive garbage

collection contractor and has determined that the services and terms provided for in this contract with CONTRACTOR will best serve the public needs of this community; and

WHEREAS, CITY and CONTRACTOR have previously adopted three supplemental agreements to the 1991 Franchise Agreement; and

WHEREAS, CITY and CONTRACTOR are desirous of revising and restating the 1991 Franchise Agreement to include all previously adopted supplemental agreements and to provide for additional new matters to be included within this Revised and Restated Agreement, including the authorization for a fully automated waste collection system with segregated trash, recyclable goods, and green waste containers; and

WHEREAS, implementation of a fully automated system using segregated containers should reduce manpower needs and decrease worker injuries, thereby lessening workers compensation claims; and

WHEREAS, implementation of the automated system using standardized containers for segregated waste and recyclables will produce benefits to both parties and the public including waste reduction, increased recycling, and improved vector control; and

WHEREAS, CONTRACTOR will also utilize CNG powered collection vehicles which will reduce air pollution emission and noise; and

WHEREAS, CONTRACTOR intends to obtain long term bond financing to purchase equipment required to implement the new system; and

WHEREAS, CONTRACTOR has agreed not to raise waste collection and recycling rates to pay for the new equipment required for the automated system but to only seek increases through the existing rate adjustment formula; and

WHEREAS, CONTRACTOR has agreed to provide City with additional monies for street maintenance and repair; and

WHEREAS, CONTRACTOR will be provided with a three year notice of non-renewal provision to assist it to obtain bond financing,

NOW, THEREFORE, it is agreed as follows:

1. Compliance with City Ordinances and Other Laws.

a. This Agreement shall be carried out in full compliance with all applicable ordinances, resolutions and adopted policies of CITY. Specific reference is made to Chapters 6.04, 6.08 and 14.40 of the F.V.M.C. CONTRACTOR shall also observe all terms of all ordinances and laws of the County of Orange and State of California now in effect or as may be amended thereafter.

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.

2. Term.

a. The term of Agreement shall be for a period of twelve (12) years effective October 3rd, 2006, and shall provide for an automatic one (1) year extension of the twelve (12) year term on the anniversary of each succeeding year, commencing October 3rd, 2007, unless cancelled by either party in their

party in their sole discretion, without cause, by notification in writing. Such notice ("notice of nonrenewal") shall be effective not earlier than three (3) years from the date when given, and once effective, will only terminate the automatic one-year renewal and extension provision and Agreement shall remain in effect for the remaining balance of the twelve (12) year term outstanding.

b. Sixty days prior to the date for the automatic one-year renewal and extension noted above, the CITY shall perform an annual evaluation of the performance of CONTRACTOR. Said evaluation shall consider the performance of the CONTRACTOR for the preceding year including, but not limited to, the kind and number of complaints made against CONTRACTOR by his customers, the condition of CONTRACTOR's facility and equipment, and overall service provided by CONTRACTOR as a basis for an automatic extension of Agreement. If the evaluation is satisfactory, the automatic extension will take effect; but, if deficiencies are discovered, the CITY will provide CONTRACTOR with a written list of same and require corrective action prior to the date for the automatic extension. Until the deficiencies are corrected to the satisfaction of the CITY, an automatic extension of Agreement may be held in abeyance or cancelled pursuant to Subsection (c), below.

c. Notwithstanding Subsection (b) above, CITY reserves the right to forthwith cancel Agreement upon sixty (60) days written notice to CONTRACTOR in the event that CONTRACTOR shall be in substantial default of any terms, covenants and conditions set forth in Agreement, after being given said sixty (60) days notice and an opportunity to cure the default.

d. Notwithstanding the above, the parties acknowledge that CITY has the absolute right to terminate the agreement without cause by the giving of notice of termination, and the Agreement will no longer be in effect at the conclusion of the twelve-year term remaining, plus the three-year notice period.

3. Scope of Service.

a. General Conditions

The work to be done under this contract shall include the furnishing of all labor, material and equipment necessary therefor, and the collection of all garbage, trash and similar refuse within the CITY OF FOUNTAIN VALLEY, as the boundaries now exist or may hereafter exist, and the ultimate disposal of such refuse at a County landfill or transfer station, unless otherwise directed by the CITY OF FOUNTAIN VALLEY. The parties acknowledge that CONTRACTOR operates and maintains a Materials Recycling Facility and it is a material consideration to CITY that said facility operate and produce recycling revenue to reduce collection and disposal costs and furthermore to reduce the waste stream in accordance with State law.

Should the CONTRACTOR fail to collect and dispose of refuse set out or placed for collection as herein provided, at the time required, after notification by the CITY and within a reasonable time (which shall not be more than twenty-four [24] hours), the CITY may collect and dispose of the same and the CONTRACTOR shall be liable for the expense incurred. In addition to any other lawful means of effecting reimbursement from the CONTRACTOR, such

expense may be deducted by the CITY from money due or which may become due the CONTRACTOR.

In the event of disruption of service in any area due to weather, an act of God, failure of equipment or otherwise, CONTRACTOR shall make such collection within seventy-two [72] hours. Labor disputes shall not be considered as excuses for nonperformance hereunder as defined in Section 1511, California Civil Code and CONTRACTOR shall provide for solid waste collection service within one week of any disruption due to strike, lock-out, walk-out, boycott or other labor dispute. CONTRACTOR shall advise CITY in writing at any time negotiations are in progress with its employees over wages and benefits and shall keep CITY apprised of the status of those negotiations in a timely manner. CONTRACTOR shall provide CITY with its plan for responding to any disruption in service in the event of a labor dispute. Should any collections not be made on the scheduled dates, CITY shall receive a credit for those missed collections.

b. Supervision

Performance of each of the provisions of the contract shall be under the direction and supervision of the City Manager. "City Manager" shall include his/her duly authorized representative.

The CONTRACTOR shall furnish the City Manager every reasonable opportunity for ascertaining whether or not the work is performed in accordance with the requirements of the contract. The CONTRACTOR shall designate a person to serve as agent and liaison between his organization and the CITY and shall maintain a toll free telephone. The City Manager may inspect

the CONTRACTOR's, premises, operations, and equipment at any reasonable time and the CONTRACTOR shall admit her or him to make such inspections at any reasonable time and place.

c. Minimum Service

i. The 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 the CITY. Extended commercial and industrial service accounts shall be collected at a frequency for which they shall contract provided it is adequate to maintain the premises so served in a healthful and uncluttered condition. At the sole option of CITY, CONTRACTOR may be required to make more than one (1) collection per week, subject to a rate adjustment with CONTRACTOR, the actual amount of which shall be determined after an independent cost analysis. Said adjustment shall be set forth in writing as an amendment to this Agreement.

ii. Upon the request of a homeowner, 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 additional cost to the homeowner. The homeowner shall be limited to a maximum of ten (10) such bulky items on any single special collection occasion. Items not acceptable for collection under the paragraph include construction and demolition debris, as well as other items as determined

by the CONTRACTOR with approval by the CITY MANAGER and other items as excluded or as listed in Attachment No. 1.

d. Service to CITY

i. At no cost to CITY, CONTRACTOR shall supply dumpsters and drop-off containers at CITY owned or operated facilities and parks as requested by the City Manager and dispose of the collected REFUSE. CONTRACTOR shall pay for the disposal of CITY generated REFUSE, including material from CITY street sweeping operations, grass clippings, tree trimmings, and other CITY operations.

ii. CONTRACTOR shall supply to CITY, upon request of the CITY MANAGER and timely notification, up to fifteen (15) 40 cubic yard waste containers for use at CITY operated neighborhood cleanup days, per event, for no more than two (2) events per calendar year.

e. Placement of Refuse for Collection

All collections of garbage and rubbish from residential, commercial, or industrial occupancies shall be made from the curb along the street, public or private, in front of each dwelling, or the alley in the rear of each dwelling; or from the premises of commercial and industrial areas having paved travel-ways. Where paved alleys, having access to streets at each end, exit in the rear of business properties, collections shall be made from said alleys.

The owner or tenant of a commercial or industrial occupancy or a multiple dwelling may provide by mutual agreement with the CONTRACTOR for

collection at a location other than as specified above, if approved by the City Manager.

f. Holidays

Collection of garbage and 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; excepting in cases of emergency and upon the express direction of the CITY MANAGER. Whenever a regular collection falls on such a holiday, then collections shall be made on the day following. Any additional holidays requested by CONTRACTOR shall be submitted in writing to CITY for its approval. Said request is to be submitted in December of each year for the following calendar year.

g. Emergency Collections

In the event of an Act of God, earthquake, storm, fire or other extraordinary situations generating abnormal amounts of refuse, the CITY may require additional collection and shall be charged at a rate commensurate with conditions existing at the time of such an occasion and at such reasonable terms as shall be negotiated in good faith by the City Manager.

h. Maintenance of Schedules

Presently existing routes, schedules and times for collection of garbage and trash shall be maintained, but may be changed by authorization of the City Manager and after at least one (1) week's advance notification by the CONTRACTOR to the occupants of buildings in the area where the changes are to be made. All collections from residential areas or adjacent areas shall be

made between the hours of 6:30 a.m. and 6:30 p.m., and collections from commercial and industrial locations, except multi-family residential units and locations immediately adjacent to residential units, may start at 5:30 a.m.

i. Standards for Commercial Collections

Equipment used by the CONTRACTOR for collection and hauling of garbage and trash shall be such as to assure, in the opinion of the City Manager, that adequate standards of collection will be maintained. It is the declared interest of the CITY that the CONTRACTOR be able to provide a wide variety of containers to meet the capacity requirements of commercial, industrial and multiple residential users. Equipment used shall be water tight. Complete operating covers must be a part of the design of equipment employed. No material shall be permitted to leak, fall or be spilled onto CITY streets, alleys or highways. Any such leakage or spills occurring shall be immediately corrected and the area cleaned. Equipment used must employ adequate safety conditions for operating personnel and the public and must be maintained in good mechanical condition at all times.

CONTRACTOR shall annually certify to CITY as part of the CONTRACTOR'S annual review that CONTRACTOR'S operating personnel are trained and aware of water pollution prevention requirements of CITY. CONTRACTOR shall report to CITY any water pollution incident found within CITY.

All collections shall be made as quietly as possible and no unnecessarily noisy trucks or equipment shall be used. Employees of the

CONTRACTOR who are unnecessarily noisy or who violate the provisions of the California Vehicle Code and/or any applicable CITY ordinance during the collection of said materials shall be barred from the performance of any duties under this contract on CITY streets and right-of-ways upon the demand of the City Manager.

j. Containers

Containers used in commercial, industrial and multiple dwelling areas shall be of a design and size to contain, at all times, the contents therein in such manner as to promote best possible housekeeping conditions. Maintenance of containers supplied by the CONTRACTOR shall, at all times, be maintained by CONTRACTOR in a well-kept appearance. Users shall be responsible for the cleanliness, sanitation and deodorizing of rental containers.

k. Automated Collection System

The CONTRACTOR shall implement a system of automated waste collection and recycling 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 Attachment No. 1. The performance and timing of each of the provisions of this AGREEMENT shall be subject to the approval of the CITY MANAGER. 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 cart-related charges that may be assessed. The regulations and incidental cart-

related charges, the initial terms of which are attached hereto as Attachment No. 3, shall be subject to the approval of the CITY MANAGER. The parties envision and intend that the standard level of service for residential accounts receiving automated collection services shall be three (3) ninety-five gallon carts, one (1) each for the deposit of greenwaste, commingled recyclables, and refuse. Automated carts shall be supplied by CONTRACTOR at no cost to CITY or CUSTOMER. A CUSTOMER or CONTRACTOR, as the case may be, may elect to reduce the number of carts or the size of carts without cost, provided that in all cases, each CUSTOMER receiving services shall have at least one (1) cart each for the deposit of refuse and recyclables. Upon request of any CUSTOMER, CONTRACTOR shall supply an additional cart of appropriate size for greenwaste or recyclables without additional charge. Additional carts 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 the CITY MANAGER. CONTRACTOR shall replace lost or damaged carts 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 the CITY MANAGER.

I. Complaints

The CITY shall record all complaints and communications received from persons or businesses being served under the provisions of this Agreement. CONTRACTOR shall promptly act upon complaints received by CITY to the City

Manager's complete satisfaction and promptly report such action to the City Manager.

m. Fees and Gratuities

The CONTRACTOR shall not, nor shall he permit any agent, employee or sub-contractor employed by him, to request, solicit, demand, or accept, either directly or indirectly, any additional compensation or gratuity for the collection of garbage or rubbish as herein defined. It is further provided, however, that the CONTRACTOR may make available special storage and loading containers, provide additional collections not required by these specifications, pick up refuse at points other than as required in these specifications or provide for the collection of greater volumes of refuse per collection than required in these specifications, any or all of these additional services at the request of the person or business being served. The CONTRACTOR may make a direct charge in each instance for such additional services under a written agreement which shall be subject to the approval of the City Manager and at such rates as are reasonable, just and uniform for all residences or businesses being served. All such direct charges shall be collected by the CONTRACTOR.

n. Performance Bond or Certificate of Deposit

The CONTRACTOR shall, prior to the execution of the contract, execute and file with the City Clerk of the CITY OF FOUNTAN VALLEY a surety bond or Certificate of Deposit in the penal sum of One Hundred Thousand Dollars (\$100,000) conditioned upon the faithful performance of said contract by

the CONTRACTOR and his sub-contractors, if any. Said bond may be written for a term of one (1) year, and may thereafter, at CITY's discretion, be renewed by posting a certificate of deposit or letter of credit for said amount, provided however, that said CONTRACTOR agrees to maintain such bond or bonds in force for the complete term of this contract.

o. Public Liability and Property Damage Insurance

The CONTRACTOR shall be required to maintain in full force and effect during the term of the contract, a public liability policy with Ten Million Dollar (\$10,000,000) limits for personal injury and property damage insurance policy of Two Hundred Fifty Thousand Dollar (\$250,000) limit for the benefit of the third persons who may be injured or damaged as a result of any negligent operations of the CONTRACTOR in the performance of his work under this contract.

The CONTRACTOR further agrees to keep on file with the CITY copies of the insurance policies, duly executed by the CONTRACTOR's insurance carrier or carriers, which shall serve as evidence of the continued existence of said insurance policies. Said policy shall name the CITY, its officers, agents and employees as additional insured 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. The insurance shall not contain a self-insured retention, or a "deductible" or any other similar form of limitation on the required coverage. The policy shall be from a company with a Best's Key Rating Guide of B+ X or equivalent, or such other

company that may be approved by the CITY. The insurer must provide at least 30-days written notice in advance of any cancellation or termination of said insurance. The CITY shall not, nor shall any officer or employee thereof, be liable or responsible for any accident, loss or damage happening or occurring in the doing of the work; and the CONTRACTOR shall indemnify, defend and hold harmless the CITY and its officers and employees of any and all liability arising therefrom, including any attorney's fee incurred in the defense of any such action. Contractor shall provide CITY with an endorsement to said policy in a form approved by the City Attorney.

p. Workers' Compensation Policy

Said CONTRACTOR shall also maintain in full force and effect during the term of this contract, a Workers' Compensation policy and such other forms of insurance as shall be required by law, and to keep on file with the CITY a copy of each of said policies.

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

q. Waivers

No acquiescence, failure or neglect of either of the contracting parties to insist on strict performance or any or all of the terms hereof shall be

considered as or constitute a waiver of any term or condition of the contract or any performance required thereunder, or any remedy, damage or other liability arising out of such refusal, neglect or inability to perform at any time.

r. Indemnification

CONTRACTOR agrees to indemnify, defend and hold the CITY harmless from any loss, liability, claim, or damage whatsoever arising out of the awarding of this contract or CONTRACTOR's performance thereunder including, but not limited to, the exclusive nature and term thereof. CONTRACTOR will conduct all defenses at its sole cost and expense. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as limitations upon the amount of indemnification to be provided by CONTRACTOR.

s. Scavenging by CONTRACTOR Employees

CONTRACTOR agrees not to allow its employees to scavenge through the containers, including reading or taking of any materials. All employees shall wear uniforms which shall display their names in a conspicuous place.

4. Use by CITY of CONTRACTOR's Equipment

a. Upon the termination of the contract for any reason prior to the end of the period specified herein as the term of the contract, the CITY shall have the exclusive right to rent or lease and operate any or all trucks, trailers, tractors, bulldozers and other items of equipment used by the CONTRACTOR in the performance of the work specified in these specifications.

b. The right of the CITY to enter upon, use, rent, or lease facilities and equipment as specified herein shall extend from the date of termination of the contract for a period of sixty (60) calendar days. The rental price to be paid by the CITY to the CONTRACTOR under the provisions of this subsection shall be as follows:

Garbage or refuse trucks, Four Hundred Dollars (\$400.00) per calendar day; containers (1/2 yard or larger), Two Dollars (\$2.00) per calendar day.

Any monies due the CONTRACTOR for rental of equipment under the provisions of this subsection may be withheld by the CITY and used by it for the purpose of paying any outstanding liens or payments due and unpaid upon the said equipment. CITY agrees to indemnify CONTRACTOR from any loss, caused by CITY'S negligence and intentional acts in using CONTRACTOR'S trucks or equipment.

c. In the event CONTRACTOR shall construct and operate an alternative fuels fueling station, CONTRACTOR agrees to provide CITY with unlimited access thereto and to make available such fueling station or facility at rates favorable to 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.

5. Senior Citizen Residential Rate Discount

CONTRACTOR has agreed to provide a residential rate discount of 10% to all households owned and occupied by a senior citizen 65 years of age.

6. Charges and Rates – Residential Units; Payment by CITY

a. As compensation for the performance by CONTRACTOR of the work described in this Agreement, CONTRACTOR shall receive from CITY on or before the twenty-first day of each calendar month, an amount for the preceding month's services, based on the rates set forth in Attachment No. 2, unless adjusted as hereinafter provided. Also set forth in Attachment No. 2 are (1) the current County of Orange landfill tipping fees and (2) the average per gallon price of diesel fuel or Compressed Natural Gas equivalent.

b. CITY shall pay to CONTRACTOR for services provided under the terms of this AGREEMENT, the sum of \$17.09 per month for each RESIDENTIAL UNIT OF SERVICE rendered in the City, which amount includes the recyclable compensation in Paragraph 9.b and excludes the City's administrative processing fee.

c. Non-commercial accounts will be billed by CITY an administrative processing fee of 74¢ per residential account, per billing cycle to offset CITY expense from billing of non-commercial accounts for CONTRACTOR. This administrative processing fee may be increased at the discretion of the City Manager in response to increased CITY cost directly associated with the billing process.

d. Cost for direct postal mailing by City to City of Fountain Valley property owners related to notification processes required for proposed rate adjustments shall be reimbursed to CITY by CONTRACTOR.

\$1.21

Changes in compensation for each subsequent year shall be based on the formula provided below and shall take effect on July 1 of each succeeding year. A change in compensation shall be negotiated by the use of three factors in the following formula:

i. 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 April to April of the preceding twelve (12) months. This factor shall constitute seventy-six percent (76%) of the rate adjustment.

ii. The increase or decrease in the Orange County 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.

iii. The increase or decrease in the average per gallon price of diesel fuel as paid by CONTRACTOR during the February to February time frame noted above. This factor shall constitute eight percent (8%) of a rate adjustment. In the event that CONTRACTOR converts to alternative fueled vehicles, the factor shall be based on a CNG/diesel fuel equivalent.

CITY shall thereafter consider an increase or decrease in CONTRACTOR'S compensation by dividing the current fee into like components (76%; 16%; 8%). CITY shall then apply the increases in each of the factor components (1-3) to each of the corresponding percentages of the rate. The sum total of the adjusted components would then represent the new rate.

Notwithstanding the foregoing, no rate increase or decrease is guaranteed and the parties shall not be precluded from considering other relevant factors in determining if a rate increase or decrease is warranted. The parties do agree to review rates annually, however, so that any change can take effect on July 1 of each successive year.

No more than one negotiated rate change shall be made in any twelve (12) month period. However, in the event of extraordinary circumstances, 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.

d. In the event CONTRACTOR becomes obligated in the performance of this Agreement to pay any fees or charges not presently required to the County of Orange or any other governmental agency, including, but not limited to: "tipping" fees, transfer station use fees; or if CONTRACTOR is required to travel additional distances to an approved dump site due to the closing of the present facilities, then the parties agree to negotiate in good faith, for an adjustment in the then existing monthly unit rate.

e. The CITY and the CONTRACTOR agree to annually review the existing formula used to establish residential rates 60 days prior to any proposed rate change in July.

7. Charges and Rates – Commercial and Industrial Units

a. CONTRACTOR shall establish and publish a schedule of rates for all commercial and industrial accounts based on frequency of collection per

week and size of container. Said schedule shall be approved by CITY at its absolute discretion. No charge shall be levied by CONTRACTOR until written approval is granted by CITY.

b. CONTRACTOR shall be exclusively responsible for making agreements regarding commercial and industrial service to all customers within the CITY. All charges will be billed to and collected from each customer by CONTRACTOR.

c. CONTRACTOR shall pay to CITY no later than the twenty-first day of each calendar month, a sum equal to five percent (5%) of the gross monthly receipts received by CONTRACTOR from commercial and industrial accounts. CONTRACTOR shall furnish a quarterly written report of all commercial receipts.

d. In the event that CONTRACTOR receives future economic benefit from the conversion of waste or recycling material into energy or energy fuel source, CITY and CONTRACTOR agree to negotiate in good faith and, accounting for full economics, may amend the rate calculation formula of the Agreement to reflect the impact of such revenue on rates.

e. CONTRACTOR shall contribute to CITY an annual roadway maintenance fee of \$215,000 as compensation to CITY for additional damage and accelerated deterioration caused to CITY'S roadways as a result of CONTRACTOR'S operations within CITY. Said payment shall be made on a monthly basis in twelve (12) equal increments no later than the twenty-first day of each calendar month. CONTRACTOR agrees to annually increase said payment

set forth in this section commensurate with any percentage of increase in the Los Angeles-Anaheim-Riverside All Urban Consumer Price Index or any relevant successor for the Orange County area from April to April of the proceeding twelve (12) months.

f. CONTRACTOR shall contribute to CITY an annual water pollution prevention fee of \$75,000 for programs and projects to further CITY'S compliance with the Federal Clean Water Act and the California Water Act, as they now exist or may be hereafter amended. Said payment shall be made on an annual basis commencing July 1, 2007, and continuing each subsequent July 1 thereafter. CONTRACTOR agrees to annually increase said payment set forth in this section commensurate with any percentage of increase in the Los Angeles-Anaheim-Riverside All Urban Consumer Price Index or any relevant successor for the Orange County area from April to April of the proceeding twelve (12) months.

g. CONTRACTOR agrees to administer and fully fund the collection of used or discarded non-automotive batteries from residents of the community and deposited at CITY facilities for proper disposal and recycling. Batteries collected shall exclude those used by commercial, industrial, educational, and institutional sources.

8. Construction and Demolition Service Franchise Fee

CONTRACTOR shall pay CITY a franchise fee of five percent (5%) of gross receipts from construction waste collection.

9. Recycling Program

a. CONTRACTOR shall provide a Material Recycling Facility (MRF) designed to specifically recycle residential, commercial, and industrial waste and recyclable material. Such facility shall continue to sort and process recycled material and patrons will not be required to segregate material unless CITY and CONTRACTOR agree thereto. Said facility shall meet the standards legislated by the State of California in the Integrated Waste Management Act of 1989 (AB 939) as it now exists or may be hereafter amended.

b. Compensation

i. 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 in CITY.

ii. CONTRACTOR may collect a monthly fee for the operation of said facility from commercial accounts in an amount not to exceed a rate schedule approved by CITY. Said schedule shall be shown as Attachment No. 3.

iii. CITY shall bill all single family, duplex, triplex, and fourplex units that are provided with noncommercial trash collection and recycling service by CONTRACTOR; groups of more than four (4) residential units are deemed to be nonresidential and will be charged in accordance with COMMERCIAL SERVICE provisions. CONTRACTOR shall bill those units that are provided COMMERCIAL SERVICE by CONTRACTOR.

c. Adjustment

i. CITY and CONTRACTOR agree to meet at least 60 days prior to the anniversary date of this Agreement to review the compensation provisions of this Agreement and to make such adjustments as are deemed necessary. Any adjustment made at that time shall be effective July 1 and shall be based upon a consideration of the data, including avoided landfill costs. Said data shall include, but not be limited to such factors as the actual cost of plant operation and the resale value of the materials collected at the facility.

ii. Changes in compensation for each subsequent year shall not exceed the percentage of increases or decrease in the Los Angeles-Anaheim-Riverside All Urban Consumer Price Index (CPI) or any relevant successor for the Orange County area from April to April of the preceding twelve (12) months.

iii. No more than one negotiated MRF-processing rate change shall be made in any twelve (12) month period. Any such rate change shall be negotiated in tandem with the refuse service negotiations. A 10% senior citizen discount MRF-processing rate will be honored each time a rate change is established. Either CITY or CONTRACTOR may propose modification of an established rate in order to assure the rate structure's overall fairness.

iv. 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 any retroactive provision be negotiated at the time of settlement.

d. Reporting Requirements

i. 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, and CONTRACTOR shall prepare reports conforming with California Integrated Waste Management Board standards, and submit them to CITY in sufficient time for CITY to review any such report before the first required public hearing or submittal deadline.

ii. 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 within 30 days of the request.

e. Other Provisions

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

ii. CONTRACTOR warrants the ability of the facility to achieve the diversion requirements established by AB 939 or any subsequent legislation dealing with solid waste diversion, and the maximum amount feasible for the year 2000 and beyond. Should CONTRACTOR fail to meet the quota due to any fault or failure of CONTRACTOR, then CONTRACTOR shall be liable, to the maximum extent permitted by law, to pay any fine or penalty levied against CITY by the State of California or the California Integrated Waste Management Board for AB 939 non-compliance, in accordance with Section 40059.1 of the California Public Resources Code. 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.

v. 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.

10. Flow Control

a. Upon thirty (30) days written notice, CITY has the right to direct that 100% of the municipal solid waste stream it controls to be delivered to the Orange County Landfills.

b. In any case in which the CONTRACTOR does not appropriately dispose CITY'S Controllable Waste (as defined in Waste Disposal Agreement with Orange County) into one of the Orange County Landfill System's active landfills, any resulting penalties (per Waste Disposal Agreement §3.1E) will be borne by the CONTRACTOR, and not the CITY.

11. Exclusiveness of Contract

The CONTRACTOR shall have the exclusive duty, right and privilege to collect, remove and retain all garbage and rubbish, and recyclable material, including residential, commercial, industrial, and construction, garbage and refuse originating within the CITY as herein defined, except that this shall not prohibit the actual producers of refuse, or the owners of premises upon which refuse has accumulated, from personally collecting, conveying and disposing of

such refuse, provided such producers or owners comply with the standards of cleanliness and good housekeeping contained in these specifications and comply with any other governing law or ordinances. Owners of recyclable material not discarded for CONTRACTOR'S collection shall have the right to make their own arrangements for the sale of such recyclable material in accordance with the holding of Waste Management of the Desert v. Palm Springs Recycling (1994) 7 Cal. 4th 478 or any subsequent law. This shall not prohibit collectors of refuse originating from outside of the CITY from hauling such refuse over CITY streets, provided such collectors comply with the provisions of these specifications and with any other governing laws or ordinances.

The CONTRACTOR shall have the exclusive right during the term of the contract to perform the duties and covenants herein specified; that is the right to gather, collect and remove garbage, refuse, and recyclable waste material from the CITY limits as the same shall presently or hereafter exist in the CITY OF FOUNTAIN VALLEY, and to remove and transport same from said CITY provided, however, that the occupant of any dwelling may, at his sole election, personally remove any garbage and rubbish accumulating on his premises and dispose of the same in a lawful manner.

CONTRACTOR agrees that his obligations extend to all premises in the CITY except areas used for the commercial growth or processing of vegetables, fruits, or other similar products and government entities which may be exempt from CITY'S solid waste collection rules.

12. Assignment/Transfer

a) This Agreement is deemed personal to the parties hereto and may not be assigned, sold or otherwise transferred to a third person without the prior written consent of the other. Said consent shall not be unreasonably withheld. For purposes of this Section, "assign" includes changing more than thirty-five percent (35%) of stock ownership in CONTRACTOR or transferring more than thirty-five percent (35%) interest in the CONTRACTOR, except for such changes or transfers to persons ("Immediate Family") who are the parents, grandparents, siblings, children, grandchildren or spouse of a shareholder, or to trusts created to primarily benefit members of the Immediate Family of a shareholder.

(b) Contractor shall provide City with a copy of the filed articles of incorporation and any amendments thereto, a copy of its most recently filed statement of domestic stock corporation showing directors, chief executive officer, chief financial officer and secretary and agents for service of process, and a copy of the stock register showing corporate ownership. Updates shall be provided as changes are made and on at least an annual basis.

13. Default

In the event that any party hereto shall be in default of any term, condition or covenant hereunder, the non-defaulting party shall give written notice of same to the designated agent of the other. Defaulting party shall have five (5) days within which to cure or remedy same. The failure of either party to so cure or remedy within said period shall terminate the contract.

In the event of cancellation, the CITY shall hold the CONTRACTOR and his sureties jointly and severally liable for any damage or loss sustained by the CITY in the matter of collection of the refuse or recyclable material, or the re-advertising or letting of another contract therefor, including all costs and attorney's fees incurred by the CITY in the cancellation of this contract and the negotiation of a new contract. The waiver of a breach of any of the terms of said contract shall not cancel or in any way affect the right of the CITY to declare a default for any re-occurrence of the same or any other breach of the contract.

14. Arbitration

Any controversy or claim arising out of or relating to this Agreement, or breach thereof, shall be settled by arbitration in accordance with the rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. Such controversy or claim shall be submitted to one (1) arbitrator selected from the National Panel of the American Arbitration Association by mutual agreement of each party.

15. Law to Govern

This Agreement shall be governed by the laws of the State of California, both as to interpretation and performance.

16. Modification

This Agreement constitutes the entire agreement and understanding between the parties hereto, and it shall not be considered

modified, altered, changed or amended in any respect unless in writing and signed by the parties hereto.

17. Right to Require Performance

The failure of the CITY at any time to require performance by the CONTRACTOR of any provisions hereof shall in no way affect the right of the CITY thereafter to enforce same. Nor shall waiver by the CITY of any breach of any provisions hereof be taken or held to be a waiver of any succeeding breach of such provision or as a waiver of any provision itself.

18. Point of Contact

All dealings, contacts, and communications between the CONTRACTOR and the CITY shall be directed by the CONTRACTOR to the City Manager.

19. Illegal Provisions

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

20. Notice

A letter addressed and sent by certified United States mail to either party at its business address below shall be sufficient notice whenever required for any purpose in this Agreement. The parties may designate other addresses for notice by mutual agreement.

"CONTRACTOR"

Rainbow Disposal Company
P.O. Box 1026
Huntington Beach, CA 92647
Attention: President

"CITY"

City of Fountain Valley
10200 Slater Avenue
Fountain Valley, CA 92708
Attention: City Manager

21. Proposition 218 Impacts The parties acknowledge that Proposition 218 has added Article XIII C and XIII D to the Constitution regarding due process and hearings required before a property related fee may be imposed. The California Supreme Court ruling in *Bighorn-Desert View Water Agency v. Verjil* (2006) 46 Cal.Rptr.3d 73 suggests that the requirements of that law apply to trash collection fees imposed and collected by a local government. The parties agree that such fees may be subject to the procedures of those laws and that the parties cannot commit in advance of those hearings to any particular rate. The parties agree that City may be required to provide notice, hearings and findings justifying such fees. If City is unable to make such determinations or if a protest hearing prevents the imposition of such rates, the parties agree to meet and confer further as to options, including the option that Contractor may be required to conduct its own billing and rate setting.

21. Effective Date

This Agreement shall become effective forthwith upon execution and the CONTRACTOR shall begin collection of the said waste as provided herein on October 3rd, 2006.

22. Financial Report

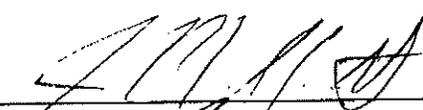
The CITY may, at the CITY'S option, upon entering into a confidentiality agreement with CONTRACTOR, request the CONTRACTOR'S annual audited financial reports/statements for the two (2) most recently completed fiscal years. CITY shall pay for the direct cost of reproduction of such copies. Financial statements may include a supplement combining schedule showing the CONTRACTOR'S results of operations, including the specific revenues and expenses in connection with the operations provided for in this Agreement, (which includes both trash collection and disposition and recycling operations) separated from others included in such financial statements. The financial statements and footnotes shall be prepared in accordance with Generally Accepted Accounting Principles (GAAP) and audited, in accordance with Generally Accepted Auditing Standards (GAAS) by a certified public accountant (CPA) licensed (in good standing) to practice public accounting in the State of California as determined by the State of California Department of Consumer Affairs Board of Accountancy. The cost for preparation of the financial statements and audit shall be borne by the CONTRACTOR as a direct cost of service. In addition, the Contractor may provide to the CITY the supplemental schedule on a compiled basis.

23. CERCLA Defense Records

The CITY views the ability to defend against CERCLA and related litigation as a matter of great importance. For this reason, the CITY regards the ability to prove where solid waste collected in the CITY was taken for disposal, as well as where it was not taken, to be matters of concern. The CONTRACTOR shall maintain data retention and preservation systems which can establish where solid waste collected in the CITY was landfilled (and therefore establish where it was not landfilled) and provide a copy of the reports five (5) years after the term during which collection services are to be provided pursuant to this Agreement, or to provide copies of such records to the CITY upon CITY'S request. The CONTRACTOR agrees to notify the CITY'S Risk Manager and the City Attorney at least 90 days before destroying such records. This provision shall survive the expiration of the period during which collection services are to be provided under this Agreement.

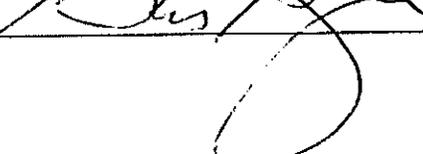
"CONTRACTOR" RAINBOW DISPOSAL
COMPANY, INC.
17121 Nichols
Huntington Beach, CA

By  _____

By  _____

"CITY"

CITY OF FOUNTAIN VALLEY
a municipal corporation

By  _____

ATTEST:

Robin Robert
CITY CLERK

APPROVED:

Alan L. James
CITY ATTORNEY

Attachment No. 1 Service Levels

1. Basic Service Level

One set of three (3) 95-gallon carts are provided for each residential service address.

Cart No. 1: Recyclable Materials (blue container)

1. **Paper products** such as newspaper, cardboard, magazines, telephone books, junk mail, office paper, computer paper, other white and colored paper
2. **Food containers** such as metal cans, glass or plastic bottles or jars
3. **Other Plastics** made from high density polyethylene (HDPE), low density polyethylene (LDPE), and polyethylene (PET)

Cart No. 2: Green Waste (green container)

1. Yard waste such as grass, leaves, branches, shrubbery, and plant soil.
2. **Green waste does not include palm fronds.**

Green waste cart not needed:

The customer may elect to forego delivery of the green waste cart if there is no vegetation at their residence, is subject to Association or other similar landscape maintenance, or utilizes a gardener that removes the green waste material from the subject property for disposal elsewhere outside of the City limits. Plant waste is not permitted within either the Recyclable Materials container or the Trash Container.

Cart No. 3: Trash (brown container)

1. Food waste
2. Full or unopened food containers
3. Food packaging that is mixed (contaminated) with food waste
4. Paper products (i.e. paper plates, napkins, paper towels, bags) that are mixed (contaminated) with food waste or grease.
5. Grease, fat, and lard
6. Plastic toys
7. Sheet or plate glass
8. Styrofoam, packing peanuts and similar packing materials, closed cell foam, and upholstery foam
9. Animal waste, animal bedding, and cat litter
10. Wood waste
11. Palm fronds
12. Any remaining items not eligible for placement in Cart No. 1 or Cart No. 2 (recyclable or green waste cart).

To accommodate greater or lesser waste capacity needs, a customer may choose to change service to include Optional Service Levels as described in Attachment No.1 once per year, per household.

2. Bulky Item Collection (10/4 Program)

Up to four (4) bulky item collections, with up to ten (10) items per collection, can be scheduled per year, per household. Qualifying items include:

1. Furniture, mattresses, box springs, bed frames, headboards, and footboards.
2. Area rugs, rolled and secured, not to exceed 6 feet in length.
3. Household appliances such as ovens, built in stove tops, range hoods, refrigerators, dishwashers, water heaters, water softeners, clothes washer or dryer, trash compactor, and microwave ovens.
4. Pool equipment
5. Moving boxes and shipping cartons in excess of the Recycling cart capacity.
6. Bagged trash in excess of Trash cart capacity – not to exceed 40 lbs. per bag and sealed with string, tape, plastic or wire tie.
7. Securely bundled palm fronds, or tree trimmings/branches in excess of Green waste cart capacity, not to exceed 4 feet in length and 40 lbs. per bundle.

Material not accepted through 10/4 Program

1. Universal waste and hazardous waste is not accepted.
2. Remodeling items such as intact vanity cabinets, sinks, toilets bathtubs, intact windows and doors; cast iron tubs are not accepted.
3. Waste from construction and demolition waste is not accepted.

3. Optional Service

Level 1: Alternative Cart Size

Alternate cart sizes of 35 and 65 gallon capacity will be available upon request. Based on the size of the household and demonstrated capacity need, a household may be allowed up to three (3) carts of any type.

Level 2: Additional Green Waste and Recycling Carts.

Customer may request one (1) additional cart each for Recyclable material and Green Waste at no charge. The additional carts must be the same size as other carts in use at the household. Following two written warnings within a three (3) month period and providing of program educational material, the

carts may be repossessed by Rainbow Disposal if the customer does not utilize the additional carts for collection of the intended material. Upon request from the City, Rainbow Disposal is to provide documentation of warning(s), including but not limited to photographs.

Level 3: Additional Trash Cart

A customer may request one (1) additional cart for Trash, subject to a one-time delivery and handling charge of \$75.

4. Cart Maintenance and Repair

All carts remain the property of Rainbow Disposal. Rainbow Disposal will repair or replace carts damaged by ordinary wear and usage at no charge to customer. Carts intentionally abused or damaged by customer through use other than that of waste collection will be repaired or replaced by Rainbow Disposal at the expense of the customer, as follows:

- a. Repairs will be charged at a rate of \$25 per repair.
- b. Carts will be replaced at the following charges:
 - 95 gallon \$75
 - 65 gallon \$70
 - 35 gallon \$65

The "life expectancy" of the carts with ordinary wear and usage is 10-12 years.

5. Scavenging

The Recycling cart shall contain a semi-permanent label placed on the underside of the lid providing a City Code Enforcement number to call to report scavenging. The City of Fountain Municipal Code Section specific to scavenging will be provided on the label.

Attachment No. 2

County of Orange Landfill Tipping Fees And Diesel Fuel Cost

Year	CPI	Dump Fee Per Ton	Fuel Price Per Gallon
2006	208.5	\$22	\$2.64

Amendment No. 1
to
Revised and Restated Agreement CON 06-28
For Rubbish Collection, Disposal and Recycling

This Amendment No. 1 (“Amendment”) to the Revised and Restated Agreement CON 06-28 For Rubbish Collection, Disposal and Recycling (“the Agreement”) is entered into as of this ___ day of _____, 2015 by and between the City of Fountain Valley, a municipal corporation organized and operating under the laws of the State of California (“CITY”) and Rainbow Disposal Company, Inc., a California Corporation (“CONTRACTOR”), collectively “the Parties”, as follows:

RECITALS

This Amendment is entered into on the basis of the following facts and understandings of the Parties hereto:

- A. WHEREAS, CITY and CONTRACTOR are Parties to the Agreement, and have previously entered into agreements dated March 5, 1991, as amended August 2, 1994, March 18, 1997, and June 18, 2002, and revised and restated on October 3, 2006, wherein CONTRACTOR was awarded the exclusive rights to provide garbage collection and disposal services for CITY; and
- B. WHEREAS, during the term of the Agreement and previous agreements, the residents of the CITY have received excellent quality service from CONTRACTOR; and
- C. WHEREAS, Public Resources Code Section 40059 provides that a city may determine whether garbage collection and disposal services are to be provided by an exclusive franchise, contract or license, and may determine to do so with or without competitive bidding; and
- D. WHEREAS, the Parties entered into the Agreement on October 3, 2006; and
- E. WHEREAS, the Parties have met and conferred to determine mutually acceptable modifications to the Agreement; and now desire to now memorialize the modifications to the Agreement by means of this Amendment; and
- F. WHEREAS, as of the date of this Amendment, CONTRACTOR and CITY are in compliance with all terms and conditions of the Agreement.

NOW THEREFORE, the Parties do agree and amend the Agreement as follows:

Amendment No. 1

The Parties hereby agree to the following amendment of the Agreement:

1. The Parties hereby incorporate the above Recitals as a material element of this Amendment.

2. Amendment of Agreement at Section 2. Section 2 of the Agreement is amended to delete the current text of Section 2 and replace it as follows:

Term. The term of Agreement shall be for a fixed period of twenty (20) years effective January 1, 2016, ending January 1, 2036.

~~a. The term of Agreement shall be for a period of twelve (12) years effective October 3rd, 2006, and shall provide for an automatic one (1) year extension of the twelve (12) year term on the anniversary of each succeeding year, commencing October 3rd, 2007, unless cancelled by either party in their sole discretion, without cause, by notification in writing. Such notice ("notice of nonrenewal") shall be effective not earlier than three (3) years from the date when given, and once effective, will only terminate the automatic one year renewal and extension provision and Agreement shall remain in effect for the remaining balance of the twelve (12) year term outstanding.~~

b. Sixty days prior to the date for the anniversary of the Agreement, the CITY shall perform an annual evaluation of the performance of CONTRACTOR. Said evaluation shall consider the performance of the CONTRACTOR for the preceding year including, but not limited to, the kind and number of complaints made against CONTRACTOR by his customers, the condition of CONTRACTOR's facility and equipment, and overall service provided by CONTRACTOR as a basis for an automatic extension of Agreement. If deficiencies are discovered, the CITY will provide CONTRACTOR with a written list of same and require corrective action within 60 days of receipt of notification from the City.

c. Notwithstanding Subsection (b) above, CITY reserves the right to forthwith cancel Agreement upon sixty (60) days written notice to CONTRACTOR in the event that CONTRACTOR shall be in substantial default of any terms, covenants and conditions set forth in Agreement, after being given said sixty (60) days notice and an opportunity to cure the default.

3. Amendment of Agreement at Section 6.d. Section 6.d. of the Agreement is amended to add the underlined text and delete the referenced text as follows:

6. Charges and Rates – Residential Units: Payment by CITY

d. Cost for direct postal mailing by CITY to City of Fountain Valley property owners related to notification processes required for proposed rate adjustments shall be reimbursed to CITY by CONTRACTOR.

Changes in compensation for each subsequent year shall be based on the Consumer Price Index (CPI) WST Index provided below and shall take effect on January 1 of each succeeding year. A change in compensation shall be negotiated by the use of factors based on the following:

- i. The average annual 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 April to April of the preceding twelve (12) months. "CPI" means the index published by the U.S. Department of Labor, Bureau of Labor Statistics, Series Id: CUUR0000SEHG Water, Sewer and Trash Collection Services, Garbage and Trash Collection, All Urban Consumers for Los Angeles-Riverside-Orange County Area, California ("WST Index").

4. Amendment of Agreement at Section 7.c.: Section 7.c. of the Agreement is amended to delete the current text of Section 7.c and replace it as follows:

7. Charges and Rates - Commercial and Industrial Units

c. Until June 30, 2016, CONTRACTOR shall pay to CITY no later than the twenty-first day of each calendar month, a franchise fee equal to five percent (5%) of the gross monthly receipts received by CONTRACTOR from commercial and industrial accounts during the previous month. CONTRACTOR shall furnish a quarterly written report of all commercial receipts and franchise fees to the CITY.

Effective with the CITY's fiscal year beginning July 1, 2016, CONTRACTOR shall pay to CITY no later than the twenty-first day of each calendar month, a Franchise Fee on gross receipts from commercial and industrial accounts within the CITY in accordance with the following specified graduated percentages pursuant to the schedule set forth below, to a maximum franchise fee of 10%:

<u>Fiscal Yr.</u>	<u>Increase</u>	<u>Total Fee</u>	<u>% of Fee In Rates</u>
2016-17	2%	7%	7% (1% Rainbow)
2017-18	2%	9%	9%
2018-19	1%	10%	9%

Effective in Fiscal Year 2016-17 and each fiscal year thereafter for the remainder of the Term, one percent (1%) of the total franchise fee shall be borne by CONTRACTOR and may not be passed through into CONTRACTOR's rates to commercial and industrial customers.

5. Amendment of Agreement at section 7.: Section 7 of the Agreement is amended to add the following:

7.a. The following is added at the end of paragraph 7.a: CONTRACTOR shall be allowed to adjust the commercial and industrial rates each year by the average annual percentage of increase or decrease in the Los Angeles- Anaheim-Riverside All Urban Consumer Price Index (CPI) for the Orange County area from April to April of the preceding twelve (12) months. "CPI" means the index published by the U.S. Department of Labor, Bureau of Labor Statistics, Series Id: CUUR0000SEHG for Water, Sewer and Trash Collection Services, Garbage and Trash Collection, All Urban Consumers for Los Angeles-Riverside-Orange County Area, California ("WST Index"). The increase shall be measured as the annual average change in the WST Index for the twelve (12) month period preceding the effective date of the proposed rate adjustment, measured annually each year from January to December.

7.e. Effective July 1, 2016, the Annual Roadway Fee shall be \$250,000. Effective July 1, 2017 and annually thereafter, the Roadway Fee shall be adjusted for the annual change in the WST Index as defined in section 7.a.

7.f. Effective July 1, 2016, the Water Pollution Prevention Fee shall be \$104,250. Effective July 1, 2017 and annually thereafter, the Water Pollution Prevention Fee shall be adjusted for the annual change in the WST Index as defined in section 7.a.

6. Amendment of Agreement at Attachment No. 1, Service Levels:

Attachment No. 1 to the Agreement is amended as follows by adding the following new underlined text starting with new item No. 6 on page 3 of Attachment No. 1:

6. \$6,000 Per Year for Staffing Keep America Beautiful/Neighborhood Cleanup Events.

Effective July 1, 2016, CONTRACTOR shall provide \$6,000 per year to CITY to help fund CITY's staffing of its Keep America Beautiful Program. The Program includes Roll Off services, graffiti remediation and Three Neighborhood Cleanup Events to be held by CITY. Effective July 1, 2017 and annually thereafter, the \$6,000 per year shall be adjusted by the annual change in the WST Index as defined in section

7. Two (2) Paper Shredding Events for Residents. CONTRACTOR shall annually provide two (2) paper-shredding events for CITY residents.
8. Mail Back Program and Disposal Kiosk for "Sharps". CONTRACTOR shall provide a mail-back sharps collection program including a sharps disposal kiosk for use by CITY residents. "Sharps" are medical waste lancets and syringes.
9. Free Compost Giveaway to Residents. CONTRACTOR shall annually provide two (2) compost give-back events providing two (2) 40 cubic yard bins for compost at no charge to CITY residents, FOB at CONTRACTOR's Agromin facility.
10. As part of the minimum service set forth in paragraph 3.c(ii), residential curbside collection of electronic waste (e-waste) material is included as an allowed item. E-waste from businesses shall not be collected as part of the residential curbside collection of e-waste.

7. CRV Revenue Sharing. New section 9.b.iv is added to the Agreement as follows:

For California Redemption Value (CRV) proceeds only, CITY and CONTRACTOR agree that effective July 1, 2016 CRV revenue will be shared for those new incremental CRV revenues above a 2016 CRV baseline of \$275,000 (as determined annually going forward from the effective dater of this Amendment based on a 5- year rolling average of CRV revenues). CRV incremental revenue sharing shall remain in effect for so long as CITY maintains and enforces a prohibition on scavenging of recyclables as a violation of its Municipal Code.

8. All other terms and conditions of the Agreement to remain in full force and effect.

IN WITNESS WHEREOF, the CITY and the CONTRACTOR have executed this Agreement on the day and year first written above.

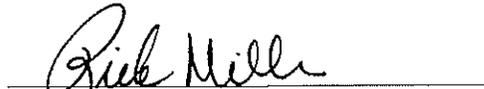
CITY OF FOUNTAIN VALLEY



Mayor

2.10.16
Date

ATTEST:



CITY CLERK

2-10-16
Date

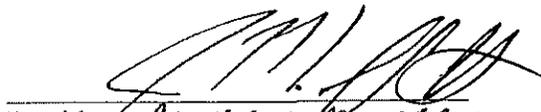
Approval as to Form:



ATTORNEY FOR THE CITY

2/16/16
Date

RAINBOW DISPOSAL COMPANY, INC.
a California Corporation



President BENJAMIN MANNING

2/5/16
Date