

AMENDED AND RESTATED  
REFUSE COLLECTION AND DISPOSAL SERVICES FRANCHISE AGREEMENT  
BY AND BETWEEN SUNSET BEACH SANITARY DISTRICT  
AND RAINBOW DISPOSAL COMPANY, INC.

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THIS AMENDED AND RESTATED FRANCHISE AGREEMENT ("Agreement") is made and entered into this 11<sup>th</sup> day of May, 2017 by and between the SUNSET BEACH SANITARY DISTRICT, a Special District under the laws of the State of California, hereinafter referred to as "DISTRICT, " and RAINBOW DISPOSAL COMPANY, INC., a California corporation, hereinafter referred to as "CONTRACTOR."

WHEREAS, DISTRICT and CONTRACTOR have previously entered into a franchise agreement for garbage and rubbish collection and disposal, dated May 12, 1987, wherein CONTRACTOR was awarded the exclusive right and privilege to provide garbage and rubbish collection and disposal services for DISTRICT; and

WHEREAS, DISTRICT and CONTRACTOR entered into Addendum No. 1 of the May 12, 1987 franchise agreement on November 10, 2005; and

WHEREAS, DISTRICT and CONTRACTOR are desirous of amending and restating the 1987 and 2005 franchise agreement to update the agreement to reflect current practices and requirements, and to provide for additional new matters to be included within this Agreement.

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

1. DEFINITIONS

"ADEQUATE SERVICE" means the combination of the number of collections, the number of containers, and the size of Containers necessary so as not to cause the accumulation of REFUSE outside Containers or in excess of the maximum levels for Containers.

"AGREEMENT" shall mean this Amended and Restated Franchise Agreement, entered into between DISTRICT and CONTRACTOR.

"AUTOMATED SERVICE" or "AUTOMATED RESIDENTIAL COLLECTION SERVICE" means REFUSE collection services using collection trucks with special equipment, including a robotic arm that swings outs, lifts the REFUSE container, and dumps REFUSE into the truck's compactor bin. AUTOMATED SERVICE requires uniform carts that are specially designed to work with the truck and robotic arm.

"BASIC LEVEL OF SERVICE" means, with respect to RESIDENTIAL COLLECTION SERVICE and AUTOMATED SERVICE, one or two collections of each RESIDENTIAL CART per week, or that level of collection and disposal service necessary to provide Adequate Service for the collection of REFUSE generated by each single family residence, and each dwelling unit

within a duplex, a triplex, or a fourplex, as specifically provided herein. "BASIC LEVEL OF SERVICE" does not include REFUSE or substances excluded from collection by applicable laws, regulation of the DISTRICT BOARD or by contract, as hereinafter provided. "BASIC LEVEL OF SERVICE", with respect to COMMERCIAL COLLECTION SERVICE, means that level of collection and disposal service necessary to provide ADEQUATE SERVICE.

"COMMERCIAL COLLECTION SERVICE" means the collection of REFUSE from all property within the District excluded from RESIDENTIAL COLLECTION SERVICE, or properties subject to RESIDENTIAL COLLECTION SERVICE, which choose to utilize COMMERCIAL COLLECTION SERVICE.

"COMMERCIAL CONTAINER" means any vessel, tank, receptacle, dumpster, box or bin used or intended to be used for the purpose of holding any REFUSE, RECYCLABLE MATERIAL, and RECYCLABLE WASTE MATERIAL. COMMERCIAL CONTAINERS utilized in COMMERCIAL COLLECTION SERVICE include all types of CONTAINERS, including dumpsters or bins.

"CUSTOMER" shall mean a residential or commercial recipient of CONTRACTOR's services.

"DISTRICT BOARD" shall mean the DISTRICT's Board of Directors.

"HAZARDOUS WASTE" shall have the meaning set forth in California Code of Regulations, Title 14, Division 7, Chapter 3, Article 4, §17225.32 and Health and Safety Code §25117, the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. § 9601 et seq.), the Hazardous Materials Transportation Act (49 U.S.C. § 1801 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.) and/or any successor laws and regulations as may be amended from time to time.

"PROCESSING" means reduction, separation, recovery, conversion or recycling of Refuse.

"RECYCLABLE MATERIAL(S)" means materials that are segregated at the source from other Refuse for the purpose of Recycling and includes, but is not limited to, paper, glass, metals, wood, plastics, wastes, bulky goods, waste oil, and construction and demolition materials and which is sold or donated by the owner thereof to a third party.

"RECYCLABLE MATERIAL COLLECTION" means the collection, transportation, storage, transfer or processing of RECYCLABLE MATERIALS.

"RECYCLABLE WASTE MATERIAL" means discarded materials such as, but not limited to newspapers, glass and metal cans, which are separated from other REFUSE for the purpose of RECYCLING and which are not sold or donated to a third party.

"RECYCLABLE WASTE MATERIAL COLLECTING" means the collection, transportation, storage, transfer, or processing of RECYCLABLE WASTE MATERIAL.

"RECYCLING" means the process of collecting, sorting, cleansing, treating, and reconstituting materials that would otherwise be disposed of by land filling or transformation, and returning materials to the economic mainstream in the form of raw material for new, reused, or reconstituted products.

"REFUSE" means all putrescible and non-putrescible solid, and semisolid wastes, including garbage, trash, refuse, paper, rubbish, yard waste, ashes, industrial wastes, demolition and construction wastes, discarded home and industrial appliances, manure, vegetable or animal solid or semi-solid wastes, and other discarded solid or semi-solid wastes, but does not include HAZARDOUS WASTE, radioactive waste regulated pursuant to the State Radiation Control Law, untreated medical waste regulated pursuant to the State Medical Waste Management Act, and liquid waste. RECYCLABLE WASTE MATERIAL is considered REFUSE for purposes of this AGREEMENT. The term "REFUSE" shall be synonymous with the term "solid waste" as defined in the Integrated Waste Management Act, Public Resources Code §40000, et seq.

"REFUSE COLLECTION" or "REFUSE COLLECTION SERVICE" means the collection, transportation, storage, transfer, disposal, or processing of REFUSE.

"RESIDENTIAL COLLECTION SERVICE" means the collection of REFUSE from each single family residence, and each dwelling unit within a duplex, a triplex or a fourplex.. It shall not include any hotel, motel, lodge, hall, club, tourist camp, trailer camp, mobile home park, church, guard shack, pool house, community room, business or industrial establishment, excludes properties otherwise subject to RESIDENTIAL COLLECTION SERVICE which choose to utilize COMMERCIAL COLLECTION SERVICE, and excludes any lot containing more than four dwelling units.

"RESIDENTIAL CART" means a container having a capacity not to exceed sixty-five (65) gallons and furnished or supplied by the District Refuse Collector for use in the AUTOMATED SERVICE. RESIDENTIAL CARTS shall be colored brown for REFUSE, and blue for RECYCLABLE WASTE MATERIAL. A 65-gallon RESIDENTIAL CART shall not be filled with more than 200 pounds of REFUSE. A 35-gallon cart shall not be filled with 100 pounds of REFUSE.

"RESIDENTIAL UNIT OF SERVICE" shall mean each single-family residence and each dwelling unit within a duplex, a triplex, or a fourplex receiving non-COMMERCIAL COLLECTION SERVICE.

"SUPERINTENDENT" shall mean the Superintendent of DISTRICT or his/her designated representatives.

"TERM" shall have the meaning set forth in section 3 of this AGREEMENT.

"YARD WASTE" or "GREEN WASTE" means those constituents of solid waste comprised of non-soil landscape or plant materials such as tree trimmings, grass cuttings, plants,

weeds, leaves, branches, trees, or similar materials.

## 2. COMPLIANCE

A. This AGREEMENT shall be governed by the laws and regulations of the State of California, the County of Orange, and DISTRICT both as to interpretation and performance.

B. If any non-material 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 that may be required by any governmental agency affected by the work to be performed by CONTRACTOR pursuant to this Agreement.

## 3. TERM; ANNUAL EXTENSION OF TERM

A. The TERM of this AGREEMENT is seven (7) years.

B. The TERM of this AGREEMENT shall be annually extended one (1) year, on the 1st of July of each succeeding year, commencing July 1, 2017. Such annual extension may also be terminated by either party in their sole discretion, without cause, by notification in writing given to the other Party no later than 30 days prior to July 1 of any year of the AGREEMENT (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. The AGREEMENT shall remain in effect, from the effective date of such Notice, for the balance of the TERM outstanding.

C. DISTRICT reserves the right to cancel this AGREEMENT upon thirty (30) days written notice to CONTRACTOR, in the event that CONTRACTOR is in default, following written notice to CONTRACTOR and a reasonable opportunity for CONTRACTOR to cure a default in any material terms, covenants or conditions set forth in this AGREEMENT.

D. Any termination of this AGREEMENT for cause, or because of expiration of the Term, shall constitute a discontinuation of the right of CONTRACTOR to provide REFUSE disposal services within DISTRICT.

## 4. EXCLUSIVITY OF CONTRACT

CONTRACTOR shall have the exclusive duty, right and privilege to provide REFUSE COLLECTION SERVICE within the DISTRICT during the TERM; this duty, right and privilege extends to all residential, commercial, or industrial wastes, including construction and demolition waste materials, that constitute REFUSE and originate within DISTRICT's geographic boundary and as the DISTRICT's geographic boundary may be later adjusted pursuant to applicable laws.

5. SUPERVISION OF AGREEMENT

A. The adequacy of CONTRACTOR's performance of each of the provisions of this AGREEMENT will be determined by the SUPERINTENDENT. CONTRACTOR shall furnish SUPERINTENDENT 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 DISTRICT, and shall maintain a toll free telephone for communication with DISTRICT'S staff.

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

D. In the event of a CUSTOMER's violation of the DISTRICT's REFUSE Ordinance, DISTRICT may direct CONTRACTOR to remove said CONTAINERS from the CUSTOMER's premises to a site of the CONTRACTOR's choosing. Upon correction of said violation, the CUSTOMER may pick-up the CONTAINERS, or request CONTRACTOR to deliver same, upon advance payment of a fee of \$85.00 per incident to Contractor. The \$85.00 per incident rate shall be fixed until June 30, 2024. Only July 1, 2024 and each July 1 thereafter the \$85.00 per incident rate shall be adjusted for the percentage change in the index published by the U.S. Department of Labor, Bureau of Labor Statistics, Series ID: CUUR0000SEHG Water, Sewer and Trash Collection Services ("WST").

6. SERVICE STANDARDS; COLLECTIONS

A. During the TERM hereof, CONTRACTOR shall provide the BASIC LEVEL OF SERVICE using AUTOMATED SERVICE to each RESIDENTIAL UNIT OF SERVICE within DISTRICT at the rates authorized herein, including collection of YARD WASTE. Until such time as State law or DISTRICT regulations otherwise specify or require, YARD WASTE generated by a RESIDENTIAL UNIT OF SERVICE must be placed unbundled in the appropriate RESIDENTIAL CONTAINER for collection. CUSTOMER shall be required to place all materials set out for collection in the RESIDENTIAL CONTAINER in an appropriate manner.

B. The standard level of service for RESIDENTIAL COLLECTION SERVICE receiving AUTOMATED SERVICE shall be two (2) sixty-five (65) gallon containers, one (1) each for the deposit of commingled RECYCLABLE MATERIALS and one for REFUSE. Each RESIDENTIAL UNIT OF SERVICE shall be supplied a RESIDENTIAL CART by CONTRACTOR. A CUSTOMER or CONTRACTOR, as the case may be, may elect to reduce the number 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 RECYCLABLE MATERIALS. Additional RESIDENTIAL CARTS for the deposit of REFUSE shall

be delivered upon request by a CUSTOMER, in exchange for a one-time delivery and handling charge of \$75.00 which has been approved by SUPERINTENDENT. CONTRACTOR shall replace lost or damaged RESIDENTIAL 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 SUPERINTENDENT.

C. CONTRACTOR agrees that upon removing REFUSE from RESIDENTIAL CARTS utilizing AUTOMATED SERVICE, said RESIDENTIALCARTS will be replaced near the curb; and proper care will be used in the handling of said containers to avoid spillage.

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 AUTOMATED SERVICES described herein.

E. CONTRACTOR shall maintain a local or toll free telephone number to which all service inquiries and 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 9:00 a.m. until noon Saturday.

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

G. CONTRACTOR shall provide twice weekly RESIDENTIAL COLLECTION SERVICE and RECYCLABLE MATERIALS COLLECTION. COMMERCIAL COLLECTION SERVICE accounts shall be collected at a frequency for which CUSTOMERS shall contract with CONTRACTOR but no less than once weekly, provided it is adequate in the opinion of SUPERINTENDENT to maintain the premises so served in a healthful and uncluttered condition.

H. Upon the request of a CUSTOMER, CONTRACTOR shall make up to four (4) special collections each year of large household REFUSE 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 CUSTOMER. 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 materials that are not REFUSE, construction debris, as well as other items as determined by CONTRACTOR with approval by SUPERINTENDENT.

I. The hours of collection shall be 7:00 A.M. to 6:30 P.M. except on advance specific waiver of the SUPERINTENDENT. Should CONTRACTOR fail to collect and dispose of REFUSE set out or placed for collection as herein provided, or at the times herein

required, DISTRICT shall notify CONTRACTOR to collect and dispose of the REFUSE. If CONTRACTOR fails to do so within 24 hours after notice from DISTRICT, DISTRICT may, after notification to CONTRACTOR, thereafter collect and dispose of said REFUSE at CONTRACTOR'S sole cost and expense.

J. 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 SUPERINTENDENT. 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 DISTRICT for approval.

K. All 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. CUSTOMERS may request CONTRACTOR to clean their containers. CONTRACTOR shall provide such service in exchange for a reasonable fee to be charged directly to CUSTOMERS by CONTRACTOR. Containers used to service the Sunset Greenbelt and coastal and bay park facilities owned by the City of Huntington Beach are serviced by the City and are not within the DISTRICT.

L. 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 DISTRICT. It is further provided, however, that CONTRACTOR may make available special storage and loading CONTAINERS, provide additional services and collections not required by these specifications, or pick up REFUSE at points other than as required in these specifications, at the request of the CUSTOMER being served. CONTRACTOR may make a direct charge in each instance for such additional service under a written agreement with CUSTOMER, which shall be subject to the approval of SUPERINTENDENT, and at such rates as are reasonable, just and uniform if for the same service. CONTRACTOR shall collect all charges for such services. The rates established in Sections 11 and 12 of this AGREEMENT are approved by the SUPERINTENDENT.

## 7. RESIDENTIAL HAZARDOUS WASTES

CONTRACTOR shall provide a household hazardous waste ("HHW") drop-off location at its Huntington Beach transfer station facility for use by DISTRICT CUSTOMERS. Said HHW drop-off location will be made available free of charge to RESIDENTIAL CUSTOMERS of DISTRICT, unless available funding sources for such location do not continue. In the event these funding sources are not available,

CONTRACTOR may levy user fees to individual users as approved by DISTRICT. In the event governmental regulations or operational costs make it impractical to operate such a drop-off location, CONTRACTOR shall have the right to terminate operation of the facility with the consent of DISTRICT.

8. RECYCLING PROGRAM

CONTRACTOR's services shall include use of CONTRACTOR's solid waste processing facility designed to specifically recycle residential and commercial waste. Rates for such services for RESIDENTIAL COLLECTION SERVICE and COMMERCIAL COLLECTION SERVICE are as established pursuant to Sections 11 and 12 of this AGREEMENT.

A. REPORTING REQUIREMENTS

1. CONTRACTOR shall, as part of this AGREEMENT, maintain such records on facility diversion, and/or the composition and disposition of materials collected at the solid waste processing facility, as may be required for reporting purposes by CalRecycle or as required by applicable law.

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

B. OTHER PROVISIONS

1. 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.

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

9. LABOR RELATIONS.

A. CONTRACTOR shall, at all times during the term of this AGREEMENT, abide by all applicable laws and regulations of the State of California regarding the employment of labor for the provision of the services required by this AGREEMENT. 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 lasting longer than 5 days, and CONTRACTOR is unable to provide the required services as a result thereof, DISTRICT 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 DISTRICT. 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 DISTRICT be applied to the reduction of any lien or encumbrance on the rented equipment.

#### 10. UNIT OF SERVICE COUNT

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

B. CONTRACTOR agrees to submit to SUPERINTENDENT, on a monthly basis, a list of all residential units that have either (1) contracted for COMMERCIAL COLLECTION SERVICE, or (2) discontinued COMMERCIAL COLLECTION SERVICE with CONTRACTOR. Such listing shall be kept confidential by DISTRICT, and is not a public record subject to the Public Records Act.

C. DISTRICT shall bill all single family, duplex, triplex and fourplex units that are provided RESIDENTIAL COLLECTION SERVICE by CONTRACTOR ; CONTRACTOR shall bill those units that are provided COMMERCIAL COLLECTION SERVICE by CONTRACTOR.

D. DISTRICT BOARD 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 RESIDENTIAL COLLECTION SERVICE to arrive at the monthly payment to CONTRACTOR. It is recognized that the total number of RESIDENTIAL UNITS OF SERVICE will vary from month to month. Therefore, the number of RESIDENTIAL UNITS OF SERVICE in any month shall be determined as above.

E. DISTRICT BOARD is responsible for authorizing 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. DISTRICT shall compensate CONTRACTOR no later than fifteen (15)days after the end of the month in which service was rendered.

#### 11. COMPENSATION - RESIDENTIAL

A. DISTRICT shall pay to CONTRACTOR and provide annual adjustments to CONTRACTOR for services provided under the terms of this AGREEMENT, effective July 1 of

each year for 2017 through June 30 of the following year for Materials Recovery Facility (“MRF”) services and RESIDENTIAL COLLECTION SERVICES as follows in Table 11-1 below:

Table 11-1

	July 1, 2017	July 1, 2018	July 1, 2019	July 1, 2020
MRF Rate	6.00	6.18	6.36	WST NTE 5%
Resi Svcs	14.00	14.42	14.84	WST NTE 5%
Total	20.00	20.60	21.20	WST NTE 5%

Changes in CONTRACTOR compensation for RESIDENTIAL COLLECTION SERVICES FOR THE PERIOD JULY 1, 2017 THROUGH JUNE 30, 2020 shall be at the rates specified in Table 11-1 above. Changes in compensation for each year starting July 1, 2020 shall be adjusted for (1) the percentage change in the index published by the U.S. Department of Labor, Bureau of Labor Statistics, Series Id: CUUR0000SEHG Water, Sewer and Trash Collection Services (“WST”), not to exceed (“NTE”) five percent (5%) annually.

B. Changes in Law. In the event of a change in law, including changes in applicable federal, state or local laws and regulations subsequent to the commencement of services applicable to CONTRACTOR’s delivery of the services pursuant to this AGREEMENT, CONTRACTOR shall be entitled to an adjustment of the rates set forth in Table 11-1. This adjustment will be submitted by the CONTRACTOR to the SUPERINTENDENT on no more than an annual basis, which will be accompanied by a breakdown of the impacts to then existing rates. “Changes in Law” shall not apply to AB 1594 (amending Sections 40507 and 41781.3 of the California Public Resources Code) as the statutes reads as of July 1, 2017, or to implementing regulations lawfully enacted by *CalRecycle* as of July 1, 2017. Later amendments to AB 1594 and/or regulations implementing AB 1594 shall be considered Changes In Law. As used herein, “Changes in Law” does not include changes in federal or state income tax laws, or changes in any collective bargaining agreement between CONTRACTOR and any labor organization.

C. Other Government Fees, Disposal or Travel Costs. In the event that CONTRACTOR becomes obligated in the performance of this AGREEMENT to pay any new or increased governmental or other fees or charges not presently imposed, including without limitation fees imposed by toll roads, for the transit of REFUSE to landfills; or if CONTRACTOR is required to pay increased landfill tipping fees or 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 or imposes government fees and surcharges, then the Parties agree to negotiate in good faith for an adjustment in the existing monthly unit rate prior to the implementation of such charges in order to appropriately charge for such new or increased fees

or charges.

## 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 the current rates in effect as of the date of this AGREEMENT. Said rates may be annually adjusted by CONTRACTOR to match approved City of Huntington Beach Exclusive Franchise Agreement Commercial Rates.

B. CONTRACTOR shall have the exclusive right to provide COMMERCIAL SERVICE to CUSTOMERS within DISTRICT. All charges will be billed to and collected from each CUSTOMER by CONTRACTOR.

## 13. COMMERCIAL SERVICE FRANCHISE FEE

A. CONTRACTOR shall pay DISTRICT a franchise fee of five percent (5%) of its paid and collected gross receipts from COMMERCIAL SERVICE, net of franchise fees.

B. Said payment shall be made on a monthly basis and be received by DISTRICT no later than fifteen (15) days after the end of each calendar month in which CONTRACTOR'S invoices were issued.

## 14. PERFORMANCE BOND

CONTRACTOR shall, at all times, during the life of AGREEMENT keep on file with DISTRICT a bond in the sum of Two Hundred Fifty Thousand Dollars (\$250,000) to the effect that CONTRACTOR will faithfully perform this AGREEMENT. .

## 15. INDEMNIFICATION, DEFENSE AND HOLD HARMLESS

CONTRACTOR hereby agrees to protect, defend, indemnify and hold harmless DISTRICT, 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 performance of the services herein undertaken by CONTRACTOR, caused in whole or in part by any negligent act or omission of CONTRACTOR, any subcontractors, and any third party acting on behalf of CONTRACTOR including but not limited to concurrent active or passive negligence, except where caused by the active negligence, sole negligence, or willful misconduct of the DISTRICT. CONTRACTOR will conduct all defense at its sole cost and expense and DISTRICT shall reasonably 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.

16. 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 DISTRICT 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 DISTRICT 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.

17. INSURANCE

In addition to the workers' compensation and employer's liability insurance and CONTRACTOR's covenant to defend, hold harmless and indemnify DISTRICT, CONTRACTOR shall obtain and furnish to DISTRICT, 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 Five Million Dollars (\$5,000,000) 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). This policy shall name DISTRICT, 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. All required limits may be satisfied via excess or umbrella liability coverage.

18. CERTIFICATES OF INSURANCE; ADDITIONAL INSURED ENDORSEMENTS

Prior to commencing performance of the work hereunder, CONTRACTOR shall furnish to DISTRICT certificates of insurance 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 without thirty (30) days' prior written notice to DISTRICT.

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.. CONTRACTOR shall pay, in a prompt and timely manner, the premiums on all insurance hereinabove required.

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

#### 19. TRANSFER

A. Except with respect to the sale, assignment or transfer to any affiliated entity of CONTRACTOR, 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 DISTRICT. Any such unauthorized transfer shall allow DISTRICT, at its option, to terminate this AGREEMENT.

In the absence of any DISTRICT ordinance providing to the contrary, CONTRACTOR may sell or otherwise dispose of REFUSE materials after the same have been collected.

#### 20. FINANCIAL RECORDS

At the request of SUPERINTENDENT, CONTRACTOR shall make the collection operation accounting records for DISTRICT available for examination by SUPERINTENDENT or his designee. Such CONTRACTOR records confidential, and are not public records subject to the Public Records Act and shall be kept confidential.

#### 21. ENTIRETY

This Agreement contains the entire Agreement of the Parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements, either written or oral, express or implied. Any modifications to this Agreement must be in the form of a written amendment agreed to by the Parties or their successors in interest.

#### 22. NOTICE

Any legal notice, request, payment or instrument required or permitted to be given under

this Agreement must be in writing and must be delivered personally (including by means of professional messenger service) or sent by express mail, registered mail, or certified mail, return receipt requested, with a courtesy copy to be delivered by email. Notices delivered personally or by express mail will be deemed received upon receipt or within two business days after being deposited in the United States mail, registered or certified, postage prepaid, and addressed to the party for whom intended, as follows:

If to District:

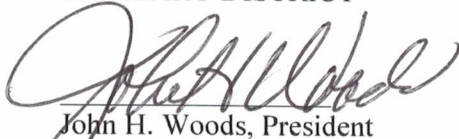
Sunset Beach Sanitary District  
c/o District Clerk  
P.O. Box 1185  
Sunset Beach, CA 90742

If to Contractor:

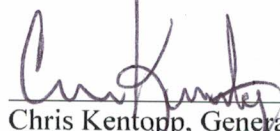
Rainbow Environmental Services, a  
Republic Services Company  
17121 Nichols Lane  
Huntington Beach, CA 92647

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

SUNSET BEACH  
SANITARY DISTRICT

  
John H. Woods, President  
Date: 5-11-17

RAINBOW ENVIRONMENTAL SERVICES, a  
REPUBLIC SERVICES COMPANY

  
Chris Kentopp, General Manager  
Date: 5/13/17

  
Graham K. Hoad, Secretary

Date: 5/11/2017  
APPROVED AS TO FORM:

LEWIS, BRISBOIS BISGAARD &  
SMITH, LLP

By: \_\_\_\_\_  
District Counsel

professional messenger service) or sent by express mail, registered mail, or certified mail, return receipt requested, with a courtesy copy to be delivered by email. Notices delivered personally or by express mail will be deemed received upon receipt or within two business days after being deposited in the United States mail, registered or certified, postage prepaid, and addressed to the party for whom intended, as follows:

If to District:

Sunset Beach Sanitary District  
c/o District Clerk  
P.O. Box 1185  
Sunset Beach, CA 90742

If to Contractor:

Rainbow Environmental Services, a  
Republic Services Company  
17121 Nichols Lane  
Huntington Beach, CA 92647

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

SUNSET BEACH  
SANITARY DISTRICT

RAINBOW ENVIRONMENTAL SERVICES, a  
REPUBLIC SERVICES COMPANY

\_\_\_\_\_  
John H. Woods, President

\_\_\_\_\_  
Chris Kentopp, General Manager

Date: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
Graham K. Hoad, Secretary

Date: \_\_\_\_\_  
APPROVED AS TO FORM:

LEWIS, BRISBOIS BISGAARD &  
SMITH, LLP

By:   
District Counsel

EXHIBIT  
"A"

COMMERCIAL SERVICES RATES



SOURCE SEPARATED RECYCLING				
SERVICE LEVELS	BASE RATE	STATE RECYCLING FEE	5% FRAN FEE	RATE
<b>3 YARD</b>				
1 X PER WEEK	\$ 130.53	\$ -	\$ 6.53	\$ 137.06
2 X PER WEEK	\$ 196.59	\$ -	\$ 9.83	\$ 206.42
3 X PER WEEK	\$ 264.93	\$ -	\$ 13.25	\$ 278.17
4 X PER WEEK	\$ 311.18	\$ -	\$ 15.56	\$ 326.74
5 X PER WEEK	\$ 398.45	\$ -	\$ 19.92	\$ 418.37
6 X PER WEEK	\$ 465.86	\$ -	\$ 23.29	\$ 489.15
<b>2 YARD</b>				
1 X PER WEEK	\$ 102.12	\$ -	\$ 5.11	\$ 107.23
2 X PER WEEK	\$ 146.38	\$ -	\$ 7.32	\$ 153.70
3 X PER WEEK	\$ 183.49	\$ -	\$ 9.17	\$ 192.66
4 X PER WEEK	\$ 215.19	\$ -	\$ 10.76	\$ 225.95
5 X PER WEEK	\$ 264.96	\$ -	\$ 13.25	\$ 278.21
6 X PER WEEK	\$ 304.27	\$ -	\$ 15.21	\$ 319.48
<b>1 YARD</b>				
1 X PER WEEK	\$ 62.74	\$ -	\$ 3.04	\$ 65.78
2 X PER WEEK	\$ 98.42	\$ -	\$ 4.77	\$ 103.19
3 X PER WEEK	\$ 123.27	\$ -	\$ 5.97	\$ 129.24
4 X PER WEEK	\$ 135.53	\$ -	\$ 6.57	\$ 142.10
5 X PER WEEK	\$ 158.63	\$ -	\$ 7.69	\$ 166.32
6 X PER WEEK	\$ 183.42	\$ -	\$ 8.89	\$ 192.31
<b>160 GALLON</b>				
1X PER WEEK	\$ 50.35	\$ -	\$ 2.52	\$ 52.86
2X PER WEEK	\$ 78.74	\$ -	\$ 3.94	\$ 82.68
3X PER WEEK	\$ 98.62	\$ -	\$ 4.93	\$ 103.55
4X PER WEEK	\$ 108.43	\$ -	\$ 5.42	\$ 113.85
5X PER WEEK	\$ 126.91	\$ -	\$ 6.35	\$ 133.25
6X PER WEEK	\$ 146.75	\$ -	\$ 7.34	\$ 154.09
<b>95 GALLON</b>				
1X PER WEEK	\$ 31.40	\$ -	\$ 1.57	\$ 32.98
2X PER WEEK	\$ 49.21	\$ -	\$ 2.46	\$ 51.67
3X PER WEEK	\$ 61.63	\$ -	\$ 3.08	\$ 64.72
4X PER WEEK	\$ 67.77	\$ -	\$ 3.39	\$ 71.16
5X PER WEEK	\$ 79.32	\$ -	\$ 3.97	\$ 83.28
6X PER WEEK	\$ 91.72	\$ -	\$ 4.59	\$ 96.30
<b>65 GALLON</b>				
1X PER WEEK	\$ 21.96	\$ -	\$ 1.10	\$ 23.06
2X PER WEEK	\$ 34.45	\$ -	\$ 1.72	\$ 36.17
3X PER WEEK	\$ 43.16	\$ -	\$ 2.16	\$ 45.31
4X PER WEEK	\$ 47.44	\$ -	\$ 2.37	\$ 49.81
5X PER WEEK	\$ 55.53	\$ -	\$ 2.78	\$ 58.30
6X PER WEEK	\$ 64.20	\$ -	\$ 3.21	\$ 67.41

MIXED WASTE PROCESSING				
SERVICE LEVELS	BASE RATE	STATE RECYCLING FEE	5% FRAN FEE	RATE
<b>3 YARD</b>				
1 X PER WEEK	\$ 153.56	\$ 4.71	\$ 7.68	\$ 165.96
2 X PER WEEK	\$ 231.28	\$ 10.50	\$ 11.56	\$ 253.35
3 X PER WEEK	\$ 311.68	\$ 20.54	\$ 15.58	\$ 347.79
4 X PER WEEK	\$ 366.09	\$ 30.14	\$ 18.30	\$ 414.54
5 X PER WEEK	\$ 468.77	\$ 37.68	\$ 23.44	\$ 529.87
6 X PER WEEK	\$ 548.07	\$ 45.22	\$ 27.40	\$ 620.69
<b>2 YARD</b>				
1 X PER WEEK	\$ 120.15	\$ 4.70	\$ 6.01	\$ 130.86
2 X PER WEEK	\$ 172.21	\$ 9.22	\$ 8.61	\$ 190.03
3 X PER WEEK	\$ 215.87	\$ 14.98	\$ 10.79	\$ 241.64
4 X PER WEEK	\$ 253.16	\$ 20.04	\$ 12.66	\$ 285.86
5 X PER WEEK	\$ 311.72	\$ 25.04	\$ 15.59	\$ 352.35
6 X PER WEEK	\$ 357.96	\$ 30.08	\$ 17.90	\$ 405.94
<b>1 YARD</b>				
1 X PER WEEK	\$ 73.81	\$ 2.66	\$ 3.69	\$ 80.16
2 X PER WEEK	\$ 115.78	\$ 5.40	\$ 5.79	\$ 126.98
3 X PER WEEK	\$ 145.03	\$ 8.14	\$ 7.25	\$ 160.42
4 X PER WEEK	\$ 159.45	\$ 10.92	\$ 7.97	\$ 178.33
5 X PER WEEK	\$ 186.62	\$ 13.66	\$ 9.33	\$ 209.61
6 X PER WEEK	\$ 215.79	\$ 16.42	\$ 10.79	\$ 243.00