

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

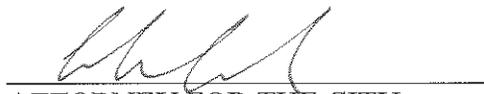
ATTEST:



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 GENERAL MANAGER

2/5/16
Date