

**THIRD AMENDMENT TO  
REVISED AND RESTATED AGREEMENT CON 06-28  
FOR RUBBISH COLLECTION, DISPOSAL AND RECYCLING  
(RAINBOW DISPOSAL COMPANY, INC)**

THIS THIRD AMENDMENT TO THE REVISED AND RESTATED AGREEMENT CON 06-28 FOR RUBBISH COLLECTION, DISPOSAL AND RECYCLING (Agreement) originally entered into on October 3, 2006, is made and entered into effective the ~~23~~ day of ~~August~~ 2022, 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.

The City and Contractor agree to amend the Agreement based on the Recitals provided below.

**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, as revised and restated on October 3, 2006, and as further amended November 17, 2015 (Amendment No. 1) and on November 15, 2016 (Amendment No. 2), wherein CONTRACTOR was awarded the exclusive rights to provide garbage collection and disposal services for CITY; 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 with or without competitive bidding; and

**WHEREAS**, the Parties entered into the Agreement on October 3, 2006; and

**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

**WHEREAS**, as of the date of this Amendment, CONTRACTOR and CITY are in compliance with all terms and conditions of the Agreement.

**WHEREAS**, Senate Bill 1383, the Short-lived Climate Pollutant Reduction Act of 2016 (SB 1383), requires CalRecycle to develop regulations to reduce organics in landfills as a source of methane. The regulations place requirements on multiple entities including the City of Fountain Valley and the Contractor to support the achievement of Statewide Organic Waste disposal reduction targets; and

**WHEREAS**, the SB 1383 regulations adopted in 2016 that created 14 California Code of Regulations (CCR), Division 7, Chapter 12 and amended portions of regulations of 14 CCR and 27 CCR require City to implement mandatory Organic Waste reduction programs within the City effective January 1, 2022, and further require amendments to the City's Agreement and the Municipal Code to implement the requirements of SB 1383; and

**WHEREAS**, the current term of the Agreement is twenty (20) years from January 1, 2016, through and including January 1, 2036; and

WHEREAS, with this Third Amendment, the City will amend the Contractor's Franchise Agreement for comprehensive refuse services to provide additional services to meet the requirements of SB 1383 within the current term of the Agreement.

Now therefore, the following Amendment is made to the Agreement:

**SECTION 1.** Section 1, Compliance with City Ordinances and Other Laws, is hereby amended by adding Section 1.c the following:

**SECTION 1.c DEFINITIONS**

"**AB 341**" means the Assembly Bill approved by the Governor of the State of California on October 5, 2011, which amended Sections 41730, 41731, 41734, 41735, 41736, 41800, 42926, 44004, and 50001 of, and added Sections 40004, 41734.5, and 41780.01 and Chapter 12.8 (commencing with Section 42649) to Part 3 of Division 30 of, and added and repealed Section 41780.02 of, the Public Resources Code, relating to Solid Waste.

"**AB 827**" means the Assembly Bill approved by the Governor of the State of California on October 2, 2019, which amended Sections 42649.2, 42649.8, and 42649.81 of the Public Resources Code, relating to Solid Waste.

"**AB 1594**" means the Assembly Bill approved by the Governor of the State of California on September 28, 2014, which amended Sections 40507 and 41781.3 of the Public Resources Code, relating to Solid Waste.

"**AB 1826**" means the Organic Waste Recycling Act of 2014 (Chapter 727, Statutes of 2014 modifying Division 30 of the California Public Resources Code), also commonly referred to as "AB 1826.

"**Blue Container**" has the same meaning as in 14 CCR Section 18982.2(a) and shall be used for the purpose of storage and Collection of Source Separated Blue Container Organic Waste or SSBCOW.

"**Brown Container**" has the same meaning as in 14 CCR Section 18982.2(a) and shall be used for the purpose of storage and Collection of Source Separated Food Waste.

"**Commercial Edible Food Generators**" includes Tier One Commercial Edible Food Generators and Tier Two Commercial Edible Food Generators, or as otherwise defined in 14 CCR Section 18982(a)(7). For the purposes of this definition, Food Recovery Organizations and Food Recovery Services are not Commercial Edible Food Generators.

"**Edible Food**" means food intended for human consumption. For the purposes of this Agreement, Edible Food is not Solid Waste if it is recovered and not discarded. Nothing in this Agreement requires or authorizes the recovery of Edible Food that does not meet the food safety requirements of the California Retail Food Code. If the definition in 14 CCR Section 18982(a)(18) for Edible Food differs from this definition, the definition in 14 CCR Section 18982(a)(18) shall

apply to this Agreement.

**“Food Recovery”** means actions to collect and distribute Edible Food for human consumption which otherwise would be Disposed, or as otherwise defined in 14 CCR Section 18982(a)(24).

**“Food Recovery Organization”** means an entity that primarily engages in the collection or receipt of Edible Food from Commercial Edible Food Generators and distributes that Edible Food to the public for Food Recovery either directly or through other entities, including, but not limited to:

- A. A food bank as defined in Section 113783 of the Health and Safety Code;
- B. A nonprofit charitable organization; and,
- C. A nonprofit charitable temporary food facility as defined in Section 113842 of the Health and Safety Code. If the definition in 14 CCR Section 18982(a)(25) for Food Recovery Organization differs from this definition, the definition in 14 CCR Section 18982(a)(25) shall apply to this Agreement.

**“Food Recovery Service”** means a Person or entity that collects and transports Edible Food from a Commercial Edible Food Generator to a Food Recovery Organization or other entities for Food Recovery; or as otherwise defined in 14 CCR Section 18982(a)(26).

**“Food Scraps”** means all food such as, but not limited to, fruits, vegetables, meat, poultry, seafood, shellfish, bones, rice, beans, pasta, bread, cheese, and eggshells. Food Scraps excludes fats, oils, and grease when such materials are Source Separated from other Food Scraps.

**“Food-Soiled Paper”** means compostable paper material that has come in contact with food or liquid, such as, but not limited to, compostable paper plates, paper coffee cups, napkins, pizza boxes, and milk cartons.

**“Food Waste”** means Source Separated Food Scraps, and Food-Soiled Paper. Food Waste is a subset of Source Separated Green Container Organic Waste (SSGCOW).

**“Gray/Black Container”** has the same meaning as in 14 CCR Section 18982.2(a) and shall be used for the purpose of storage and Collection of Gray/Black Container Waste or Mixed Waste.

**“Gray/Black Container Waste”** means Solid Waste that is collected in a Gray/Black Container that is part of a three-Container Organic Waste Collection service that prohibits the placement of Organic Waste in the Gray/Black Container as specified in 14 CCR Sections 18984.1(a) and (b) or as otherwise defined in 14 CCR Section 17402(a)(6.6). For the purposes of this Agreement, Gray/Black Container Waste includes carpet and textiles.

**“Green Container”** has the same meaning as in 14 CCR Section 18982.2(a) and shall be used for the purpose of storage and Collection of SSGCOW.

**“Organic Waste”** means Solid Wastes containing material originated from living organisms and their metabolic waste products including, but not limited to, food, Yard Waste, organic textiles and carpets, lumber, wood, paper products, printing and writing paper, manure, biosolids, digestate, and sludges, or as otherwise defined in 14 CCR Section 18982(a)(46).

**“SB 1383”** means the Short-Lived Climate Pollutants Act of 2016 (an act to add Sections 39730.5, 39730.6, 39730.7, and 39730.8 to the Health and Safety Code, and to add Chapter 13.1 [commencing with Section 42652] to Part 3 of Division 30 of the Public Resources Code, relating to methane emissions), also commonly referred to as "SB 1383."

**“Source Separated Blue Container Organic Waste”** or **“SSBCOW”** means Source Separated Organic Waste that can be placed in a Blue Container that is limited to the Collection of those Organic Wastes and Non-Organic Recyclables as defined in 14 CCR Section 18982(a)(43); or as otherwise defined by 14 CCR Section 17402(a)(18.7). SSBCOW is a subset of Organic Waste.

**“Source Separated Green Container Organic Waste”** or **“SSGCOW”** means Source Separated Organic Waste that can be placed in a Green Container that is specifically intended for the separate Collection of Organic Waste by the Generator, excluding SSBCOW, carpets, Non-Compostable Paper, and textiles. SSGCOW is a subset of Organic Waste.

**“Source Separated Recyclable Materials”** means Source Separated Non-Organic Recyclables and SSBCOW.

**“Tier One Commercial Edible Food Generator”** means a Commercial Edible Food Generator that is one of the following, each as defined in 14 CCR Section 18982:

- A. Supermarket
- B. Grocery Store with a total facility size equal to or greater than 10,000 square feet.
- C. Food Service Provider.
- D. Food Distributor.
- E. Wholesale Food Vendor.

If the definition in 14 CCR Section 18982(a)(73) of Tier One Commercial Edible Food Generator differs from this definition, the definition in 14 CCR Section 18982(a)(73) shall apply to this Agreement.

**“Tier Two Commercial Edible Food Generator”** means a Commercial Edible Food Generator that is one of the following, each as defined in 14 CCR Section 18982:

- A. Restaurant with 250 or more seats, or a total facility size equal to or greater than 5,000 square feet.
- B. Hotel with an on-site food facility and 200 or more rooms.
- C. Health facility with an on-site food facility and 100 or more beds.
- D. Large Venue.
- E. Large Event.

F. A State agency with a cafeteria with 250 or more seats or total cafeteria facility size equal to or greater than 5,000 square feet.

G. A local education agency with an on-site food facility.

If the definition in 14 CCR Section 18982(a)(74) of Tier Two Commercial Edible Food Generator differs from this definition, the definition in 14 CCR Section 18982(a)(74) shall apply to this Agreement.

**SECTION 2.** Section 24, is hereby added after Section 23 of the agreement.

**24.1 SB 1383 Services - Residential**

- (a) Containers. Contractor shall provide SB 1383 compliant three (3) container Residential collection services as follows:
1. A Green Container for organic waste (only food waste, yard waste, green waste, and other organic materials). A Blue Container for recyclables (non-organic recyclables, such as bottles, cans, and plastic, and organic waste such as paper and cardboard.) A Gray or Black Container for non-organic waste only (Items that cannot be recycled or composted).
  2. Effective January 1, 2022, replacement of Residential Containers shall be made from new Containers that are SB 1383 color and compliant. New containers purchased by Contractor after January 1, 2022, are required to meet SB 1383 container colorization (Gray/Black, Blue and Green) and labelling requirements. New containers purchased after January 1, 2022, will require SB 1383 compliant graphic-based labels identifying the acceptable materials permitted within each source-separated cart.
  3. Town house and condominium customers who currently do not receive organics service nor have a green container onsite at the time of this amendment, will receive organics service upon implementation of new SB 1383 programs. These customers will be enrolled in either a 35-gallon residential cart collection program or a shared organics bin collection program. The waiver verification process will also be applicable to these customers.
  4. The three Container collection source separation program replaces and mixed waste collection and processing and supersedes any prior mixed waste processing requirements in sections 9.a and 9.v and other related provisions of the Agreement.
  5. Contractor shall complete delivery of SB 1383 compliant Containers as required by 14 CCR 18984.7 by January 1, 2036.
- (b) Outreach. Contractor will implement the following targeted education and outreach efforts to Residential customers regarding SB 1383 required programs. Contractor shall develop educational material to explain program changes and new program implementation. Outreach and education materials will include information on separation of Organic Waste

materials, appropriate Containers, Organic Waste minimization efforts, and composting information. Absent events beyond Contractor's control or events of force majeure, a welcome outreach package for new SB 1383 programs to include a cart label will be sent to all Residential customers on or before September 1, 2022, and Contractor will also provide an annual Residential direct mailed newsletter with SB 1383 program implementation information. Contractor shall provide education and outreach materials in English, Vietnamese, and Spanish languages.

- (c) Contractor and City shall annually review the outreach effort and determine if changes to the outreach program may be required, by mutual agreement.

#### **24.2 SB 1383 Services – Commercial**

Commercial and Multi Family Customers shall subscribe to the City's three (3) container Commercial and Multi Family collection services in accordance with section 6.08.210 of the Municipal Code, and shall be auto-enrolled in these services by Contractor.

- (a) Containers. Contractor shall provide SB 1383 compliant three (3) container Multi Family and Commercial collection services as follows:
  1. A Green Container for organic waste (only food waste, yard waste, green waste, and other organic materials.) A Blue Container for recyclables (non-organic recyclables, such as bottles, cans, and plastic, and organic waste such as paper and cardboard.) A Gray or Black Container for non-organic waste only (Items that cannot be recycled or composted.)
  2. Effective January 1, 2022, replacement of Commercial and Multi Family containers shall be made from new Containers purchased after to January 1, 2022, New or replacement containers requested will be SB 1383 color and compliant. New containers purchased by Contractor after January 1, 2022, are required to meet SB 1383 container colorization (Gray/Black, Blue and Green) and labelling requirements. New containers purchased after January 1, 2022, will require SB 1383 compliant graphic-based labels identifying the acceptable materials permitted within each source-separated cart.
  3. The three Container collection source separation program replaces mixed waste collection and processing and supersedes any prior mixed waste processing requirements in sections 9.a and 9.v and other related provisions of the Agreement.
  4. Contractor shall complete delivery of SB 1383 compliant Containers as required by 14 CCR 18984.7 by January 1, 2036.
- (b) Commercial and Multi Family customers will have options for various sizes of metal bins and carts depending on space restrictions and material types.
- (c) Outreach. Contractor will implement the following targeted education and outreach efforts

to Commercial customers regarding SB 1383 required programs. Contractor shall develop educational material to explain SB 1383 program changes and new program implementation. Outreach and education materials will include information on separation of Organic Waste materials, appropriate Containers, Organic Waste minimization efforts, and composting information. Absent events beyond Contractor's control or events of force majeure, a welcome outreach package for new SB 1383 programs will be sent to all Commercial and Multi Family customers on or before September 1, 2022, and Contractor will also provide Commercial and Multi Family customers with two (2) direct outreach newsletters with SB 1383 program implementation information. Contractor shall provide education and outreach materials in English, Vietnamese, and Spanish languages annually.

- (d) Compliance Review. Contractor shall conduct a desktop review for all Commercial businesses as needed for reporting purposes.
- (e) Physical Space and De Minimis Waivers. Contractor shall assist City with Commercial Customer applications for Physical Space Waivers and De Minimis Quantity Waivers in compliance with the applicable provisions of the Municipal Code. Contractor shall assist City with development of application requirements and protocols, evaluation, and verification of the details in the Customer waiver applications, and provide assistance with preparation of City's written determinations on Customer waiver applications
- (f) Edible Food Recovery.
  - 1. No later than September 1, 2022, Contractor shall identify all Commercial Customers that meet the definition of Tier One and Tier Two Commercial Edible Food Generators and provide a list of such Customers to the City, which shall include: Customer name; service address; contact information; Tier One or Tier Two classification; and, type of business (as it relates to the Tier One and Tier Two Commercial Edible Food Generator definitions).
  - 2. Commencing September 1, 2022, and at least annually thereafter, Contractor shall coordinate inspections and provide required reporting data of Tier One Commercial Edible Food Generators, Food Recovery Organizations, and Food Recovery Services to assess compliance with the requirements of 14 CCR Chapter 12 Article 10.
  - 3. At least annually, the Contractor shall provide Commercial Edible Food Generators with the following information:
    - i. Information about the City's Edible Food Recovery program;
    - ii. Information about the Commercial Edible Food Generator requirements under 14 CCR Chapter 12 Article 10;
    - iii. Information about Food Recovery Organizations and Food Recovery Services operating within the City, and where a list of those Food Recovery Organizations and Food Recovery Services can be found; and,
    - iv. Information about actions that Commercial Edible Food Generators can take to prevent the creation of Food Waste.

4. The Contractor may provide the education information required by this section by including it with regularly scheduled notices, education materials, billing inserts, or other information disseminated to Commercial Businesses.

(g) Site Visits and Waste Assessments.

1. Contractor will include an outreach and technical assistance plan in the AB 341, AB 827, AB 1826, and SB 1383 Implementation Plan identifying the site visit schedule for which to send a Contractor representative to visit Multi-Family and Commercial Generator's Premises for the purpose of assessing how much Source Separated Recyclable Materials and SSGCOW is being Disposed; assessing Source Separated Recyclable Materials and SSGCOW Collection service level needed to meet the requirements of SB 1383, and encouraging all Generators to establish Source Separated Recyclable Materials and SSGCOW Collection service in advance of September 1, 2022, when mandatory service is required. Contractor shall also notify Customers of opportunities to reduce costs by enrolling in Source Separated Recyclable Materials and SSGCOW Collection service.. Contractor shall contact Multi-Family and Commercial Customers and provide site visits according to the City-approved schedule. Contractor will also provide a site visit to any Multi-Family and Commercial Generator that requests a site visit. Any internal Recycling programs or third-party Recycling programs that the Contractor encounters while conducting Customer site visits shall be documented using a City-approved electronic reporting form and provided in an electronic format such as a cloud-based file-sharing system that can be accessed by the City or its representatives. Upon request from the City, the Contractor shall provide reports to the City as may be reasonably required.
2. Beginning September 1, 2022, and annually thereafter, Contractor representative shall follow-up with Multi-Family and Commercial Generators who are required to participate in Source Separated Recyclable Materials and SSGCOW Collection service under Applicable Law, including but not limited to AB 341, AB 1826, and SB 1383, to verify that these Generators are participating in the Source Separated Recyclable Materials and SSGCOW Collection Service. If the Generator is not in compliance or not participating, the representative shall assist the Customers with selecting appropriate Containers and Container sizing, identifying acceptable Organic Waste collection services as set forth, and attempt to resolve any logistical barriers to providing Source Separated Recyclable Materials and SSGCOW Collection service.
3. Contractor shall offer, and also provide on-site training for Commercial Generators' staff as may be needed, including, but not limited to: management, kitchen staff, service employees, and janitorial staff; and Multi-Family Customers' staff, including but not limited to: the property manager, janitorial staff, maintenance, and any other on-site staff members or contractors that handle discarded materials processes.
4. For each on-site waste assessment conducted by Contractor, Contractor shall provide information or documentation of the items listed below. City reserves the right to

reasonably request additional information, and shall authorize the format for required information.

- i. Pictures of material in all Containers
- ii. General characteristics of the property, business, and Generator type
- iii. Written recommendations for the appropriate service Level for each material type
- iv. Provision of outreach and education materials appropriate to the Generator type
- v. Determination of signage placement
- vi. Determination of any on-going training needs
- vii. Determination of any special access needs
- viii. Documentation of any special service needs, (such as, but not limited to, seasonal, automated on-call compactor, etc.)
- ix. Documentation of communications with the Generator.

#### **24.3. SB 1383 Contamination Monitoring and Enforcement.**

- (a) Contractor shall institute a contamination minimization program which will include:
  1. Route Reviews/Container Inspections: Carts shall be randomly selected and inspected along each route once per year per route;
  2. Notifications to Customers: Cart tags will be issued to inform Customers of proper material separation requirements and observed contamination;
  3. Contamination Fee: A Contamination Fee will be charged to Residential and Commercial Customers with contaminated carts identified through routine periodic monitoring.
- (b) Inspection Program. Contractor shall implement a container inspection program in compliance with the requirements of SB 1383. Contractor shall perform contamination inspections with Contractor's personnel on Collection vehicles, and periodic route reviews. Collection vehicle personnel may conduct contamination inspections by lifting the Container lid and observing the contents.
- (c) Record Keeping. The driver or other Contractor representative shall record each event of identification of Prohibited Container Contaminants in a written log or in the on-board computer system including date, time, Customer's address, type of Container (Blue, Green, or Gray or Black Container); and maintain photographic evidence, if needed. Contractor shall submit this record to the Contractor's Customer service department, and Contractor's Customer service department shall update the Customer's account record to note the event, if the documentation of the on-board computer system did not automatically update the Customer's account record.
- (d) Identification of Excluded Waste. If Contractor's personnel observe Excluded Waste in an uncollected Container, the Contractor's personnel shall record that observation and immediately inform their route supervisor. The route supervisor shall investigate and initiate applicable action within one (1) Business Day or sooner if the Excluded Waste

reasonably appears to pose a threat of immediate danger.

- (e) Courtesy Pick-Up Notices. Upon identification of Prohibited Container Contaminants in a Customer's Container, Contractor shall provide the Customer with a courtesy pick-up notice. The courtesy pick-up notification shall: (i) inform the Customer of the observed presence of Contaminants; (ii) include the date and time the Prohibited Container Contaminants were observed; (iii) include information on the Customer's requirement to properly separate materials into the appropriate Containers, and the accepted and prohibited materials for Containers; (iv) inform the Customer of the courtesy pick-up of the contaminated materials on this occasion with information that on any subsequent instances, Contractor may assess Contamination fees. Contractor shall collect the contaminated Container contents for transport to the appropriate Approved/Designated Facility for Disposal/ Processing.
- (f) Notice of Assessment of Contamination Fees. Upon observation of container contamination by commercial or residential customers as set forth in section (e) above, the Contractor shall issue a warning notice tag to the Customer advising that the load is contaminated, and that further instances of contamination will lead to a fine on the customer's bill. Thereafter, once the Contractor has issued two (2) warning tag notices to a Customer for any subsequent observation of Contamination in Commercial or Residential Containers, Contractor may charge a Contamination fee to the Customer. Contractor shall leave a contamination fee notice attached to or adhered to the Customer/Generators' contaminated Containers; at the Premises' door or gate; or, may deliver the notice by mail, e-mail or text message. The Contamination fee notice shall describe the specific material(s) of issue, the fact of the prior warning notice tags, explain how to correct future set outs, and indicate that the Customer will be charged a Contamination fee on its next bill.

**24.4. On-going Contamination Monitoring by Route Personnel**

Contractor shall assist on an on-going basis in minimizing contamination by helping to educate Customers on acceptable and non-acceptable materials through ongoing education and outreach efforts and through on-going monitoring of the contents of Collection Containers. Contractor shall provide education and outreach materials in English, Vietnamese, and Spanish languages. The on-going Container monitoring shall be performed by Contractor using the method described in Section 24.3.

**24.5. Prescribed Contamination Monitoring**

Contractor will implement Physical Container Inspections to comply with the requirements of this Section.

- (a) Methodology and Frequency. Commencing on or after July 1, 2022, the Contractor shall, at its sole expense, conduct hauler route reviews for Prohibited Container Contaminants in Containers in a manner that is deemed safe by the Contractor; is approved by the City; and is conducted in a manner that results in all hauler routes being reviewed annually or more frequently. The Contractor shall conduct hauler route reviews that include inspection of the contents of Blue, Green, and Gray/Black Containers for Prohibited Container Contaminants in a manner that a minimum of five percent (5%) of accounts on each and

every hauler route are randomly inspected annually. Contractor shall develop a hauler route review methodology to accomplish the above Container inspection requirements in substantial compliance with the requirements of 14 CCR Section 18984.5(b).

- (b) Noticing of Generators with Contamination, and Disposal of Materials. Upon finding Prohibited Container Contaminants in a Container, Contractor shall follow the contamination noticing procedures and contaminated Container handling protocols set forth in Section 24.3.

## 24.6. Inspection and Enforcement

### (a) Annual Compliance Reviews

1. General. Contractor shall perform compliance reviews described in this Section commencing September 1, 2022, and at least annually thereafter, unless otherwise noted.
  2. Commercial Generator Compliance Reviews. The Contractor shall complete a compliance review of all Multi-Family and Commercial Customers that generate two (2) cubic yards or more per week of Solid Waste, including Organic Waste to determine their compliance with: (i) Generator requirements under the City's Collection program; The compliance review shall mean a "desk" review of records to determine Customers' compliance with the above requirements and does not necessarily require on-site observation of service; however, the City may request that the Contractor perform an on-site observation of service in addition to or in lieu of the desk review if needed to obtain the required information.
  3. Annual Hauler Route Review. The Contractor shall conduct annual hauler route reviews of Commercial, Multi-Family, and Single-Family Generators for compliance with the City's Organic Waste collection program and Container contamination monitoring. These hauler route reviews may be performed concurrently with the contamination monitoring hauler route reviews, provided that Contractor documents a reasonable sampling of Generators for which compliance with the City's Organic Waste collection program during the hauler route review was assessed.
  4. Food Recovery Compliance Reviews. Commencing September 1, 2022, and at least annually thereafter, Contractor shall conduct inspections of Tier One Commercial Edible Food Generators, Food Recovery Organizations, and Food Recovery Services to assess Generators' compliance with the requirements of 14 CCR Chapter 12 Article 10.
- (b) Generator Waiver Inspections. Contractor shall verify Commercial Generator de minimis and physical space constraint waivers, if waivers were approved by the City, at least once every five (5) years from the date of issuance of the waiver.

(c) Compliance Review Process

1. Number of Reviews. The Contractor shall conduct compliance reviews, hauler route reviews, and inspections of entities as required in this Amendment to determine the entities' overall compliance with SB 1383, AB 1826, and AB 341. The City reserves the right to require additional inspections, if the City determines that the amount of inspections conducted by the Contractor is insufficient. City may require the Contractor to prioritize inspections of entities that the City determines are more likely to be out of compliance
2. Non-Compliant Entities. From September 1, 2022, through September 31, 2023, when compliance reviews are performed by Contractor, Contractor shall provide educational materials in response to circumstances of non-compliance. Contractor shall provide these educational materials to the non-compliant Customers and Generators following a determination of non-compliance or immediately upon determination of non-compliance if such non-compliance is determined during an inspection or hauler route review. Contractor shall document the non-compliant Customers and Generators and the date and type of education materials provided and report such information to the City.
3. Documentation of Inspection Actions. The Contractor shall generate a written and/or electronic record and maintain documentation for each inspection, hauler route review, and compliance review conducted.

**24.7. SB 1383 Customer Compliance Enforcement Data**

Contractor shall keep and maintain SB 1383 customer compliance enforcement records within a cloud-based system format, and City will be provided access credential to access the customer enforcement action data as may be required for purposes of CalRecycle requests made pursuant to 14 CCR 18995.2.

**24.8. SB 1383 Customer Outreach Records**

Contractor shall keep and maintain SB 1383 customer outreach records within a cloud-based system format, and City will be provided access credential to access the customer outreach data as may be required for purposes of CalRecycle requests made pursuant to 14 CCR 18988.4.

**24.9 SB 1383 Data Reporting.**

- (a) Contractor shall assist City with SB 1383 initial CalRecycle compliance reporting by providing compliance data needed for City generated reports to CalRecycle in accordance with 14 CCR 18994.2.

- (b) Contractor shall assist City with SB 1383 annual CalRecycle compliance reporting by providing compliance data needed for the City-generated Annual compliance report to CalRecycle in accordance with 14 CCR 18994.2.

#### **24.10 SB 1383 Organic Procurement Requirements.**

Contractor will cooperate with City and assist City in meeting City's procurement requirements established in 14 CCR Section 18993.1 regarding recovered organic waste products. Annually, Contractor will assist City either by procuring approximately 2,569 tons of compost on behalf of the City to be delivered on a schedule and to a location mutually agreed upon, or alternatively as determined by Contractor utilizing one or more alternative methods to assist City in meeting its procurement obligation, including without limitation compost donations and assignment of customer compost purchase credits to City. Contractor's total cost of procurement assistance shall not exceed \$25.00 per ton, adjusted annually for changes in the Consumer Price Index in accordance with the provisions of section 6.d of this Agreement.

#### **24.11 Uncontainerized (Bulky) Waste**

The provisions of Attachment 1 to the Agreement are amended at section 2. Bulky Item Pickup, to add the following sentence after numbered item &:

"Contractor shall segregate and process recyclable Organic Waste in Customer bulky item set outs."

**SECTION 3. Overage Fee.** The Agreement is amended at Section 3.(i) to add the following sentence as the last sentence of subsection (i):

"Contractor may not charge Customer an overage fee if a Customer's Container was missed on the Customer's prior service day and was not serviced after Customer's notification to Contractor of the missed collection."

**SECTION 4. Amendment of Agreement at Attachment No. 1, Service Levels (previously amended by Amendment No. 1):**

Attachment No. 1 to the Agreement is amended as follows by deleting the following text of item 10 on page 3 of Attachment No. 1:

~~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.~~

Attachment No. 1 to the Agreement is amended as follows by adding a new numbered paragraph 6 as follows:

**6. Holiday Tree Collection.**

Contractor shall collect residential holiday trees set out curbside commencing two (2) days after the Christmas Holiday, and continuing from that date for a period of two successive weeks with tree collection on Customer's regular collection day.

**SECTION 5. Amendment of Agreement at section 6.d (as previously amended by Amendment No. 2) as follows by deleting the following text and replacing it with the text immediately below the deleted text:**

~~i. — 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: CUUR0000SEHCi Garbage and Trash Collection. All Urban Consumers for Los Angeles-Riverside-Orange County Area, California ("Garbage and Trash Collection Index").~~

**Amended text of 6.d.i:**

i. The average annual percentage of increase or decrease in the Consumer Price Index (CPI) 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: CUUR0000SEHG02 Garbage and Trash Collection. Found at <https://beta.bls.gov/dataViewer/view/timeseries/CUUR0000SEHG02> or successor link from [www.bls.gov](http://www.bls.gov).

**SECTION 6. Amendment of Agreement at section 7.a (as previously amended by Amendment No. 2) as follows by deleting the following text and replacing it with the text immediately below the deleted text:**

~~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 Garbage and Trash Collection. The increase shall be measured as the annual average change in the Garbage and Trash Collection Index for the twelve (12) month period preceding the effective date of the proposed rate adjustment, measured annually each year from January to December.~~

**Amended text of 7.a:**

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 Consumer Price Index (CPI) 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: CUUR0000SEHG02 for Garbage and Trash Collection.

**SECTION 7. Interpretation.** In the event of any conflict between this Third Amendment and the Agreement, this Amendment shall govern. Section headings in this Amendment are for convenience only and shall not be used in the interpretation of this Amendment. This Amendment may be executed in counterparts and/or by electronic signature (e.g. DocuSign). As used in this Amendment, “including” and its variants mean “including without limitation.”

**SECTION 8. Change in Applicable Law.** The parties acknowledge and agree that in the event of a Change in Applicable Law affecting the provisions of the Agreement, including without limitation changes to AB 939, SB 1383 and AB 341 which result in required changes to services provided under the Agreement as amended, the Parties shall meet and confer in good faith to implement the changes in law and adjust Contractor Rates. “Change in Applicable Law” means, without limitation, the enactment, issuance, adoption, repeal, amendment or modification or other changes in federal, state or local statute, ordinance or regulation, or a regulatory agency or other administrative agency interpretation of a regulation or statute, or a judicial decision interpreting a law, statute, ordinance or regulation affecting Contractor’s performance of Services pursuant to this Agreement, including the imposition of new or amended Solid Waste diversion programs or requirements on City or Contractor, or the imposition of new or increased government fees, taxes or assessments.

**SECTION 9. Continuing Effect of Agreement.** Except as amended by this Third Amendment, all provisions of the Agreement shall remain unchanged and in full force and effect. From and after the date of this Amendment, whenever the term “Agreement” appears in the Agreement, it shall mean the Agreement, as amended by this Third Amendment to the Agreement.

**SECTION 10. Affirmation of Agreement; Warranty Re Absence of Defaults.** City and Contractor each ratify and reaffirm each and every one of the respective rights and obligations arising under the Agreement. Each party represents and warrants to the other that there have been no written or oral modifications to the Agreement other than as provided herein. Each party represents and warrants to the other that the Agreement is currently an effective, valid, and binding obligation. Contractor represents and warrants to City that, as of the date of this Third Amendment, City is not in default of any material term of the Agreement and that there have been no events that, with the passing of time or the going of notice, or both, would constitute a material default under the Agreement. City represents and warrants to Contractor that, as of the date of this Third Amendment, Contractor is not in default of any material term of the Agreement and that there have been no events that, with the passing of time or the giving of notice, or both, would constitute a material default under the Agreement.

**SECTION 11. Adequate Consideration.** The parties hereto irrevocably stipulate and agree that

they have each received adequate and independent consideration for the performance of the obligations they have undertaken pursuant to this Third Amendment.

**SECTION 12. Authority.** The persons executing this Third Amendment on behalf of the respective Parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Third Amendment on behalf of said party, (iii) by so executing this Third Amendment, such party is formally bound to the provisions of the Agreement as amended, and (iv) the entering into this Third Amendment does not violate any provision of any other agreement to which said party is bound.

**SECTION 13. Recitals Material.** The Parties agree that the Recitals above are material and are incorporated herein as part of this Third Amendment.

**IN WITNESS WHEREOF,** the Parties have executed this Agreement, as of the date first indicated above.

**CITY:**

**CONTRACTOR:**

CITY OF FOUNTAIN VALLEY

A Municipal Corporation

By: Patrick Harper  
Patrick Harper, Mayor

ATTEST:  
By: Rick Miller  
Rick Miller  
City Clerk

APPROVED AS TO FORM:

Colin Burns  
By: \_\_\_\_\_  
Colin Burns  
Attorney for the City

APPROVED AS TO CONTENT:

By: Hye Jin Lee  
Hye Jin Lee, PE  
Director of Public Works

RAINBOW DISPOSAL CO, INC.

Approved by:

By: Daniel Capcher  
Daniel Capcher GM  
Print name and Title of Officer

By: \_\_\_\_\_  
\_\_\_\_\_  
Print Name and Title of Officer

# CONTINUATION CERTIFICATE

The Arch Insurance Company (hereinafter called the Surety) hereby continues in force its Bond No. 1119909 in the sum of One Hundred Thousand Dollars and 00/100 (\$100,000.00) Dollars, on behalf of Rainbow Disposal Co., Inc. in favor of City of Fountain Valley for Rubbish Collection, Disposal and Recycling subject to all the conditions and terms thereof through 2nd Day of October, 2023 at location of risk.

This Continuation is executed upon the express condition that the Surety's liability shall not be cumulative and shall be limited at all times by the amount of the penalty stated in the bond.

IN WITNESS WHEREOF, the Surety has caused this instrument to be signed by its duly authorized Attorney-in-Fact and its corporate seal to be hereto affixed this 8th Day of August, 2022.

Arch Insurance Company  
Surety

BY: \_\_\_\_\_

Amber Engel, Attorney-in-Fact



This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated. Not valid for Note, Loan, Letter of Credit, Currency Rate, Interest Rate or Residential Value Guarantees.

POWER OF ATTORNEY

Know All Persons By These Presents:

That the Arch Insurance Company, a corporation organized and existing under the laws of the State of Missouri, having its principal administrative office in Jersey City, New Jersey (hereinafter referred to as the "Company") does hereby appoint: Amber Engel

its true and lawful Attorney(s)-in-Fact, to make, execute, seal, and deliver from the date of issuance of this power for and on its behalf as surety, and as its act and deed: Any and all bonds, undertakings, recognizances and other surety obligations, in the penal sum not exceeding Ninety Million Dollars (90,000,000.00). Any and all bonds, undertakings, recognizances and other surety obligations.

Surety Bond Number: 1119909
Principal: Rainbow Disposal Co., Inc.
Obligee: City of Fountain Valley

This authority does not permit the same obligation to be split into two or more bonds In order to bring each such bond within the dollar limit of authority as set forth herein.

The execution of such bonds, undertakings, recognizances and other surety obligations in pursuance of these presents shall be as binding upon the said Company as fully and amply to all intents and purposes, as if the same had been duly executed and acknowledged by its regularly elected officers at its principal administrative office in Jersey City, New Jersey.

This Power of Attorney is executed by authority of resolutions adopted by unanimous consent of the Board of Directors of the Company on December 11, 2020, true and accurate copies of which are hereinafter set forth and are hereby certified to by the undersigned Secretary as being in full force and effect:

"VOTED, That the Chairman of the Board, the President, or the Executive Vice President, or any Senior Vice President, of the Surety Business Division, or their appointees designated in writing and filed with the Secretary, or the Secretary shall have the power and authority to appoint agents and attorneys-in-fact, and to authorize them subject to the limitations set forth in their respective powers of attorney, to execute on behalf of the Company, and attach the seal of the Company thereto, bonds, undertakings, recognizances and other surety obligations obligatory in the nature thereof, and any such officers of the Company may appoint agents for acceptance of process."

This Power of Attorney is signed, sealed and certified by facsimile under and by authority of the following resolution adopted by the unanimous consent of the Board of Directors of the Company on December 11, 2020:

VOTED, That the signature of the Chairman of the Board, the President, or the Executive Vice President, or any Senior Vice President, of the Surety Business Division, or their appointees designated in writing and filed with the Secretary, and the signature of the Secretary, the seal of the Company, and certifications by the Secretary, may be affixed by facsimile on any power of attorney or bond executed pursuant to the resolution adopted by the Board of Directors on December 11, 2020, and any such power so executed, sealed and certified with respect to any bond or undertaking to which it is attached, shall continue to be valid and binding upon the Company. In Testimony Whereof, the Company has caused this instrument to be signed and its corporate seal to be affixed by their authorized officers, this 2nd day of July, 2021

Attested and Certified

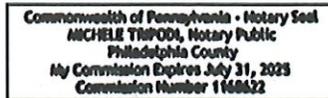
Signature of Regan A. Shulman
Regan A. Shulman, Secretary



Signature of Stephen C. Ruschak
Stephen C. Ruschak, Executive Vice President

STATE OF PENNSYLVANIA SS
COUNTY OF PHILADELPHIA SS

I, Michele Tripodi, a Notary Public, do hereby certify that Regan A. Shulman and Stephen C. Ruschak personally known to me to be the same persons whose names are respectively as Secretary and Executive Vice President of the Arch Insurance Company, a Corporation organized and existing under the laws of the State of Missouri, subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that they being thereunto duly authorized signed, sealed with the corporate seal and delivered the said instrument as the free and voluntary act of said corporation and as their own free and voluntary acts for the uses and purposes therein set forth.



Signature of Michele Tripodi
Michele Tripodi, Notary Public
My commission expires 07/31/2025

CERTIFICATION

I, Regan A. Shulman, Secretary of the Arch Insurance Company, do hereby certify that the attached Power of Attorney dated July 2, 2021 on behalf of the person(s) as listed above is a true and correct copy and that the same has been in full force and effect since the date thereof and is in full force and effect on the date of this certificate; and I do further certify that the said Stephen C. Ruschak, who executed the Power of Attorney as Executive Vice President, was on the date of execution of the attached Power of Attorney the duly elected Executive Vice President of the Arch Insurance Company.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the corporate seal of the Arch Insurance Company on this 8th day of August, 2022.

Signature of Regan A. Shulman
Regan A. Shulman, Secretary

This Power of Attorney limits the acts of those named therein to the bonds and undertakings specifically named therein and they have no authority to bind the Company except in the manner and to the extent herein stated.

PLEASE SEND ALL CLAIM INQUIRIES RELATING TO THIS BOND TO THE FOLLOWING ADDRESS:

Arch Insurance - Surety Division
3 Parkway, Suite 1500
Philadelphia, PA 19102

To verify the authenticity of this Power of Attorney, please contact Arch Insurance Company at SuretyAuthentic@archinsurance.com. Please refer to the above named Attorney-in-Fact and the details of the bond to which the power is attached.

