

**AMENDMENT NO. FOUR TO
AGREEMENT FOR BEACH CONTAINER REFUSE COLLECTION SERVICE
WITH RAINBOW DISPOSAL CO., INC.**

THIS AMENDMENT NO. FOUR TO BEACH CONTAINER REFUSE COLLECTION SERVICE AGREEMENT ("Amendment No. Four") is made and entered into as of this 27th day of January, 2026 ("Effective Date"), by and between the CITY OF NEWPORT BEACH, a California municipal corporation and charter city ("City"), and RAINBOW DISPOSAL CO., INC., a California corporation ("Contractor"), whose address on file with the Secretary of State is 18500 North Allied Way, Phoenix, Arizona 85054, with a local address of 17121 Nichols Lane, Huntington Beach, CA 92647, and is made with reference to the following:

RECITALS

- A. On January 11, 2011, City and Contractor entered into an Agreement for Beach Container Refuse Collection Service (Contract No. C-4709) ("Agreement") for refuse collection, disposal and maintenance services for beach containers on a regular basis ("Project").
- B. On August 13, 2019, City and Contractor entered into Amendment No. One to the Agreement ("Amendment No. One") to increase the total compensation based upon an unanticipated increase in the volume of services, to amend the Administration and Notices sections of the Agreement, and to add sections related to No Attorneys Fees and Counterparts.
- C. On October 13, 2020, City and Contractor entered into Amendment No. Two ("Amendment No. Two") to increase the total compensation based upon an unanticipated increase in the volume of services, to update Exhibit B, extend the term of the Agreement to December 31, 2022, amend Hold Harmless section, and update insurance requirements.
- D. On September 27, 2022, City and Contractor entered into Amendment No. Three to increase the total compensation, update the Scope of Services, amend the Schedule of Billing Rates, and extend the term of the Agreement to February 28, 2026.
- E. The parties desire to enter into this Amendment No. Four to extend the term of the Agreement to December 31, 2029, revise Section 3 of the Agreement to include a project manager, revise the Compensation to Contractor and increase the total compensation, update the Schedule of Billing Rates, amend the Notices section, and update the insurance requirements.

NOW, THEREFORE, it is mutually agreed by and between the undersigned parties as follows:

1. TERM

Section 1 of the Agreement is amended in its entirety and replaced with the following: "The term of this Agreement shall commence on the Effective Date, and shall terminate on December 31, 2029, unless terminated earlier as set forth herein."

2. WORKMANSHIP, SUPERVISION, AND EQUIPMENT

Section 3.I. of the Agreement is amended in its entirety and replaced with the following: "I. Contractor shall designate a Project Manager who shall coordinate all phases of the Project with the City's Administrator, and ensure satisfactory performance of Agreement Services and compliance with the terms of this Agreement. The Project Manager shall be available to City at all reasonable times during the Agreement term. Contractor has designated Debbie Kiley to be its Project Manager. Contractor shall not remove or reassign the Project Manager or any personnel or assign any new or replacement personnel to the Project without the prior written consent of City. City's approval shall not be unreasonably withheld with respect to the removal or assignment of non-key personnel."

3. COMPENSATION TO CONTRACTOR

As of the Effective Date of this Amendment No. Four, Exhibit B to the Agreement shall be supplemented to include the Schedule of Billing Rates, attached hereto as Exhibit B and incorporated herein by reference ("Services" or "Work"). Exhibit B to the Agreement, and Exhibit B to Amendment No. One, Amendment No. Two, Amendment No. Three, and this Amendment No. Four shall collectively all be known as "Exhibit B".

Section 4 of the Agreement is amended in its entirety and replaced with the following:

"4.1 City shall pay Contractor for the Services on a not-to-exceed basis in accordance with the provisions of this Section and the Schedule of Billing Rates attached hereto as Exhibit B and incorporated herein by reference. Except as otherwise provided herein, no rate changes shall be made during the term of this Agreement without the prior written approval of City. Contractor's compensation for all Services performed in accordance with this Agreement, including all reimbursable items, shall not exceed **Three Million Seven Hundred Forty Thousand Dollars and 00/100 (\$3,740,000.00)**, without prior written amendment to the Agreement.

4.2 The parties acknowledge that the Waste Infrastructure System Enhancement (WISE) agreement is currently under negotiation. Once the WISE agreement (or similar successor agreement) is fully executed and the applicable rates are formally established, Contractor shall be permitted to submit the pass-through billing rates established therein to the City's Project Manager. All such rates remain subject to the advance written approval of the City Manager or their designee, which approval shall not be unreasonably withheld.

Upon the first anniversary of the Effective Date and upon each anniversary of the Effective Date thereafter, the non pass-through billing rates set forth in Exhibit B ("Schedule of Billing Rates") may be adjusted in proportion to changes in the Consumer Price Index, subject to the maximum adjustment set forth below. Such adjustment shall be made by multiplying the Billing Rates in Exhibit B by a fraction, the numerator of which is the value of the Consumer Price Index for the calendar month three (3) months preceding the calendar month for which such adjustment is to be made, and the denominator of which is the value of the Consumer Price Index for the same calendar month immediately prior to Effective Date. The Consumer Price Index to be used in such calculation is the "Consumer Price Index, All Items, 1982-84=100 for All Urban Consumers (CPI-U)", for the Los Angeles-Riverside-Orange County Metropolitan Area, published by the United States Department of Labor, Bureau of Labor Statistics. If both an official index and one or more unofficial indices are published, the official index shall be used. If said Consumer Price Index is no longer published at the adjustment date, it shall be constructed by conversion tables included in such new index. In no event, however, shall the amount payable under this Agreement be reduced below the Billing Rates in effect immediately preceding such adjustment. The maximum adjustment increases to the Billing Rates, for any year where an adjustment is made pursuant to this Section, shall not exceed the Consumer Price Index or 3.0% of the Billing Rates in effect immediately preceding such adjustment, whichever is less. Contractor shall notify City in writing of any requests for adjustment pursuant to this Section at least thirty (30) days prior to the Effective Date of such adjustment and provide updated billing rates. Adjusted billing rates shall be approved in writing by City prior to use."

The total amended compensation reflects Contractor's additional compensation for additional Services to be performed in accordance with this Amendment No. Four, including all reimbursable items and subconsultant fees, in an amount not to exceed **Six Hundred Ninety Four Thousand Four Hundred Ninety Four Dollars and 27/100 (\$694,494.27)**.

4. NOTICES

Section 19 of the Agreement shall be amended in its entirety and replaced with the following:

"19.1 All notices, demands, requests or approvals, including any change in mailing address, to be given under the terms of this Agreement shall be given in writing, and conclusively shall be deemed served when delivered personally, or on the third business day after the deposit thereof in the United States mail, postage prepaid, first-class mail, addressed as hereinafter provided.

19.2 All notices, demands, requests or approvals from Contractor to City shall be addressed to City at:

Attn: Director of Public Works
Public Works Department
City of Newport Beach
100 Civic Center Drive
Newport Beach, CA 92660

19.3 All notices, demands, requests or approvals from City to Contractor shall be addressed to Contractor at:

Attn: Debbie Killey
Rainbow Disposal Co., Inc.
17121 Nichols Lane
Huntington Beach, CA 92647"

5. INSURANCE REQUIREMENTS

As of this Effective Date of this Amendment No. Four, Exhibit E of the Agreement shall be deleted in its entirety and replaced with Exhibit E, attached hereto and incorporated herein by reference. Any reference to Exhibit E in the Agreement, Amendment No. One, Amendment No. Two, and Amendment No. Three shall hereafter refer to Exhibit E attached hereto."

6. INTEGRATED CONTRACT

Except as expressly modified herein, all other provisions, terms, and covenants set forth in the Agreement shall remain unchanged and shall be in full force and effect.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have caused this Amendment No. Four to be executed on the dates written below.

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

Date: 11/13/2024

By: Aaron C. Harp
Aaron C. Harp
City Attorney

ATTEST:
Date: _____

By: _____
Lena Shumway
City Clerk

CITY OF NEWPORT BEACH,
a California municipal corporation

Date: _____

By: _____
Lauren Kleiman
Mayor

CONTRACTOR: RAINBOW DISPOSAL CO., INC., a California corporation
Date: _____

By: _____
Daniel Capener
General Manager

[END OF SIGNATURES]

Attachments: Exhibit B – Schedule of Billing Rates
 Exhibit E – Insurance Requirements

EXHIBIT B

SCHEDULE OF BILLING RATES

EXHIBIT B

BILLING RATES

I. Current Rates Effective 09/27/2025:

TIP RATE
\$8.21
CART CLEANOUT RATE
\$21.03

II. Rates Effective March 1, 2026:

TIP RATE	DESCRIPTION
\$1.39	Pass Through
\$8.10	Non-Pass Through
\$9.49	Total Tip Rate
CART CLEANOUT RATE	
\$47.70	

EXHIBIT E

INSURANCE REQUIREMENTS – MAINTENANCE/REPAIR/JANITORIAL SERVICES

1. Provision of Insurance. Without limiting Contractor's indemnification of City, and prior to commencement of Work, Contractor shall obtain, provide and maintain at its own expense during the term of this Agreement, policies of insurance of the type and amounts described below and in a form satisfactory to City. Contractor agrees to provide insurance in accordance with requirements set forth here. If Contractor uses existing coverage to comply and that coverage does not meet these requirements, Contractor agrees to amend, supplement or endorse the existing coverage.
2. Acceptable Insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City's Risk Manager.
3. Coverage Requirements.
 - A. Workers' Compensation Insurance. Contractor shall maintain Workers' Compensation Insurance, statutory limits, and Employer's Liability Insurance with limits of at least one million dollars (\$1,000,000) each accident for bodily injury by accident and each employee for bodily injury by disease in accordance with the laws of the State of California, Section 3700 of the Labor Code.

Contractor shall submit to City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of City, its City Council, boards and commissions, officers, agents, volunteers and employees.
 - B. General Liability Insurance. Contractor shall maintain commercial general liability insurance and, if necessary, umbrella liability insurance, with coverage at least as broad as provided by Insurance Services Office form CG 00 01, in an amount not less than two million dollars (\$2,000,000) per occurrence, four million dollars (\$4,000,000) general aggregate. The policy shall cover liability arising from premises, operations, products-completed operations, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).
 - C. Automobile Liability Insurance. Contractor shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of Contractor arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned or

rented vehicles, in an amount not less than one million dollars (\$1,000,000) combined single limit each accident.

D. **Umbrella or Excess Liability Insurance.** Contractor shall obtain and maintain an umbrella or excess liability insurance policy with limits of not less than one million dollars (\$1,000,000) that will provide bodily injury, personal injury and property damage liability coverage at least as broad as the primary coverages set forth above. Such policy or policies shall include the following terms and conditions:

- A drop down feature requiring the policy to respond in the event that any primary insurance limits are exhausted by paid claims;
- Pay on behalf of wording as opposed to reimbursement;
- Concurrency of effective dates with primary policies;
- Policies shall "follow form" to the underlying primary policies; and
- Insureds under primary policies shall also be insureds under the umbrella or excess policies.

E. **Pollution Liability Insurance.** If required, Contractor shall maintain a policy providing contractor's pollution liability ("CPL") coverage with a total limit of liability of no less than one million dollars (\$1,000,000) per loss and two million dollars (\$2,000,000) in the aggregate per policy period. Claims-made policies require a 5-year extended reporting period. The CPL policy shall include coverage for cleanup costs, third-party bodily injury and property damage, including loss of use of damaged property or of property that has not been physically injured or destroyed, resulting from pollution conditions caused by contracting operations. Coverage as required in this paragraph shall apply to sudden and non-sudden pollution conditions resulting from the escape or release of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids, or gases, waste materials, or other irritants, contaminants, or pollutants. The CPL shall also provide coverage for transportation and off-Site disposal of materials. The policy shall not contain any provision or exclusion (including any so-called "insured versus insured" exclusion or "cross-liability" exclusion) the effect of which would be to prevent, bar, or otherwise preclude any insured or additional insured under the policy from making a claim which would otherwise be covered by such policy on the grounds that the claim is brought by an insured or additional insured against an insured or additional insured under the policy.

4. **Other Insurance Requirements.** The policies are to contain, or be endorsed to contain, the following provisions:

A. **Waiver of Subrogation.** All insurance coverage maintained or procured pursuant to this Agreement shall be endorsed to waive subrogation

against City, its City Council, boards and commissions, officers, agents, volunteers and employees or shall specifically allow Contractor or others providing insurance evidence in compliance with these requirements to waive their right of recovery prior to a loss. Contractor hereby waives its own right of recovery against City, and shall require similar written express waivers from each of its subcontractors.

- B. Additional Insured Status. All liability policies including general liability, products and completed operations, excess liability, pollution liability, and automobile liability, if required, shall provide or be endorsed to provide that City, its City Council, boards and commissions, officers, agents, volunteers and employees shall be included as insureds under such policies.
- C. Primary and Non Contributory. All liability coverage shall apply on a primary basis and shall not require contribution from any insurance or self-insurance maintained by City.
- D. Notice of Cancellation. All policies shall provide City with thirty (30) calendar days notice of cancellation (except for nonpayment for which ten (10) calendar days notice is required) or nonrenewal of coverage for each required coverage.

5. Additional Agreements Between the Parties. The parties hereby agree to the following:

- A. Evidence of Insurance. Contractor shall provide certificates of insurance to City as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation and other endorsements as specified herein for each coverage. Insurance certificates and endorsement must be approved by City's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with City at all times during the term of this Agreement. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. At least fifteen (15) days prior to the expiration of any such policy, evidence of insurance showing that such insurance coverage has been renewed or extended shall be filed with the City. If such coverage is cancelled or reduced, Contractor shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the City evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies. City reserves the right to require complete, certified copies of all required insurance policies, at any time.
- B. City's Right to Revise Requirements. City reserves the right at any time during the term of the Agreement to change the amounts and types of insurance required by giving Contractor sixty (60) calendar days

advance written notice of such change. If such change results in substantial additional cost to Contractor, City and Contractor may renegotiate Contractor's compensation.

- C. Right to Review Subcontracts. Contractor agrees that upon request, all agreements with subcontractors or others with whom Contractor enters into contracts with on behalf of City will be submitted to City for review. Failure of City to request copies of such agreements will not impose any liability on City, or its employees. Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that City is an additional insured on insurance required from subcontractors. For CGL coverage, subcontractors shall provide coverage with a format at least as broad as CG 20 38 04 13.
- D. Enforcement of Agreement Provisions. Contractor acknowledges and agrees that any actual or alleged failure on the part of City to inform Contractor of non-compliance with any requirement imposes no additional obligations on City nor does it waive any rights hereunder.
- E. Requirements not Limiting. Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If the Contractor maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.
- F. Self-insured Retentions. Any self-insured retentions must be declared to and approved by City. City reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible. Self-insurance will not be considered to comply with these requirements unless approved by City.
- G. City Remedies for Non-Compliance. If Contractor or any subcontractor fails to provide and maintain insurance as required herein, then City shall have the right but not the obligation, to purchase such insurance, to terminate this Agreement, or to suspend Contractor's right to proceed until proper evidence of insurance is provided. Any amounts paid by City shall, at City's sole option, be deducted from amounts payable to Contractor or reimbursed by Contractor upon demand.
- H. Timely Notice of Claims. Contractor shall give City prompt and timely notice of claims made or suits instituted that arise out of or result from

Contractor's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies. City assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve City.

- I. Contractor's Insurance. Contractor shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the Work.