

ATTACHMENT A

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

THIS AMENDMENT NO. ONE TO BEACH CONTAINER REFUSE COLLECTION SERVICE AGREEMENT ("Amendment No. One") is made and entered into as of this 13th day of August, 2019 ("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 is 17121 Nichols Lane, Huntington Beach, California 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 ("Agreement") for refuse collection, disposal and maintenance services for beach containers on a regular basis ("Project").
- B. The parties desire to enter into this Amendment No. One to increase the total compensation based upon an unanticipated increase in the volume of Services; to update the Administration and Notices sections of the Agreement; and to add sections related to No Attorneys Fees and Counterparts.

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

1. SERVICES TO BE PERFORMED

Exhibit B to the Agreement shall be supplemented as of the Effective Date, to include the Billing Rates and Services, attached hereto as Exhibit B and incorporated herein by reference ("Services" or "Work"). Exhibit B to the Agreement and Exhibit B to this Amendment No. One shall collectively be known as "Exhibit B." The City may elect to delete certain Services within the Scope of Services at its sole discretion.

2. COMPENSATION TO CONSULTANT

Section 4 of the Agreement shall be amended in its entirety and replaced with the following: "City shall pay Contractor for the Services on a not-to-exceed basis in accordance with the provisions of this Section and the billing Rates attached hereto as Exhibit B and incorporated herein by reference. Contractor's compensation for all Services performed in accordance with this Agreement, including all reimbursable items, shall not exceed **One Million Four Hundred Ninety Seven Thousand Six Hundred Twenty Four Dollars and 30/100 (\$1,497,624.30)**, without prior written amendment to the Agreement. Contractor shall submit all invoices for scheduled collection services and refuse container replacement to City on a monthly basis. City shall pay invoices with thirty (30) days after receipt and approval by the City. Payment shall be deemed made when deposited in the United States mail, first class postage pre-paid, and addressed to Contractor as specified in Section 19 entitle 'Notices'."

The total amended compensation reflects Consultant's additional compensation for additional Services to be performed in accordance with this Amendment No. One, including all reimbursable items and subconsultant fees, in an amount not to exceed **One Hundred Twenty Thousand Dollars and 00/100 (\$120,000.00)**.

3. ADMINISTRATION

Section 11(A) of the Agreement shall be amended in its entirety and replaced with the following: "This Agreement will be administered by the Public Works Department. City's Facilities Maintenance Supervisor or designee shall be the Project Administrator and shall have the authority to act for City under this Agreement. The Project Administrator shall represent City in all matters pertaining to the Services to be rendered pursuant to this Agreement."

4. NOTICES

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

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

Attn: Deputy Director of Public Works
Municipal Operations Division
City of Newport Beach
100 Civic Center Drive
PO Box 1768
Newport Beach, CA 92658

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

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

5. NO ATTORNEYS' FEES

Section 31 is added to the Agreement as follows:

"31. NO ATTORNEYS FEES

In the event of any dispute or legal action arising under this Agreement, the prevailing party shall not be entitled to attorneys' fees."

6. COUNTERPARTS

Section 32 is added to the Agreement as follows:

"32. COUNTERPARTS This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original and all of which together shall constitute one (1) and the same instrument."

7. 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. One to be executed on the dates written below.

**APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE**

Date: 7/12/2019

By: *Aaron C. Harp*
For: Aaron C. Harp 7-12-19
City Attorney

ATTEST:

Date: _____

By: _____
Leilani I. Brown
City Clerk

CITY OF NEWPORT BEACH,
a California municipal corporation

Date: _____

By: _____
Diane B. Dixon
Mayor

**CONTRACTOR: RAINBOW DISPOSAL
CO., INC., a California corporation**

Date: _____

By: _____
Chris Kentopp
General Manager

[END OF SIGNATURES]

Attachments: Exhibit B – Schedule of Billing Rates

EXHIBIT B

SCHEDULE OF BILLING RATES

EXHIBIT B
BILLING RATES

Summer Season 178 Bins	Total Cost <i>Summer (14 Weeks)</i>	Non-Summer Season 168 Bins	Total Cost <i>Non-Summer (38 Weeks)</i>
Area #1 (50 Bins)	\$18,635.05	Area #1 (42 Bins)	\$18,555.62
Area #2 (31 Bins)	\$13,754.44	Area #2 (31 Bins)	\$13,695.82
Area #3 (20 Bins)	\$8,873.83	Area #3 (20 Bins)	\$8,836.01
Area #4 (15 Bins)	\$6,655.37	Area #4 (15 Bins)	\$6,627.01
Area #5 (25 Bins)	\$10,204.91	Area #5 (23 Bins)	\$10,161.41
Area #6 (37 Bins)	\$16,416.59	Area #6 (37 Bins)	\$16,346.62
Total Annual Cost			