

**First Amendment to Exclusive Franchise Agreement for Integrated Solid Waste
Collection, Processing, and Disposal Services By and Between City of San Bernardino
and Burrtec Waste Industries, Inc.**

First Amendment
to
Exclusive Franchise Agreement
for
Integrated Solid Waste Collection, Processing, and Disposal Services
By and Between
THE CITY OF SAN BERNARDINO
and
BURRTEC WASTE INDUSTRIES, INC.

Approved on: January 25, 2016

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This First Amendment to the Exclusive Franchise Agreement for Integrated Solid Waste Collection, Processing, and Disposal Services ("**First Amendment**") is hereby entered into by and between the City of San Bernardino, a California Charter City and a municipal corporation organized under the Constitution and laws of the State of California ("**City**"), and Burrtec Waste Industries, Inc. a California corporation organized under the laws of the State of California ("**Contractor**"), and is made on the terms and conditions provided below:

RECITALS

WHEREAS, Article XI, § 7 of the California Constitution authorizes cities to protect public health and safety by taking measures in furtherance of their authority over police and sanitary matters; and

WHEREAS, the Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989, ("**AB 939**" or the "**Act**") established a Solid Waste management process which requires cities and other local jurisdictions to implement plans for source reduction, reuse and recycling as integrated waste management practices for Solid Waste attributed to sources within their respective jurisdictions; and

WHEREAS, the Legislature of the State of California, by enactment of its California Global Warming Solutions Act of 2006 ("**AB 32**"), requires that commercial generators statewide participate in recycling programs; and

WHEREAS, the Legislature of the State of California, by enactment of Assembly Bill 341 ("**AB 341**") adopted a goal that seventy-five percent of solid waste generated state-wide be diverted from landfill by the year 2020. Furthermore, AB 341 requires that each commercial solid waste generator, including multi-family dwellings of five or more units, provide for recycling programs, and each City or County implement recycling programs for commercial solid waste generators, including multi-family dwellings of five or more units; and

WHEREAS, the Legislature of the State of California, by enactment of Assembly Bill 1594 ("**AB 1594**") eliminates cities and counties from receiving landfill diversion credit from green waste used being used as Alternative Daily Cover effective January 1, 2020; and

WHEREAS, the Legislature of the State of California, by enactment of Assembly Bill 1826 ("**AB 1826**") adopted requirements for each commercial solid waste generator, including multi-family dwellings of five or more units, to provide for organics recycling programs, and for each City or County to implement organics recycling programs for commercial solid waste generators, including multi-family dwellings of five or more units by April 1, 2016; and

WHEREAS, California Public Resources Code § 40059 provides that aspects of Solid Waste handling of local concern include but are not limited to frequency of collection, means of collection and transportation, level of services, charges and fees, and nature, location and extent of providing solid waste services, and whether the services are to be provided by means of nonexclusive, partially exclusive or wholly exclusive franchise, contract, license or otherwise which may be granted by local government under terms and conditions prescribed by the governing body of the local agency; and

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WHEREAS, City is obligated to protect the public health and safety of the residents and businesses of the City of San Bernardino and arrangements made by solid waste enterprises and recyclers for the collection of residential and commercial Solid Wastes should be made in a manner consistent with the exercise of the City's police power for the protection of public health and safety; and

WHEREAS, the City Council of the City of San Bernardino awarded Contractor an exclusive Franchise for collection, recycling, diversion and disposal of Solid Waste from Service Units in the City of San Bernardino (the "**Agreement**"); and

WHEREAS, Contractor is obligated, pursuant to Section 3.2 of the Agreement, to purchase certain equipment and personal property utilized in City's provision of Comprehensive Solid Wastes Services, as specified on the "**List of City's Equipment/Property**", attached to the Agreement as Exhibit 9, for the sum of Twelve Million Two Hundred Twenty Five Thousand Dollars (\$12,225,000) (the "**Purchase Price**") which represents the Contractor's value of the specific equipment/personal property; and

WHEREAS, City and Contractor now desire to amend the List of City's Equipment/Property, attached to the Agreement as Exhibit 9, and make a corresponding reduction to the Purchase Price.

OPERATIVE PROVISIONS

NOW, THEREFORE, in consideration of the foregoing Recitals, which are true and correct and are made a material part of this First Amendment, and the mutual representations, warranties, and covenants contained herein, and on the terms and subject to the conditions set forth herein, the City and Contractor agree as follows:

Section 1. Excluded Equipment/Property

The List of City's Equipment/Property, attached to the Agreement as Exhibit 9, is hereby amended to exclude the equipment/property set forth in "**Exhibit A**" to this First Amendment (the "**Unpurchased Property**").

Section 2. Amendment of Prior Section 12.9 Lease of Contractor's Vehicles

The List of City's Equipment/Property, set forth in Exhibit A includes vehicle 739 as one of the vehicles to be deemed Unpurchased Property pursuant to the terms of this First Amendment to the Exclusive Franchise Agreement. Accordingly, section 12.9 of the prior agreement is amended to exclude vehicle 739 as one of the vehicles to be leased back by the City for the amount of One Dollar (\$1.00) per Agreement year. This amendment shall not affect the remainder of section 12.9 as it relates to the City's option to lease vehicle number 08223 as listed in Exhibit 9 to the Agreement for an amount of One Dollar (\$1.00) per Agreement Year. In the event City leases vehicle number 08223, the City shall be responsible for the associated insurance, vehicle licensing, maintenance and fueling costs of vehicle 08223 during the time this vehicle is leased by the City. The terms and conditions of any vehicle lease agreement shall be negotiated between the City and Contractor.

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Section 3. Purchase Price Adjustment

The value of the Unpurchased Property is Forty Nine Thousand Six Hundred Seventy Five Dollars (\$49,675). The Purchase Price shall be reduced by the value of the Unpurchased Property (the "**Amended Purchase Price**"). The Amended Purchase Price shall be Twelve Million One Hundred Seventy Five Thousand Three Hundred Twenty Five (\$12,175,325).

Section 4. Definitions

All capitalized terms that are not defined herein shall have the same meaning as provided in the Agreement.

Section 5. Counterparts

This First Amendment may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this First Amendment as of the date first above written.

CITY:

CITY OF SAN BERNARDINO
a California Charter City and
Municipal Corporation



Mark Scott
City Manager

CONTRACTOR:

BURRTEC WASTE INDUSTRIES, INC.

By: 

Cole Burr
President

ATTEST:



Georgeann "Gigi" Hanna
City Clerk

APPROVED AS TO FORM:



Gary D. Saenz, City Attorney

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Exhibit A						
List of Unpurchased Property						
Type	Year	Vehicle Number	Description	Chassis	Body	Value
Flatbed	2006	739	1 Ton Flatbed Dump	GMC	C6500	\$ 31,625
Flatbed	1992	1540	1 Ton Flatbed Dump			
Flatbed	2002	1541	Flatbed	Isuzu		
Flatbed	2012	12151	Stakebed	Ford	F550	
Key	2010	529	Fuel Key			\$ -
Key	2010	530	Fuel Key			
Pressure Wash	2009	528	Pressure Washer			\$ -
Pressure Wash	1989	1546	Pressure Washer			
PU	2007	505	Compact PU Reg. Cab	Ford	Ranger	\$ 17,050
PU	2008	703	1 Ton Pick Up	Ford	F250	
PU	2002	716	1/2 Ton Pick Up	Chevy	C1500	
PU	2002	724	1/2 Ton Pick Up	Chevy	C1500	
PU	1997	1544	3/4 Ton Pick Up	Ford	F250	
Sign	2010	517	Speed Flow Sign			\$ -
Sign	2008	527	Speed Flow Sign			
Sprayer	2011	515	Paint Sprayer			\$ 500
Sprayer	2008	523	Paint Sprayer			
Sprayer	2008	524	Paint Sprayer			
Sprayer	2008	525	Paint Sprayer			
Sprayer	2008	526	Paint Sprayer			
Trailer	1973	485	Trailer 15 ft			\$ 500
Trailer	1980	487	Trailer 10 ft	N/A		
Trailer	2003	1536	Arrow Board Trailer			
Trailer	1988	1539	Trailer 15 ft			
Misc	2011	472	Vibroplate			\$ -
Misc	2000	511	Generator Portable			
						\$ 49,675