

**Second 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.**

Second 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

**Second 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.**

This page intentionally left blank.

**Second 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.**

This Second Amendment to the Exclusive Franchise Agreement for Integrated Solid Waste Collection, Processing, and Disposal Services ("**Second 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

**Second 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.**

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 executed that certain First Amendment to the Exclusive Franchise Agreement for Integrated Solid Waste Collection, Processing, and Disposal Services (the "**First Amendment**") to amend the List of City's Equipment/Property, attached to the Agreement as Exhibit 9, and made a corresponding reduction to the Purchase Price.

WHEREAS, Subsequent to the execution of the First Amendment, Contractor took inventory of the Equipment/Property and discovered that three (3) items of Equipment/Property had been previously sold by the City during the years 2008 and 2009.

WHEREAS, City and Contractor now desire to further amend the List of City's Equipment/Property, attached to the Agreement as Exhibit 9 without a corresponding reduction in 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 Second 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 Second Amendment (the "**Additional Unpurchased Property**").

**Second 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.**

Section 2. No Purchase Price Adjustment

The Amended Purchase Price amount of Twelve Million One Hundred Seventy Five Thousand Three Hundred Twenty Five (\$12,175,325), as set forth in the First Amendment, shall not be adjusted.

Section 3. Definitions

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


Section 4. Counterparts

This Second 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 Second 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.

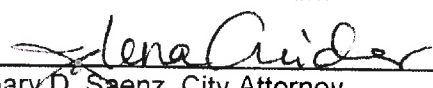
By: _____
Cole Burr
President

ATTEST:



Georgeann "Gigi" Hanna
City Clerk

APPROVED AS TO FORM:



Gary D. Saenz, City Attorney

**Second 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.**

Section 2. No Purchase Price Adjustment

The Amended Purchase Price amount of Twelve Million One Hundred Seventy Five Thousand Three Hundred Twenty Five (\$12,175,325), as set forth in the First Amendment, shall not be adjusted.

Section 3. Definitions

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

Section 4. Counterparts

This Second 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 Second Amendment as of the date first above written.

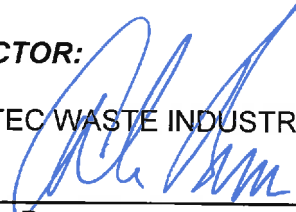
CITY:

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

**Second 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.**

EXHIBIT "A"

ADDITIONAL UNPURCHASED PROPERTY

Type	Year	Vehicle Number	Description	Odometer
ASL	2002	01107-02	Side Loader Automated	104,095
ASL	2002	01114-02	Side Loader Automated	82,853
RL	1987	0155-87	Rear Loader	252,804