

City of Duarte

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November 19, 2007

Ms. Debbie Hansen
Burrtec Waste Services LLC
9890 Cherry Avenue
Fontana, California 92335

Mayor
Lois Gaston
Mayor Pro Tem
Phillip R. Reyes
Councilmembers
John Fasana
Margaret E. Finlay
Tzeitel Paras-Caracci
City Manager
Darrell George

Amendment No. 2 to Services Agreement

The Duarte City Council, at its regular meeting of November 13, 2007, unanimously approved Amendment No. 2 to the Agreement between the City of Duarte and Burrtec Waste Services LLC. Specifically, the Agreement for Municipal Solid Waste, Recyclables, and Green Waste Collection, Transportation, Disposal, Composting, and Processing dated September 18, 1996, was amended to confirm the contract term expiration date of January 1, 2011, and to amend one heading in the Agreement to clarify that certain services are "Optional Services" rather than exceptions to the scope of services.

Enclosed are two original Agreements that have been executed by the City of Duarte. Please sign and return one Agreement to our City Clerk Marla Akana at this office. You may retain the other Agreement for your files.


Thank you.

Sincerely,

Darrell J. George
City Manager

DJG:mka
Enclosures

Celebrating Our 50th Anniversary 1957-2007

 = Brand of the original Andres Duarte Rancho

MEMORANDUM

TO: Darrell George, City Manager
FROM: Kristen Petersen, Interim Assistant City Manager
DATE: November 13, 2007
SUBJECT: BURRTEC CONTRACT AMENDMENT

Burrtec Waste Services began providing franchised refuse collection and recycling services in the City of Duarte on November 1, 1996. Amendment No. 2 addresses two separate issues to the Agreement between Burrtec and the City of Duarte.

First, the City and Burrtec entered into Amendment No. 1 on March 8, 2004 to extend the term of the Agreement to January 1, 2011. The language of that amendment, however, anticipated that the City Council, by January 1, 2007, would either reconfirm the extension to January 1, 2011, or further extend the term of the past the January 1, 2011 by one more year. There is no record of formal Council action on that matter and therefore the proposed Amendment No. 2 states that the Term of the Agreement shall end on January 1, 2011 and ratifies the City Council determination as to the term of the Agreement.

Second, the Agreement with Burrtec Waste Services is meant to be an exclusive contract for waste services. Exclusivity has many benefits including rate control, consistency of program benefits, and consolidation of waste and recycling data for annual reporting requirements. However, it is important to note that there may be certain items that require special handling such as asbestos, which may not be appropriate for Burrtec to collect. As a result, the Agreement has a section, which lists the services which Burrtec has the exclusive right to collect, but for which they have the option to refuse to collect. This should be considered a "first right of refusal". Historically this section was titled "Exceptions". However, we have found that this title has recently been misused by outside waste haulers that have been cited by code enforcement to argue in court that Burrtec does not have the exclusive right to collect these items. To address any mistaken belief that Burrtec does not have the exclusive right to collect these items, the proposed Amendment No. 2 retitles this section as "Optional Exclusive Services" and goes on to explain that Burrtec has the exclusive right to collect the items listed in this section, but subject to Burrtec's determination on a case by case basis that a special hauler should be used instead.

RECOMMENDATION

Staff recommends that City Council approve Amendment No. 2 to the Municipal Solid Waste, Recyclables, and Green Waste Collection, Transportation, Disposal Composting, and Processing Agreement between the City of Duarte and Burrtec Waste Services, LLC.

**Amendment No. 2 To
Agreement Between The City Of Duarte And Burrtec Waste Services LLC**

This *Amendment No. 2 To The Agreement Between The City Of Duarte And Burrtec Waste Services LLC For Municipal Solid Waste, Recyclables, And Green Waste Collection, Transportation, Disposal, Composting, And Processing* ("Amendment No. 2") is made and entered into as of November 13, 2007 ("Effective Date"), by and between the CITY OF DUARTE, a municipal corporation ("City"), and Burrtec Waste Services LLC, a California limited liability company ("Burrtec"). City and Burrtec are sometimes referred to herein individually as a "Party" and collective as the "Parties."

RECITALS:

A. City and Burrtec entered into that certain agreement titled "Agreement Between the City of Duarte and Burrtec Waste Service[sic] LLC for Municipal Solid Waste, Recyclables, and Green Waste Collection, Transportation, Disposal, Composting, and Processing dated on or about September 18, 1996, also referred to as "Agreement Between The City of Duarte And Burrtec Waste Service[sic] LLC For Solid Waste Collection, Processing and Disposal Services, September 18, 1996 (the "Original Agreement"), as amended by that certain Amendment No. 1 thereto dated on or about March 8, 2004 ("Amendment No. 1"). The Original Agreement as amended by Amendment No. 1 is hereinafter referred to collectively as the "Agreement."

B. City and Burrtec desire to enter into this Amendment No. 2 for the purpose of confirming the contract term expiration date and to change the heading of Section 4.01.b(1) to clarify that the items listed thereunder are optional services Burrtec may provide rather than exceptions to the scope of services.

C. Except as otherwise set forth in this Amendment No. 2, the defined terms used herein shall have the same meanings as used in the Agreement.

AMENDMENT:

NOW, THEREFORE, in consideration of the foregoing Recitals and the covenants and promises hereinafter contained, and for good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the Parties hereto agree as follows:

1. Recitals Incorporated. The foregoing Recitals are true and correct and are incorporated herein and made a part hereof.

2. Amendments. The Agreement is amended as follows:

A. The Parties acknowledge and agree that the City Council hereby authorizes clause "1" of Section 3.01 ("Term") of the Agreement. Accordingly, the Term of the Agreement shall end on January 1, 2011, with no extension of the Term beyond January 1, 2011 under the terms of the Agreement. Burrtec acknowledges and agrees to the foregoing determination by the City Council under the Agreement notwithstanding such determination occurred after January 1, 2007.

B. The heading to Section 4.01.b(1) of the Agreement, currently titled "Exceptions," is amended to read as follows:

(1) **Optional Exclusive Services.** Contractor shall have the right to provide on an exclusive basis the following services; provided, however, that Contractor may, in its sole discretion, determine on a case by case basis to not provide a particular service(s):

3. **No Other Amendment.** Except as set forth in this Amendment No. 2, the Agreement shall remain in full force and effect according to its terms.


4. **Counterparts.** This Amendment No. 2 may be executed in counterparts, each of which, when this Amendment No. 2 has been signed by both of the Parties, shall constitute one and the same instrument.

5. **Effective Date.** The Effective Date of this Agreement shall be the latest of the dates set next to the signatures of the Parties, which latest date shall be inserted into the Preamble to this Agreement.

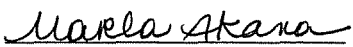
IN WITNESS WHEREOF, the Parties have executed and entered into this Agreement as of the Effective Date.

CITY OF DUARTE

Date: 11/13/07

By: 
Mayor Lois Gaston

ATTEST:


Marla Akana, City Clerk

APPROVED AS TO FORM:
Rutan & Tucker, LLP


Dan Slater, City Attorney

Date: 11/26/07

BURRTEC WASTE SERVICES LLC
By: 

Printed Name: Cole Burr

Its: President