

**AMENDMENT NO. 3 TO AGREEMENT BETWEEN
THE CITY OF DUARTE AND BURRTEC WASTE SERVICES LLC**

This Amendment No. 3 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. 3") is made and entered into as of February 24, 2009 ("Effective Date"), by and between the CITY OF DUARTE, a municipal corporation ("City"), and BURRTEC WASTE SERVICES LLC, a California limited liability company ("Contractor"). City and Contractor are sometimes referred to herein individually as a "Party" and collective as the "Parties."

RECITALS:

A. City and Contractor 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 Services[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"), and by that certain Amendment No. 2 thereto dated on or about November 13, 2007. The Original Agreement as amended by Amendment No. 1 and Amendment No. 2 is hereinafter referred to collectively as the "Agreement."

B. City and Contractor desire to enter into this Amendment No. 3 to, among other provisions, amend, extend, and restate the Term of the Agreement, provide for an annual performance review, and add certain services to the list of services to be provided by Contractor.

C. Except as otherwise set forth in this Amendment No. 3, 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. Section 3.01 ("Term") of the Agreement is hereby amended in its entirety to read as follows:

3.01 Term. This Agreement, which is operative and in effect on the date of Amendment No. 3 to this Agreement, was set to expire on January 1, 2011, pursuant to the terms of Amendment No. 2 to this

Agreement. The expiration date of January 1, 2011 set forth in Amendment No. 2 is hereby null and void and the Term of this Agreement is hereby extended to December 31, 2017; subject to the following terms and conditions:

(a) From the Effective Date of this Amendment No. 3 and throughout the Term of this Agreement, City may terminate this Agreement for cause pursuant to the terms of this Agreement.

(b) On or after September 1, 2014 but prior to December 31, 2014, the City may elect not to approve a one year renewal with or without cause with the Agreement expiration to be effective as of December 31, 2017, subject to clause (c) below.

(c) If the City elects to approve a one year renewal between September 1, 2014 and December 31, 2014, the Agreement shall continue in full force and then as of January 1, 2015, the Agreement shall be extended one (1) year to December 31, 2018, and shall be similarly extended one (1) year each year thereafter so as to continually maintain a three (3) year period as the remaining Term of the Agreement, unless the City does not approve, with or without cause, the one-year renewal in any subsequent year during the Annual Performance Review period pursuant to the following procedures and schedule:

(1) Commencing during calendar year 2014 and each calendar year thereafter until this Agreement expires, Contractor shall submit to City, prior to July 31 of each year, the documentation reasonably required for the City to perform the Annual Performance Review.

(2) City shall conduct the Annual Performance Review on or after August 1 but prior to September 30 of each year. Upon completion of the Annual Performance Review the City shall determine, not later than September 30 of each year, whether to approve the one year renewal or not approve the one year renewal of the Agreement. If the one-year renewal is approved, a three (3) year remaining term to the Agreement would be maintained. If the City timely determines to not approve the one-year renewal to the Agreement, the Agreement shall expire as of the December 31 of the third full calendar year following such determination. If the City fails to conduct the Annual Performance Review, or if there is not a timely determination to not renew the Agreement by the City in any such year, the Agreement shall automatically be extended, as of the next immediate January 1, for one (1) year so as to maintain a three (3) year remaining term to the Agreement.

B. Section 5.05 (“Public Performance Review”) is hereby amended to (i) change the heading to Section 5.05 to read “Performance Review,” (ii) restate the current

Section 5.05 in its entirety as subsection (a) with the heading “Public Performance Review,” and to add subsection (b) as follows:

(b) **Annual Performance Review.** Each year during the Term of this Agreement, the City shall conduct an Annual Performance Review. A sample of such a review is attached as Exhibit 1. However, this review may be revised and expanded upon mutual agreement. Nothing herein shall preclude or limit the City from conducting, at any time and from time to time, the Public Performance Review pursuant to the terms of Section 5.05(a).

- C. Section 10.10.c (“Annual Rate Review and Adjustment Period”) is amended by adding the following sentence at the end of such section: “Contractor agrees to forego the annual rate review and adjustment for rates effective January 1, 2009.”
- D. Exhibit 3.01a (“Scope of Regular Collection Services”) is amended by adding Paragraphs 11 through 15 as follows: The program shall be operated in compliance with all applicable laws and regulations. Contractor shall notify City in writing of (i) the public education efforts Contractor intends to undertake to optimize participation and (ii) the commencement date of the programs listed below. Pricing related to these programs, if any, shall be determined by the Contractor, included on the fee schedule, but subject to final approval by the City.
11. **Household Sharps Collection.** Prior to January 1, 2010, Contractor shall institute and maintain a “Household Sharps” collection program to collect hypodermic needles, intravenous needles, lancets, and other devices that are used to penetrate the skin for delivery of medications generated at a single-family residence.
12. **Used Oil Collection Program.** Prior to January 1, 2010, Contractor shall institute and maintain a curbside used oil collection recycling program so that convenient curbside collection can occur through the use of used oil receptacle containers. A single-family residence shall be permitted to place at curbside for Contractor pickup not fewer than three (3) such contractor provided/approved containers per calendar year.
13. **Commercial Recycling Barrels.** Prior to January 1, 2010, Contractor shall institute and maintain a program for commercial recycling by providing businesses and other commercial users barrels for recycling which would permit comingled recyclables resulting in increased commercial diversion.
14. **E-Waste Collection.** Prior to January 1, 2010, Contractor shall institute and maintain a program for “E-Waste” collection to collect electronic waste, including but not limited to items such as

computers and computer equipments, digital photographic equipment, entertainment electronics, mobile phones, and home and auto electronics at the semi-annual community cleanup events.

15. **Construction and Demolition Roll-Off Processing.** Prior to January 1, 2010, Contractor shall institute and maintain a construction and demolition waste collection system using roll-off equipment to allow demolition and building contractors and owner-contractors to avoid separation of construction and demolition waste.

E. Additional Provision. Contractor agrees, commencing on the Effective Date of Amendment No. 3, to convert or replace its routed trash and routed recycling collection trucks serving the City from gasoline or diesel to alternative fuels such as compressed natural gas. Contractor shall convert or replace all of these trucks with alternative fuel trucks not later than December 31, 2011.

3. **NO OTHER AMENDMENT.** Except as set forth in this Amendment No. 3, the Agreement shall remain in full force and effect according to its terms.
4. **COUNTERPARTS.** This Amendment No. 3 may be executed in counterparts, each of which, when this Amendment No. 3 has been signed by both of the Parties, shall constitute one and the same instrument.
5. **EFFECTIVE DATE.** The Effective Date of this Amendment No. 3 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 Amendment No. 3.

[end—signature page follows]

IN WITNESS WHEREOF, the Parties have executed and entered into this Amendment No. 3 as of the Effective Date.

“CITY”

CITY OF DUARTE


Date: Feb 10, 2009

By: 
Mayor John Fasana

ATTEST:


Marla Akana, City Clerk


APPROVED AS TO FORM:
Rutan & Tucker, LLP


Dan Slater, City Attorney

“CONTRACTOR”

BURRTEC WASTE SERVICES LLC

Date: February 24, 2009

By: 
Printed Name: Tracy A. Sweeney

Its: Chief Operating Officer

EXHIBIT 1

PERFORMANCE REVIEW

**AGREEMENT BETWEEN CITY OF DUARTE AND
BURRTEC WASTE SERVICES, LLC**

In Compliance
Yes No

1 Compensation

A. Payment of Fees to City

- (1) Franchise Fees
- (2) AB939 Fee

B. No Charge City Services

- (1) Collection of City generated waste
- (2) Provide recycling program at City buildings

C. Services

- (1) Provide annual residential curbside Christmas tree collection and recycling program as directed
- (2) Aid to handicapped and frail
- (3) Senior citizen rate
- (4) Respond to service complaints
- (5) Respond to complaints regarding graffiti or disrepair

D. Licenses

- (1) City business license
- (2) County haulers permit

E. Insurance/Bonds

- (1) Performance bond
- (2) Worker's Comp insurance
- (3) General Liability insurance

F. Reports

- (1) Monthly waste generation reports
- (2) Complaint reports

G. Outreach

- (1) Public education
- (2) Community involvement

H. Operations

- (1) Safety record
- (2) Vehicle Maintenance

I. Alternative fuel vehicles