

**AMENDMENT NO. 6 TO AGREEMENT BETWEEN
THE CITY OF DUARTE AND BURRTEC WASTE SERVICES, LLC**

This Amendment No. 6 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. 6) is made and entered into as of December 15, 2014 (“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”), by that certain Amendment No. 2 thereto dated on or about November 13, 2007 (“Amendment No. 2”), by that certain Amendment No. 3 thereto dated on or about February 24, 2009 (“Amendment No. 3”), by that certain Amendment No. 4 thereto dated on or about June 22, 2010 (“Amendment No. 4”), and by that certain Amendment No. 5 thereto dated on or about December 10, 2013 (“Amendment No. 5”). The Original Agreement as amended by Amendment No. 1, Amendment No. 2, Amendment No. 3, Amendment No. 4, and Amendment No. 5 is hereinafter referred to collectively as the “Agreement.”

B. City and Contractor desire to enter into this Amendment No. 6 to (i) amend Section 4.01g(1)(i) as it relates to vehicle noise testing, (ii) amend Section 4.01g(6) as it relates to vehicle maintenance obligations, (iii) amend Section 4.04c as it relates to office hours, (iv) amend Section 10.09 as it relates to the timing of Contractor payments to City, (v) amend Exhibit 3.01d(1) as it relates to the services container maintenance program, and (vi) amend Exhibit 6.01 as it relates to insurance requirements.

C. Except as otherwise set forth in this Amendment No. 6, 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. **ONE YEAR EXTENSION.** Pursuant to 3.01(c) of the Agreement, on September 23, 2014 the City Council of the City of Duarte authorized a one year extension of the Term. The Term is therefore currently scheduled to expire (subject to the granting of further extensions pursuant to Section 3.01 of the Agreement) on December 31, 2018.

3. **AMENDMENTS.** The Agreement is amended as follows:

A. Section 4.01g(1)(i) (“Noise”) of the Agreement is hereby amended in its entirety to read as follows:

4.01g(1)(i) Noise. The noise level generated by vehicles using compaction mechanisms during the stationary compaction process shall not exceed seventy-five decibels at a distance of twenty-five feet from the collection vehicle measured at an elevation of five feet above ground level using the “A” scale of a standard sound level meter at slow response, or Applicable Law, whichever is more stringent. Contractor shall cause the collection vehicles to be tested upon City request by an independent testing authority and shall submit a certificate of testing showing that the vehicles meet the requirements of this Section.

B. Section 4.01g(6) (“Maintenance”) of the Agreement is hereby amended in its entirety to read as follows:

4.01g(6) Maintenance Contractor shall at all times maintain vehicles in good condition in accordance with the maintenance protocol contained in Exhibit 3.01d(2), so that they operate properly and safely. Contractor acknowledges that it is important to the City that Contractor present a professional and pleasing image. Therefore, Contractor shall wash all vehicles at least once each week and shall repaint all vehicles (including trim) as needed or at the City’s request in order to maintain trucks in good condition.

C. Section 4.04c (“Office Hours”) of the Agreement is hereby amended in its entirety to read as follows:

4.04c Office Hours Contractor shall maintain an office open at a minimum from 8:00 a.m. to 5:00 p.m., daily, and on Saturdays following recognized holidays. Office must be staffed by Contractor during normal business hours. Customer call messages left on the after hours messaging system will be returned the following business day.

D. Section 10.09 (“Contractor Payment to the City”) of the Agreement is hereby amended in its entirety to read as follows:

10.09 Contractor Payment to the City. Contractors shall make payment to the City for items listed in Section 10.03 calculated on quarterly basis, on the thirtieth day of the month following the prior quarter ending date.

Contractor agrees that payment by the Contractor to the City for items as identified in Section 10.05 shall not constitute nor be deemed a release of the responsibility and liability of Contractor, its employees, subcontractors, agents and consultants for the services performed hereunder nor shall payment be deemed to be an assumption of responsibility or liability by City for any defect or error in such services.

- E.** Exhibit 3.01d(1) (“Maintenance Protocol”) of the Agreement is hereby amended in its entirety to read as follows:

Exhibit 3.01d(1) Maintenance Protocol. All automated containers will be repaired and/or replaced on request. The request may be generated from the route driver, the customer, or City staff.

Once the repair or replacement order is received, a container will be delivered on the next service day or within 24 hours if necessary to meet the customer’s request. The defective or missing container will be exchanged for a new or reconditioned container. Containers are repaired and replaced whenever necessary.

Residential bins will be exchanged on an as-needed basis. An exchange request may be generated from the route driver or the customer. Bins will be exchanged on the next service day or within 24 hours of the received request if necessary to meet the customer’s request. Bins and containers are exchanged or replaced for a variety of reasons, including: defective or damaged components, graffiti, odor, or the unit is missing all together.

All automated containers and residential bins will be maintained at the local facilities yard. Maintenance procedures include: Steam cleaning, component replacement, welding, lubrication, painting and signage.

- D.** Exhibit 6.01 (“Insurance”) of the Agreement is hereby amended in its entirety to read as follows:

Exhibit 6.01 Insurance. Excess Liability for Commercial Auto & Employer’s

- \$2 Million/occurrence; 10,000 self-insured retention
- Automobile (same)
- \$1 Million CSL BE & PD/occurrence
- \$5,000 deductible
- \$5,000 MP – passenger
- \$1 Million Uninsured motorists – passenger
- \$1 Million Non-owned/hired
- \$1,000 comp – passenger vehicles – deductible
- N/C – Collision deductible

- \$1,000 Sp. Perils – passenger vehicles – deductible
Workers Comp / Employer’s Liability
- \$2 Million/accident
- \$2 Million/disease – policy limit
- \$2 Million/disease – each employee

4. **NO OTHER AMENDMENT.** Except as set forth in this Amendment No. 6, the Agreement shall remain in full force and effect according to its terms.
5. **COUNTERPARTS.** This Amendment No. 6 may be executed in counterparts, each of which, when this Amendment No. 6 has been signed by both of the Parties, shall constitute one and the same instrument.
6. **EFFECTIVE DATE.** The Effective Date of this Amendment No. 6 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. 6.

[end—signature page follows]

IN WITNESS WHEREOF, the Parties have executed and entered into this Amendment No. 6 as of the Effective Date.


“CITY”

CITY OF DUARTE

Date: Dec 9, 2014

By: 
Mayor Tzeitel Paras-Caracci

ATTEST:


Marla Akana, City Clerk

APPROVED AS TO FORM:
Rutan & Tucker, LLP


Jeffrey Melching, City Attorney

“CONTRACTOR”

BURRTEC WASTE SERVICES, LLC

Date: December 15, 2014

By: 

Printed Name: Cole Burr

Its: President