

City of Duarte

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Mayor
John Fasana

March 15, 2018

Mayor Pro Tem
Liz Reilly

Councilmembers
Margaret E. Finlay
Samuel Kang
Tzeitel Paras-Caracci

City Manager
Darrell J. George

Mr. Richard Niño
Burrtec Waste Services LLC
9890 Cherry Avenue
Fontana, California 92335

Amendment No. 9 to Services Agreement

Enclosed is an original signed Amendment No. 9 for your files.

Thank you.

Sincerely,

Marla Akana

Marla Akana
City Clerk

Enclosures

**AMENDMENT NO. 9 TO AGREEMENT BETWEEN
THE CITY OF DUARTE AND BURRTEC WASTE SERVICES, LLC**

This **Amendment No. 9 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. 9) is made and entered into as of December 12, 2017, (“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”) and by that certain Amendment No. 6 dated on or about December 15, 2014 (“Amendment No. 6”) by that certain Amendment No. 7 dated on or about December 23, 2015 (“Amendment No. 7”) and by that certain Amendment No. 8 dated on or about December 13, 2016 (“Amendment No. 8”) The Original Agreement as amended by Amendment No. 1, Amendment No. 2, Amendment No. 3, Amendment No. 4, Amendment No. 5, Amendment No. 6, Amendment No. 7 and Amendment No. 8 is hereinafter referred to collectively as the “Agreement.”

B. City and Contractor desire to enter into this Amendment No. 9 to, among other things, amend, extend and restate the Term of the Agreement, alter the dates of the 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. 9, 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. 8 to this Agreement, was set to expire on December 31, 2020, pursuant to the terms of Amendment No. 8. to this Agreement. The expiration date of December 31, 2020 set forth in Amendment No. 8 is hereby extended to December 31, 2027, subject to the following terms and conditions.

(a) From the Effective Date of this Amendment No. 9 and throughout any remaining term of this Agreement. City may terminate this Agreement for cause pursuant to the terms of this Agreement.

(b) The Term of this Agreement shall expire effective December 31, 2027, subject to subsection (c) below

(c) The Agreement Term may be extended one (1) additional year each year from and after December 31, 2018, so as to continually maintain a ten (10) year period as the remaining Term of the Agreement. Such extension may be granted by City with or without cause, pursuant to the following Annual Performance Review procedures and schedule:

(1) Commencing during calendar year 2018 and each calendar year thereafter until this Agreement expires, Contractor shall submit to City, prior to September 1 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 September 1 but prior to November 30 of each year. Upon completion of the Annual Performance Review, the City shall determine, not later than November 30 whether to approve a one-year addition to the end of the Term of this Agreement. If the one year renewal is approved, a ten (10) 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 tenth full calendar year following such determination.

and

(b) Whether the Contractor's overall performance under the Agreement is satisfactory and in compliance with both the terms of the Agreement, and the requirements of California and federal law applicable to each and every one of the services Contractor provides hereunder. If the City finds that Contractor's performance is not so in compliance, it shall identify, in writing, those areas of deficiency, and the

actions, remedial measures, corrections, or improved services or performance the City contends is necessary to correct such deficiency. If Contractor disputes the City's determination regarding the area of deficiency or non-performance, Contractor shall so advise City, in writing, within thirty (30) days of City's notice, and the parties shall thereupon meet and confer in good faith in an effort to resolve the dispute. If the Parties cannot come to agreement on the alleged area of noncompliance or deficiency within thirty (30) days of Contractor's notice disputing same, the matter shall be submitted to Arbitration under Section 6.03. In the event the City's determination of deficiency or noncompliance is not disputed by Contractor, or upheld through Arbitration, Contractor shall have until the City's next following Annual Performance Review to correct the deficiency or non-compliance. In the event Contractor fails to do so, City may shorten the Term to December 31 of the third full calendar year from and after completion of the City's Annual Performance Review following the one that identifies the area of noncompliance or deficiency. In the event of any dispute between the Parties as to whether Contractor has adequately addressed the deficiency or noncompliance, the matter shall be submitted to Arbitration under section 6.03. Such Annual Performance Review, and any actions in connection therewith, are not intended to, and shall not, supplant or replace any rights or remedies City may have for any default of Contractor, whether under Article 11 of the Agreement, or otherwise.

(d). If the City fails to conduct the Annual Performance Review, or if the City fails to make a timely determination not to renew the Agreement in any year, the Agreement shall automatically be extended, as of the next immediate January 1, for one (1) year, so as to maintain a ten (10) year remaining term to the Agreement.

(e). In the event of a City-approved Contractor assignment under Section 15.01(b) of this Agreement, and such Contractor Assignment is approved at such time as there are more than three (3) years remaining on the Agreement Term, the Term of the Agreement shall automatically adjust to terminate on December 31 of the third full calendar year following the Contractor Assignment approval by the City. In the event the City approval of the Contractor Assignment occurs at a time when there are less than three (3) years remaining on the Term, there shall be no adjustment to the Term, and this Agreement shall expire at the same time as if there had been no Contractor Assignment.

B. Exhibit 3.01a (Scope of Regular Collection Services") is amended by adding Paragraph 16-18 as follows:

16. Solid Waste/Organics – From and after the effective date of this Amendment, Contractor shall continue its efforts begun prior to January 1, 2016, to institute and maintain a program in compliance with AB1826--Solid Waste/Organic Waste. Such program shall be designed and operated specifically to divert organic waste generated by businesses generating eight (8) cubic yards or more of organic waste, and shall obtain and achieve phasing goals, standards, and benchmarks required by statute from 2016 to 2020. The program shall also decrease the amount of organic waste from eight (8) or more to four (4) cubic yards effective January 1, 2017 and after January 1, 2019, a business that

generates four (4) cubic yards or more of commercial solid waste per week must arrange for organic waste recycling services.

17. Shred Events. Contractor shall provide a biannual shred event at no cost to the City, to coincide with the City's spring and fall cleanup events.

18. Mulch Giveaway. Contractor will provide two roll-off loads of mulch per year to Duarte residents upon request, at no charge to the requesting party nor the City. Contractor shall also provide to City, at no City expense, two loads of mulch per year for City's use on City-owned public property.

C. Transfers Among Family Members. Contractor is a Limited Liability Company (LLC) the membership interests for which are divided among members. Contractor shall, simultaneously with the execution of this Agreement, provide the City Manager with a list of all such members and other immediate family members. Notwithstanding the fact it would otherwise fall within the provisions of this Section, any transfer of membership interests to an immediate family member of any of the current members may occur with the written approval of the City Manager, and without any of the other provisions of this Section 3 applying if Contractor certifies, and the City Manager verifies, that the transfer is in fact to an immediate family member or members; and, the City Manager finds both of the following: (i) that the transfer of membership interest will have no adverse impact on Contractor's operations in City, and (ii) that the transfer of membership interest will not result in any interest in Contractor being vested in any person who is not an immediate family member. In the event the City Manager is unable to make these findings, or has any concern regarding his ability to do so, he may refer the matter in whole or part to the City Council for its consideration, approval, or other action, and the City Council shall have the discretion to consider the matter as if it is a Contractor Assignment as set forth herein.

3. **NO OTHER AMENDMENT.** Except as set forth in this Amendment No. 9, the Agreement shall remain in full force and effect according to its terms.

4. **COUNTERPARTS.** This Amendment No. 9 may be executed in counterparts, each of which, when this Amendment No. 9 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. 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. 9.

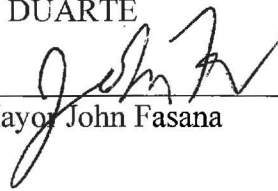
[end—signature page follows]

IN WITNESS WHEREOF, the Parties have executed and entered into this Amendment No. 9 as of the Effective Date.


“CITY”

CITY OF DUARTE

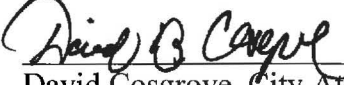
Date: Dec. 12, 2017

By: 
Mayor John Fasana

ATTEST:


Marla Akana, City Clerk

APPROVED AS TO FORM:
Rutan & Tucker, LLP


David Cosgrove, City Attorney

“CONTRACTOR”

BURRTEC WASTE SERVICES, LLC

Date: March 8, 2018

By: 

Printed Name: Cole Burr

Its: President