



Contract Number

16-521 A-3

SAP Number

Public Works – Solid Waste Management Division

| | |
|---|---------------------------------------|
| Department Contract Representative | <u>Darren Meeka, Deputy Director</u> |
| Telephone Number | <u>(909) 386-8703</u> |
| Contractor | <u>Burrtec Waste Industries, Inc.</u> |
| Contractor Representative | <u>Cole Burr</u> |
| Telephone Number | <u>(909) 429-4200</u> |
| Contract Term | <u>7/1/2016 – 6/30/2027</u> |
| Original Contract Amount | <u>\$29,701,228</u> |
| Amendment Amount | <u>\$34,877,009</u> |
| Total Contract Amount | <u>\$64,578,237</u> |
| Cost Center | <u>6700004250</u> |

IT IS HEREBY AGREED AS FOLLOWS:

**AGREEMENT 16-521
AMENDMENT NO. 3
AGREEMENT FOR THE SALE OF SOLID WASTE LANDFILL AIRSPACE**

The following is Amendment No. 3 to Agreement No. 16-521 (“Amendment No. 3”) with Burrtec Waste Industries, Inc., for the sale of solid waste landfill airspace.

WHEREAS, on June 28, 2016 (Item No. 51), the Board of Supervisors (“Board”) approved Agreement No. 16-521 (“Agreement”) with Burrtec Waste Industries, Inc. (Contractor) for the sale of solid waste landfill airspace;

WHEREAS, on December 19, 2017 (Item No. 36), the Board approved Amendment No. 1 to the Agreement to allow a portion of the City of San Bernardino’s waste to be direct hauled to the Mid-Valley Sanitary Landfill at an increased rate and added an additional processing facility for the City of San Bernardino’s waste;

WHEREAS, on June 22, 2021 (Item No. 61), the Board approved Amendment No. 2 to extend the Agreement for one year to June 30, 2022, with the intent to negotiate rates for a potential long-term agreement at the end of the extension period; and

WHEREAS, the Parties desire to enter into this Amendment No. 3 to extend the Agreement five (5) years to June 30, 2027, and increase the disposal rates, effective July 1, 2022, adjusted annually according to the Agreement.

NOW THEREFORE, the Agreement is hereby amended as follows:

1. Section 2.1 of the Agreement, entitled "Term," is amended in its entirety to read:

2.1 Term. The Term of this Agreement shall be five (5) years, commencing on July 1, 2022 and shall terminate at 11:59 p.m. on June 30, 2027, unless sooner terminated or extended as herein provided.

2. Section 3.1 of the Agreement, entitled "Base Fee for In-County Qualifying Solid Waste," is amended in its entirety to read:

3.1 Base Fee for In-County Qualifying Solid Waste. Contractor shall pay a disposal fee of \$32.13 per ton to County ("In-County Qualifying Waste Disposal Fee"), effective July 1, 2022, as adjusted in Section 3.3, annually, for each ton of In-County Qualifying Solid Waste delivered to the Disposal System.

3. Section 3.1.1 of the Agreement, entitled "Rate for Direct Hauled In-County Qualifying Solid Waste from the City of San Bernardino," is amended in its entirety to read:

3.1.1. Rate for Direct Hauled In-County Qualifying Solid Waste from the City of San Bernardino. Contractor shall pay a disposal fee equal to \$2.00 above the current Waste Disposal Agreement (WDA) rate that the County has with various WDA cities within San Bernardino County, for each ton of In-County Qualifying Solid Waste originating from the City of San Bernardino that is direct hauled to the MVSL in curbside, front, rear, or side loading commercially licensed refuse hauling vehicles. The current rate to the Contractor for Fiscal Year 2022-23 is \$45.41 per ton (WDA rate of \$43.41 + \$2.00), or as may be amended. The rate shall be adjusted annually by the WDA cost of living increase.

4. Section 3.2 of the Agreement, entitled "Base Fee for Out-of-County Qualifying Solid Waste," is amended in its entirety to read:

3.2 Base Fee for Out-of-County Qualifying Solid Waste. Contractor shall pay a disposal fee of \$35.41 per ton to County ("Out-of-County Qualifying Waste Disposal Fee"), as adjusted in Section 3.3, for each ton of Out-of-County Qualifying Solid Waste delivered to the Disposal System.

5. Section 3.3 of the Agreement, entitled "Annual Increase," is amended in its entirety to read:

3.3 Annual Increase. During the Term of this Agreement the Base Fee for In-County Qualifying Solid Waste and Out-of-County Qualifying Solid Waste shall be adjusted annually with the formula described herein each July 1 during the Contract, commencing July 1, 2023. The Base Fee for In-County and Out-of-County Qualifying Solid Waste shall be increased annually by any positive change in the Consumer Price Index, CPI-U index (Series ID: CUURS49ASA0 – Not Seasonally Adjusted, Area: Los Angeles-Long Beach-Anaheim, CA, Item: All Items, Base Period: 1982-84=100) for the preceding 12-month period September to September and effective each July 1 throughout the Agreement Term and any Option Period. The Base Fee for In-County and Out-of-County Qualifying Solid Waste will not change effective July 1 of any subsequent year throughout the Agreement Term and any Option Period if the annual change in the CPI-U index for the preceding 12-month period September to September is zero or negative. If the annual change in the CPI-U index for the preceding 12-month period September to September is negative, all parties agree that the negative change in the CPI-U index will be used in the subsequent year's calculation of the net annual change in the CPI-U index. In no case will the current adjusted Base Fee for In-County and Out-of-County Qualifying Solid Waste ever be decreased. For example, if the current rate is \$30.00 per ton and the annual change in the CPI-U index for the preceding 12-month period September to September is negative two percent (-2%), then the rate effective that July 1 will continue to be \$30.00 per ton. The following year, if the annual change in the CPI-U index for the

preceding 12-month period September to September is positive three percent (3%), then the rate effective that July 1 will \$30.00 plus 1%, or \$30.30.

$$\frac{\text{CPI-U (new)} - \text{CPI-U (old)}}{\text{CPI-U (old)}}$$

If the Consumer Price Index is no longer published, or is otherwise unavailable, then the Cost of Living Adjustment shall be determined by using standard official statistics measuring changes to, respectively, labor costs and cost of materials, as the parties shall mutually agree.

In addition to the above annual increase formula, the Base Fee for In-County Qualifying Solid Waste will have an additional increase as noted below to address County-wide disposal system cost increases resulting from, but not limited to, changes in law, changes in regulatory requirements, future County owned landfill expansions, closed landfill monitoring and maintenance, and county-wide community programs:

- July 1, 2023 - \$1.50 per ton
- July 1, 2024 - \$1.50 per ton
- July 1, 2025 - \$1.50 per ton
- July 1, 2026 - \$1.50 per ton

6. Section 4.1 of the Agreement, entitled “In-County Qualifying Solid Waste,” is amended in its entirety to read:

4.1 In-County Qualifying Solid Waste. The Solid Waste which qualifies to be disposed of pursuant to the terms of this Agreement for In-County solid waste shall be only Qualifying Solid Waste that is:

- (a) Otherwise qualified to be disposed of at a County Landfill pursuant to all applicable federal, state and local laws and regulations;
- (b) Not, on July 1, 2022 or 6 months prior to July 1, 2022, being delivered to, and disposed of within, the Disposal System;
- (c) Not collected pursuant to a City WDA Agreement, County Solid Waste Handling Franchise Agreement (granted as provided in Division 6 of Title 4 of the San Bernardino County Code), or a County Class A permit or temporary permit (granted as provided in Article 2.1 of Chapter 8 of Division 3 of Title 3 of the San Bernardino County Code);
- (d) Being processed at the West Valley Material Recovery Facility or the East Valley Recycling and Transfer Facility or the Robert A. Nelson Transfer Station, all owned by Contractor; and
- (e) Delivered to the Disposal System in transfer trailers, or direct hauled to MVSL in Burrtec waste collection vehicles for the City of San Bernardino solid waste only that is subject to the rate in Section 3.1.1. Waste delivered in transfer trailers may be delivered in Burrtec owned and/or subcontracted transfer trailers.

Qualifying Solid Waste that satisfies all of the above conditions may be disposed of pursuant to the provisions of this Agreement and shall be referred to as “**In-County Qualifying Solid Waste**”.

7. This Amendment may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same Amendment. The parties shall be entitled to sign and transmit an electronic signature of this Amendment (whether by facsimile, PDF or other email transmission), which signature shall be binding on the party whose name is contained therein. Each party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed Amendment upon request.

8. Except as amended herein, all other terms and conditions of the Contract remain in full force and effect.

IN WITNESS WHEREOF, the Board of Supervisors of San Bernardino County and Contractor have each caused this Amendment to be subscribed by its respective duly authorized persons, on its behalf.

SAN BERNARDINO COUNTY

►

Curt Hagman, Chairman, Board of Supervisors

Dated: _____
SIGNED AND CERTIFIED THAT A COPY OF THIS
DOCUMENT HAS BEEN DELIVERED TO THE
CHAIRMAN OF THE BOARD

Lynna Monell
Clerk of the Board of Supervisors
of San Bernardino County

By _____
Deputy

BURRTEC WASTE INDUSTRIES, INC.
(Print or type name of corporation, company, contractor, etc.)

By ► _____
(Authorized signature - sign in blue ink)

Name Cole Burr
(Print or type name of person signing contract)

Title President
(Print or Type)

Dated: _____

Address 9890 Cherry Avenue
Fontana, California 92335

FOR COUNTY USE ONLY

Approved as to Legal Form
►
Jolena Grider, Deputy County Counsel
Date _____

Reviewed for Contract Compliance
►
Andy Silao, P.E.
Date _____

Reviewed/Approved by Department
►
Brendon Biggs, Director
Date _____