

*Amendment No. 4
to AGREEMENT BETWEEN
THE COUNTY OF SAN BERNARDINO AND
BUURTEC WASTE & RECYCLING SERVICES, LLC
FOR THE COLLECTION OF SOLID WASTE AND OTHER SERVICES dated June 16, 2009*

WHEREAS, on June 16, 2009 (Item No. 92), the Board of Supervisors approved County Contract No. 09-620 BURRTEC WASTE & RECYCLING, LLC ("Grantee") to provide for the collection of solid waste and other services (the "Contract");

WHEREAS, on November 6, 2012 (Item No. 96), the Board approved Amendment No. 1 to the Franchise Agreement which amended Section 13.2 to clarify the methodology for the calculation of rates/Cost of Living Adjustment (COLA), allowed adjustments to be made in accordance with Section 13.2 when calculated in error, and updated the Exhibit "E" which sets the current rates for the franchise area;

WHEREAS, on June 18, 2013 (Item No. 70) the Board approved Amendment No. 2 to the Franchise Agreement which amended Section 4. Term.

WHEREAS, on November 19, 2013 (Item No. 35) the Board approved Amendment No. 3 to the Franchise Agreement which amended Section 4. Term.

WHEREAS, the County and the Grantee desire to amend specific sections of the Franchise Agreement as set forth below which they have each determined to be in the better interests of the parties and the better interests of the residents of the unincorporated areas of the County of San Bernardino.

NOW THEREFORE, the Contract is amended as follows:

1. Section 4 is deleted in its entirety and replaced with the following:

SECTION 4. TERM

(a) The initial term of this Agreement shall commence on the later of (i) July 1, 2009 or (ii) the date on which amendments made to the County Code for consistency purposes become effective, and expiring on June 30, 2017. Thereafter, beginning on July 1, 2010, and on each July 1 anniversary date thereafter, the term of this Agreement will be extended automatically for one (1) additional year, so as to have a rolling term of eight (8) years. Should either party desire that said automatic renewal and extension provision be terminated, such party shall give the other written notice of nonrenewal no later than sixty (60) days prior to the automatic renewal date. Any such notice, properly given, shall serve to terminate the automatic one year renewal and extension provision only, and this Agreement shall remain in effect for the balance of the term then outstanding. In the event that either party exercises its right to terminate the automatic renewal and extension provision under this paragraph, the parties may subsequently reinstate the automatic renewal and extension provision by mutual written agreement.

(b) Whether or not specifically mentioned or incorporated in this Agreement, exercise of the Franchise granted herein, and every provision of this Agreement, are subject to the terms, conditions and provisions of Division 6 of Title 4 of the County Code, as currently existing. With respect to each extended term of this Agreement, exercise of the Franchise granted herein, and every provision of the Agreement, are subject to the terms, conditions and provisions of Division 6 of Title 4 of the County Code, as currently existing or as hereinafter amended, so long as the amendment to the Division has been adopted by the Board prior to the date by which the Board is required to determine that this Franchise Agreement shall not be extended (as provided in Section 4), whether or not such amendment is effective prior to such date.

2. Section 9.4(a) is amended by deleting the name "California Integrated Waste Management Board" and replacing it with the following: "Department of Resources Recycling and Recovery (CalRecycle) or its successor entity".
3. Section 10.1(a) is amended by deleting the name "California Integrated Waste Management Board" and replacing it with the following: "Department of Resources Recycling and Recovery (CalRecycle) or its successor entity".
4. Section 10.1(a)(6) is deleted in its entirety and replaced with the following:

If the Grantee willfully fails to make any payments required under the provisions of either Division 6 of Title 4 of the Code or this Franchise Agreement and/or refuses to provide or does not provide to the County within thirty (30) days the requested information, manifests, reports, and/or test results in a timely manner as provided in Division 6 of Title 4 of the Code or of this Franchise Agreement.

5. Section 10.1 (d) (2) (B) is amended by deleting the name "California Integrated Waste Management Board" and replacing it with the following: "Department of Resources Recycling and Recovery (CalRecycle) or its successor entity".
6. Section 10.2 (a) (8) is deleted in its entirety and replaced with the following:

Failure to submit Reports to Division: failure to submit complete records to the Division within thirty (30) days of the due date in accordance with Section 6(d) and Section 12 of the Agreement: \$1000.

7. Section 12.1 (b) is deleted in its entirety and replaced with the following:

All information required to be kept, maintained or furnished to the County shall be maintained a minimum of seven (7) years after the entry of the most recent item therein;

8. Section 13.1 (a), including Exhibit E, is deleted in its entirety and replaced with the following:

Section 13.1 Compensation

- (a) In accordance with applicable law, Grantee shall provide the Solid Waste Handling services described in this Agreement and its exhibits in accordance with the rates set forth in "Exhibit E 2014." Recyclable Materials collection from commercial and industrial units are included in the rates approved for services rendered pursuant to this Agreement to the extent provided in local state and federal law. "Exhibit E 2014" specifies the maximum rate to be charged for collection of such materials. By March 1 of each year as part of the Annual Report, the Grantee shall warrant to the County, in a writing signed by an officer, that during the prior calendar year it billed all of the Solid Waste Handling service Subscribers provided service under this Franchise Agreement at the rates set forth in the Total Rate approved with and applicable to this Franchise Agreement, as such Total Rate may have been adjusted pursuant to the provisions of this Section 13 and in accordance with applicable law. Copies of Subscriber billings which demonstrate the above shall be made available to the Division on its request.

9. Section 13.2 is deleted in its entirety and replaced with the following:

Section 13.2 Adjustment to Total Rate - Residential, Commercial and Roll-off Service

The following annual and special rate adjustments shall be made to the appropriate cost components of the Total Rate as provided for in this Franchise Agreement. However, no

rate adjustment shall be implemented for or during any period of time when Grantee is not in substantial compliance with all material provisions of this Agreement.

(a) Cost of Living Adjustment.

1. General

Beginning July 1, 2015, Grantee may request an adjustment to all rate categories included in the approved rate schedule according to the method described below and the formulas shown in – “Exhibits G-1 through G-5 - Example Rate Adjustment Formula,” subject to review and approval of County. All future adjustments are to be effective July 1 of the same year.

2. Cost Components for Rate Adjustment Indices

The approved rates consist of the following cost component categories: Landfill Disposal, Fuel, Service, and Other Operations. Initial component weightings to be used for the first rate adjustment are shown in the table attached as “Exhibits H-1 and H-2 - Rate Adjustment Indices and Initial Cost Component Weightings” Each cost component may be adjusted by the change in the corresponding index shown in the exhibit. See subsection (3) below for detailed rate adjustment procedures.

3. Residential and Commercial Rate Adjustment Steps

All residential and commercial rates will be adjusted using the cost component weightings identified in the table attached as “Exhibit H-1 - Rate Adjustment Indices and Initial Cost Component Weightings” and as described below. See “Exhibits G-1, G-2 and G-3 - Example Rate Adjustment Formula” for an example of rate adjustment calculations. Using Exhibit G-1 as an example, the adjustment is calculated as follows:

Step One – Calculate the percentage increase or decrease in each index listed in the table attached as Exhibit H-1 – Rate Adjustment Indices and Initial Cost Component Weightings.” The increase or decrease in landfill disposal will be the change in the identified gate rate between the July 1 effective date for the rate adjustment and the preceding July 1, except in those instances when the County does not fix a new gate rate as of July 1 of any year, the actual effective date of the gate rate change will control. The increase or decrease in the published indices for Fuel, Service and Other Operations will be the change in the average annual published index between the calendar year ended the December prior to the July 1 effective date for the rate adjustment and the prior calendar year. See “Exhibit G-5 – Example Rate Adjustment Formula” for an example calculation of the average annual change in an index.

Step Two – Multiply the percentage changes for each rate adjustment component by that component’s weighting and add these resulting percentages together to get the total weighted change to the rates.

The July 1, 2015 rate adjustment cost components as a percentage of total costs are provided in the table attached as “Exhibit H-1 Rate Adjustment Indices and Initial Cost Component Weightings”, with component weightings for use in subsequent years calculated in Step Four of the rate adjustment. For Step Two of each subsequent rate adjustment, use the “Cost Components Reweighted to

Equal 100%" in Column "O" of "Exhibit G-1 – Example Rate Adjustment Formula" in Step Four during the previous rate adjustment.

Step Three – Multiply the total weighted percent change from Step Two by the existing customer rates to calculate the increase or decrease to the maximum rates. Add the rate increase or decrease to the existing rates to derive the newly adjusted rates.

Step Four – Recalculate weightings for the following year based upon these changes. The "Cost Components Reweighted to Equal 100%" in Column "O" of "Exhibit G-1– Example Rate Adjustment Formula" shall be used to calculate the franchise fees due for the upcoming year beginning the July 1 that rates become effective, as shown in "Exhibit I - Example Franchise Fee Calculation."

4. Roll-Off Box Rate Adjustment Steps

All roll-off box rates will be adjusted using the cost component weightings identified above as described below. See "Exhibit G-4 Example Rate Adjustment Formula" for an example rate adjustment for roll-off box rates.

Step One – Calculate the percentage increase or decrease in the Fuel and Service indices listed in the table attached as "Exhibit H-2 - Rate Adjustment Indices and Initial Cost Component Weightings." The increase or decrease in the indices for Fuel and Service will be the change in the average annual published index between the calendar year ended the December prior to the July 1 effective date for the rate adjustment and the prior calendar year.

The Landfill Disposal Facility Fee component is based on a per ton rate. That rate shall remain equal to the San Bernardino County Solid Waste System per ton rate for roll-off loads as of the effective date of the new rate schedule.

Step Two – Multiply the percentage changes for each rate adjustment component by that component's weighting and add these resulting percentages together to get the total weighted change to the rates.

Cost components as a percentage of total costs are provided in "Exhibit H-2 Rate Adjustment Indices and Initial Cost Component Weightings" for the rate adjustment effective July 1, 2015, with subsequent components calculated in Step Four of the rate adjustment. For Step Two of each subsequent rate adjustment, use the "Cost Components Reweighted to Equal 100%" in Column "O" of "Exhibit G-4 – Example Rate Adjustment Formula" in Step Four during the previous rate adjustment.

Step Three – Multiply the total weighted percent change from Step Two by the existing customer rates to calculate the increase or decrease to the maximum rates. Add the rate increase or decrease to the existing rates to derive the newly adjusted rates.

Step Four – Recalculate weightings for the following year based upon these changes. The "Cost Components Reweighted to Equal 100%" in Column "O" of "Exhibit G-4 – Example Rate Adjustment Formula" shall be used to calculate the franchise fees due for the upcoming year beginning the July 1 that rates become effective, as shown in "Exhibit I - Example Franchise Fee Calculation."

5. Changes in Rate Adjustment Indices

If the same rate adjustment index is used from year to year, the "Old Index Value" (Column A in each example in "Exhibits G-1 through G-4 - Example Rate Adjustment Formula") shall be the "New Index Value" (Column B in "Exhibits G-1 through G-4 - Example Rate Adjustment Formula") used in the prior rate adjustment. If the rate adjustment index changes, due to a change in type of fuel, a discontinued index or otherwise, the change will be measured as the average annual change year over year for the new index, and data for the old/discontinued index will not be used. If a rate adjustment index is discontinued, an alternative index must be approved by the Deputy Director of Solid Waste Management or designee.

6. Revision of Cost of Living Adjustment Methodology

The Parties acknowledge that external factors that are used in the Cost Components Reweighted analysis, such as fuels, costs of equipment, etc., may change over time and the factors may need adjustment. Either Party may initiate discussions to review these factors and whether an adjustment to the rate component weightings is necessary in order to provide economic service to County ratepayers.

(b) Reserved. [Former subsection 13.2(b) deleted as of the effective date of Amendment No. 3.]

(c) Extraordinary Adjustment

The parties acknowledge that there may be infrequent extraordinary events which, although they do not prevent either party from performing, and thus do not implicate the Force Majeure provisions hereof, nevertheless increase the cost of providing service such that Grantee's compensation and the rate adjustment mechanism provided in this Agreement result in Grantee's suffering losses which are substantially outside the commercially reasonable expectations of the parties. The obligation of the parties in such event is to act reasonably toward each other in arriving at an appropriate adjustment in rates. Accordingly, at its option, Grantee may apply to the County at any time, but not more frequently than once annually, for an extraordinary rate adjustment should an event or circumstance arise that is not the result of a Change in Law or Change in Service Level which negatively impacts the economic operation of Grantee and which is in excess of the rate adjustment resulting from the application of the annual adjustment formula set for in subparagraph (a) above. An interim adjustment in rates will be deemed justified if it is necessary for the Grantee to make a substantial change in its operations, or substantial capital expenditure or investment in order to perform its obligations under this Agreement due to the occurrence of an event or circumstance other than a Change in Law or Change in Service Level which is beyond the reasonable control of Grantee. In the event of such an application for an extraordinary rate increase, it is understood that the Grantee shall have the burden of demonstrating to the reasonable satisfaction of County the basis for the extraordinary increased cost. In no event shall any Extraordinary Adjustment be effective prior to the Board's approval of an amendment to the Franchise Agreement.

(d) Landfill Disposal Facility Fee Adjustment

The Landfill Disposal Facility Fee Adjustment shall be the pass-through of one hundred percent (100%) of any increase or decrease in the fee charged to the Grantee for the use of a Landfill Disposal Facility approved for use by the Division, using the rate

adjustment formula described in “(a)” above, and shall be effective as of the date of the change of such fee.

(e) Franchise Fee Adjustment

The Franchise Fee adjustment shall be the pass through of one hundred percent (100%) of any increase or decrease in the Franchise Fee percentage, and shall be effective as of the date the Franchise Fee increase or decrease is payable by the Grantee.

(f) Change in Service Level Adjustments

- (1) The Total Rate shall be increased (or decreased) by one hundred percent (100%) of the increase (or decrease) or incremental increase (or incremental decrease), as the case may be, in the demonstrable costs (i.e., on any direct or indirect cost, whether fixed or variable) associated with the change in the level of the Solid Waste Handling services which may be required of, or agreed to by, Grantee. A Change in Service Level Adjustment shall be effective on and after the actual date of the requirement to or agreement to change operations which results from the change in service, but, absent the consent of the Director, or designee, not sooner than the effective date of the change in service. In no event shall any Change in Service Level Adjustment be effective prior to the Board's approval of an amendment to the Franchise Agreement.
- (2) In the event that the Director, or designee, and the Grantee claiming to be affected by the change in service level cannot agree on either the existence, or the effect on demonstrable costs, of a change in service level, the dispute resolution provisions of Section 13.3(a) shall apply.

(g) Change in Law Adjustments

- (1) The Total Rate shall be increased (or decreased) by one hundred percent (100%) of the increase (or decrease) or incremental increase (or incremental decrease), as the case may be, in the demonstrable costs (i.e., on any direct or indirect cost, whether fixed or variable) associated with the change in the manner or nature of conducting Solid Waste Handling services necessitated by a Change in Law. A Change in Law Adjustment shall be effective on and after the actual date of the change in operations which resulted from the Change in Law, but, absent the consent of the Director, or designee, not sooner than the effective date of the Change in Law. In no event shall any Change in Law Adjustment be effective prior to the Board's approval of an amendment to the Franchise Agreement.
- (2) In the event that the Director, or designee, and the Grantee claiming to be affected by the Change in Law cannot agree on either the existence, or the effect on demonstrable costs, of a Change in Law, the dispute resolution provisions of Section 13.3(a) shall apply.

(h) If at any time during the term of this Agreement, the Grantor or the Grantee realize that an adjustment made in accordance with this Section 13.2 has been calculated in error, then the appropriate correction will be calculated by the County and an applicable corrective change, either positive or negative, will be made to the Total Rate on the next ensuing July 1st.

Exhibit D - DEFINITIONS

Definitions is hereby amended by replacing the definition of "CONSUMER PRICE INDEX" as it is currently defined to Consumer Price Index – All Urban Consumers, Los Angeles-Riverside-Orange County, CA All items less food and energy, CUURA421SA0LE.

Definitions is hereby amended by replacing the definition of "GROSS RECEIPTS LESS DISPOSAL CHARGES" with "Gross Receipts Less Disposal Charges" means Gross Receipts less that part of the monies received by the Grantee that are collected from Subscribers for payment of the fee imposed for disposing of the Solid Waste at a Landfill Disposal Facility and the fee imposed for Other Operations.

Definitions is hereby added for "OTHER OPERATIONS" as defined as all operational cost categories that are not included in fuel , service and landfill disposal; OTHER OPERATIONS may include, but are not limited to, non-county facilities for transfer, processing, composting and transformation .

Definitions is hereby amended by deleting the definitions of "PRODUCER PRICE INDEX CNG" and "PRODUCER PRICE INDEX DIESEL" in their entireties and replacing with California No. 2 Diesel Ultra Low Sulfur (0-15 ppm) Retail Prices (Dollars per Gallon), U.S. Energy Information Administration OR Natural Gas (CNG) Information Reported by Clean Cities, West Coast (Table 5 of Quarterly Report) whichever is more applicable.

Definitions is hereby amended by deleting the definition of "SOLID WASTE FACILITY" and replacing the term with "LANDFILL DISPOSAL FACILITY" defined as any COUNTY owned/operated facility that is designed to manage any type of SOLID WASTE and includes disposal, transfer, processing, composting and transformation.

Definitions is hereby amended by deleting the definition of "SOLID WASTE FACILITY FEE" and replacing the term with "LANDFILL DISPOSAL FACILITY FEE" defined as the fee charged for use of a LANDFILL DISPOSAL FACILITY.

[REMAINDER OF PAGE LEFT BLANK]

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

COUNTY OF SAN BERNARDINO

► _____
Janice Rutherford, Chair, Board of Supervisors

Dated: _____

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

Laura H. Welch
Clerk of the Board of Supervisors
of the County of San Bernardino

By: _____
Deputy

BURRTEC WASTE & RECYCLING
SERVICES, LLC

*(Print or type name of corporation,
company, contractor, etc.)*

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

Name: TRACY A. SWEENEY
*(Print or type name of person signing
contract)*

Title: _____
(Print or Type)

Dated: _____

Address: 9890 CHERRY AVENUE
FONTANA, CALIFORNIA. 92335

2CD2980-04