

**THIRD AMENDMENT TO THE CITY OF SAN BERNARDINO'S EXCLUSIVE
FRANCHISE AGREEMENT FOR INTEGRATED SOLID WASTE COLLECTION,
PROCESSING, AND DISPOSAL SERVICES WITH BURRTEC WASTE INDUSTRIES, INC.**

This Third Amendment to the City of San Bernardino's Exclusive Franchise Agreement for Integrated Solid Waste Collection, Processing, and Disposal Services with Burrtec Waste Industries, Inc. ("Third Amendment") is made and entered into as of _____, 2024 ("Effective Date") by and between the City of San Bernardino, a charter city and municipal corporation ("City") and Burrtec Waste Industries, Inc. a California corporation organized under the laws of the State of California ("Contractor"). City and Contractor are sometimes referred to herein individually as a "Party" and collectively as "Parties."

RECITALS

- A. **WHEREAS**, the City and Contractor entered into an Exclusive Franchise Agreement for Integrated Solid Waste Collection, Processing, and Disposal Services dated January 25, 2016, as amended by the First Amendment to Exclusive Franchise Agreement for Integrated Solid Waste Collection, Processing, and Disposal Services and the Second Amendment to Exclusive Franchise Agreement for Integrated Solid Waste Collection, Processing, and Disposal Services ("Agreement"), for the purpose of providing the collection, recycling, diversion and disposal of Solid Waste from Service Units in the City of San Bernardino; and
- B. **WHEREAS**, pursuant to Section 33.8 of the Agreement, the Agreement may only be amended by written agreement signed by both the City and Contractor; and
- C. **WHEREAS**, SB 1383 (Chapter 395, Statutes of 2016) and the regulations adopted by the California Department of Resources Recycling and Recovery ("CalRecycle") to implement it, require residential and commercial waste generators to participate in organic recycling programs; and
- D. **WHEREAS**, the SB 1383 Regulations require the City to implement Collection programs, meet Processing facility requirements, conduct contamination monitoring, provide education, maintain records, submit reports, monitor compliance, conduct enforcement, and fulfill other requirements; and, the City has chosen to delegate some of its responsibilities to Contractor, acting as the City's designee, and Contractor desires to take on these responsibilities; and
- E. **WHEREAS**, the Parties now desire to modify the Agreement to implement changes required by the SB 1383 Regulations.

NOW, THEREFORE, in consideration of the above recitals and the mutual covenants, conditions, and promises contained in this Third Amendment and the Agreement, the Parties mutually agree as follows:

1. Incorporation of Recitals. The recitals listed above are true and correct and are hereby incorporated herein by this reference.

2. Definitions. The Definitions as stated in Section 1 shall be amended or added to read as follows, and the numbering within Section 1 for each definition shall be deleted:
- a. **“Compost”** has the same meaning as in 14 CCR Section 17896.2(a)(4), as may be amended from time to time.
 - b. **“Consumer Price Index or CPI”** means the twelve (12) month annual average percentage change the All Urban Consumers Index (CPI-U), Not Seasonally Adjusted, All Items, Riverside-San Bernardino-Ontario, CA (Series ID: CUURS49CSA0), as published by the U.S. Department of Labor, Bureau of Labor Statistics, for the most calendar year, compared to the prior calendar year.
 - c. **“Edible Food”** means food intended for human consumption. For the purposes of this Agreement, Edible Food is not Solid Waste if it is recovered and not discarded. Nothing in this Agreement requires or authorizes the recovery of Edible Food that does not meet the food safety requirements of the California Retail Food Code. If the definition in 14 CCR Section 18982(a)(18) for Edible Food differs from this definition, the definition in 14 CCR Section 18982(a)(18) shall apply to this Agreement
 - d. **“Excluded Waste”** means hazardous substances, Hazardous Waste, infectious waste, designated waste, volatile, corrosive, medical waste, infectious, regulated radioactive waste, and toxic substances or material that facility operator(s), which receive materials from the City and its generators, reasonably believe(s) would, as a result of or upon acceptance, transfer, processing, or disposal, be a violation of local, State, or Federal law, regulation, or ordinance, including: land use restrictions or conditions, waste that cannot be disposed of in Class III Landfills or accepted at the facility by permit conditions, waste that in the City’s reasonable opinion would present a significant risk to human health or the environment, cause a nuisance or otherwise create or expose Contractor or City to potential liability; but not including de minimis volumes or concentrations of waste of a type and amount normally found in Single-Family or Multi-Family Solid Waste after implementation of programs for the safe collection, processing, recycling, treatment, and disposal of batteries and paint in compliance with Sections 41500 and 41802 of the California Public Resources Code.
 - e. **“Food Recovery Organization”** is as defined in 14 CCR Section 18982(a)(25).
 - f. **“Food-Soiled Paper”** means compostable paper material that has come in contact with food or liquid, such as, but not limited to, compostable paper plates, paper coffee cups, napkins, pizza boxes, and milk cartons.
 - g. **“Food Scraps”** means all food such as, but not limited to, fruits, vegetables, meat, poultry, seafood, shellfish, bones, rice, beans, pasta, bread, cheese, and eggshells. Food Scraps excludes liquids, fats, oils, and grease when such materials are Source Separated from other Food Scraps.

- h. **“Food Waste”** means Source Separated Food Scraps and Food Soiled Paper. Edible Food separated for food recovery shall not be considered Food Waste.
- i. **“Hauler Route(s)”** means the designated itinerary or sequence of stops for each segment of the City’s collection service area, or as otherwise defined in 14 CCR Section 18982(a)(31.5).
- j. **“Organic Waste”** means Solid Wastes containing material originated from living organisms and their metabolic waste products including, but not limited, to, Food Waste, yard trimmings, organic textiles and carpets, lumber, wood, paper products, printing and writing paper, manure, biosolids, digestate, and sludges, or as otherwise defined in 14 CCR Section 18982(a)(46). Biosolids and digestate are as defined in 14 CCR Section 18982(a).
- k. **“Prohibited Container Contaminants”** means the following: (i) discarded materials placed in the Recyclable Materials Container that are not identified as acceptable Source Separated Recyclable Materials for the Recyclable Materials Container; (ii) discarded materials placed in the Organic Waste Container that are not identified as acceptable Source Separated Organic Waste for the Organic Waste Container; (iii) discarded materials placed in the Solid Waste Container that are acceptable Source Separated Recyclable Materials and/or Source Separated Organic Waste to be placed in Organic Waste Container and/or Recyclable Materials Container; and (iv) Excluded Waste placed in any Container.
- l. **“Source Separated”** means materials, including commingled Recyclable Materials, and Organic Waste, that have been separated or kept separate from the Solid Waste stream, at the point of generation, for the purpose of additional sorting or Processing of those materials for recycling or reuse in order to return them to the economic mainstream in the form of raw material for new, reused, or reconstituted products which meet the quality standards necessary to be used in the marketplace, or as otherwise defined in 14 CCR Section 17402.5(b)(4). Source Separated shall include separation of Recyclable Materials, Organic Waste, and Solid Waste by the generator into different Containers for the purpose of collection and processing.
- m. **“Term”** means the operative life of this Agreement as stated in Section 4.2.
- n. **“SB 1383”** means Senate Bill 1383 (Chapter 395, Statutes of 2016), and the SB 1383 Regulations adopted by CalRecycle to implement it.
- o. **“Tier One Commercial Edible Food Generator”** means a commercial edible food generator that is one of the following, each as defined in 14 CCR Section 18982:
 - A. Supermarket.
 - B. Grocery Store with a total facility size equal to or greater than 10,000

square feet.

- C. Food service provider.
- D. Food Distributor.
- E. Wholesale food vendor.

If the definition in 14 CCR Section 18982(a)(73) of Tier One Commercial Edible Food Generator differs from this definition, the definition in 14 CCR Section 18982(a)(73) shall apply to this Agreement.

p. **“Tier Two Commercial Edible Food Generator”** means a commercial edible food generator that is one of the following, each as defined in 14 CCR Section 18982:

- A. Restaurant with 250 or more seats, or a total facility size equal to or greater than 5,000 square feet.
- B. Hotel with an on-site food facility and 200 or more rooms.
- C. Health facility with an on-site food facility and 100 or more beds.
- D. Large venue .
- E. Large Event.
- F. A state agency with a cafeteria with 250 or more seats or total cafeteria facility size equal to or greater than 5,000 square feet.
- G. A local education agency with an on-site food facility.

If the definition in 14 CCR Section 18982(a)(74) of Tier Two Commercial Edible Food Generator differs from this definition, the definition in 14 CCR Section 18982(a)(74) shall apply to this Agreement

3. Self-Hauling. Section 2.9 shall be amended in its entirety to read as follows:

2.9 Self-Hauling. Self-hauling is allowed as specified in the San Bernardino Municipal Code. This Agreement does not prohibit such materials which are removed from any Service Unit in the City and which are transported personally by the owner or occupant of such premises to a processing or disposal facility pursuant to the San Bernardino Municipal Code. This Agreement shall not prohibit gardeners and landscapers from collecting, transporting and composting or disposing of Green Waste, as long as they transport such Green Waste to an Organic Processing Facility, or other site permitted (or exempt from permitting) by CalRecycle, or its successor agency, in accordance with all governing laws and regulations and submit reports required by City. “Self-hauling” shall have the same definition as in Section 8.24.010 of the San Bernardino Municipal

Code.

4. Monthly Franchise Fee Payment. The following sentence shall be added to the end of Section 3.4.8:

“The Franchise Fee Payment may be decreased by the City during the Term of this Agreement without Contractor’s prior written consent, and if the Franchise Fee is adjusted, City shall provide written notice to the Contractor.”

5. Term. Section 4.2 shall be amended in its entirety to read as follows:

4.2.1 Term of Agreement. The term of this Agreement shall expire on March 31, 2031, subject to early termination or extension.

6. Container Contamination Minimization. Section 6.9.1 is hereby added to read as follows:

6.9.1 Container Contamination Minimization. Contractor shall assist in minimizing contamination by helping to educate customers on acceptable and non-acceptable materials, by monitoring the contents of collection Containers, and by refusing to collect containers with visible Prohibited Container Contaminants. Contractor shall, at its sole expense conduct hauler route reviews each calendar year for Prohibited Container Contaminants in Containers in a manner that is deemed safe by the Contractor, is approved by the City, and is conducted in a manner that results in all hauler routes being reviewed, in accordance with 14 CCR Section 18984.5(b).

6.9.1.1 Number of Containers to Review. Contractor shall visually inspect the contents of all Solid Waste, Recyclable Materials, and Organic Waste Containers for a sufficient number of residential and commercial accounts to fully comply with the associated SB 1383 requirements per hauler route to search for Prohibited Container Contaminants. At a minimum, the Contractor shall inspect, 3% of all residential Solid Waste, Recyclable Materials, and Organic Waste Containers, and 10% of all commercial businesses, including multi-family units. The Containers shall be randomly selected by a method approved by the City.

6.9.1.2 Route Review Methodology. Contractor shall develop a hauler route review methodology that complies with the requirements of 14 CCR Sections 18984.5(b). Contractor shall submit its proposed hauler route review methodology for the coming contract year (July – June) to the City no later than July 1 of each year, describing its proposed methodology for the calendar year and schedule for performance of each hauler route review. Company’s proposed hauler route review methodology shall include its plan for container inspections and shall also include its plan for prioritizing the inspection of customers that are more likely to be out of compliance. City shall review, comment on, and approve the proposed methodology. Contractor may commence with the proposed methodology upon approval. If the City notifies the Contractor that the methodology is inadequate to meet the requirements of SB 1383, Contractor shall, at its sole expense, revise the methodology and, after obtaining City approval, conduct additional hauler

route reviews, increased container inspections, or implement other changes using the revised procedure. Contractor shall implement and perform route reviews per the approved methodology beginning July 1, 2024.

6.9.1.3 Scheduling. The City may request, and Contractor shall accept, modifications to the schedule to permit observation by the City subject to reasonable safety protocols. In addition, Contractor shall provide email notice to the City no less than ten (10) working days prior to each scheduled hauler route review that includes the specific time(s), which shall be within the City's normal business hours, and location(s).

6.9.1.4 Documentation. Contractor shall document contamination with still pictures or video, and will notify the customer of the contamination and recycling requirements. Contractor may, at its discretion, collect the Container as Recyclable Materials, Organic Waste, or as Solid Waste.

6.9.1.5 Reporting Requirements. Contractor shall maintain records and report to the City on contamination monitoring activities and actions taken. Contractor shall collaborate with the City to obtain records and submit the AB 939/SB 1383 Electronic Annual Report (EAR) on behalf of the City to CalRecycle by August 1st of each year starting in 2024. The submitted EAR shall meet the requirements per 14 CCR Section 18794.0.

6.9.1.6 SB 1383 Monitoring and Inspections. Contractor shall perform customer compliance reviews described in this subsection annually, as of the Effective Date, unless otherwise noted.

6.9.1.7 Commercial Generator Compliance Reviews. Contractor shall complete a compliance review of all commercial businesses that generate two (2) cubic yards or more per week of solid waste, including organic waste, to determine their compliance with: (i) generator requirements under the City Code and this Agreement; and, (ii) if applicable for the customer, self-hauling requirements per 14 CCR Section 18988.3. The compliance review shall mean a "desk" review of records to determine customers' compliance with the above requirements and does not necessarily require on-site observation of service.

6.9.1.8 Compliance Review Process. Contractor shall conduct inspections and/or contact non-compliant entities described in Section 6.9.1.7 at a minimum of once per year or as directed by City to adequately determine the entities' overall compliance with SB 1383. City may require the Contractor to prioritize inspections of entities that the City determines are more likely to be out of compliance.

6.9.1.9 Non-Compliant Entities. When compliance reviews are performed by Contractor pursuant to this subsection, Contractor shall provide City-approved educational materials, in response to violations. Contractor shall provide these educational materials to the non-compliant customers by mail or immediately upon determination of non-compliance if such non-compliance is determined during an inspection or hauler route review. Contractor shall document the non-compliant customers and the date and type of education materials provided and report such

information to the City. Beginning January 1, 2024, the Contractor shall document non-compliant customers determined through Contractor's compliance reviews, and shall report all customers with SB 1383 violations to the City. The City shall be responsible for subsequent enforcement action.

6.9.1.10 Tier 1 and Tier 2 Edible Food Generators and Food Recovery Organizations. Contractor shall inspect each Tier 1 and Tier 2 edible food generator and food recovery organization within the City annually to determine their compliance with SB 1383 and take reasonable steps to ensure generators are educated on their compliance requirements with regulations and the City is notified of non-compliant entities.

6.9.1.11. Documentation of Inspection Actions. The Contractor shall generate a written or electronic record and maintain documentation for each inspection, including Tier 1 and Tier 2 edible food generators and food recovery organizations, hauler route review, and compliance review conducted. Contractor shall provide a copy of that documentation to the City as part of its Annual Report.

6.9.1.12 Documentation of SB 1383 Non-Compliant Complaints. Contractor shall maintain a computer database of all oral and written SB 1383-related non-compliant complaints reported to Contractor from customers or other persons. Contractor shall provide a copy of the Recyclist Program information collected to the City as part of its Annual Report.

6.9.1.12.1 Reports of SB 1383-Noncompliant Complaints. For reports received in which customers or other persons allege that an entity is in violation of SB 1383 requirements, Contractor shall document such complaint investigations. Contractor shall provide this information in a brief complaint report to the City for each SB 1383-noncompliant complaints within five (5) working days of receipt of such complaint, and a quarterly summary report of SB 1383-noncompliant complaints.

6.9.1.12.2 Investigation of SB 1383-Noncompliant Complaints. Contractor shall assist City in meeting its obligation to investigate non-compliant complaints by commencing an investigation within thirty (30) days of receiving notice of a complaint in the following circumstances: (i) upon Contractor receipt of a complaint that an entity may not be compliant with SB 1383 and if City determines that the allegations against the entity, if true, would constitute a violation of SB 1383; and, (ii) upon City request to investigate a complaint received by City, in which City determines that the allegations against the entity, if true, would constitute a violation of SB 1383. Contractor is required to investigate complaints against customers and generators, including Tier One and Tier Two Commercial Edible Food Generators, against Edible Food recovery organizations, Edible Food recovery services, and other entities regulated by SB 1383. Contractor shall investigate the complaint by:

i. Reviewing the service level of the customer (if the entity is a customer of the Contractor);

- ii. Reviewing the waiver list, if applicable, to determine if the entity has a valid, City-approved de minimis or physical space constraint waiver;
- iii. Reviewing the self-haul registration list, if applicable, to determine if the entity has registered and reviewing the entities reported self-haul information;
- iv. Inspecting premises of the entity identified in the complaint notice, if warranted;
- v. Contacting the entity to gather more information, if warranted; and
- vi. Affixing a City-approved notice of non-compliant complaint report on the customer's container that includes SB 1383 generator requirements and, if applicable, provides a City-approved deadline for correction.

6.9.1.11.3 Reporting. Within ten (10) days of completing an investigation of an SB 1383-noncompliant complaint, Contractor shall submit to City an investigation complaint report that documents the customer account in question, the nature of the complaint, the investigation performed, and recommends to City whether or not the entity investigated is in violation of SB 1383 based on the Contractor's investigation. The City shall make a final determination of the allegations against the entity.

Contractor shall provide to City in its reports a list of all customer non-compliant complaint notices that have not been resolved by Contractor within thirty (30) days of receiving such notice. The Contractor complaint list shall include the customer's account information, including customer's then-current service level, the nature of the complaint, and Contractor's efforts to resolve the complaint. City, or its designee, shall be responsible for investigating such outstanding complaints received by Contractor.

Within three (3) business days of the City's or its designee's request, Contractor shall provide City or its designee with customer account information and other documentation that may be useful in the investigation such as records of the customer's most recent change(s) in service level and other customer service records.

7. Procurement of Recovered Organic Waste. Section 6.15 is hereby added to read as follows:

6.15 Procurement of Recovered Organic Waste. Contractor shall purchase or procure Compost and or mulch necessary to meet 30% of the City's annual target amount as specified in SB 1383 Regulations, 14 CCR Section 18993.1. Contractor agrees to act as a direct service provider on behalf of the City for additional quantities of Recovered Organic Waste Products to help the City meet its annual target amount at the City's expense. Recovered Organic Waste Products shall comply with 14 CCR 18993.1(f). Contractor shall comply with the recordkeeping and verification requirements of 14 CCR 18993.2.

8. Conditions of Service. Section 7.1 is hereby amended to read as follows:

7.1 Conditions of Service. Contractor shall provide SFD collection service to all SFD Service Units whose Solid Waste, Recycle Materials, or Organic Waste are properly placed in Carts. Except as set forth in Section 7.8, Contractor shall offer Carts for Solid Waste, Recycle Materials, and Organic Waste in 35-, 64-, and 96-gallon sizes. Contractor shall provide, at its sole expense, a senior discount of ten percent (10%) for 35-gallon Solid Waste Cart service at no cost to the City or other customers. Contractor may offer alternative services to recipients receiving on-premise service. If collection in Carts is not sufficient to accommodate the amount of Solid Waste generated, Contractor may offer Bins or Roll-offs in sizes as allowed under this Agreement.

9. SFD Food Waste Collection Services. Section 7.7.5 (SFD Food Waste Collection Services) is hereby deleted in its entirety and replaced with the following:

7.7.5 SFD Organic Waste Collection Services. No later than September 1, 2024, Contractor shall provide all SFD accounts with Organic Waste Collection Services, including the collection of food waste.

10. MFD Organic Waste Collection Services. Section 8.2 is hereby amended to read as follows:

8.2 MFD Organic Waste Collection Service. For MFD Service Units utilizing Bins or Roll-offs for collection, Contractor shall implement any required MFD Organic Waste Program in accordance with the schedule established under AB 1826 and SB 1383.

11. Commercial Organic Waste Collection Service. Conditions of Service. Section 9.4.1 is hereby amended to read as follows:

9.4.1 Conditions of Service. In accordance with the schedule established under AB 1826 and SB 1383, Contractor shall provide Commercial Organic Waste Collection Service to all Commercial Service Units in the service area who have subscribed for service and whose Commercial Organic Waste materials are properly placed in Containers except as set forth below, where the Containers are accessible. Commercial Organic Waste Collection Service will occur Monday – Friday, and on Saturdays upon request and as necessary.

12. Street Sweeping. A new subsection 11.25 is to be added to Section 11 Street Sweeping and read as follows:

11.25 Review of GPS Data. Contractor shall no less than weekly review GPS data from each street sweeping route to determine if all required street sweeping services have been fully provided. Contractor shall include a written confirmation in each Quarterly Report that the Contractor has reviewed the daily GPS data for all Street Sweeping routes and verified that all routes have been fully completed, as scheduled. If that is not the case, Contractor shall provide a list of any and all exceptions.

13. SB 1383 Outreach and Education. Section 14.9 is hereby added to read as follows:

14.9 SB 1383 Outreach and Education. The Contractor shall conduct a public information program, as directed and approved by the City and meeting the SB 1383 requirements , to inform and remind residents and businesses of the recycling and organic waste programs and their operation. Such program shall include media releases, advertisements, public appearances, community involvement programs to encourage participation in recycling efforts. A program plan shall be submitted to the City prior to July 1 of each contract year for approval. Contractor shall, consistent with 14 CCR Section 18985.1, provide generators with information on properly separating materials, organic waste prevention, on-site recycling, composting, methane reduction benefits, how to recycle organic waste, approved haulers, public health and environmental impacts associated with landfilling organic waste, self-haul requirements, and edible food donation. Contractor shall prepare and distribute public education and outreach materials in non-English languages spoken by a substantial number of the public that are provided organic waste collection services, consistent with the requirements of Government Code section 7295.

Annually Contractor shall provide Tier One and Tier Two Commercial Edible Food Generators with information on the City's Edible Food Recovery Program, generator requirements, and food recovery.

Contractor shall cooperate and coordinate with the City Manager or his or her designee on public education activities to minimize duplicative, inconsistent, or inappropriately timed education campaigns. Contractor shall obtain approval from the City Manager or his or her designee on all Contractor -provided public education materials including, but not limited to: print, radio, television, or internet media before publication, distribution, and/or release. City shall have the right to request that Contractor include City identification and contact information on public education materials and approval of such requests shall not be unreasonably withheld. Contractor shall provide access to the Recyclist Program during the term of the agreement and will provide the records for up to two years after the agreement ends upon request.

14. Container Labeling. A new Section 15.17.9 shall be added and read as follow:

15.17.19 Container labeling. All new and replacement Containers shall be SB 1383 compliant as of the Effective Date of this Amendment.

15. Submission of Reports. Section 24.4 shall be amended to read as follows:

24.4 Submission of Reports. Reports shall be submitted to:

Director of Public Works
City of San Bernardino
290 North D Street
San Bernardino, CA 92401

16. Liquidated Damages. Section 30.5.5 shall be deleted in its entirety and replaced with the following:

LIQUIDATED DAMAGES		
Item		Amount
a.	Failure or neglect to address each complaint by the close of the next working day.	\$100 per incident per Service Recipient
b.	Failure to address concerns regarding maintaining the collection equipment in a clean, and sanitary manner.	\$100 per incident per day.
c.	Failure to have a vehicle operator properly licensed.	\$100 per incident per day.
d.	Failure to maintain office hours as required by this Agreement.	\$100 per incident per day.
e.	Failure to maintain or timely submit to City all documents and reports required under the provisions of this Agreement.	\$100 per incident per day.
f.	Failure to display Contractor's name and customer service phone number on collection vehicles.	\$100 per incident per day.
g.	Failure to collect a missed collection by close of the next work day upon notice to Contractor	\$100 per incident per day.
h.	Failure to repair or replace damaged Carts or Bins within the time required by this Agreement.	\$100 per incident per day.
i.	Failure to deliver or exchange Carts or Bins within the time required by this Agreement.	\$100 per incident per day.

LIQUIDATED DAMAGES		
Item		Amount
j.	Failure to meet vehicle noise requirements.	\$100 per incident per day.
k.	Failure to maintain collection hours as required by this Agreement without prior City approval.	\$250 per incident per day.
l.	Failure to offer and provide adequate facility processing capacity of Recyclable Materials and Organic Waste.	\$250 per incident per day.
m.	Failure to have field personnel in company/contractor uniform.	\$250 per incident per day.
n.	Failure to repair damage to customer property caused.	\$500 per incident per location.
o.	Failure to repair damage to City property caused by Contractor or its personnel.	\$500 per incident.
p.	Failure to clean up spillage or litter caused by Contractor.	\$500 per incident per location.
q.	Failure to properly cover materials in roll-off containers during transport.	\$500 per incident.
r.	Changing residential collection days without property notification to the City Representative.	\$500 per incident per day.
s.	Commingled Solid Waste with Recyclable Materials or Organic Waste, with the exception of contaminated recyclables.	\$500 per incident.
t.	Disposal of Recyclable Materials or Organic Waste in the landfill without first obtaining the required permission	\$500 per load.

LIQUIDATED DAMAGES		
Item		Amount
	of the City.	
u.	Failure to deliver any collected materials to a permitted Disposal Facility, Materials Recovery Facility, or Organic Processing Facility, as appropriate, except as otherwise expressly provided in this Agreement.	\$5,000 each failure
v.	Commingling of materials collected inside and outside the City of San Bernardino.	\$1,000 per incident.
w.	Failure to meet and maintain minimum annual Diversion Guarantee for two consecutive years.	\$50 per ton for each ton under the minimum requirement
x.	Failure to remove graffiti as specified in Section 6.10.	\$100 per Container per day.
y.	Failure to sweep a street after notification by City that street had not been swept in accordance with established schedule or sweeping did not meet generally accepted industry standards for sweeping.	\$500 per block or lot.
z.	Failure to provide Containers for SB 1383 Collection service to all customers by July 1, 2025 unless customer is waiting for waiver approval or has been granted a waiver.	\$500 each week.
aa.	Failure to complete annual outreach and education requirements in accordance with this Agreement and SB 1383 by July 1, 2025, and each July 1st thereafter	\$500 per Agreement Year.

LIQUIDATED DAMAGES		
Item		Amount
bb.	Failure to complete annual SB 1383 monitoring requirements by July 1, 2025, and each July 1st thereafter, in accordance with this Agreement and SB 1383.	\$500 per year.
cc.	Failure to complete annual calendar reporting requirements by July 1, 2025, and each July 1st thereafter, in accordance with this Agreement and SB 1383.	\$500 per year.
dd.	Failure to contact Customers in response to complaints within one (1) business day or to resolve or remedy a Complaint within seven (7) calendar days of receiving such Complaint.	\$100 per incident
ee.	Failure to issue contamination notices in accordance with this Agreement and SB 1383.	\$50 per incident
ff.	Failure to conduct compliance tasks (i.e., perform route reviews or waste audits) in accordance with this Agreement and SB 1383.	\$100 per incident
gg.	Failure to perform re-inspections in accordance with this Agreement and SB 1383.	\$50 per incident
hh.	Submission of a late report required by the SB 1383.	\$500 per incident.

17. Compliance with Laws. The following sentence shall be added to the end of Section 25.6

“Nothing contained herein shall prohibit Contractor from meeting its compliance requirements by any alternative methods or procedures, provided it complies with SB 1383, and/or any other applicable law, as may be amended from time to time.”

18. Notices. Section 33.9 shall be amended to read as follows:

33.9 Notices. All notices required or permitted to be given under this Agreement shall be in writing and shall be personally delivered or sent by United States certified mail, postage prepaid, return receipt requested, and by email, addressed as follows:

To City: Rochelle Clayton, Acting City Manager
City of San Bernardino
290 North D Street
San Bernardino, CA 92401 Email:
Clayton_Ro@sbcity.org

Copy to: Sonia Carvalho, City Attorney
City of San Bernardino
Best Best & Krieger LLP 18101 Von
Karman Ave., Suite 1000 Irvine,
CA 92612
Email: Sonia.Carvalho@bbklaw.com

And to: Lynn Merrill, Director of Public Works
City of San Bernardino
290 North D Street
San Bernardino, CA 92401 Email:
Merrill_Ly@sbcity.org

To Contractor: Cole Burr, President
Burrtec Waste Industries, Inc.
9890 Cherry Ave.
Fontana, CA 92335

19. Public Records. The heading of Section 33.12 shall be renamed to “**33.12 Public Records.**”

20. Replacement of Exhibit 1. **Exhibit 1** of the Agreement is hereby replaced with the Exhibit 1 attached to this Third Amendment and incorporated by reference herein.

21. Contractor understands and agrees that it shall comply with any changes to the San Bernardino Municipal Code adopted by City necessary or advisable to ensure compliance with SB 1383 and which are not inconsistent with the terms of this Agreement.

22. Whenever the words “AB 1826” appear in the Agreement, “and SB 1383 ” shall follow.

23. This Third Amendment may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

24. This Third Amendment shall affect only the items specifically set forth herein, and all other

terms and conditions of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties hereto have executed this Third Amendment on the Effective date first herein above written.

CITY

CITY OF SAN BERNARDINO

CONTRACTOR

BURRTEC WASTE INDUSTRIES, INC.

APPROVED BY:

Rochelle Clayton
Acting City Manager

Cole Burr
President

APPROVED AS TO FORM:

Best Best & Krieger LLP
City Attorney

Exhibit 1
Maximum Permitted Service Rates