



## Town Council Agenda Report

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Date: June 25, 2019 Item No. 3

To: Honorable Mayor and Town Council

Subject: PROPOSED ADDENDUM NO. 1 TO THE EXCLUSIVE SOLID WASTE FRANCHISE AGREEMENT BETWEEN THE TOWN OF APPLE VALLEY AND BURRTEC WASTE INDUSTRIES, INC. TO PROVIDE FOR STAFFING OF THE TOWN OF APPLE VALLEY HOUSEHOLD HAZARDOUS WASTE COLLECTION LOCATION

From: Douglas Robertson, Town Manager

Submitted by: Guy Eisenbrey, Code Enforcement Manager  
Code Enforcement Department

Budgeted Item:  Yes  No  N/A

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### RECOMMENDED ACTION

That the Town Council authorize the Town Manager to approve the attached Addendum No. 1 to the Exclusive Solid Waste Franchise Agreement between the Town of Apple Valley and Burrtec Waste Industries, Inc. to provide for staffing of the Town of Apple Valley Household Hazardous Waste Collection location.

### SUMMARY

The attached Addendum No. 1 allows for Burrtec Waste Industries, Inc. to start providing staffing for the Town's Household Hazardous Waste Collection (HHWC) site within the Public Works Yard at 13450 Nomwaket Road. The cost for this service will be \$27,500 annually through the end of the original contract's term, except as otherwise noted therein.

### BACKGROUND

The Town's HHWC site has been manned by part-time personnel employed by the Town. Historically, the Town has found it a challenge to find quality applicants to fill the part-time position of manning the HHWC site as it requires knowledge and technical expertise but is paid at a lower than average industry rate. Often, the Town has needed to fill the position with temporary workers, which can be expensive and result in a hard-to-predict budget. For example, in fiscal year 18/19, the budget for wages was approved and set at \$15,262 and as of May 1, 2019 total expenditures for the year already exceeded \$18,200. In addition to the wages accrued directly by Household Hazardous Waste personnel

throughout the fiscal year, the cost of managing, disciplining, and hiring additional personnel costs the Town an amount that cannot be fully captured, but is likely more than that which is proposed by this Addendum No. 1.

Additionally, under present staffing arrangements, the HHWC site had been closed on the fifth Saturday of those months that had them. This Addendum provides for staffing every Saturday except holidays.

Lastly, it should be noted that disposal of household hazardous waste materials will still be provided by the San Bernardino County Fire Protection District and Gold'n West Surplus under separate contracts with the Town. The District collects materials from the HHWC location and transports the waste to its central facility in San Bernardino. The County and Gold'n West Surplus have contracts with third party vendors to dispose of or recycle the collected materials, as appropriate.

### **FISCAL IMPACT**

Project Budget:      \$27,500.00

### **ATTACHMENTS**

1. Proposed Addendum No. 1 to Exclusive Solid Waste Franchise Agreement between the Town of Apple Valley and Burrtec Waste Industries, Inc.

**ADDENDUM NO. 1 TO THE EXCLUSIVE SOLID WASTE FRANCHISE AGREEMENT BETWEEN THE TOWN OF APPLE VALLEY AND BURRTEC WASTE INDUSTRIES, INC.**

This Addendum No. 1 to the Exclusive Solid Waste Franchise Agreement dated January 24, 2017 between the Town of Apple Valley and Burrtec Waste Industries, Inc. for reference purposes only (“Addendum No. 1”), is entered into by and between the Town of Apple Valley (“Town”), a general law municipality and municipal corporation organized under the laws of the State of California and Burrtec Waste Industries, a California corporation (“Contractor”). Town and Contractor are sometimes hereinafter individually referred to as a “Party” and collectively to as “Parties.”

**RECITALS**

**WHEREAS**, on January 24, 2017, Parties entered into the Exclusive Solid Waste Franchise Agreement between the Town of Apple Valley and Burrtec Waste Industries, Inc. (the “Franchise Agreement”) for the purposes of providing reliable and cost-effective solid waste handling and recycling services to the residents and businesses in the Town; and

**WHEREAS**, California Public Resources Code section 40059 et seq., authorizes the Town to determine and arrange for all aspects of solid waste handling; and

**WHEREAS**, California Public Resources Code section 47000 et seq., requires cities and counties to prepare a Household Hazardous Waste Element which identified a program for the safe collection, recycling, treatment and disposal of hazardous wastes which are generated by households, and which must be kept separate from the regular solid waste stream; and

**WHEREAS**, the Town has a Household Hazardous Waste Collection facility located within the Public Works Yard at 13450 Nomwaket Road (the “HHWC Site”); and

**WHEREAS**, Town and Contractor wish to amend the Franchise Agreement to provide the terms and conditions under which the Contractor shall provide staffing services for the HHWC Site; and

**NOW, THEREFORE, IN CONSIDERATION OF MUTUAL COVENANTS AND CONDITIONS CONTAINED AND MADE IN THIS ADDENDUM NO. 1, THE PARTIES HERETO AGREE AS FOLLOWS AS FOLLOWS:**

**A. RESPONSIBILITIES AND DUTIES OF THE CONTRACTOR**

1. Commencing upon the Effective Date, Contractor shall provide qualified personnel to staff, operate, and maintain the HHWC Site at its current location or such other location to be specified and mutually agreed upon by Parties hereto in writing.

2. Qualified personnel shall mean such persons who have successfully completed the 32-hour HazWoper training course provided by the San Bernardino County Fire Protection District (the "District"), including any required refresher course(s), or such equivalent training as is deemed acceptable by the District. In addition to having the aforementioned qualifications, Contractor and its employees staffing the HHWC Site shall comply with the provision of Section 5 of the Franchise Agreement.
3. Staffing level shall be maintained at no less than three persons per day, one day each week, and for five and one half (5 ½) hours each day. Currently the service is provided on Saturdays from 10 a.m. to 2 p.m. with an hour setup and half hour breakdown. Any modification to the specific day of the week and hours of opening and closing of the HHWC Site shall be agreed upon by the Town Manager or their designee following consultation with the Contractor's government liaison.
4. Contractor shall have plans in place to provide for trained substitute personnel, in the event its regularly assigned personnel are absent.
5. Contractor shall be responsible for hiring, training, disciplining, compensating, insuring (as applicable), and supervising all of the Contractor's personnel who will staff the HHWC Site, and shall provide the staffing services in accordance with Section 12 of the Franchise Agreement, which provides, among other things, that the Contractor's personnel are not and shall not be considered agents or employees by the Town.
6. Contractor shall be responsible for providing safety equipment and safety supplies for all its personnel staffing the HHWC site, including but not limited to safety glasses, steel toed boots, nitrile gloves, leather gloves, Tyvek aprons, and Tyvek suits. Contractor shall also supply or require their personnel to wear uniforms.
7. As required by Section 15(f) of the Franchise Agreement, the Contractor shall comply with all applicable laws as well as any applicable regulations and policies in carrying out its responsibilities under this Addendum No. 1. If any provision of this Addendum No. 1 conflicts with applicable laws or regulations, Contractor shall comply with the applicable laws and regulations and inform the Town immediately of the inconsistency.
8. The Contractor shall operate the HHWC Site in accordance with the most recent edition of "The Satellite Facilities Operations Manual" ("Operations Manual") prepared by the District's Division of Hazardous Materials.
9. The Contractor's personnel who staff the HHWC Site will use commercially reasonable efforts to accept only "Household Hazardous Waste", as defined in Title 22, Section 66260.10 of the California Code of Regulations and in California Health and Safety Code Section 25218.1(e). The designated personnel will categorize, pack, and label the wastes in accordance with the Operations Manual. Except used motor oil, paint, and used antifreeze, the wastes will be stored in their original packaging and placed in containers provided by the District inside the waste storage area located with the fenced area of the HHWC Site. Waste tires will also be accepted at the HHWC Site and the Contractor's personnel will be responsible for properly documenting their receipt in accordance with Title 14,

Section 18461 of the California Code of Regulations and other recording requirements as deemed necessary to perform successfully under the terms of the CalRecycle Waste Tire Amnesty grant program.

10. The Contractor shall be responsible for the safety of persons and materials on the Property of the HHWC Site. The Contractor shall also ensure the HHWC Site remains secure by locking the associated security lock boxes, cages, and facility gates at the end of shift.
11. The Contractor shall be responsible for keeping the HHWC Site in a neat and clean condition and using all equipment in a safe and appropriate manner.
12. The Contractor shall notify and obtain approval from the Town Manager or their designee prior to making any changes in the maintenance and/or operations of the HHWC Site that are not contemplated by this Addendum No. 1.

## **B. RESPONSIBILITIES AND DUTIES OF THE TOWN**

1. The Town shall arrange for the disposal of the Household Hazardous Waste as defined above.
2. The Town shall compensate the Contractor for the services provided under this Addendum No. 1 on a monthly basis. The formula and procedures set forth below will be used to calculate and adjust, when appropriate the amount of the Contractor's compensation for operating the HHWC Site. However, in no event shall the Town pay Contractor in excess of \$27,500 per year, subject to CPI increases in accordance with Section 9.b. of the Franchise Agreement.
  - a. Services Compensation Formula. The following formula shall be used to calculate the amount of compensation to be paid to the Contractor: the aggregate amount of each employee of Consultant's hourly rate plus 8% (to account for payroll taxes and worker's compensation costs) multiplied by the number of hours worked by said employee
  - b. Invoicing and Payment. Contractor shall submit a monthly invoice to the Town, detailing the Services Compensation Formula set forth in Section B.2.a. above for the prior month. Town shall pay the invoice within thirty (30) days following receipt.
3. The Town shall be responsible for providing and maintaining a forklift at the HHWC Site.

## **C. EFFECTIVE DATE, TERM, AND TERMINATION**

1. This Addendum No. 1 shall become effective upon the date of this Addendum No. 1 has been fully executed by the Parties (the "Effective Date"). Unless terminated in accordance with Section C.2. below, this Addendum No. 1 shall remain in effect until further amended in writing by both Parties or until the termination of the Franchise Agreement.

2. This Addendum No. 1 may be terminated by either Party, with or without cause, by providing ninety (90) days advance written notice to the other Party. Such notice shall be given in accordance with Section 14.b.i. of the Franchise Agreement.
3. Should this Addendum No. 1 relating to the staffing services of the HHWC Site be terminated as set forth above, the Franchise Agreement shall remain in full force and effect in accordance with its terms.
4. Except as specifically set forth in this Addendum No. 1, all terms and provisions of the Franchise Agreement, including without limitation, Article 12 relating to Insurance, Indemnification, and Performance Bond, shall apply to the staffing services of the HHWC Site provided for under this Addendum No. 1. All other terms and provisions of the Franchise Agreement shall also continue in full force and effect.
5. This Addendum No. 1 may be executed in one or more counterparts, each of which shall be deemed original, but all of which shall constitute one and the same document.

In witness whereof, the Parties hereto have signed this Addendum No. 1 the day and year set forth below.

**TOWN**  
**Town of Apple Valley**

**CONTRACTOR**  
**Burrtec Waste Industries, Inc.**

\_\_\_\_\_  
**Douglas B. Robertson, Town Manager**

\_\_\_\_\_  
**Cole Burr, President**

**Date:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
**Town Clerk**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
**Town Attorney**