

**Fourth Amendment To  
Exclusive Franchise Agreement for  
Comprehensive Refuse Services**

by and between

the

**CITY OF HEMET**

and

**CR&R INCORPORATED**

**Dated September 24, 2019.**

## **FOURTH AMENDMENT TO EXCLUSIVE FRANCHISE AGREEMENT FOR COMPREHENSIVE REFUSE SERVICE**

This Fourth Amendment to the Exclusive Franchise Agreement for Comprehensive Refuse Service ("**Fourth Amendment**"), which is dated for reference as indicated on the cover page, is hereby entered into by and between the CITY OF HEMET, a California general law city ("**City**"), and CR&R Incorporated, a California corporation ("**Contractor**"), as follows:

### **RECITALS**

- A. City and Contractor entered in that Exclusive Franchise Agreement for Comprehensive Refuse Services, dated October 11, 2011 as approved by City Resolution No. 4458 ("**Agreement**"). The Agreement provides that Contractor will provide comprehensive solid waste collection and disposal services to, and within, the City of Hemet, under an exclusive franchise, for which Contractor will pay City certain compensation.
- B. Through the implementation process of the Agreement, City and Contractor identified specific amendments to certain provisions of the Agreement that were necessary to fully implement the arrangement as contemplated by the Parties. City and Contractor thereafter agreed to a First, Second, and Third Amendment (the "**Amendments**") which amended the Agreement. All references to the "Agreement" hereinafter are inclusive of the Agreement as modified by the Amendments.
- C. Recent actions by third party Recyclable Materials purchasers, including without limitation the China Sword initiative and similar programs, which are beyond the ability of the Parties to reasonably control, have resulted in a fundamentally different Recyclable Materials market than existed at the time the Parties entered into the Agreement and are frustrating the original intent of the parties regarding the collection, processing, sale (or similar transaction), and diversion of Recyclable Materials.
- D. The Parties have also identified trends within the insurance industry, including changes in policies, and increase expense of insurance coverage, that make amendment to the insurance provisions of the Agreement desirable to both parties.
- E. In order to fully implement the intent of the Parties, and to ensure the continued collection, processing and diversion of Recyclable Materials for and within City, the Parties have identified specific amendments to the

Agreement, as set forth in this Fourth Amendment, necessary to address this issue and to protect City's significant interest in the health and safety of its citizens.

### **OPERATIVE PROVISIONS**

NOW, THEREFORE, in consideration of the promises made and recited herein, and for good and valuable consideration, the receipt and adequacy of which the Parties deem satisfactory, the Parties do hereby enter into this Fourth Amendment:

#### **1. AMENDMENTS.**

1.1 The Agreement is hereby amended by the addition of a new Subsection A "Recycling Materials Fee" to Section 19 "Marketing & Diversion of Recyclable Materials" after the existing paragraph, to read as follows:

**"A. Recycling Materials Fee.** The intention of the Parties is that Contractor collect, process, and divert all Recyclable Materials collected from Service Recipients as is provided for under this Agreement and that Contractor be permitted to sell (or such other similar transaction) such Recyclable Materials to fully off-set Contractor's reasonable cost for the collection and processing of such material, including obtaining a profit from the sale of such material. The Parties acknowledge that since Parties originally entered into the Agreement, the market for Recyclable Materials has materially changed, due to actions of third party materials purchasers beyond the reasonable ability of either Party to control. The Parties further acknowledge that, at present, Contractor is not, despite the exercise of commercially reasonable efforts, able to sell such Recyclable Materials for a profit or to fully off-set Contractor's costs to collect and process the Recyclable Materials collected in City. Based on the foregoing, the Parties agree that a Recycling Materials Collection and Processing Fee ("**Recycling Fee**") shall be added to the schedule of Maximum Permissible Rates attached to the Agreement as "Exhibit 2" that may be charged to each Service Recipient. There may be a separate Recycling Fee for SFD Recipients and another for Commercial and MFD Customers. City shall not be charged the Recycling Fee. The Recycling Fee shall be administratively adjusted on an annual basis each July 1st based on information submitted by Contractor to City at least sixty (60) days prior to the requested adjustment. The adjustment shall not be subject to, and Contractor shall not be entitled to receive, the annual Consumer Price Index adjustment for the Recycling Fee which is provided

for other rates in paragraph 3(b) of subsection A of Section 20 of the Agreement. To support any adjustment, Contractor shall provide verifiable information to City regarding the then existing average material sales price on a per ton basis as compared to the actual average material sales price for the immediate previous calendar year. It is the intention of the Parties that the Recycling Fee be set to zero and not charged to any Service Recipients during such periods where proceeds from the sale (or other form of transaction) of Recyclable Materials completely or substantially offsets the Contractor's costs to collect and process the Recyclable Materials collected in City."

**1.2** The Agreement is hereby amended by the addition or modification of Subsections G, H, I, J, K, L, M, N & O of Section 24 "Indemnity and Insurance" to read as follows:

**G. "Workers' Compensation Insurance.** Contractor shall obtain and maintain in full force and effect throughout the entire Term of this Agreement full workers' compensation insurance in accord with the provisions and requirements of the Labor Code of the State of California. Copies of policies and endorsements that implement the required coverage shall be filed and maintained with the City Clerk throughout the term of this Agreement. The policy providing coverage shall be amended to provide that the insurance shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty days' prior written notice by certified mail, return receipt requested, has been given to the City.

**H. Liability and Vehicle Insurance.** Contractor shall obtain and maintain, in full force and effect throughout the entire Term of this Agreement, coverage at least as broad as:

**1. Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than FIVE MILLION (\$5,000,000) per occurrence and TEN MILLION (\$10,000,000) aggregate.

**2. Vehicle Liability Insurance:** Insurance Services Office Form CA 0001 covering Code 1 (any auto), with limits no less than THREE MILLION (\$3,000,000) each accident for bodily injury and property damage. The Vehicle Liability policy shall be endorsed to include Transportation Pollution Liability insurance, covering materials to be

transported by Contractor pursuant to this Agreement. This coverage may also be provided on the Pollution Liability policy. Regardless of the coverage limits above, Contractor's coverage must be compliant with the Motor Carrier Act of 1980, California Vehicle Code Sections 34630-34634 and California Health and Safety Code Section 25169.

**I. Pollution and/or Environmental Impairment Liability Insurance.** Contractor shall obtain and maintain in full force and effect for the entire Term of this Agreement, a Pollution Liability and/or Environmental Impairment Liability policy covering liability arising from the release of Hazardous Waste, or other contaminants, pollutants or irritants with minimum limits of TEN MILLION DOLLARS (\$10,000,000.00) aggregate and FIVE MILLION DOLLARS (\$5,000,000.00) per occurrence, per year. Contractor shall ensure that such coverage shall automatically broaden in its form of coverage to include legislated changes in the definition of Hazardous Waste.

**J. Required Rating.** The insurance required by this Agreement shall be with insurers which have a minimum AM Best Rating of A- VII, and which are California-admitted, or optionally, with California non-admitted but authorized insurers who (1) are listed in the California Department of Insurance List of Approved Surplus Line Insurers and (2) have a minimum Best Rating of A X. The limits of such insurance coverage, and companies, shall be subject to review and approval by the City's Risk Manager every year and may be increased at that time and match the coverage provided by the City's own liability insurance policy.

**K. Evidence of Insurance Coverage; Insurance Repository.** Contemporaneously with the execution of this Agreement, Contractor shall file original certificates of insurance and copies of the policies or executed endorsements and declarations pages evidencing the required insurance coverages with the City Clerk. In addition, City shall have the right of inspection of all insurance policies required by this Agreement, and to obtain certified copies of such policies, at any time. Contractor also agrees to maintain copies of insurance policies required pursuant to this Agreement for one hundred years (100 years) after the end of the Term during which collection services were provided pursuant to this Agreement. Contractor shall notify City's Risk Manager and City Attorney before destroying copies of such policies. This provision shall survive the expiration of the period during which collection services are to be provided

under this Agreement. The failure to obtain the required documents at any time shall not waive Contractor's obligation to provide them.

**L. Self-Insurance.** Self-insured retentions must be declared to and approved by the City. At the option of the City, the Contractor shall provide coverage to reduce or eliminate such self-insured retentions as respects the City, its officers, officials, employees, and volunteers; or the Contractor shall provide evidence satisfactory to the City guaranteeing payment of losses and related investigations, claim administration, and defense expenses. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or City.

**M. Reduction of CERCLA and Other Liability.** City and Contractor agree to meet annually in the fourth calendar quarter of each year to discuss ways to reduce potential CERCLA and other liabilities to third parties.

**N. Broader Coverage/Higher Limits.** If Contractor maintains broader coverage and/or higher limits than the minimums shown above, City requires and shall be entitled to the broader coverage and/or the higher limits maintained by Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to City.

**O. Replacement of Coverage.** In the case of the breach of any of the insurance provisions of this Contract, the City may, at the City's option, take out and maintain at the expense of Contractor, such insurance in the name of Contractor as is required pursuant to this Contract, and may deduct the cost of taking out and maintaining such insurance from any sums which may be found or become due to Contractor under this Contract.

**P. Indemnity Requirements Not Limiting.** Procurement of insurance by Contractor, including the insurance required under this Agreement, shall not be construed to replace, impair or limit Contractor's duties to defend and indemnify provided under this Agreement.

**Q. Subcontractors.** Should the Contractor subcontract out any of the work required under this Agreement, it shall include all subcontractors as insureds under its policies or shall maintain separate certificates and endorsements for each subcontractor. As an alternative, the Contractor

may require all subcontractors to provide at their own expense evidence of all the required coverages listed in this Schedule. If this option is exercised, both the City and the Contractor shall be named as additional insured under the subcontractor's General Liability, Vehicle Liability and Pollution Liability policies. All coverages for subcontractors shall be subject to all the requirements stated herein. The City reserves the right to perform an insurance audit during the course of the project to verify compliance with requirements.

**R. Waiver of Subrogation.** Contractor hereby grants to City a waiver of subrogation which any insurer may acquire against City, its officers, officials, employees, and volunteers, from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation but this provision applies regardless of whether or not City has received a waiver of subrogation endorsement from the insurer. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of City for all work performed by the Contractor, its employees, agents, and subcontractors.

**S. Additional Insureds, Primary/Noncontributing, Cancellation.** The General Liability, Vehicle Liability, and Pollution Liability policies must contain, or be endorsed to contain, the following provisions:

1. City, its officers, officials, employees, and volunteers are to be covered as additional insureds with respect to liability arising out activities performed by or on behalf of Contractor. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10, CG 11 85 or both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 forms if later revisions used).

2. For any claims related to this Agreement, the Contractor's insurance coverage shall be primary insurance coverage at least as broad as ISO CG 20 01 04 13 as respects City, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by City, its officers, officials, employees, agents, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

3. Each insurance policy required above shall provide that coverage shall not be canceled, except with thirty days' prior written

notice by certified mail, return receipt requested, and shall also be given to the City in the event of suspension, cancellation, or reduction in coverage or in limits or non-renewal of this policy for whatever reason. Such notice shall be sent to the City Manager, City Attorney and City Clerk.”

**2. GENERAL PROVISIONS.**

- 2.1 **Remainder Unchanged.** Except as specifically modified and amended in this Fourth Amendment, the Agreement (inclusive of the Prior Amendments) remains in full force and effect and binding upon the parties.
- 2.2 **Integration.** This Fourth Amendment consists of a cover page and pages 1 through 4, and Exhibit “A” which constitute the entire understanding and agreement of the parties and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the transaction discussed in this Fourth Amendment.
- 2.3 **Effective Date.** This Fourth Amendment shall not become effective until the date it has been formally approved by City’s City Council, and executed by the appropriate representatives of the City and Consultant.
- 2.4 **Applicable Law.** The laws of the State of California shall govern the interpretation and enforcement of this Second Amendment.
- 2.5 **References.** All references to the Agreement include all their respective terms and provisions. All defined terms utilized in this Fourth Amendment have the same meaning as provided in the Agreement, unless expressly stated to the contrary in this Fourth Amendment.
- 2.6 **Recitals.** The Parties agree that the Recitals stated above are true and correct and are incorporated herein.

***[Signature page follows]***



**IN WITNESS WHEREOF**, the parties hereto have executed this Fourth Amendment to the Agreement on the date and year first written above.

**City:**

**THE CITY OF HEMET**

By:   
\_\_\_\_\_  
Christopher Lopez,  
Interim City Manager

ATTEST

  
\_\_\_\_\_  
Lori Frontella, Interim City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Eric S. Vail, City Attorney

**Contractor:**

**CR&R INCORPORATED**

By:   
\_\_\_\_\_

By:   
\_\_\_\_\_