

**THIRD AMENDMENT TO**  
**Exclusive Franchise Agreement for**  
**Comprehensive Refuse Services**

by and between

the

**CITY OF HEMET**

and

**CR&R INCORPORATED**

Dated September\_\_\_\_, 2015

### **THIRD AMENDMENT TO [INSERT TITLE OF ORIGINAL AGREEMENT]**

This Third Amendment to the Exclusive Franchise Agreement for Comprehensive Refuse Service ("**Third 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 refuse services to, and within, the City of Hemet under an exclusive franchise, for which Contractor will pay City certain compensation. Through the implementation of the Agreement to date, the City and Contractor have identified specific amendments to certain provisions of the Agreement related to operational and administrative processes, which have been outlined in the Third Amendment and Second Amendment previously agreed to by City and Contractor.
- B. City and Contractor have identified additional operational amendments necessary to further compliance with Assembly Bill 1826 ("AB1826"), approved by the State in September 2014, which establishes organic waste recycling program requirements for solid waste customers and public entities. Effective January 1, 2016, jurisdictions must have in place an organic waste recycling program that meets the requirements of AB1826. tion
- C. This Third Amendment amends Section 4 (Definitions), Section 7 (SFD Collection Services), and Exhibit 2 (Maximum Permissible Rates) to provide that definitions in the Agreement are consistent with definitions sited in State Law, residential program changes are identified, and new rates are established to recover operational costs necessary to support Organic Waste Recycling Program implementation. This amendment also replaces and updates approved disposal facilities outline in the Agreement.

#### **OPERATIVE PROVISIONS**

NOW, THEREFORE, in consideration of the promises made and recited herein, the parties do hereby enter into this Third Amendment which modifies and amends the Agreement as follows:

1. **PURPOSE.** The purpose of this Third Amendment is to comply with the requirement of Assembly Bill 1826 that the City adopt an organic waste and recycling program by January 2016. CR&R, as City's sole refuse franchisee, shall develop the City's Organic Waste and Recycle Program, and provide should services reasonably necessary to implement the Program by January 1, 2016.

2. **AMENDMENT.** The Agreement is hereby modified and amended as follows:

- 2.1 **Section 4– Item FF.** Item FF of Section 4 of the Agreement is hereby amended as follows:

FF. “Organic Waste” means food waste, green waste, landscape and pruning waste, nonhazardous wood waste, compostables and soiled paper waste that is mixed in with food waste.

- 2.2 **Subparagraph 5 of Sub-Section H of Section 7.** Subparagraph 5 of Sub-Section H of Section 7 of the Agreement is hereby amended as follows:

5. SFD Food Waste Collection Service. At such time as State Law mandates a separate residential Food Waste Recycling Program, or at such time as CR&R’s Anaerobic Digester is operational, Contractor shall implement an Organic Waste Recycling Program for SFD. At the start of the program, Contractor shall make available Kitchen Food Waste Pails, upon individual customer request, to SFD service recipients. The first Food Waste Pail will be delivered at no cost and additional Food Waste Pails, above and beyond the first pail, will be charged rates as outlined in Exhibit 2.

- 2.3 **Exhibit 2 – Maximum Permissible Rates.** Sections A and D of Exhibit 2 of the Agreement is hereby amended as follows:

A. Residential Cart Collection Service / Special Charges Residential

*Addition of Rates:*

Monthly Residential Organic Waste Processing Fee	\$1.98/home
Additional Kitchen Food Waste Pail (after first pail)	\$ 7.00/each

D. Disposal and Processing Tipping Fees

*Deletion of Fees:*

“Green Waste Processing” Fee

*Amend Fee:*

Organic Waste Processing Fee      \$72.50/ton

- 2.4 **Exhibit 4 – Approved Facilities.** Exhibit 4 of the Agreement is hereby amended as follows:

*Deletion of facility:*

California Bio Mass (Out of Business)

*Addition of Facility:*

CR&R Anaerobic Digester, 1706 Goetz Road, Perris CA 92570

**3. GENERAL PROVISIONS.**

3.1 **Remainder Unchanged.** Except as specifically modified and amended in this Third Amendment, the Agreement remains in full force and effect and binding upon the parties.

3.2 **Integration.** This Third Amendment consists of pages 1 through 4 inclusive, 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 Third Amendment.

3.3 **Effective Date.** This Third Amendment shall not become effective until the date it has been formally approved by the City Council and executed by the appropriate authorities of the City and Consultant.

3.4 **Applicable Law.** The laws of the State of California shall govern the interpretation and enforcement of this Third Amendment.

3.5 **References.** All references to the Agreement include all their respective terms and provisions. All defined terms utilized in this Third Amendment have the same meaning as provided in the Agreement, unless expressly stated to the contrary in this Third Amendment.

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

CITY:

THE CITY OF HEMET

By: \_\_\_\_\_  
Gary Thornhill, Interim City Manager

ATTEST:

\_\_\_\_\_  
Sarah McComas, City Clerk

APPROVED AS TO FORM

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

CONTRACTOR:

CR&R INCORPORATED

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

Name: David Ronnenberg

Title: Chief Operations Officer

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


Name: Joyce Amato

Title: Chief Financial Officer



## Staff Report

TO: Honorable Mayor and Members of the Hemet City Council

FROM: Gary Thornhill, Interim City Manager <sup>52</sup>  
Kristen Jensen, Public Works Director 

DATE: September 8, 2015

RE: Third Amendment to Exclusive Franchise Agreement for Comprehensive Refuse Services with CR&R Incorporated

### **RECOMMENDED ACTION:**

It is respectfully recommended that the City Council:

- 1.) Approve the Third Amendment to Exclusive Franchise Agreement for Comprehensive Refuse Services with CR&R Incorporated ("Third Amendment"); and,
- 2.) Authorize the Interim City Manager to execute the Third Amendment; and,

### **BACKGROUND:**

In October, 2011, the City and CR&R Incorporated ("CR&R") entered into an Exclusive Franchise Agreement ("Agreement") for Comprehensive Refuse Services. These services include the collection, transport, recycling and disposal of residential and commercial solid waste. From time to time the agreement may be amended to reflect changes in legislation related to solid waste, or changes in service provisions. Two Agreement amendments have been previously approved. The First Amendment addressed operational and administrative process items that surfaced after the initial transition period from City operated to CR&R services. The Second Amendment addressed provisions of mandatory refuse services and collection of delinquent service charges.

The proposed Third Amendment addresses the implementation of an Organic Waste Recycling Program required for compliance with Assembly Bill 1826 (AB1826). This bill requires commercial customers that generate certain volumes of solid and organic waste to arrange for recycling services *specifically for* organic waste. The legislation takes a phased approach to mandating organic waste recycling by annually incorporating a progressively larger portion of the commercial and multi-family residential customer base beginning April, 2016 through January 2020. In order to meet these phased mandates, jurisdictions are required to have an organic waste recycling program in place as of January 1, 2016.

Currently, the Agreement includes collection of green waste as organic waste to be recycled. Through the existing program, green waste collected may be delivered as alternative daily cover to landfills or transported to agricultural properties and used as non-composted organic land cover and be accounted for as "recycled" tonnage. 100% of the green waste collected in the City in 2104 was used in land application.

Recently, countywide concerns have surfaced about the environmental impacts of non-composted organic material being used in land applications. Issues such as vector control, water quality impacts, and air quality impacts, have put in question the sustainability of land application

as a disposal option. Due to these concerns, local jurisdictions face a very real possibility that land application may be prohibited in the next few years, which will result in a huge demand for alternative green waste recycling options. Adding to the challenge, beginning January 1, 2020, Assembly Bill 1594 will no longer allow green waste used as alternative daily cover at landfills to constitute diversion as a recycled material.

AB 1826 is anticipated to be the first of a number of laws addressing requirements for organic waste recycling. In order to meet the need for organic waste recycling processing now and in the future, CR&R invested in the construction of an Anaerobic Digester (AD) Facility. Through CR&R's AD facility the City is able to take advantage of expanding organic waste recycling to meet State Law compliance. An added benefit of the facility is the option it provides the City to begin organic waste collection from Single Family Dwelling (SFD) customers ahead of State mandates. This facility provides an environmentally conscience process for handling organic waste diversion, recycling, and material reuse. With Council approval, organic waste materials generated by City of Hemet solid waste customers may be processed at this facility in early 2016.

In 2014 the City of Hemet generated 7,743 tons of green waste. This tonnage accounts for a major portion of the recycling tonnage used to remain compliant with State Assembly Bill 939, which requires a 50% diversion of waste from landfills as compared to landfilled waste totals in calendar year 1990. Although green waste tonnage is produced by commercial, multi-family, and single family residential customers, residential customers generate over 6,030 tons annually. This accounts for 78% of annual green waste generation in the City.

#### **ANALYSIS:**

Approval of the Third Amendment would bring the definition of Organic Waste in the Agreement in line with State Law to also include food waste and soiled paper waste that is mixed in with food waste. Organic waste recycling services, as currently defined in the Agreement, include only the collection and processing of green waste. The inclusion of food scrap in organic waste recycling requires a new approach to processing the organic material, which the AD facility provides.

Approval of the proposed amendment will also authorize implementation of a SFD Food Waste Collection Service program ahead of State mandates, by taking advantage of the AD facility operations now. To implement this program, CR&R will request that food scraps be placed with green waste in existing green waste collection carts for organic recycling collection. In order to facilitate transport of food scraps to the cart, CR&R will deliver each residential customer one free Kitchen Food Scrap Pail, upon the customer's request. Additional pails will be available for purchase from CR&R for a one-time fee of \$7.00 each.

It is in the best interest of the City and CR&R to implement SFD Organic Waste Recycling ahead of State mandates for a number of reasons. It allows our customers to participate in the program at lower rates as early adopters in the first phase of the AD project. CR&R obtained grant funding to offset a sizable portion of construction costs for the first phase of the four phase facility. Early adopters reap the benefit of the grant offset. Early adoption of the SFD program also provides opportunity for the City and CR&R to develop programs and educate customers to have best practices in place for SFD organic recycling now, easing the goal of meeting mandated compliance in the future.

Finally, the Third Amendment incorporates rate updates to cover operation costs of the AD facility. SFD customers would be charged a monthly, per home rate of \$1.98. For customers that remit payment on a per ton basis (some commercial/industrial), the amendment eliminates the

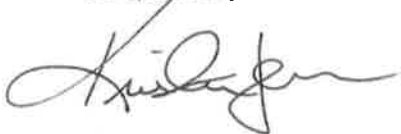
existing Green Waste Processing Fee and updates the existing Organic Waste Processing Fee to an amount of \$72.50 per ton, which incorporates costs formerly related to strictly green waste processing. Implementation of the Organic Waste Recycling Program and associated rates will be implemented at the time CR&R's Anaerobic Digester facility has been placed in operation, and organic waste is processed at the facility. CR&R anticipates processing to begin in the first quarter of 2016.

Staff recommends that the City Council approve the proposed Third Amendment to ensure compliance with AB1826, establish early adoption of SFD Organic Waste Recycling, and incorporate updated rates for recovery of costs related to the AD facility and the Organic Waste Recycling Program. Upon approval staff will prepare the appropriate ordinance for Council review and consideration of approval.

**FISCAL IMPACT:**

No General Fund impacts. Costs related to Organic Waste Recycling will be billed and collected by CR&R through established billing methods.

Respectfully submitted,



Kristen Jensen  
Public Works Director

Approved as to form:



Eric S. Vail  
City Attorney

Fiscal Review:



Jessica Hurst  
Deputy City Manager

Attachment(s):

Third Amendment to Exclusive Franchise Agreement for Comprehensive Refuse Services