

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

by and between

the

CITY OF HEMET

and

CR&R INCORPORATED

Dated July 23, 2013

SECOND AMENDMENT TO EXCLUSIVE FRANCHISE AGREEMENT FOR COMPREHENSIVE REFUSE SERVICE

This Second Amendment to the Exclusive Franchise Agreement for Comprehensive Refuse Service ("**Second 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.
- B. Through the implementation process of the Agreement, and as a consequence of a legal challenge to 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 Amendment which contained these amendments.
- C. Concerns related to the accumulation of waste among residential customers who remain delinquent with their waste payments have created the need for further amendments to certain provisions of the Agreement. City and Contractor have therefore identified specific amendments to certain provisions of the Agreement that are necessary to fully implement the arrangement as contemplated by the Parties and to protect the City's significant interest in the health and safety of its citizens. This Second Amendment contains these specific amendments to be made to certain paragraphs and subparagraphs to the Agreement and rescinds a side letter describing what will become an outdated procedure for managing delinquencies.
- D. City is authorized to pass laws regulating the accumulation of waste in the proper exercise of its police powers.
- E. The accumulation of waste, especially at residential dwelling units, is injurious to health and is indecent and offensive to the senses, which affects an entire community and, as such, is a public nuisance under applicable law, including, but not limited to, Civil Code sections 3479, 3480, 3491 and 3494. It is therefore in the interest of the City to ensure that Contractor does not discontinue refuse collection service to such units as a result of delinquent payment or nonpayment of refuse services, but also to ensure mechanism for Contractor's collection of refuse service charges.
- F. In addition to any other remedy allowed by law, City may collect delinquent solid waste fees or charges in the manner provided by Section 25831 of the Government Code as applied to cities in Section 38790.1 of the Government Code.

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 Second Amendment:

1. **AMENDMENTS.** The Agreement is hereby amended as provided below:

1.1 Subparagraph 1 of Paragraph J of Section 20. Subparagraph 1 of Paragraph J or Section 20 of the Agreement is hereby amended to read as follows:

“1. **Residential Accounts.** Contractor agrees not to discontinue service to residential customers. Residential Customers (owners or tenants) who have not remitted required payment within one hundred twenty (120) days after the date of billing shall be notified by Contractor on forms that contain a statement that if payment is not received within fifteen (15) days from the date of the notice, a 10% penalty and 1.5% monthly interest will begin to accrue and the City will be informed of the delinquency in an annual report. Contractor will deliver a report of the delinquencies in May of each year with a request that the City place the delinquencies on the tax roll. City is authorized to collect delinquent solid waste fees or charges in the manner provided in Sections 38790.1 and 25831 of the Government Code. To implement Contractor’s request, City will fix a time, date and place for hearing the report and any objections and protests to the report. As determined in the sole discretion of the City, Contractor shall mail notice of the hearing to the Residential Customers listed on the report not less than ten (10) days prior to the date of the hearing. At the hearing, City shall hear any objections or protests of Residential Customers liable to be assessed for delinquent fees. The City may make revisions or corrections to the report as it deems just, after which, by resolution, the report shall be confirmed.

The delinquent fees set forth in the report as confirmed, shall constitute special assessments against the respective parcels of land and are a lien on the property for the amount of the delinquent fees. A certified copy of the confirmed report shall be filed with the Riverside County Auditor for the amounts of the respective assessments against the respective parcels of land as they appear on the current assessment roll. The lien created attaches upon recordation, in the office of the Riverside County Recorder, of a certified copy of the resolution of confirmation. The assessment may be collected at the same time and in the same manner as ordinary ad valorem property taxes are collected and shall be subject to the same penalties and the same procedure and sale in case of delinquency as provided for those taxes. Contractor understands and agrees that the City has no obligation to foreclose on the lien for any delinquency. Contractor shall pay all fees charged by Riverside County in connection with the establishment of this secured tax roll billing and collection program and shall pay all direct and indirect costs incurred by the City in processing delinquent and unpaid assessments through the secured property

tax roll procedure. City shall remit to Contractor within thirty days of receipt from the Riverside County Assessor of amounts collected pursuant to this process. Contractor shall notify the City in the event any delinquency on the report or for which a lien has been created is paid or otherwise resolved.”

1.2 Paragraph A of Section 24. Paragraph A of Section 24 of the Agreement is hereby amended to read as follows:

“A. **Indemnification re Certain Challenges to Agreement.** Contractor, upon demand of the City, made by and through the City Attorney, shall indemnify, hold harmless, protect City and appear in and defend the City and its elected officials, officers, employees and agents, in and against any claims or actions by third parties, whether judicial, administrative or otherwise, including, but not limited to disputes and/or litigation:

- a) Challenging the definitions of “Solid Waste” or “Recyclable Material”;
- b) Asserting rights under the dormant Commerce Clause or any other federal or state law, including, but not limited to the anti-trust laws with respect to the provision of Comprehensive Refuse Services in the City;
- c) Challenging the placement on the tax roll, levy, collection, or remittance of any delinquent rate, fee, charge, interest, penalty, or other amount on the tax roll to Section 20, paragraph J of this Agreement, or any lien associate with the foregoing, as impermissible general tax, special tax, assessment, or fee requiring compliance with any provision of Article XIII of the California Constitution, the various enabling and implementing statutes, or as being an *ultra vires* act, or is invalid under or otherwise contrary to any federal, state, or local law, ordinance, regulation, or decision of a court of competent jurisdiction; and/or
- d) Challenging the certification, implementation, imposition, adjustment, levy or collection of any rate, fee, charge, interest, penalty or other amount under the Agreement.

This provision shall survive the expiration of the period during which collection services are to be provided under this Agreement. In the event of an adverse legal determination or settlement of such action, the parties agree to cooperate and work in good faith to prepare such amendments or alternatives to the Agreement that will implement the original intent of the Parties while complying with any adverse legal determination or settlement.

1. Mutual Defense Regarding Certain Challenges to Agreement. Except as expressly provided above, in the event this Agreement, including but not limited to, its approval, its implementation, the limits of City’s authority to grant the Franchise, or any of the payments made by Contractor to City, is challenged on the basis that it is invalid under or is otherwise contrary to any federal, state, or local law, ordinance, regulation, or

decision of a court of competent jurisdiction, the Parties agree to conduct a joint and coordinated defense of such action making collective decisions regarding litigation strategy including decisions regarding motions, discovery, settlement, and trial. Each Party agrees to bear their own costs of defense and shall have the right to choose their own independent legal counsel, provided that nothing herein prohibits the Parties from agreeing to retain one or more legal counsel to jointly represent and defend the Parties. In the event of an adverse legal determination or settlement of such action, the parties agree to cooperate and work in good faith to prepare such amendments or alternatives to the Agreement that will implement the original intent of the Parties while complying with any adverse legal determination or settlement.”

2. RESCISSION OF SIDE LETTER.

The side letter entitled “Solid Waste Residential Delinquency Procedures” dated June 4, 2012 is rescinded. City has no obligation to abide by the procedures in the side letter that are separate or contradictory to those procedures described in the Agreement as specifically modified and amended in this Second Amendment.

3. GENERAL PROVISIONS.

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

3.2 Integration. This Second Amendment consists of pages 1 through 5 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 Second Amendment except as provide in Section 2.1 of this Second Amendment.

3.3 Effective Date. This Second 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 Contractor.

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

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

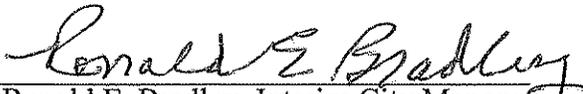
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IN WITNESS WHEREOF, the parties hereto have executed this Second Amendment to the Agreement on the date and year first written above.

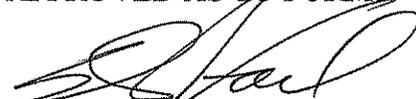
**CITY:
THE CITY OF HEMET**

By: 
Ronald E. Bradley, Interim City Manager

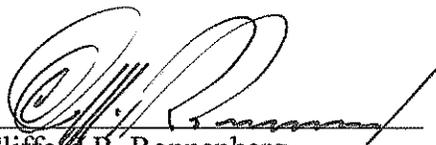
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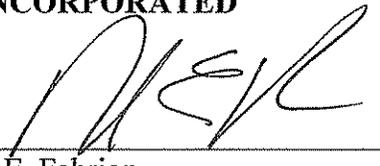

Sarah McComas, City Clerk

APPROVED AS TO FORM:


Eric S. Vail, City Attorney

**CONTRACTOR:
CR&R INCORPORATED**

By: 
Clifford R. Ronnenberg
CEO and Chairman of the Board

By: 
David E. Fahrion
President, Solid Waste Division