

FIFTH AMENDMENT TO THE EXCLUSIVE FRANCHISE AGREEMENT FOR COMPREHENSIVE REFUSE SERVICES BETWEEN THE CITY OF HEMET AND CR&R INCORPORATED

This Fifth Amendment to the Franchise Agreement ("Amendment No. 5" "5th Amendment" "Fifth Amendment") is entered into as of July 5, 2022 by and between the City of HEMET, a Municipal Corporation ("City") and CR&R Incorporated, a California Corporation ("Grantee"). The parties are individually referred to as "Party" and collectively referred to as "Parties."

RECITALS

- A. WHEREAS, on October 11, 2011, the City and Grantee entered into that certain agreement entitled "Exclusive Franchise Agreement for Comprehensive Refuse Services by and between the City of Hemet and CR&R Incorporated" (the "Franchise Agreement"); and
- B. WHEREAS, the Parties have entered into several amendments to the Franchise Agreements, in 2012 ("Amendment No. 1"), 2013 ("Amendment No. 2"), 2015 ("Amendment No. 3") and 2019 ("Amendment No. 4") to address various operational matters and respond to legislative mandates from the California Legislature; and
- C. WHEREAS, the State of California has found and declared that the amount of Solid Waste generated in California, coupled with diminishing disposal capacity and interest in minimizing potential environmental impacts from landfilling and the need to conserve natural resources, have created an urgent need for State and local agencies to enact and implement aggressive integrated waste management programs. The State has, through enactment of the California Integrated Waste Management Act of 1989 (AB 939) (California Public Resources Code Section 40000, et seq.) and subsequent related legislation including, but not limited to: the Jobs and Recycling Act of 2011 (AB 341), the Event and Venue Recycling Act of 2004 (AB 2176), SB 1016 (Chapter 343, Statutes of 2008 [Wiggins, SB 1016]), the Mandatory Commercial Organics Recycling Act of 2014 (AB 1826), and the Short-Lived Climate Pollutants Bill of 2016 (SB 1383), directed the responsible State agency, and all local agencies, to promote a reduction in landfill disposal and to maximize the use of feasible waste reduction, reuse, recycling, and composting options in order to reduce the amount of material that must be disposed; and
- D. WHEREAS, SB 1383 establishes regulatory requirements for jurisdictions, Generators, haulers, solid waste facilities, and other entities to support achievement of State-wide organic waste disposal reduction targets; and
- E. WHEREAS, regulations implementing SB 1383 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 the Grantee, acting as the City's designee, and Grantee desires to take on these responsibilities; and

- F. WHEREAS, City and Grantee desire to amend the Franchise Agreement as set forth herein.

OPERATIVE PROVISIONS

NOW, THEREFORE, in consideration of the promises above stated and the terms, conditions, covenants, and agreements contained herein, the Parties hereby agree to amend the Franchise Agreement for the fifth time as follows:

1. **Recitals Incorporated**. The foregoing recitals are true and correct and incorporated herein by reference as if set forth in full.
2. **Definitions**. Section 4 (Definitions) of the Franchise Agreement is amended to add or amend, as applicable, the following definitions:

"Back-Haul" means generating and transporting Organic Waste to a destination owned and operated by the Generator using the Generator's own employees and equipment, or as otherwise defined in 14 CCR Section 18982(a)(66)(A).

"Blue Container or Lid" has the same meaning as in 14 CCR Section 18982.2(a)(5) and shall be used for the purpose of storage and Collection of Source Separated Recyclable Materials (SSBCOW).

"California Code of Regulations" or **"CCR"** means the State of California Code of Regulations. CCR references in this Agreement are preceded with a number that refers to the relevant Title of the CCR (e.g., "14 CCR, Division 7, Chapter 12" refers to Title 14, Division 7, Chapter 12 of the California Code of Regulations).

"CalRecycle" means California's Department of Resources Recycling and Recovery, which is the Department designated with responsibility for developing, implementing, and enforcing SB 1383 Regulations on jurisdictions and other regulated entities.

"Commercial Edible Food Generators" includes Tier One Commercial Edible Food Generators and Tier Two Commercial Edible Food Generators, or as otherwise defined in 14 CCR Section 18982(a)(7). For the purposes of this definition, Food Recovery Organizations and Food Recovery Services are not Commercial Edible Food Generators, or as otherwise specified by 14 CCR Section 18982(a)(7).

“Compostable Plastics” or **“Compostable Plastic”** means plastic materials that meet the ASTM D6400 standard for compostability, or as otherwise described in 14 CCR Section 18984.1(a)(1)(A) or 18984.2(a)(1)(C).

“Diversion (or any variation thereof including “Divert”) means activities which reduce or eliminate Discarded Materials from Disposal, including, but not limited to, source reduction, Reuse, salvage, Recycling, and composting.

“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.

“Excluded Waste” means Hazardous Substance, Hazardous Waste, Infectious Waste, Designated Waste, volatile, corrosive, Medical Waste, infectious, regulated radioactive waste, and toxic substances or material that Facility operator(s) 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 Contractor’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.

“Facility” or **“System Facility”** or **“Solid Waste Facility”** means a Solid Waste Facility, as defined in Public Resources Code section 40194, that for the purposes of this Agreement is designated by the City to be used by the Contractor for the processing, recovery and/or disposal of Solid Waste, including Recyclable Materials and Organic Waste.

“Food Recovery” means actions to collect and distribute food for human consumption which otherwise would be disposed, or as otherwise defined in 14 CCR Section 18982(a)(24).

“Food Recovery Organization” means an entity that primarily engages in the collection or receipt of Edible Food from Commercial Edible Food Generators and distributes that Edible Food to the public for Food Recovery either directly or through other entities, including, but not limited to:

- A. A food bank as defined in Section 113783 of the Health and Safety Code;

- B. A nonprofit charitable organization as defined in Section 113841 of the Health and Safety code; and,
- C. A nonprofit charitable temporary food facility as defined in Section 113842 of the Health and Safety Code.

If the definition in 14 CCR Section 18982(a)(25) for Food Recovery Organization differs from this definition, the definition in 14 CCR Section 18982(a)(25) shall apply to this Agreement.

“Food Recovery Service” means a Person or entity that collects and transports Edible Food from a Commercial Edible Food Generator to a Food Recovery Organization or other entities for Food Recovery; or as otherwise defined in 14 CCR Section 18982(a)(26).

“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 fats, oils, and grease when such materials are Source Separated from other Food Scraps.]

“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.

“Food Waste” means Source Separated Food Scraps, Food-Soiled Paper, and Compostable Plastics. Food Waste is a subset of SSGCOW. Edible Food separated for Food Recovery shall not be considered Food Waste.

“Generator” means the owner or occupant of a premises, including residences or businesses, which initially produces Solid Waste, including Recyclable Materials and Organic Waste.

“Gray/Black Container or Lid” has the same meaning as in 14 CCR Section 18982(a)(28) and shall be used for the purpose of storage and Collection of Gray/Black Container Waste.

“Gray/Black Container Waste” means Solid Waste that is collected in a Gray/Black Container as specified in 14 CCR Sections 18984.1(a) and (b), or as otherwise defined in 14 CCR Section 17402(a)(6.5). [Gray/Black Container Waste may specifically include carpet, and textiles.]

“Green Container or Lid” has the same meaning as in 14 CCR Section 18982.2(a)(29) and shall be used for the purpose of storage and collection of Source Separated Green Container Organic Waste (SSGCOW).

"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).

"Large Event" means an event, including, but not limited to, a sporting event or a flea market, that charges an admission price, or is operated by a local agency, and serves an average of more than 2,000 individuals per day of operation of the event, at a location that includes, but is not limited to, a public, nonprofit, or privately owned park, parking lot, golf course, street system, or other open space when being used for an event. If the definition in 14 CCR Section 18982(a)(38) differs from this definition, the definition in 14 CCR Section 18982(a)(38) shall apply to this Agreement.

"Large Venue" means a permanent venue facility that annually seats or serves an average of more than 2,000 individuals within the grounds of the facility per day of operation of the venue facility. For purposes of 14 CCR, Division 7, Chapter 12 and this Agreement, a venue facility includes, but is not limited to, a public, nonprofit, or privately owned or operated stadium, amphitheater, arena, hall, amusement park, conference or civic center, zoo, aquarium, airport, racetrack, horse track, performing arts center, fairground, museum, theater, or other public attraction facility. For purposes of 14 CCR, Division 7, Chapter 12 and this Agreement, a site under common ownership or control that includes more than one Large Venue that is contiguous with other Large Venues in the site, is a single Large Venue. If the definition in 14 CCR Section 18982(a)(39) differs from this definition, the definition in 14 CCR Section 18982(a)(39) shall apply to this Agreement.

"Non-Compostable Paper" includes, but is not limited to, paper that is coated in a plastic material that will not breakdown in the composting process, or as otherwise defined in 14 CCR Section 18982(a)(41).

"Non-organic recyclables" or **"Recyclable Material"** means non-putrescible and non-hazardous recyclable wastes including, but not limited to, bottles, cans, metals, plastics, and glass, or as otherwise defined in 14 CCR Section 18982(a)(43). Non-Organic Recyclables are a subset of Source Separated Recyclable Materials.

"Organic Waste" means Solid Wastes containing material originated from living organisms and their metabolic waste products including, but not limited to, food, 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)(4) and 14 CCR Section 18982(a)(16.5), respectively.

"Paper Products" include, but are not limited to, paper janitorial supplies, cartons, wrapping, packaging, file folders, hanging files, corrugated boxes, tissue, and toweling; or as otherwise defined in 14 CCR Section 18982(a)(51).

“Performance-based Compliance Approach” means the method of complying with the SB 1383 Regulations through implementation of a collection system, programs, and policies in accordance with 14 CCR, Division 7, Chapter 12, Article 17, or as otherwise defined by 18982(a)(52.5), and all associated requirements.

“Printing and Writing Papers” include, but are not limited to, copy, xerographic, watermark, cotton fiber, offset, forms, computer printout paper, white wove envelopes, manila envelopes, book paper, note pads, writing tablets, newsprint, and other uncoated writing papers, posters, index cards, calendars, brochures, reports, magazines, and publications; or as otherwise defined in 14 CCR Section 18982(a)(54).

“Process” or **“Processing”** means the controlled separation, recovery, volume reduction, conversion, or Recycling of Solid Waste including, but not limited to, organized, manual, automated, or mechanical sorting, the use of vehicles for spreading of waste for the purpose of recovery, and/or includes the use of conveyor belts, sorting lines, or volume reduction equipment, or as otherwise defined in 14 CCR Section 17402(a)(20).

“Prohibited Container Contaminants” means the following: (i) Discarded Materials placed in the Blue Container that are not identified as acceptable Source Separated Recyclable Materials for the City’s Blue Container; (ii) Discarded Materials placed in the Green Container that are not identified as acceptable SSGCOW for the City’s Green Container; (iii) Discarded Materials placed in the Gray Container that are acceptable Source Separated Recyclable Materials and/or SSGCOW to be placed in City’s Green Container and/or Blue Container; and (iv) Excluded Waste placed in any Container.

“Recycle” or **“Recycling”** means the process of Collecting, sorting, cleansing, treating, and reconfiguring materials for the purpose of returning them to the economic mainstream in the form of raw material for new, Reused, or reconstituted products that meet the quality standards necessary to be used in the marketplace. Recycling includes processes deemed to constitute a reduction of Landfill Disposal pursuant to 14 CCR, Division 7, Chapter 12, Article 2. Recycling does not include gasification or transformation as defined in Public Resources Code Section 40201.

“Reuse” or any variation thereof, means the use, in the same, or similar, form as it was produced, of a material which might otherwise be discarded, or as otherwise defined in 14 CCR Section 17402.5(b)(2).

“SB 1383” means Senate Bill 1383 of 2016 approved by the Governor on September 19, 2016, which added Sections 39730.5, 39730.6, 39730.7, and 39730.8 to the Health and Safety Code, and added Chapter 13.1 (commencing with Section 42652) to Part 3 of Division 30 of the Public Resources Code, establishing methane emissions reduction targets in a statewide effort to reduce emissions of short-lived climate pollutants as amended, supplemented, superseded, and replaced from time to time.

“SB 1383 Regulations” or **“SB 1383 Regulatory”** refers to the Short-Lived Climate Pollutants (SLCP): Organic Waste Reductions regulations developed by CalRecycle and

adopted in 2020 that created Chapter 12 of 14 CCR, Division 7 and amended portions of regulations of 14 CCR and 27 CCR.

“Service Level” refers to the number and size of a Generator’s Container(s) and the frequency of Collection service, as well as ancillary services such as lock/unlock service, Container push/pull service, etc.

“Solid Waste” has the same meaning as defined in PRC Section 40191, which defines Solid Waste as all putrescible and nonputrescible solid, semisolid, and liquid wastes, including garbage, trash, refuse, paper, rubbish, ashes, industrial wastes, demolition and construction wastes, abandoned vehicles and parts thereof, discarded home and industrial appliances, dewatered, treated, or chemically fixed sewage sludge which is not hazardous waste, manure, vegetable or animal solid and semisolid wastes, and other discarded solid and semisolid wastes, with the exception that Solid Waste does not include any of the following wastes:

- A. Hazardous waste, as defined in PRC Section 40141.
- B. Radioactive waste regulated pursuant to the Radiation Control Law (Chapter 8 (commencing with Section 114960) of Part 9 of Division 104 of the Health and Safety Code).
- C. Medical waste regulated pursuant to the Medical Waste Management Act (Part 14, commencing with Section 117600, of Division 104 of the Health and Safety Code). Untreated medical waste shall not be disposed of in a solid waste Landfill, as defined in PRC Section 40195.1. Medical waste that has been treated and deemed to be Solid Waste shall be regulated pursuant to PRC, Division 30.

As used in this Agreement, Solid Waste includes Organic Waste and Recyclable Materials, unless the context clearly indicates otherwise.

“Source Separated” means materials, including commingled Recyclable materials, 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 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). For the purposes of the Agreement, Source Separated shall include separation of materials by the Generator, Property Owner, Property Owner’s employee, property manager, or property manager’s employee into different Containers for the purpose of Collection such that Source Separated materials are separated from Gray Container Waste and other Solid Waste for the purposes of Collection and Processing.

“Source Separated Blue Container Organic Waste” or **“SSBCOW”** means Source Separated Organic Wastes that can be placed in a Blue Container that is limited to the

collection of those Organic Wastes and Non-Organic Recyclables as defined in Section 18982(a)(43), or as otherwise defined by Section 17402(a)(18.7).

“Source Separated Green Container Organic Waste” or **“SSGCOW”** means Source Separated Organic Waste that can be placed in a Green Container that is specifically intended for the separate collection of Organic Waste by the Generator, excluding Source Separated Blue Container Organic Waste, carpets, Non-Compostable Paper, and textiles.

“Source Separated Recyclable Materials” means Source Separated Non-Organic Recyclables and SSBCOW.

“Standard Compliance Approach” means the method for complying with the SB 1383 Regulations through implementation of a collection system pursuant to 14 CCR, Division 7, Chapter 12, Article 3, and all associated program and policy requirements

“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.

“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.

“Yard Trimmings” means types of SSGCOW resulting from normal yard and landscaping installation, maintenance, or removal that the Generators Source Separate and set out in Green Containers for Collection for the purpose of Processing by the Contractor

- 3. All references to **“Green Waste”** in the Franchise Agreement shall be changed to **“Organic Waste.”**
- 4. A new paragraph is added to Section 6 (Types and Frequency of Service) of the Franchise Agreement to read as follows:

M. SB 1383 Procurement and Facility Identification Requirements. Contractor agrees to coordinate and cooperate with the City to meet its Organic Waste produce procurement target, as required by SB 1383 Regulations. If using a Standard Compliance Approach, Contractor shall identify the Facilities to which they will transport Organic Waste as required by the SB 1383 Regulations.

- 5. A new paragraph is added to Section 6 (Types and Frequency of Service) of the Franchise Agreement to read as follows:

N. SB 1383 Container Requirements. Contractor shall use the Contractor-provided Collection containers that are currently located at Generators’ premises or provide Generators with collection containers from Contractor’s current inventory.

On or before July 1, 2022, (or if using Performance-based Compliance Approach, then until color compliant containers are provided), Contractor shall place a label on the body or lid of each new container that has been provided to a Generator that includes language or graphic images, or both, that indicate the primary materials accepted and the primary materials prohibited in that container. Labels shall clearly indicate items that are Prohibited Container Contaminants for each container. Prior to ordering labels for containers, Contractor shall submit a copy of its proposed label, proposed location(s) for placement of labels on each type of container, and its labeling plan to the City for approval.

No later than January 1, 2036, Contractor shall provide all Generators with collection containers that comply with the container color requirements specified in this Agreement or as otherwise specified in the SB 1383 Regulations. If an existing container breaks or is otherwise rendered non-functional on or after July 1, 2022, the Contractor shall replace the non-functional container with a container that complies with the color requirements of the SB 1383 Regulations. Notwithstanding this paragraph, the Contractor is not required to replace functional containers, including containers purchased prior to July 1, 2022, that do not comply with the color requirements of this Agreement prior to the end of the useful life of those containers, or prior to January 1, 2036, whichever comes first.

6. A new paragraph is added to Section 6 (Types and Frequency of Service) of the Franchise Agreement to read as follows:

O. SB 1383 Services and Monitoring.

I. Three-Container Collection Program

- A. General. Beginning July 1, 2022, Contractor shall provide a three-container Collection program for the separate Collection of Source Separated Recyclable Materials, SSGCOW, and Gray/Black Container Waste as specified in this Agreement, using containers that comply with the requirements of this Agreement and SB 1383 Regulations. Contractor shall not knowingly Collect Blue, Green, or Gray/Black Containers that include Prohibited Container Contaminants.

- B. Source Separated Recyclable Materials Collection (Blue Container or Lid). Contractor shall provide Blue Containers to Generators for Collection of Source Separated Recyclable Materials and shall provide Source Separated Recyclable Materials Collection service, Contractor shall transport the Source Separated Recyclable Materials to a Facility that recovers the materials designated for Collection, in accordance with SB 1383 Regulations.

Source Separated Recyclable Materials that are to be accepted for Collection in the Source Separated Recyclable Materials Collection program include the following: (i) Non-Organic Recyclables such as: aluminum, glass bottles and jars, rigid plastics (marked # 1 through # 7), tin and bi-metal cans; and (ii) SSGCOW such as: Paper Products, Printing and Writing Papers, wood and dry lumber.

- C. SSGCOW Collection (Green Container or Lid). Contractor shall provide Green Containers to Generators for Collection of SSGCOW and shall provide SSGCOW Collection service. Contractor shall transport the

SSGCOW to a Facility in accordance with SB 1383 Regulations. SSGCOW that are to be accepted for Collection in the SSGCOW Collection program include the following: Food Scraps; Food-Soiled Paper; Yard Trimmings, and Compostable Plastics. Carpets, Non-Compostable Paper, textiles, and Prohibited Container Contaminants shall not be Collected in the Green Containers. Yard Trimmings that are to be accepted for Collection in the SSGCOW Collection program include the following: green trimmings, grass, weeds, flowers, leaves, prunings, branches, dead plants, brush, tree trimmings, dead trees weighing no more than 50lbs, and other types of SSGCOW resulting from normal yard and landscaping installation, maintenance, or removal, provided all SSGCOW fits inside the Green Container with the lid closed and does not exceed 150 pounds.

Contractor may Collect compliant Compostable Plastics in the Green Containers for Processing. At least two (2) months prior to the commencement of the Collection of Compostable Plastics in the SSGCOW program, Contractor shall provide written notification to the City whether the Facility can or cannot Process and recover these Compostable Plastics in accordance with SB 1383 Regulations. If the Facility can process and recover Compostable Plastics, and Contractor elects to Collect Compostable Plastics in the Green Container, then Contractor shall provide annual written notification to the City that the Facility has and will continue to have the capabilities to Process and recover the Compostable Plastics. If the Facility cannot process and recover Compostable Plastics, then Contractor will not Collect Compostable Plastics in the Green Container. It is also understood that Contractor proposes to process the City's organics through its Anaerobic Digester Facility (AD). AD Facilities do not accept compostable plastics at the current time.

Contractor may require Generators to place Food Waste in plastic bags or other wrappings and put the bagged or wrapped Food Waste in the Green Container. At least two (2) months prior to the commencement of the use of plastic bags for the Food Waste program, Contractor shall provide written notification to the City that allowing the use of bags does not inhibit the ability of the City to comply with SB 1383 Regulations, and that the Facility can Process and remove plastic bags when it recovers SSGCOW. Contractor shall provide annual written notification to the City that the Facility has and will continue to have the capabilities to Process and remove plastic bags when it recovers SSGCOW. It is also understood that Contractor proposes to process the City's organics through its Anaerobic Digester Facility (AD). AD Facilities do not accept plastic bags or other wrappings at the current time.

- D. Gray/Black Container Waste Collection. Contractor shall provide Gray/Black Containers or Lids to Generators for Collection of Gray/Black Container Waste and shall provide Gray/Black Container Waste Collection

service. Contractor shall transport the Gray/Black Container Waste to a Facility in accordance with the SB 1383 Regulations. Contractor may allow carpets, and textiles to be placed in the Gray/Black Containers. Prohibited Container Contaminants shall not be Collected in the Gray/Black Containers.

II. Contamination Monitoring

- A. **Route Reviews and Waste Evaluations.** Contractor shall meet its SB 1383 Regulations contamination monitoring requirements commencing July 1, 2022, using either Route Reviews or Waste Evaluations; provided however, that if Contractor complies with SB 1383 Regulations using a Performance-based Compliance Approach, it may monitor containers using waste evaluations, as outlined herein. Contractor shall meet its SB 1383 Regulations contamination monitoring requirements commencing July 1, 2022, using route reviews as outlined herein:
1. Contractor shall conduct Hauler Route reviews for Prohibited Container Contaminants in Collection Containers in a manner that is deemed safe by the Contractor; is approved by the City; is conducted in a manner that results in all Hauler Routes being reviewed annually and is consistent and in accordance with SB 1383 Regulations. Containers may be randomly selected along the Hauler Route. This Section should not be construed to require that every container on a Hauler Route must be sampled annually.
 2. Upon finding Prohibited Container Contaminants in the container, Contractor shall follow the contamination monitoring noticing procedures paragraph B.3 of this Section II.
 3. Contractor shall maintain all applicable records required under SB 1383 Regulations, and report to the City on a quarterly basis on contamination monitoring activities, route reviews and/or waste evaluations, and actions taken.
 4. Notwithstanding the foregoing, this paragraph A shall not prohibit Contractor from meeting its compliance requirements by any alternative methods or procedures, provided it complies with SB 1383, the SB 1383 Regulations, and/or any other applicable law, as may be amended from time to time.
- B. **Waste Evaluations.** Alternatively, if Contractor elects to perform Waste Evaluations, Contractor shall, conduct waste evaluations that comply with and meet the requirements of 14 CCR Section 18984.5(c). The City maintains the right to observe, or hire a third party to observe, the waste evaluations.

1. Sampling Method, Study Protocols. The Contractor shall conduct waste evaluations for Prohibited Container Contaminants by sampling the contents of Containers on Hauler Routes in the following manner:
 - a) If using a Standard Compliance Approach, Contractor shall conduct waste evaluations at least twice per year and in two distinct seasons of the year in a manner that complies with the requirements of 14 CCR section 18984.5(c). If using a Performance-based Compliance Approach, Contractor shall conduct waste evaluations at least twice per year for the Blue and Green Containers and at least once per quarter for the Gray Containers.
 - b) The Contractor's waste evaluations shall include samples of Source Separated Recyclable Materials, SSGCOW, and Gray Container Waste.
 - c) The waste evaluations shall include samples from each Container type served by the Contractor and shall include samples taken from different areas in the City that are representative of the City's waste stream.
 - d) The waste evaluations shall include at least the minimum number of samples specified in SB 1383 Regulations.
 - e) The Contractor shall Transport all of the material Collected for sampling to a sorting area at a permitted solid waste Facility where the presence of Prohibited Container Contaminants for each Container type shall be measured to determine the ratio of Prohibited Container Contaminants present in each material stream by weight. To determine the ratio of Prohibited Container Contaminants, the Contractor shall use the following protocol:
 - i. The Contractor shall take one sample of at least a 200 pounds from the material Collected from each material stream for sampling.
 - ii. The 200-pound sample shall be randomly selected from different areas of the pile of Collected material for that material stream.
 - iii. For each 200-pound sample, the Contractor shall remove any Prohibited Container Contaminants and

determine the weight of Prohibited Container Contaminants.

- iv. The Contractor shall determine the ratio of Prohibited Container Contaminants in the sample by dividing the total weight of Prohibited Container Contaminants by the total weight of the sample.
2. Contamination Response. If the sampled weight of Prohibited Container Contaminants exceeds twenty-five percent (25%) of the measured sample for any material stream, the Contractor shall:
 - a) If using a Performance-based Compliance Approach, notify the City within fifteen (15) working days of the waste evaluation.
 - b) Within fifteen (15) working days of the waste evaluation, notify all Generators on the sampled Hauler Route of their requirement to properly separate materials into the appropriate Containers. The Contractor may provide this information by placing a written notice on the Generators' Containers or the gate or door of the Premises; and/or by mail, email, or electronic message to the Generators. The format of the warning notice shall be approved by the City.
 - c) If using a Performance-based Compliance Approach, Contractor shall allow a representative of the City and/or CalRecycle to oversee its next scheduled quarterly sampling of the Gray Containers, upon request.
 3. Material Exceptions. Organic Waste that is textiles, carpet, hazardous wood waste, human waste, pet waste, or material subject to a quarantine on movement issued by a County agricultural commissioner is not required to be measured as Organic Waste when calculating the amount of Organic Waste present in the Gray Container Waste.
- C. Actions upon Identification of Prohibited Container Contaminants. Upon finding Prohibited Container Contaminants in a Container, Contractor shall follow the protocols set forth in this Section.
1. Record Keeping. The driver or other Contractor representative shall record each event of identification of Prohibited Container Contaminants in a written log or in the on-board computer system including date, time, Generator's address, type of container (Blue, Green, or Gray/Black Container).

2. **Courtesy Pick-Up Notices.** Upon identification of Prohibited Container Contaminants in a Generator's container, Contractor shall provide the Generator a courtesy pick-up notice. The courtesy pick-up notification shall: (i) inform the Generator of the observed presence of Prohibited Container Contaminants; (ii) include the date and time the Prohibited Container Contaminants were observed; (iii) include information on the Generator's requirement to properly separate materials into the appropriate containers, and the accepted and prohibited materials for Collection in the Blue Container, Green Container, and/or Gray/Black Container; (iv) inform the Generator of the courtesy pick-up of the contaminated materials on this occasion with information that following three consecutive instances of Prohibited Container Contaminants within a six-month time period, Contractor may assess contamination Processing fees. Contractor shall leave the courtesy pick-up notice attached to or adhered to the Generator's contaminated containers; at the Premises' door or gate; or, subject to City's approval, may deliver the notice by mail, e-mail, text message, or other electronic message.

 3. **Notice of Assessment of Contamination Processing Fees.** If the Contractor observes Prohibited Container Contaminants in a Generator's Container on more than three consecutive occasions within a six-month time period, and issued courtesy pick-up notices on each of those occasions, the Contractor may impose a contamination Processing fee of \$35.00 (which will be adjusted annually pursuant to the same CPI Index used for annual rate adjustments). Contractor shall notify the City in its quarterly report of Generators for which contamination Processing fees were assessed. Contractor shall leave a contamination Processing fee notice attached to or adhered to the Generators' contaminated containers; at the Premises' door or gate; or, subject to City's approval, may deliver the notice by mail, e-mail, text message, or other electronic message. The contamination Processing fee notice shall describe the specific material(s) of issue, explain how to correct future set outs, and indicate that the Generator will be charged a contamination Processing fee on its next bill. The format of the contamination Processing fee notice shall be approved by the City.
- D. **Disposal of Contaminated Materials.** If the Contractor observes Prohibited Container Contaminants in a Generator's Container(s), Contractor may dispose of the Container's contents, provided Contractor complies with the noticing requirements in subsection A above.

III. Education and Outreach

- A. Contractor shall create all applicable education materials and conduct all education programs and activities as provided by and in accordance with the SB 1383 Regulations. Contractor shall cooperate and coordinate with the City on public education activities.
- B. On or before July 1, 2022, the City, with assistance from the Contractor, shall develop a list of Food Recovery Organizations and Food Recovery Services operating within the City, maintain the list on both the Contractor's City-specific website and the City's website, and update the list annually. The list shall include, at a minimum, the following information about each Food Recovery Organization and each Food Recovery Service:
 - 1. Name and physical address;
 - 2. Contact information;
 - 3. Collection service area; and,
 - 4. An indication of types of Edible Food the Food Recovery Service or Food Recovery Organization can accept for Food Recovery.
- C. At least annually, the City, in cooperation with the Contractor, shall provide Commercial Edible Food Generators with the following information:
 - 1. Information about the City's Edible Food Recovery program;
 - 2. Information about the Commercial Edible Food Generator requirements under 14 CCR, Division 7, Chapter 12, Article 10;
 - 3. Information about Food Recovery Organizations and Food Recovery Services operating within the City, and where a list of those Food Recovery Organizations and Food Recovery Services can be found; and,
 - 4. Information about actions that Commercial Edible Food Generators can take to prevent the creation of Food Waste.
- D. The Contractor may provide the information required above by including it with regularly scheduled notices, education materials, billing inserts, or other information disseminated to commercial businesses.
- E. Contractor shall comply with all applicable public education and outreach record keeping and reporting requirements as provided by SB 1383 and the SB 1383 Regulations.

IV. Inspections and Enforcement

Beginning July 1, 2022, Contractor shall assist the City with and/or conduct applicable inspections and enforcement, to the extent delegable, as required by SB 1383 Regulations. Contractor shall maintain all applicable records from inspection and enforcement in accordance with SB 1383 Regulations. If using a Performance-based Compliance Approach, the city agrees it will only grant waivers if at least ninety percent (90%) of Single-Family Generators and ninety percent (90%) of Commercial Generators (including Multi-Family Generators) participate in the three-Container Collection program.

V. Generator Waiver Program Coordination

- A. **General.** In accordance with SB 1383 Regulations and the City Code, the City may grant waivers (de minimis, physical space or Collection frequency) to Generators that impact the scope of Contractor's provision of service for those Generators. Waivers issued shall be subject to compliance with SB 1383 Regulatory requirements, pursuant to 14 CCR Section 18984.11.
- B. **Requests Submitted to Contractor.** Generators may submit requests for de minimis waivers, physical space waivers, and Collection frequency waivers to the Contractor. Contractor shall within fifteen (15) working days review the Generator's waiver application and inspect the Generator's Premises to verify the accuracy of the application. Contractor shall provide documentation of the inspection, including the Contractor's recommendation to approve or deny the waiver request, and send this information to the City within five (5) working days of receipt of the Generator's waiver application for the City's review and approval. The City ultimately retains the right to approve or deny any application, regardless of the Contractor's recommendation. Contractor shall report information regarding waivers reviewed on a quarterly basis.
- C. **Contractor Change in Generators' Service Levels.** When the City grants a waiver to a Generator, the City shall notify the Contractor within fifteen (15) working days of the waiver approval with information on the Generator and any changes to the service level or Collection service requirements for the Generator. Contractor shall have ten (10) working days to modify the Generator's service level and billing statement, as needed.
- D. **Reverification of Waivers.** It shall be the responsibility of the Contractor to verify that the Generators with de minimis, physical space constraint, or Collection frequency waivers continue to meet the waiver requirements set forth in this Section. Contractor shall conduct such reverifications of waivers through inspection of each Generator's premises and review of applicable records at least once every five (5) years for de minimis and physical space

constraint waivers. Contractor shall maintain a record of each waiver verification and provide a quarterly report to the City documenting the waiver reverifications performed and recommendations to the City on those waivers that Contractor concludes are no longer warranted. The City shall make a final determination of the waiver eligibility of Generators.

- E. **Contractor Recordkeeping of Generators Granted Waivers.** Upon Contractor request, no more than two (2) times per year, the City shall provide Contractor an updated listing of waivers approved by the City, including the Generators' names, mailing address, service address, and type of waiver. Contractor shall maintain waiver-related records and report on waiver verifications, as required herein.

VI. Indemnification.

Contractor's duty to defend and indemnify under Section 24 herein includes payment of all fines and/or penalties imposed by Cal Recycle, subject to the restrictions set forth in Public Resources Code Section 40059.1, if the requirements of AB 939, AB 341, AB 1826, and/or SB 1383 and corresponding regulations are not met by the Contractor with respect to Solid Waste collected under this Agreement, and such failure is: (i) due to the failure of Contractor to meet its obligations under this Agreement, or, (ii) due to Contractor delays in providing information that prevents Contractor or City from submitting reports required by AB 939, AB 341, AB 1826, and/or SB 1383 and corresponding regulations in a timely manner. The foregoing indemnity is expressly conditioned upon the City's implementation of required programs or activities, requested by the Contractor, which are within the City's authority and ability to implement and which would be effective as a means to increase diversion and maintain compliance with State regulations. The provisions of this paragraph shall survive the termination or expiration of this Agreement.

VII Alternative Compliance

D. Nothing in this section shall prohibit Contractor from meeting its compliance requirements by any alternative methods or procedures, provided it complies with SB 1383, the SB 1383 Regulations, and/or any other applicable law, as may be amended from time to time. Any alternative methods or procedures shall require the approval of the City Manager, which shall not be unreasonably withheld.

7. General Provisions.

- a) **Remainder Unchanged.** Except as specifically modified and amended in this 5th Amendment, the Agreement remains in full force and effect and binding upon the parties.
- b) **Integration.** This 5th Amendment constitutes 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 5th Amendment.

- c) **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. All counterparts shall be construed together and shall constitute one agreement.
- d) **Effective Date.** This 5th Amendment shall be considered effective as of July 1, 2022.
- e) **Applicable Law.** The laws of the State of California shall govern the interpretation and enforcement of this 5th Amendment.
- f) **References.** All references to the Agreement include all their respective terms and provisions. All defined terms utilized in this 5th Amendment have the same meaning as provided in the Agreement, unless expressly stated to the contrary in this 5th Amendment.

IN WITNESS WHEREOF, the parties hereto have executed this 5th Amendment on the date and year first-above written.

CITY OF HEMET

DocuSigned by:
Eddie Pust 7/1/2022
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City Manager

ATTEST:

DocuSigned by:
John Paul 7/5/2022
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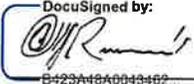
City Clerk

APPROVED AS TO FORM

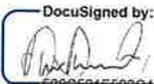
DocuSigned by:
Steven Graham, Interim City Attorney 7/5/2022
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City Attorney

CR&R INCORPORATED

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Clifford Ronnenberg

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By:  7/5/2022
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David Ronnenberg

Its: _CEO and Chairman _____
Secretary _____

Its: COO and