



**CITY OF WILDOMAR - CC - SPECIAL MEETING
GENERAL BUSINESS
Agenda Staff Report # 3.1
Meeting Date: October 26, 2022**

SUBJECT: Consideration of Franchise Agreement with CR&R Incorporated for the Collection and Transportation of Solid Waste, Recyclable Materials, Organic Waste, and Construction and Demolition Debris (Collection Services) and Other Specified Services

SUBMITTED BY: Daniel A York

PREPARED BY: Daniel York, City Manager

ACTION:

1) Consider and approve a Resolution approving a franchise agreement between the City of Wildomar and CR&R Incorporated for the collection and transportation of solid waste, recyclable materials, organic waste, and construction and demolition debris and other specified services:

RESOLUTION NO. 2022 - __

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA APPROVING THE FRANCHISE AGREEMENT BETWEEN THE CITY AND CR&R INCORPORATED FOR THE COLLECTION AND TRANSPORTATION OF SOLID WASTE, RECYCLABLE MATERIALS, ORGANIC WASTE, AND CONSTRUCTION AND DEMOLITION DEBRIS AND OTHER SPECIFIED SERVICES

2) Find that approval of the proposed franchise agreement is exempt under the California Environmental Quality Act; and

3) Authorize the City Manager to execute the proposed franchise agreement.

SUMMARY:

CR&R and Waste Management have separate agreements to provide solid waste services in the city. Both parties have entered into an agreement by which CR&R assumes solid waste services previously provided by Waste Management. A new franchise agreement with CR&R ("Proposed Franchise Agreement") supersedes and replaces the Prior CR&R Agreement and

the Prior Waste Management Agreement. The Proposed Franchise Agreement extends CR&R's franchise to provide solid waste handling services throughout the city.

BACKGROUND:

CR&R Incorporated ("CR&R") and City currently have an agreement for the collection and transportation of solid waste and other specified services, dated June 10, 2009. Under this agreement, which has been amended five (5) times, CR&R provides solid waste handling services, in a portion of the City's jurisdiction ("Prior CR&R Agreement"). Additionally, City and USA Waste of California Inc., ("Waste Management") also have an agreement for the collection and transportation of solid waste and other specified services, dated June 10, 2009. Under that agreement, which has been amended five (5) times, Waste Management provides solid waste handling services, to a different portion of the City's jurisdiction ("Prior Waste Management Agreement"). CR&R and Waste Management have entered into an Asset Purchase Agreement dated September 29, 2022, by which CR&R is agreeing to purchase various capital assets of Waste Management used to service Wildomar.

City staff and the City Attorney's Office, in consultation with R3 Consultants, has been negotiating with CR&R to draft the new franchise agreement now being proposed to the City Council ("Proposed Franchise Agreement"), to amend and replace the Prior CR&R Agreement and the Prior Waste Management Agreement. Under the Proposed Franchise Agreement, CR&R will assume all of the rights and responsibilities previously held by Waste Management for its franchise area within Wildomar. The result is that CR&R will become the exclusive provider of Solid Waste Handling Services within the existing and future jurisdictional boundaries of the City.

DISCUSSION:

The Proposed Franchise Agreement is the result of months of careful negotiations between the parties. Below is a brief discussion of some of the more pertinent deal points in the agreement:

Compensation to the City

During the course of the agreement, CR&R will make the following on-going payments to the City:

- **Franchise Fee:** CR&R has agreed to continue the existing franchise fee equal to eight (8%) percent of CR&R's annual gross receipts, less disposal costs, between December 1, 2022 and July 1, 2023. Commencing July 1, 2023, the franchise fee will increase to ten percent (10%) of CR&R's annual gross receipts, less disposal costs. The franchise fee will be paid monthly to the City. Based on the franchise fees remitted to the City from CR&R and Waste Management in fiscal year 2021/2022, it is estimated that the annual franchise fee collected by the City in fiscal year 2023/2024 will be between \$350,000 and \$400,000.
- **Street Sweeping Mitigation Fee:** CR&R, has also agreed to pay the City One Hundred Fifty Thousand dollars (\$150,000.00) per year as a street sweeping mitigation fee. This

fee will be adjusted annually by the applicable Consumer Price Index in accordance with the terms of the Proposed Franchise Agreement.

- Administrative Cost Reimbursement: Each year, CR&R will pay the City an amount intended to defray the City's costs directly related to the administration of the Proposed Franchise Agreement. The fee shall initially be set at Fifty Thousand Dollars (\$50,000.00), and shall be adjusted annually by the applicable Consumer Price Index in accordance with the terms of the Proposed Franchise Agreement.

During the course of the agreement, CR&R will make the following one-time payments to the City:

- CR&R will reimburse the City for the actual costs incurred by the City in negotiating and drafting the Proposed Franchise Agreement (including, consultant fees, attorney fees, and related costs).
- CR&R has agreed to make the following one-time payments to the City totaling One Million Nine Hundred Thousand Dollars (\$1,900,000.00): One Million Four Hundred Thousand Dollars (\$1,400,000.00) within 10 days of approval of the Proposed Franchise Agreement; Two Hundred Fifty Thousand Dollars (\$250,000.00), on or before December 31, 2029; Two Hundred Fifty Thousand Dollars and No Cents (\$250,000.00), on or before December 31, 2037.

The Franchise Fee, and other City imposed fees provided for in the Proposed Franchise Agreement are necessary, and reasonably reflect or are less than the actual costs the City will incur in the administration of the contracted services, compliance with mandatory state laws and regulations related to the contracted services, and to mitigate the impacts the contracted services will have on City streets and infrastructure. As detailed in Attachment A to this staff report, the City has calculated the cost of impacts associated with solid waste collection and transportation services on the City, as well as the cost to administer the Proposed Franchise Agreement. Per the estimate, the annual cost estimate for impacts to the City will be approximately \$1,060,800. The annual fees to be collected under the Proposed Franchise Agreement (\$575,000), is less than the estimated cost of impacts to the City.

Service Rates and New Rate Assessment Methodology

Approval of this Proposed Franchise Agreement does not include an increase in current service rates. All rates will remain the same until June 30, 2023, with the maximum residential service rate not to exceed \$31.39 per month during this period.

Commencing on July 1, 2023, the maximum rates as set forth in Exhibit A to the agreement, may be adjusted annually by a new methodology intended to smooth out radical market fluctuations and provide more rate stability for customers. Rates will be adjusted by multiplying the existing service rate by two percent (2%) or the 36 month average of the CPI for All Urban Consumers, Riverside-San Bernardino-Ontario, whichever is greater. No rate may be increased by more than a maximum of eight percent (8%) in any given year.

However, commercial rates in the former Waste Management service area are subject to an additional three percent (3%) increase until the rates are normalized between the former CR&R and Waste Management service areas.

The prior agreements with CR&R and Waste Management had no rate stabilization provisions and the City was required to simply pass on whatever the CPI increase was – which in this year, depending on the month has ranged between 8.5% and over 12%.

Services

CR&R has agreed to provide the following services to the City:

- Single-family residence service recipients to receive 3 pre-arranged bulky item pick-ups free of charge per year. Currently, residents receive two free bulky item collections per year.
- CR&R, at no charge to City, will collect and dispose items gathered by City from City maintenance operations and illegal dumping.
- CR&R, at no charge to City, will collect and dispose of solid waste, recycling and organics from all City Facilities. City will also be able to select up to three (3) City or community events for CR&R to deliver appropriate refuse receptacles, and collection and disposal of such solid waste at no charge to City.
- CR&R will coordinate and cooperate with the City to meet its Organic Waste product procurement target, as required by SB 1383 Regulations. In support of that objective the City will receive any applicable SB 1383 organic waste material procurement credits for all renewable natural gas used by CR&R to power City franchise vehicles.
- CR&R will include drop off of Universal Waste (e.g. batteries, florescent bulbs and tubes, electronic devices, etc.) as part of scheduled Community Clean Ups, CR&R will provide up to six (6) public or private locations (including City Hall), subject to City approval, for residents of the City to drop-off Universal Waste.
- Continue to provide an Organics Waste Recycling Program in full compliance with the Integrated Waste Management Act and CalRecycle regulations, as amended, inclusive of new laws and regulations.

Term

The term of the Proposed Franchise Agreement is for a period of twenty (20) years, commencing on December 1, 2022, and ending on November 30, 2042, unless terminated in accordance with the provisions of the agreement.

Three years prior to the expiration of the Term, City will provide CR&R with a Notice of Termination, and the parties will meet and confer regarding the potential extension of the Term. Neither party is obligated to agree to extend the Term. If the parties have not mutually agreed to an extension within that year, then the City may pursue an RFP or direction negotiation process for Solid Waste Handling Services. The City will then have the option to

unilaterally extend the term for up to one (1) additional year if necessary to complete its bidding or negotiation process.

New Performance Review and Market Rate Review

Commencing in 2025 CR&R will undergo performance reviews at the City discretion, not more than once every five (5) years. The cost of the performance review will be evenly split between the parties.

Commencing in 2027, the City may undertake a market rate review process provided for in the Agreement. This processes will provide rate stabilization protection to residential and commercial customers to ensure that, in the long run, rates are not set above the weighted average residential rate in comparative jurisdictions nor more than the highest commercial rate for comparative jurisdictions. The comparative jurisdictions are set in Agreement.

New Alternative Enforcement Process – Liquidated Damages

The parties have agreed to a contract enforcement process to address any deficiencies in CR&R performance. This process, which can be concurrently pursued with other remedies set forth in the agreement, allows for a notice of non-compliance and cure period. If CR&R fails to cure any performance deficiencies, the City manager will be authorized to assess liquidated damages.

Enhanced Reporting

CR&R will comply with reporting requirements sufficient to satisfy AB 341, AB 901, and SB 1016 (the “Reporting Laws”), as well as the regulations promulgated by CalRecycle, including SB 1383 regulations.

Prior CR&R Agreement and Prior Waste Management Agreement

As part of the terms of the Proposed Franchise Agreement, the City will approve assignment of the Prior Waste Management Agreement to CR&R. Further, the Proposed Franchise Agreement will replace in full the Prior CR&R Agreement and Prior Waste Management Agreement so that the City’s solid waste handling services will be provided by a single entity (CR&R) under one agreement.

CEQA:

The approval of the Proposed Franchise Agreement has been reviewed with respect to the applicability of the California Environmental Quality Act ("CEQA"). The project is exempt from CEQA requirements under CEQA Guidelines Section 15301 because approval and execution of the Proposed Franchise Agreement involves the operation and licensing of existing facilities and equipment, and does not involve an expansion of use. The Franchise Agreement would provide the same level of service for solid handling services as currently provided. The project is also exempt under CEQA Guidelines Section 15061(b)(3) because it can be seen with certainty that there is no possibility approval and execution of the Franchise Agreement

would cause a significant effect on the environment. The Franchise Agreement will not change the operation of solid waste collection services provided to the City.

FISCAL IMPACT:

The City will collect a one-time payment of \$1,400,000 upon the approval of the agreement, and an additional \$500,000 over the next 15 years. The City will also receive payment for the costs associated with negotiating the Proposed Franchise Agreement. On an annual basis, the City will receive \$150,000 in street sweeping mitigation fees and \$50,000 in administrative costs (to be adjusted annually by the CPI), as well as a franchise fee. These payments are equal to, or less than, the costs associated with the City's administration of the agreement and the impacts on the City associated with the solid waste collection and transportation services to be provided by CR&R.

ACCOUNT CODE:

212-3120 - Franchise Fees

212-3131 - Street Sweeping Mitigation Fee

ATTACHMENTS:

[Presentation Re CR&R Franchise Agreement.pptx](#)

[Franchise Fee Waste Hauler Mitigation Fee Study.pdf](#)

[Wildomar Resolution Approving CR&R Franchise Agreement.pdf](#)

[Solid Waste Handling Agreement with CR&R.pdf](#)