

AGREEMENT
BETWEEN
CITY OF DANA POINT
AND
CR&R, INCORPORATED
FOR
COLLECTION AND HANDLING
OF TEMPORARY WASTE

* * *

March 23, 2006

AGREEMENT FOR COLLECTION AND HANDLING OF TEMPORARY WASTE

This AGREEMENT is made and entered into this 22nd day of March, 2006, by and between the City of Dana Point, a municipal corporation organized and existing under the Constitution and laws of the State of California (hereinafter "City") and CR&R, Incorporated (hereinafter Contractor).

RECITALS

A. The Legislature of the State of California by enactment of California Integrated Waste Management Act (CIWMA) of 1989 requires local agencies to make provisions for solid waste handling and recycling within their jurisdictions.

B. The City Council of the City of Dana Point desires by entering this agreement to provide for the recycling and reuse of waste generated at construction sites and other similar temporary wastes, that may otherwise be disposed in landfills.

NOW, THEREFORE, in consideration of the respective and mutual covenants and promises contained and made, and subject to all the terms and condition hereof, the parties hereto do hereby agree as follows:

1. EXCLUSIVE GRANT OF CONTRACT

City hereby grants to Contractor, for the term hereafter specified, an exclusive right to provide Temporary Waste Service as defined herein in order to collect, recycle, divert, and transport to appropriate facilities as set forth in this Agreement construction waste and other similar temporary waste which is generated, produced, and/or accumulated in the City and which is being disposed of in a Rolloff Box and/or a Bin. Contractor, subject to all of the terms hereof, hereby accepts and agrees to faithfully perform such obligations.

2. TERM OF CONTRACT: CONTINUATION RIGHTS

The term of this Agreement shall begin on the date of execution and shall extend through June 30, 2019. Contractor acknowledges that, to the extent applicable, the terms and conditions of this Agreement constitute the mailed notification required to be given by the City under Public Resources Code Section 49520, et seq. prior to the City's award of exclusive solid waste handling services.

3. DEFINITIONS

- a. "**Bin**" means a metal Container with a capacity of under 10 cubic yards, including compactors, and meeting such other standards as may be imposed by City.
- b. "**City Manager**" means the City Manager of City or his designee.

c. "**Environmental Laws**" means all federal and state statutes, county, local and City ordinances concerning public health, safety and the environment including, by way of example and not limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 USC §9601 et seq.; the Resource Conservation and Recovery Act, 42 USC §6901 et seq.; the Federal Clean Water Act, 33 USC §1251 et seq.; the Toxic Substances Control Act, 15 USC §2601 et seq.; the Occupational Safety and Health Act, 29 USC §651 et seq.; the California Hazardous Waste Control Act, California Health and Safety Code §25100 et seq.; the Carpenter-Presley-Tanner Hazardous Substance Account Act, California Health and Safety Code §25300 et seq.; the Porter-Cologne Water Quality Control Act, California Water Code §13000 et seq.; the Safe Drinking Water and Toxic Enforcement Act, California Health and Safety Code §25249.5 et seq.; as currently in force or as hereafter amended, and all rules and regulations promulgated thereunder.

d. "**Gross Receipts**" means and includes all revenues actually received by Contractor arising from, or attributable to, Temporary Waste Services provided to its customers in the City pursuant to this Agreement in accordance with generally accepted accounting principals, including specifically, but not limited to, charges for collection of solid waste pursuant to this Agreement without subtracting franchise fees, or any other cost of doing business; excepting that, revenue from the sale of recyclable materials shall be excluded from Gross Receipts for purposes of calculating franchise fees.

e. "**Hazardous Substance**" shall mean any of the following: (a) any substances defined, regulated or listed (directly or by reference) as "Hazardous Substances", "hazardous materials", "Hazardous Wastes", "toxic waste", "pollutant" or "toxic substances" or similarly identified as hazardous to human health or the environment, in or pursuant to (i) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 USC §9601 et seq.(CERCLA); (ii) the Hazardous Materials Transportation Act, 49 USC §5101, et seq.; (iii) the Resource Conservation and Recovery Act, 42 USC §6901 et seq.; (iv) the Clean Water Act, 33 USC §1251 et seq.; (v) California Health and Safety Code §§25115-25117, 25249.8, 25281, and 25316; (vi) the Clean Air Act, 42 USC §7401 et seq.; and (vii) California Water Code §13050; (b) any amendments, rules or regulations promulgated thereunder to such enumerated statutes or acts currently existing or hereafter enacted; and (c) any other hazardous or toxic substance, material, chemical, waste or pollutant identified as hazardous or toxic or regulated under any other applicable federal, state or local laws or regulations, including any of the Environmental Laws, currently existing or hereinafter enacted, including, without limitation, friable asbestos, polychlorinated biphenyl's ("PCBs"), petroleum, natural gas and synthetic fuel products, and by-products.

f. "**Hazardous Waste**" means all substances defined as Hazardous Waste, acutely Hazardous Waste, or extremely Hazardous Waste by the State of California in Health and Safety Code §25110.02, §25115, and §25117 or in the future amendments to or recodifications of such statutes or identified and listed as Hazardous Waste by the US Environmental Protection Agency (EPA), pursuant to the Federal Resource Conservation and Recovery Act (42 USC §6901 et seq.), all future amendments thereto, and all rules and regulations promulgated thereunder.

g. "**Rolloff Box**" means Solid Waste Collection Containers of 10-yards or larger, including "high sides" and "low boys," and which meet such standards as may be imposed by City.

h. "**Temporary Waste Service**" means the collection of occasional, non-continuing accumulations of solid waste which are not generated from ongoing activities or operations, and is limited to Solid Waste Handling Services for either: (a) Construction and Demolition Debris (as defined in the Dana Point Municipal Code) or (b) Solid Waste generated from activities not related to construction which is collected in a Bin or Rolloff Box in such a manner that a Bin or Rolloff Box designated for its collection remains on the Premises for no more than 30 days at a time, and for no more than 60 days of any consecutive 90 day period.

4. AREA OF OPERATION

Contractor shall have the right to operate anywhere within the City limits.

5. RATES

Contractor shall charge such rates as it deems appropriate for the services set forth in this Agreement, provided however such rates shall not exceed the maximum rates set forth on Exhibit 1 attached hereto, as they may be adjusted from time to time as more fully set forth on Exhibit 1. For clarification purposes, it is noted that the rate adjustment language on Exhibit 1 is intended to mean that the maximum rates that may be charged by Contractor pursuant to this Agreement shall be adjusted annually, subject to all conditions, and limitations, and utilizing the adjustment formulas for Bins and Rolloff Boxes, as set forth in the Exclusive Franchise Agreement for Residential and Commercial Solid Waste Handling Services entered between Contractor and City on March 22, 2006.

6. USE AND MAINTENANCE OF BINS AND ROLLOFF BOXES

a. All solid waste collected pursuant to this Agreement shall be collected in bins or Rolloff Boxes. Such containers shall not be placed in any public right-of-way without Contractor first having obtained a separate encroachment permit from City for each container located in a right-of-way. Contractor acknowledges that encroachment permits will rarely be approved by City, and will only be approved if there is no reasonable means to place a container on private property. In addition to any other remedy available to City, including termination hereof, any violation of this Section shall subject Contractor to a penalty of One Hundred Dollars (\$100.00) per container per day upon which a container is in the public right-of-way.

b. Bins and Rolloff Boxes provided by Contractor for Collection of Solid Waste hereunder shall be maintained in a clean, sound condition free from Putrescible residue. Such Containers shall be constructed of heavy metal, or other suitable, durable material, and shall be watertight and professionally painted. Wheels, forklift slots, and other appurtenances designed for movement, loading, or unloading of the Container shall be maintained in good repair and shall not leak. The make, model and general design of Bins and Rolloff Boxes shall be subject to approval by the City Manager.

c. Each Bin or Rolloff Container used by Contractor for Solid Waste Collection hereunder shall have the name and phone number of Contractor in letters not less than three inches high on its exterior so as to be visible when the Container is placed for use.

d. Contractor shall cause to have graffiti removed from its Bins and Rolloff Boxes within twenty-four (24) hours of a request by City to do so, or remove the Bin or Rolloff Box containing graffiti from active use within the City within such time. Failure to remove the graffiti within the required twenty-four (24) hours, shall result in the assessment of a two hundred dollar (\$200) fine to Contractor for each Bin or Rolloff Box containing graffiti.

e. Contractor shall use exceptional care to prevent Solid Waste or fluids from leaking, being spilled and/or scattered during the collection or transportation process. If any Solid Waste or fluids leak or are spilled during collection, Contractor shall promptly clean up all such materials. Each collection vehicle shall carry a broom, liquid absorption materials and shovel at all times for this purpose. Leaks must be contained and cleaned and shall not be directed to storm drains. Contractor shall not transfer loads from one vehicle to another on any public street, unless it is necessary to do so because of mechanical failure, accidental damage to a vehicle, or a pre-approved method of Solid Waste transfer between vehicles, without prior written approval by the City. Contractor shall be responsible for any fines and or cleanup charges resulting from or relating to NPDES regulations in the event any spill enters a storm drain or waterway.

7. VEHICLES

a. Contractor shall maintain all of its properties, vehicles, facilities, and equipment used in providing service under this Agreement in a good, safe, neat, clean and operable condition at all times; City may instruct Contractor to remove a collection vehicle from service until repaired for not meeting cleaning and maintenance requirements. Reasons for removal from service may include dents or rust on the vehicle and other cosmetic problems, as well as operational problems.

b. Collection vehicles shall be painted, thoroughly washed, and thoroughly steam cleaned on a regular basis so as to present a clean appearance. The City may inspect vehicles at any time to determine compliance with this Agreement. Contractor shall also make its collection vehicles available to the California Highway Patrol for inspection, at any frequency it requests. Contractor agrees to replace, repair to the City's satisfaction, or take out of service in the City, any collection vehicle which the City determines to be of unsightly appearance, leaking, or in unsatisfactory operating condition.

c. Contractor shall repaint all collection vehicles at least every two years, and within thirty (30) days' notice from City, if City determines that their appearance warrants painting.

d. Contractor shall inspect each collection vehicle daily to ensure that all equipment is operating properly. Collection vehicles which are not operating properly shall be removed from service until repaired and operating properly. Contractor shall perform all scheduled maintenance functions upon collection vehicles in accordance with the manufacturer's specifications and schedule. Contractor shall keep accurate records of all collection vehicle maintenance, recorded according to date and mileage and shall make such records available to City upon request.

e. Contractor shall repair, or arrange for the repair of, all of its vehicles and equipment for which repairs are needed because of accident, breakdown or any other cause so as to maintain all equipment in a safe and operable condition. Contractor shall maintain accurate records of repair, which shall include the date and mileage, nature of repair and the verification by signature of a maintenance supervisor that the repair has been properly performed.

f. Contractor shall clean up any leaks or spills from Collection Vehicles per the NPDES permit in effect at the time. No vehicle shall leak fluids. No fluids shall be washed into storm drains at any time. All NPDES dry-cleaning measures shall be complied with. All Collection vehicles must be equipped with absorbent for such clean up efforts.

g. Upon request, Contractor shall furnish City a written inventory of all equipment, including Collection Vehicles, used in providing service pursuant to this Agreement. This inventory shall list all equipment by manufacturer, ID number, date of acquisition, type, and capacity.

8. FRANCHISE FEE

a. Contractor shall pay City an annual franchise fee equal to 5% of Contractor's Gross Receipts as defined herein.

b. The franchise fee noted above shall be paid quarterly on or before the thirtieth (30th) day following the end of each calendar quarter during the term of this Agreement. Hence, on or before said date Contractor shall remit to City a sum of money equal to 5% of the Gross Receipts collected by Contractor as a result of applicable services provided within City pursuant to the terms hereof during the preceding calendar quarter. If the franchise fee is not paid on or before the thirtieth (30th) day following the end of the calendar quarter, and in addition to any other remedy provided by law, Contractor shall pay to City a penalty in an amount equal to ten percent (10%) per month, or portion thereof, of the amount owing until paid.

c. Each quarterly franchise fee remittance to City shall be accompanied by a statement detailing Gross Receipts for the period covered from all operations conducted or permitted, pursuant to this Agreement, and detail the method by which the franchise fee and Gross Receipts were calculated such that Gross Receipts from all sources of revenue attributable to this Agreement, including those to which the franchise fee does not apply, are easily identifiable.

9. RECYCLING REQUIREMENTS

a. General Requirement

All solid waste collected in the City by Contractor pursuant to this Agreement shall be taken to a City Certified Construction and Demolition Debris Processing Facility for processing.

b. Landfill Prohibition.

No solid waste collected pursuant to this Agreement may be taken directly to a landfill for disposal.

c. Diversion Requirements

Contractor shall conduct its operation pursuant to this Agreement such that it achieves a diversion rate of 75% in connection with the waste stream it handles which is covered by this Agreement. In addition to its other indemnification obligations as set forth herein, Contractor specifically agrees that it will protect, indemnify, pay, save, defend (with Counsel acceptable to City), and hold City harmless from any and all loss, expense, damage, fines, penalties and liability of every kind and nature whatsoever by virtue of any non-compliance by Contractor with the diversion requirements set forth herein.

10. REPORTING REQUIREMENTS

Contractor shall maintain records for all solid waste it collects pursuant to this Agreement, which records shall include the location at which such waste is deposited for processing/disposal for audit by the City. Contractor shall prepare and submit to the City, in a form subject to approval by the City, a monthly report stating the amount of solid waste collected and the location(s) to which it was taken for processing/disposal. In addition thereto, Contractor shall provide to the City an annual report which provides a collated summary of all the information contained in the monthly reports referred to above. City may require additional reports from Contractor should it determine the reports requested, or submitted, pursuant to this section not satisfactorily fulfill the City's needs.

11. AUDIT REQUIREMENTS

Contractor shall maintain records of all transactions related to the terms and conditions of this Agreement in accordance with normal industry accounting procedures. City and/or their audit representatives shall have access for the sole purpose of auditing Contractor's performance under this Agreement, to records, including, but not limited to weight tickets, books, documents and papers directly related to Contractor's performance under this Agreement. City shall schedule any desired audit at Contractor's place of business, and at a date and time to be mutually agreed upon by City and Contractor, which date shall be at least seven (7) days following City giving written notice to Contractor of its desire to perform an audit, and the information that will be required to be provided in connection therewith. Nothing herein shall be construed to require access to any privileged or confidential information as set forth in federal or

State law. All records and information subject to the audit provisions of this contract shall remain confidential. City agrees that its audit representative shall be subject to the same requirements as City regarding any portion of this Agreement.

12. CONFIDENTIALITY

Pursuant to the above audit provision, if City receives information from its auditing representatives or consultants which due to the nature of such information is reasonably understood to be confidential and/or proprietary, City agrees that it shall not use or disclose such information except in the performance of this Agreement, and further agrees to exercise the same degree of care it uses to protect its own information of like importance, but in no event less than reasonable care. "Confidential Information" shall include all nonpublic information. The foregoing obligations of non-use and nondisclosure shall not apply to any information that (a) has been disclosed in publicly available sources; (b) is, through no fault of the City disclosed in a publicly available source; (c) is in rightful possession of City's consultant without an obligation of confidentiality; (d) is required to be disclosed by operation of law; or (e) is independently developed by the City without reference to information disclosed by City's consultant.

13. COMPLIANCE WITH LAWS

Contractor shall at all times comply with all applicable provisions of the Dana Point Municipal Code, now in effect or hereafter enacted, as well as all other applicable County, State and Federal laws and regulations.

14. INDEMNIFICATION

Contractor hereby agrees to and shall indemnify and hold harmless City, its elected and appointed boards, commissions, officers, employees, and agents (collectively, indemnities) from and against any and all loss, liability, penalty, forfeiture, claim, demand, action, proceeding or suit in law or equity of any and every kind and description (including, but not limited to, injury to and death of any Person and damage to property, or for contribution or indemnity claimed by third parties) arising or resulting from and in any way connected with (1) the negligence or willful misconduct of Contractor, its officers, employees, agents, and/or subcontractors in performing services under this Agreement; (2) the failure of Contractor, its officers, employees, agents, and/or subcontractors to comply in all respects with the provisions of this Agreement, applicable laws (including, without limitation, the Environmental Laws), ordinances and regulations, and/or applicable permits and licenses; (3) the acts of Contractor, its officers, employees, agents, and/or subcontractors in performing services under this Agreement for which strict liability is imposed by law (including, without limitation, the Environmental Laws). The foregoing indemnity shall apply regardless of whether such loss, liability, penalty, forfeiture, claim, demand, action, proceeding, suit, injury, death or damage is also caused in part by any of the indemnities negligence, but shall not extend to matters resulting from the indemnities gross negligence, or willful misconduct. Contractor further agrees to and shall, upon demand of City, at Contractor's sole cost and expense, defend (with attorneys acceptable to City) City, its elected and appointed boards and commissions, officers, employees, and agents against any claims, actions, suits in law or equity or other proceedings, whether judicial, quasi-judicial or administrative in nature, arising or resulting from any of the aforementioned events, and to

reimburse the City for any and all costs and expenses City incurs in providing any such defense, either before, during or after the time Contractor elects to provide such defense, including any and all costs incurred in overseeing any defense to be provided herein by Contractor. The obligations of Contractor set forth in this Section shall not terminate or expire, shall be given the broadest possible interpretation, and shall survive the expiration or earlier termination of this Agreement.

15. HAZARDOUS SUBSTANCES INDEMNIFICATION

Without regard to any insurance coverage or requirements, and without limiting the above general indemnification obligation in any way, Contractor specifically agrees to and shall, to the maximum extent permitted by law, defend (with counsel acceptable to City) reimburse, indemnify, and hold City and its past and present officers, council members, employees, consultants and agents (hereinafter "Indemnified Parties") harmless from and against any and all claims, actions, liabilities, damages, demands, judgments, losses, costs, liens, expenses, suits, actions, attorneys' fees, consultant fees, penalties and any and all other losses, damages, fees and expenses of whatever kind or nature ("Claims") (including but not limited to response costs, investigative costs, assessment costs, monitoring costs, treatment costs, cleanup costs, removal costs, remediation costs, and similar costs, damages and expenses) that arise out of or are alleged to arise out of or in any way relate to any action, inaction or omission of Contractor that:

- a. results in any demand, claim, notice, order, or lawsuit, asserting that any Indemnified Party is liable, responsible or in anyway obligated to investigate, assess, monitor, study, test, treat, remove, remediate, or otherwise cleanup, any Hazardous Contaminant (as defined herein); or
- b. relates to material collected, transported, recycled, processed, treated or disposed of by Contractor.

Contractor's obligations pursuant to this Section shall apply, without limitation, to:

- a. any Claims brought pursuant to or based on the provisions of the Environmental Laws, including without limitation the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9601 et seq., the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6901 et seq., the Carpenter-Presley-Tanner Hazardous Substances Account Act (California Health & Safety Code Sections 25300 et seq.), the California Hazardous Waste Control Laws (California Health and Safety Code Sections 25100 et seq.), the California Porter-Cologne Act (California Water Code Section 13000 et seq.), and any and all amendments and regulations thereto, and any other Federal, State, regional or local environmental statutory or regulatory provision;
- b. any Claims based on or arising out of or alleged to be arising out of the ownership, use, lease, sale, design, construction, maintenance or operation by Contractor of any Facility;

c. any Claims based on or arising out of or alleged to be arising out of the marketing, sale, distribution, storage, transportation, disposal, processing or use of any materials recovered by Contractor;

d. any Claims based on or arising out of or alleged to be arising out of any breach of any express or implied warranty, representation or covenant arising out of or in connection with this Agreement.

The foregoing indemnity and defense obligations shall apply irrespective of the negligence or willful misconduct of Contractor or any affiliate of Contractor. For purposes of this Agreement, the term "Hazardous Contaminant" shall mean any "hazardous material," as that term is defined under California Health & Safety Code Section 25501(o); any "hazardous substance," as that term is defined herein or under California Health & Safety Code Sections 25281(h), 25501(p), 25501.1 and under Title 42, Section 9601(14) of the United States Code; any "hazardous waste," as that term is defined herein and under Title 42, Section 6903(5) of the United States Code and under California Health & Safety Code Section 25501(q); any chemical which the Governor has identified as a chemical known to the State to cause cancer or reproductive toxicity pursuant to California Health & Safety Code Section 25249.8; any crude oil or refined or unrefined petroleum product or any fraction or derivative thereof; and any asbestos or asbestos-containing material. The term "Hazardous Contaminant" shall also include any and all amendments to the above-referenced statutory and regulatory provisions made before or after the date of execution of this Agreement. The provisions of this Section shall not terminate or expire, shall be given the broadest possible interpretation and shall survive the expiration or earlier termination of this Agreement.

16. DEFAULT, DAMAGES AND TERMINATION OF AGREEMENT

a. In the event Contractor defaults in the performance of any of the obligations, covenants or agreements to be kept, done or performed by it under the terms of this Agreement, or any other applicable Federal, state, or local law or regulation, City shall notify Contractor in writing of the nature of such default.

b. The City Manager may, in such written instrument, set a reasonable time within which correction of all such deficiencies is to be made. Unless otherwise specified, a reasonable time for correction shall be thirty (30) days from the receipt by the Contractor of such written notice. If the Contractor cannot reasonably correct or remedy the breach within the time set forth in such notice, Contractor shall commence to correct or remedy the violation within such time as set forth in the notice and shall diligently achieve such correction or remedy as soon thereafter as possible, but shall in no case fail to cure any such defect in less than ninety (90) days. Failure to cure within ninety (90) days as stated will be considered a material violation of this agreement, subject to immediate termination as set forth in subsection (c) below.

c. The right of termination as set forth in herein, is in addition to any other rights of the City upon a failure of Contractor to perform its obligations under this Agreement. The City further reserves the right to immediately terminate this agreement or impose damages in the event of the following:

(1) If the Contractor practices or attempts to practice fraud upon the City;

(2) If the Contractor becomes insolvent, unable or unwilling to pay debts, or upon listing of any order for relief in favor of Contractor in a bankruptcy proceeding;

(3) If the Contractor fails to provide or maintain any insurance requirements in this agreement

(4) If the Contractor willfully violates any orders or rulings of any regulatory body having jurisdiction over the Contractor relative to this agreement, provided that the Contractor may contest such orders or rulings by appropriate proceedings conducted in good faith, in which case, no breach of this agreement shall have occurred;

(5) If Contractor willfully fails to make any payments required under this agreement and/or refuses to provide the City with required information and/or reports in a timely manner as provided in this agreement; or,

(6) Any other act or omission by the Contractor directly related to its performance under this Agreement which materially violates the terms, conditions, or requirements of this Agreement or any law or regulation including specifically the California Integrated Waste Management Act, as it may be amended from time to time, or any order, directive or rule, or regulation .

d. Contractor expressly agrees and acknowledges that it is the intent of both parties that in the event that the City or any third party fails to perform any obligation created by this Agreement Contractor's sole remedy and City's sole liability, shall be the termination of this Agreement by delivering written notice of termination to City. In the event of such termination and cancellation by Contractor, this Agreement shall terminate and the parties hereto shall have no further rights, obligations, or liabilities hereunder. Contractor expressly agrees and acknowledges that no extrinsic evidence may be offered in any proceeding regarding the interpretation of this clause. CITY SHALL NOT BE LIABLE UNDER ANY CIRCUMSTANCES FOR ANY INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY NATURE WHATSOEVER WHETHER SUCH DAMAGES BE PREDICATED UPON AN ALLEGED BREACH OF THIS AGREEMENT, NEGLIGENCE BY THE CITY, STRICT LIABILITY IN TORT, OR UPON ANY OTHER BASIS WHATSOEVER.

17. INSURANCE

Contractor shall procure and maintain during the entire term of this Agreement the following types of insurance, and shall maintain the following minimum levels of coverage, which shall apply to any claims which may arise from or in connection with Contractor's performance hereunder or the actions or inactions of any of Contractor's officers, agents, representatives, employees, or subcontractors in connection with Contractor's performance. The

insurance requirements hereunder in no way limit Contractor's various defense and indemnification obligations, or any other obligations as set forth herein.

a. Minimum Scope of Insurance.

Coverage shall be at least as broad as:

(1) The most recent editions of Insurance Services Office Commercial General Liability coverage ("occurrence" form CG 00 01).

(2) The most recent editions of Insurance Services Office form number CA 00 01 – 1001 covering Automobile Liability, code 1 "any auto".

(3) Workers' Compensation insurance as required by the Labor Code of the State of California and Employers Liability insurance.

b. Minimum Limits of Insurance.

Contractor shall maintain in force for the term of this Agreement limits no less than:

(1) Comprehensive General Liability: Ten Million Dollars (\$10,000,000) limit aggregate and Ten Million Dollars (\$10,000,000) limit per occurrence for bodily injury, personal injury and property damage. Such limits can be achieved through a combination of primary and excess liability policies.

(2) Automobile Liability: Ten Million Dollars (\$10,000,000) limit aggregate and Ten Million Dollars (\$10,000,000) limit per accident for bodily injury and property damage. Such limits can be achieved through a combination of primary and excess liability policies.

(3) Workers' Compensation and Employers Liability: Workers' compensation limits as required by the Labor Code of the State of California and Employers Liability limits of One Million Dollars (\$1,000,000) per accident.

c. Deductibles and Self-Insured Retentions.

Any deductibles or self-insured retentions must be declared to and approved by City. If, in the reasonable opinion of the City, Contractor does not have sufficient financial resources to protect the City from exposure with respect to any deductibles or self-insured retentions, at the option of City, either: the insurer shall reduce or eliminate such deductibles or self-insured retention's as respects City, its officials, employees and agents; or Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

d. Other Insurance Provisions.

The policies are to contain, or be endorsed to contain, the following provisions:

(1) General Liability and Automobile Liability Coverages

(a) City, its elective and appointive boards, commissions, officials, employees, agents and volunteers are to be named as additional insureds as respects: liability arising out of activities performed by or on behalf of Contractor; Premises owned, leased or used by Contractor; or vehicles owned, leased, hired or borrowed by Contractor. The coverage shall contain no special limitations on the scope of protection afforded to City, its elective and appointive boards, commissions, officials, employees, agents or volunteers.

(b) Contractor's insurance coverage shall be primary insurance as respects City, its elective and appointive boards, commissions, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by City, its officials, elective and appointive boards, commissions, employees, agents or volunteers shall be excess of Contractor's insurance and shall not contribute with it.

(c) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to City, its officials, elective and appointive boards, commissions, employees, agents or volunteers.

(d) Coverage shall state that Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(2) Workers' Compensation and Employers Liability Coverage

The insurer shall agree to waive all rights of subrogation against City, its officials, elective and appointive boards, commissions, employees, agents and volunteers for losses arising from work performed by Contractor for City.

(3) All Coverages

Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to City.

e. Acceptability of Insurers.

The insurance policies required by this Section shall be issued by an insurance company or companies authorized to do business in the State of California and with a rating in the most recent edition of Best's Insurance Reports of size category VII or larger and a rating classification of A or better, unless otherwise approved by the City Manager.

f. Verification of Coverage.

Contractor shall furnish City with certificates of insurance and with original endorsements affecting coverage required by this Article. The certificates and endorsements for each insurance policy are to be signed by a Person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are to be on forms provided by or acceptable to City and are to be received and approved by City before work commences. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

18. NOTICES

Any notice, tender, demand, delivery, or other communication pursuant to this Agreement shall be in writing and shall be deemed to be properly given if delivered in person or if mailed by first class or certified mail, postage prepaid, or sent by Fax or other telegraphic communication in the manner provided in this Section, to the following persons:

To City: City Clerk
33282 Golden Lantern
Dana Point, CA 92629-1805
City of Dana Point
Fax (949) 248-7372

To CONTRACTOR: Division President
CR&R Incorporated
31641 Ortega Highway
San Juan Capistrano, CA 92657

A party may change its address by giving notice in writing to the other party. Thereafter, any notice, tender, demand, delivery, or other communication shall be addressed and transmitted to the new address. If sent by mail, any notice, tender, demand, delivery, or other communication shall be effective or deemed to have been given three (3) days after it has been deposited in the United States mail, duly registered or certified, with postage prepaid, and addressed as set forth above. If sent by fax, any notice, tender, demand, delivery, or other communication shall be effective or deemed to have been given twenty-four (24) hours after the time set forth on the transmission report issued by the transmitting facsimile machine, addressed as set forth above. For purposes of calculating these time frames, weekends, federal, state, County or City holidays shall be excluded.

19. VALIDITY

The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of the other provisions of this Agreement.

20. ASSIGNABILITY

Inasmuch as this Agreement is intended to secure the specialized services of Contractor, Contractor may not assign, transfer, delegate, or subcontract any rights, obligations or interest

herein without the prior written consent of the City, and any such assignment, transfer, delegation or subcontract without the City's prior written consent shall be considered null and void.

21. DISCRIMINATION

Contractor shall not discriminate because of race, color, creed, religion, sex, marital status, sexual orientation, age, national origin, ancestry, or disability, as defined and prohibited by applicable law, in the recruitment, selection, training, utilization, promotion, termination or other employment related activities. Contractor affirms that it is an equal opportunity employer and shall comply with all applicable federal, state and local laws and regulations.

22. JURISDICTION - VENUE

This Agreement and all questions relating to its validity, interpretation, performance, and enforcement shall be governed and construed in accordance with the laws of the State of California. This Agreement has been executed and delivered in the State of California and the validity, interpretation, performance, and enforcement of any of the clauses of this Agreement shall be determined and governed by the laws of the State of California. Both parties further agree that Orange County, California, shall be the venue for any action or proceeding that may be brought or arise out of, in connection with or by reason of this Agreement.

23. LICENSES AND PERMITS

Contractor shall, throughout the term of this Agreement, maintain all necessary licenses, permits, approvals, waivers, and exemptions necessary for the provision of the services hereunder and required by the laws and regulations of the United States, the State of California, and all other governmental agencies. Contractor shall notify the City immediately and in writing of its inability to obtain or maintain such permits, licenses, approvals, waivers, and exemptions. Said inability shall be cause for termination of this Agreement.

24. MISCELLANEOUS PROVISIONS

a. Each undersigned represents and warrants that its signature hereinbelow has the power, authority and right to bind their respective parties to each of the terms of this Agreement, and shall indemnify each other party fully, including reasonable costs and attorney's fees, for any injuries or damages caused in the event that such authority or power is not, in fact, held by the signatory or is withdrawn.

b. All Exhibits referenced herein and attached hereto shall be incorporated as if fully set forth in the body of this Agreement.

c. The scope of this Agreement is limited to its subject matter. It is not intended to in any way regulate or impede the right of any solid waste enterprise to engage in hauling activities associated with recycling endeavors which are exempt from regulation by the City by statute or case law, nor to proscribe rights of self hauling.

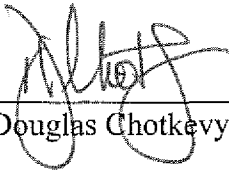
IN WITNESS WHEREOF, the parties hereto have executed this Agreement the date and year first above written.

ATTEST:



Liz Ehring, City Clerk

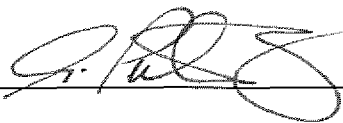
CITY OF DANA POINT




Douglas Chotkevys, City Manager

APPROVED AS TO FORM:

City Attorney

By 

CONTRACTOR



David E. Fabrizio

EXHIBIT 1

MAXIMUM RATES

Following are the rates for January 1, 2007 through December 31, 2007:

Roll-off Box Charges	Rate
Rate per pull - Standard Roll-off Box Refuse Load (10 to 40-yard)	\$ 175.00
Rate per pull - Compactors (excluding compactor rental)	\$ 215.00
Tonnage Charge, per ton, including mixed waste processing, and residue disposal - Standard and Compactor Roll-off Box Loads, and Mixed Construction and Demolition Debris Loads	\$ 45.40
Rate per pull - Green Waste and Mixed Construction and Demolition Roll-off Box loads	\$ 150.00
Tonnage Charge, per ton - Green Waste	\$ 26.95
Mixed Recyclable Loads - 40-yard box, including pull and processing/residue disposal	\$ 275.00
Mixed Recyclable Loads - 10-yard box, including pull and processing/residue disposal	\$ 275.00
Source Separated Clean Recyclable Loads (including concrete, asphalt, cardboard and paper) - per load, including pull plus processing/residue disposal	\$ 220.00
Temporary 3-cubic-yard Construction and Demolition Bin - per pickup	\$ 62.00

Rates to be adjusted using the same rate adjustment formula for roll-off box rates contained in the exclusive residential and commercial solid waste handling services agreement.