



## RESOLUTION

**APPROVING A THREE-YEAR AGREEMENT WITH ENVIRONMENTAL RESOURCE RETURN CORPORATION ("ERRCO") AND LL&S, INC. FOR CONSTRUCTION AND DEMOLITION WASTE DIVERSION**

### *CITY OF NASHUA*

*In the Year Two Thousand and Eight*

**RESOLVED** by the Board of Aldermen of the City of Nashua that the attached three-year contract with Environmental Resource Return Corporation ("ERRCO") and LL&S, Inc. for construction and demolition waste diversion is hereby approved. The funding source for FY08 and FY09 will be Account No. 801-59100 "Solid Waste - Miscellaneous Services - Recycling".

## C&D DISPOSAL AGREEMENT

AGREEMENT made and entered into as of this \_\_\_\_<sup>th</sup> day of \_\_\_\_\_, 2008 by and between Environmental Resource Return Corp and LL&S, Inc. (hereinafter referred to as "ERRCO/LL&S"), corporations organized under the laws of the State of New Hampshire having principal places of business located at 270 Exeter Road, Epping, NH 03042 & 69 Lowell Road, Salem, NH 03079 respectively, and the City of Nashua's Four Hills Landfill, located on 840 West Hollis Street, Nashua, New Hampshire 03062 (hereinafter referred to as the "Customer").

In consideration of the mutual covenants, promises, and payments reflected herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Customer and ERRCO/LL&S agree as follows:

1. Term & Renewal. The term of this agreement shall commence on \_\_\_\_\_, 2008 and end on \_\_\_\_\_, 2011 unless sooner terminated as provided herein. This agreement may be mutually extended for an additional three year period, at a price to be negotiated between the parties.
2. Volume. ERRCO/LL&S agrees to receive all acceptable C&D Waste (as defined in Exhibit A) during the term of the agreement at its C&D Recycling Facilities located in Epping & Salem, New Hampshire (hereinafter referred to as the "C&D Facilities"). Customer agrees to deliver all wood, asphalt shingles, mixed C&D and metals received at the Customer's landfill to ERRCO/LL&S. The Customer will not guarantee a set minimum or maximum of quantities. ERRCO/LL&S will not guarantee any maximum or minimum pick ups or delivery of materials.
3. Payment Terms: Customer agrees to pay ERRCO/LL&S within 30 days from the date of invoice. ERRCO/LL&S invoices weekly. ERRCO/LL&S also agrees to pay the Customer within 30 days from date of invoice. Customer invoices bi-weekly.
4. Fees. Customer will be invoiced at a rate of \$47.00 per ton for 100% Source Separated Wood (SSW), which must **not** contain pressure treated or creosote wood. Customer will be invoiced at a rate of \$78.00 per ton for mixed C&D including pressure treated wood, creosote wood, gypsum, and other non-hazardous materials delivered to the C&D Facility (see exhibit A).  
ERRCO/LL&S will be invoiced from Customer for Cover Chip that is delivered to the Nashua Landfill at a rate of \$26.00 per ton. ERRCO/LL&S will be invoiced from Customer at a rate of \$125.00 per gross ton for all loads of metals that are removed from the Nashua Landfill.

5. Transportation: All transportation costs for incoming and outgoing materials illustrated in section four (4) to and from the Nashua Landfill will be paid by ERCCO/LL&S.

Said disposal fee does not include any increase in disposal cost imposed pursuant to the adoption or implementation by any federal, state or local body or agency of a law, rule, regulation, ordinance or order which results in the levying of a fee on or against the operations at the Facility. Any such fee shall be allocated among all customers which utilize the Facility on a pro rata basis.

6. Hours of Operation. The ERRCO/LL&S Facilities will receive material on Monday through Friday from 7:00 a.m. to 5:00 p.m. and from 7:00 a.m. to 12:00 p.m. on Saturday. The Four Hills Landfill will accept materials Monday through Friday from 8:00 a.m. to 4:00 p.m.

7. Work Rules. Customer and ERRCO/LL&S agree to work within the rules of both facilities.

8. Excuse of Performance. The performance of and obligations under this Agreement, except for the payment of money for services already rendered, may be suspended by either party in the event the transportation of material by Customer or the disposal/recycling of the material by the Facility are prevented by a cause or causes beyond the reasonable control of such party. Such causes shall include, but not be limited to acts of God, acts of war, riot, fire, explosion, accident, flood, or sabotage; lack of adequate fuel, power, changes in governmental laws, regulations, rule makings, permits, approvals, requirements, orders or actions which significantly effect the Facility; public outcry; national defense requirements; injunctions or restraining orders.

9. Insurance - Contractor shall maintain for the duration of the contract all required insurance coverage. Coverage must be written with an insurance carrier licensed to do business in the State of New Hampshire. City of Nashua requires thirty (30) days written notice of cancellation or material change in coverage. Contractor is responsible for filing updated Certificates of Insurance with the City of Nashua Risk Management Dept. during the life of the contract. The contractor must maintain required limits of coverage for the duration of the contract/project.

The contractor shall provide a Certificate of Insurance with evidence of the following coverage's to the City of Nashua Risk Management Dept. ten (10) days prior to commencing work under the contract document.

Comprehensive General Liability - \$1,000,000 per occurrence/\$2,000,000 aggregate – City of Nashua must be named as an additional insured.

Motor Vehicle Liability - \$1,000,000 combined single limit – City of Nashua must be named as an additional insured. Coverage must include all owned, non-owned and hired vehicles.

Workers' Compensation as required by statute/Employers' Liability of \$100,000/\$500,000/\$100,000.

Any subcontractor used is the agent of the contractor and not the City of Nashua's. Subcontractors are subject to the same insurance requirements as the contractor.

10. Indemnifications - (a) ERRCO/LL&S agrees to indemnify, save harmless, and defend Customer from and against any and all liabilities, claims, penalties, forfeitures, suits, and the costs and expenses incident thereto (including costs of defense, settlement, and reasonable attorneys' fees), which it may hereafter incur, become responsible for, or pay out as a result of death or bodily injuries to any person, destruction or damage to any property, contamination of or adverse effects on the environment, or any violation of governmental laws, regulations, or orders caused, in whole or in part, by ERRCO/LL&S employees, or its subcontractors in the performance of this Agreement.

(b) Customer agrees to indemnify, save harmless, and defend ERRCO/LL&S from and against any and all liabilities, claims, penalties, forfeitures, suits and the costs and the expenses incident thereto (including costs of defense, settlement, and reasonable attorneys' fees), which it may hereafter incur, become responsible for, or pay out as a result of death or bodily injuries to any person, destruction or damage to any property, contamination of or adverse effects on the environment, or any violation of governmental laws, regulations, or orders caused, in whole or in part by:

(i) Customer's breach of any term or provision of this Agreement or,

(ii) any negligent or willful act or omission of Customer, its agents, employees, or subcontractors in the performance of this Agreement.

11. No Assignment. Customer and ERRCO/LL&S may not assign, transfer, broker or otherwise vest in any other company, entity or person, any of its rights or obligations under this Agreement.

12. Successors & Assigns. This Agreement shall be binding upon, and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

13. Governing-Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New Hampshire.

14. Entire Agreement. This Agreement represents the entire understanding reached between the parties hereto with respect to Customer's disposal rights at the Facility.

15. Termination of Agreement. ERRCO/LL&S and Customer, in its sole discretion, shall have the right to terminate this agreement for just cause. If ERRCO/LL&S or Customer chooses to terminate this agreement, it shall provide the other party, thirty (30) days written notice of its intent to do so. In the event of a termination for just cause, both

parties shall receive all amounts due and not previously paid in accordance with the contract prior to the termination date.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as of the day and year first written above.

ERRCO

City of Nashua

BY: \_\_\_\_\_  
Its:

BY: \_\_\_\_\_  
Its:

LL&S, Inc

BY: \_\_\_\_\_  
Its:



## **Exhibit A**

### **ERRCO/LL&S Recycling EPPING & SALEM, NH**

#### **Acceptable C&D Waste**

The ERRCO/LL&S Facilities located in Epping and Salem, New Hampshire are permitted to receive and process the following solid waste materials:

- Mixed construction and demolition (C&D) debris, which is to primarily include untreated wood, but may also include asphalt shingles, concrete, brick, metal, insulation, wire, glass, cardboard, corrugated container board, aluminum cans, steel cans, paper, plastics, and similar wastes in quantities generally incidental to the quantity of wood waste received;
- Virgin wood wastes, which may include unpainted pallets, 2x4 lumber, and spools.
- Brush, which may contain stumps smaller than 2 ft. in diameter and tree parts 8 inches or smaller in diameter.
- 100% Source Separated Wood (SSW) is Virgin wood wastes plus painted, stained, varnished, glued wood with a minimal wood fine content that is smaller than ½ inch in size.
- 100% Asphalt Shingles consist of all asphalt shingles with a minimal fines content that is smaller than ½ inch in size.
- Metals can be accepted at the LL&S facility in mixed form.

#### **Prohibited Waste**

Items prohibited at the facility include, but are not limited to, the following materials:

- Hazardous waste
- Household Hazardous waste
- Asbestos or asbestos containing waste
- Contaminated soils
- Liquid waste
- Contained gaseous waste
- Hospital, medical or laboratory waste
- Batteries
- Electrical components, including capacitors and transformers
- Putrescible or municipal solid waste
- Sludge or Sewage
- Ash
- Motor vehicles and engines
- Radioactive wastes

- Recycling Residuals
- Computers, CRT's and televisions
- Residue from air pollution control facilities
- Animal wastes
- PCB wastes

Contacts: Any questions or inquiries can be directed to Jonathan Hixon and David DeVito at the ERRCO Facility @ 603-679-2626.