

# **CITY OF BATAVIA**

DATE: March 13, 2003  
TO: Chuck Beckman, Public Services Chair  
FROM: Gary Larsen, Public Works Director  
SUBJECT: Resolution #03-17-R Authorizing Execution of Host Agreement with Onyx Waste Services; Resolution #03-18-R Authorizing Execution of Agreement for Refuse Collection Service with Onyx Waste Services.

The Public Services Committee recommended approval of both of the above Resolutions, conditioned on some changes.

Regarding the Host Agreement (Resolution 03-17-R), there is a new Definition Section (Section 2), and there is additional language in Section 5b relating to the types of process that would accompany requests for increased tonnage in the future. There are also changes in Sections 18, 22, 35 and 42 which were requested by the Committee. All of the changes (including additional technical changes) are highlighted.

Regarding the Hauling Agreement (Resolution 03-18-R), there is a minor revision regarding the removal of tires from the definition of refuse. The answer to the question in Section 11(g) pertaining to the meaning of a financial rating of "5A2" is a rating which is given to companies with good credit ratings and a net worth of at least 50 million dollars.

Staff recommends passage of each Resolution as amended. Please call anyone on the team, including myself, Randy Recklaus, Bill McGrath or John Noble, with questions.

Attachment: Resolutions 03-17-R, 03-18-R

**CITY OF BATAVIA**  
**RESOLUTION #03-17-R**

**AUTHORIZING THE EXECUTION OF A HOST AGREEMENT WITH**  
**ONYX WASTE SERVICES, INC.**

**WHEREAS**, the City of Batavia has been engaged in investigating the possibility of siting a waste transfer station; and

**WHEREAS**, there are various possibilities with respect to the location and potential operator of a waste transfer station; and

**WHEREAS**, Onyx Waste Services, Inc. has indicated to the City that it has an option to purchase property in the City, which, potentially, could be utilized for a waste transfer station; and

**WHEREAS**, Onyx has indicated an intention to file with the City a request for siting approval to construct and operate a municipal solid waste transfer station on said property; and

**WHEREAS**, the City has heretofore enacted a Site Location Ordinance which requires that an executed Host Agreement must be included as part of, any application filed with the City for site location approval; and

**WHEREAS**, The City has negotiated a Host Agreement with Onyx Waste Services, Inc. which will ensure that the interests of the City are protected in the event a Waste Transfer Facility to be operated by Onyx Waste Services is applied for, approved and permitted as provided for under the City's Site Location Ordinance and the Illinois Environmental Protection Act.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Batavia, Kane and DuPage Counties, Illinois:

**SECTION 1:** That the Mayor and City Clerk are hereby authorized to execute the Host Agreement attached hereto as **Exhibit "A"**.

**PRESENTED** to the City Council of the City of Batavia, Illinois, on the 17<sup>th</sup> day of March, 2003.

**PASSED** by the City Council of the City of Batavia, Illinois, on the 17<sup>th</sup> day of March, 2003.

**APPROVED** by me as Mayor of said City of Batavia, Illinois, on the 17<sup>th</sup> day of March, 2003.

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Mayor

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City Clerk

Ayes: 11  
Nays: 0  
Absent: 3  
Abstentions (counted as ayes/nays): 0  
Total Holding Office: 14

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and revised document: K:\DOCSLIB1\JCALLAGH\@RVL08!.DOC

CompareRite found 172 change(s) in the text

Deletions appear as Overstrike text surrounded by {}

Additions appear as Bold text surrounded by []

**HOST CITY AGREEMENT**

This Host City Agreement ~~{(the “Agreement”)}~~ is made this \_\_\_\_ day of \_\_\_\_\_, 2003, by and between Onyx Waste Services Midwest, Inc., a Wisconsin corporation ~~{(“Onyx”)}~~, and its **[controlling]** parent corporation, Onyx Waste Services, Inc., a Wisconsin corporation, and the City of Batavia, an Illinois Municipal Corporation ~~{(“City”)}~~ ~~(collectively “the Parties”)~~.

**WITNESSETH:**

WHEREAS, Onyx is the owner of ~~{property located at 766 Hunter Drive, in the City of Batavia, Illinois, and legally described on Exhibit A attached hereto (“Onyx Property”)}~~ **[the Onyx Property]**; and

WHEREAS, Onyx desires to file with the City a request for siting approval to construct and operate a ~~{municipal solid waste transfer station on the Onyx Property (“Waste Transfer Facility”)}~~ **[Waste Transfer Facility]**; and

WHEREAS, Onyx has represented that the Onyx Property can meet all applicable regulatory location standards which are required to develop a ~~{waste transfer station on the Onyx Property}~~ **[Waste Transfer Facility]**; and

WHEREAS, the City has demonstrated a strong commitment to identifying a long term solution to the City’s solid waste management needs; and

WHEREAS, Onyx recognizes that the City has undertaken considerable time, effort and expense in educating its citizens as to the potential benefits, and potential impacts that a waste transfer station located within the City may have upon its citizens; and

WHEREAS, Onyx also recognizes that the City has undertaken considerable effort and expense investigating the possibility of the City siting its own transfer station on ~~{property}~~ **[the**

**City Location]** upon which the City has an option to acquire~~{("City Location"); the City Location is commonly known as 1780 Hubbard Avenue, Batavia, Illinois, and is legally described in Exhibit B, attached hereto and made a part hereof};~~ and

WHEREAS, Onyx recognizes that the City is foregoing significant opportunity in regard to the City siting a transfer station on the City Location by considering and entering this Agreement with Onyx; and

WHEREAS, Onyx and the City have entered into an Agreement to Negotiate in Good Faith in order to define the terms and conditions of this Agreement; and

WHEREAS, the City has not, by entering into this Agreement, predetermined whether it will grant or deny siting approval for the Waste Transfer Facility or whether Onyx can (or cannot) establish any of the criteria related to siting approval, and the City retains all of its authority to grant, deny or grant with conditions siting approval in accordance with Section 39.2(a) of the ~~{Illinois Environmental Protection}~~ Act~~{("Act")}~~, 415 ILCS 5/39.2(a); and

WHEREAS, the City has heretofore enacted ~~{a Site Location Ordinance(Ordinance #02-10) which was subsequently amended on}~~ the ~~{5th day of August, 2002 by}~~ Ordinance ~~{No. 02-51 ("City Siting Ordinance" or "Ordinance")}~~ to govern the review and consideration of requests for siting approval for pollution control facilities (as defined by the Act); and

WHEREAS, the parties acknowledge and agree that the Act, at Section 39.2(a), sets forth criteria for the granting of such local siting approval with respect to each new pollution control facility, including waste transfer facilities such as the Waste Transfer Facility, as follows:

- 1) The facility is necessary to accommodate the waste needs of the area it is intended to serve;
- 2) The facility is designed, located and proposed to be operated so that the public health and safety will be protected;

- 3) The facility is so located so as to minimize incompatibility of the character of the surrounding area and to minimize the effect on the value of the surrounding property;
- 4) The facility is located outside the boundary of the 100 year floodplain or the site is flood proof;
- 5) The plan of operations for the facility is designed to minimize the danger to the surrounding area from fires, spills or other operational standards;
- 6) The traffic patterns to or from the facility are so designed as to minimize the impact on existing traffic flow;
- 7) If the facility will be treating, storing or disposing of hazardous waste (which the Waste Transfer Facility will not be), an Emergency Response Plan exists for the facility which includes notification, containment, and evacuation procedures to be used in case of an accidental release;
- 8) If the facility is to be located in a county where the county board has adopted a Solid Waste Management Plan consistent with the planning requirements of the Local Solid Waste Disposal Act or the Solid Waste Planning and Recycling Act, the facility is consistent with the plan; and
- 9) If the facility will be located within a regulated recharge area, any applicable requirements specified by the county board for such areas have been met; and

WHEREAS, Onyx agrees and understands that it will be necessary for Onyx to establish (through any application for siting approval which Onyx may file, and as a result of any hearing on any such application for siting approval) that its proposed plan and operation of a waste transfer station satisfies each and every one of the criteria in Section 39.2(a) of the Act (as hereinabove set forth) to the satisfaction of the City; and

WHEREAS, if the City grants siting approval for the Waste Transfer Facility, the Illinois Environmental Protection Agency issues permits for the development and operation of the Waste Transfer Facility on the Onyx Property, and the Waste Transfer Facility is constructed and receives waste, then Onyx is willing to pay a host benefit fee, as hereinafter set forth, to the City; and

WHEREAS, all words used in this Agreement, which are not defined herein but are defined in the Act, its corresponding regulations, and the Ordinance, shall have the same definitions and meanings as found in the Act, its corresponding regulations, and the Ordinance, in effect on the date of this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

**1. Incorporation of Recitals.**

The Parties agree that the foregoing recitals are material to this Agreement and are hereby incorporated and made a part of this Agreement as if they were fully set forth herein.

**2. [Definitions.**

**The following capitalized terms shall have the following respective meanings for purposes of and throughout this Agreement; provided, however, that any ambiguity between the definitions and the terms contained elsewhere in this Agreement shall be resolved in favor of the terms contained elsewhere in this Agreement:**

**“Act” means the Illinois Environmental Protection Act, 415 ILCS 5/1 *et seq.***

**“Additional Fee” means a fee payable on the difference between minimum and actual tonnage as described in Section 6(c)(iii) herein.**

**“Agreement” means this Host City Agreement.**

**“Anniversary Date” means the date when Waste or Recyclables are first received at the Waste Transfer Facility.**

**“Annual Adjustment” means an annual upward adjustment of the Host Benefit Fee, as set forth in Section 6(d) herein.**

**“Annual Host Benefit Fee” means the Host Benefit Fee, including the Additional Fee, if applicable, calculated in accordance with Section 6(c) and 6(d) hereof.**

**“Capacity” means one thousand (1,000) tons per day of Waste and Recyclables combined, on an annual daily average basis.**

**“City” means the City of Batavia, an Illinois Municipal Corporation.**

**“City Location” means the property commonly known as 1780 Hubbard Avenue, Batavia, Illinois, legally described in Exhibit B, attached hereto and made a part hereof.**

**“City Siting Ordinance” means the Site Location Ordinance (Ordinance #02-10) which was subsequently amended on the 5th day of August, 2002 by Ordinance No. 02-51.**

**“City Residential Waste” means residential waste generated within the City.**

**“City Waste” means Waste generated by the City as part of conducting the City’s normal government operations and services, including, but not limited to, Leaf Waste, street sweepings, and ditch maintenance and flood debris; provided, however, that City Waste shall not include sewage treatment sludge.**

**“City Waste Allowance” means the amount of City Waste, excluding Unauthorized Waste, which the City shall be permitted to deliver free of charge to the Waste Transfer Facility.**

**“Discount Rate” means the published Wall Street Journal Prime Rate less one half point.**

**“Escrow Agreement” means an escrow agreement established with a national title insurance company or with such other escrow agent that is acceptable to the Parties.**

**“Final Approval” means the final and nonappealable local siting approval for the Waste Transfer Facility from the City, and as further described in Section 29(b) herein.**

**“Host Benefit Fee” means the per ton fee payable to the City, commencing on the Anniversary Date and applied to each ton of Waste received at the Waste Transfer Facility during the previous quarter of each Operating Year, as more fully set forth in Section 6 herein.**

**“Index”, or collectively “Indices”, means the Revised Consumer Price Index for All Urban Consumers for Chicago, Illinois or the Revised Consumer Price Index for the United States, such Indices being published from time to time by the United States Department of Labor Statistics.**

**“IEPA” means the Illinois Environmental Protection Agency.**

**“Increased Capacity” means an increase in the allowable amount of Waste and Recyclables that may be received at the Waste Transfer Facility during the Operating Year and which may be approved by the City pursuant to the provisions of Section 5(b) herein.**

**“Investigation Costs”** means the direct and indirect costs incurred by the City in investigating the suitability of the City Location for a waste transfer station and obtaining control over such location.

**“Landfill”** means the Orchard Hills Landfill, located in Davis Junction, Illinois.

**“Leaf Waste”** means leaves collected by the City from residential buildings.

**“Liability”** means any and all costs, expenses, attorneys’ fees, fees, damages and judgments.

**“Local Siting Application”** means an application requesting local siting approval for the Waste Transfer Facility which satisfies the completeness and submittal requirements of the City Siting Ordinance and Section 39.2 of the Act.

**“Local Unit of Government”** means any of the Illinois Counties of Cook, DuPage, Kane, Will, Lake, McHenry, DeKalb, Grundy or Kendall or any township or municipality therein.

**“Municipal Waste”** means municipal waste, as such term is defined in the Ordinance on the date hereof.

**“New Total Capacity”** means, if the City approves a request by Onyx for Increased Capacity, the Capacity plus the increase in capacity in excess of the Capacity granted from time to time.

**“Notification Period”** means the period at least 300 days prior to initiating closure of the Waste Transfer Facility.

**“Onyx”** means Onyx Waste Services Midwest, Inc., a Wisconsin corporation.

**“Onyx Property”** means the property located at 766 Hunter Drive, in the City of Batavia, Illinois, and legally described on Exhibit A attached hereto.

**“Operating Year”** means the year commencing on the Anniversary Date.

**“Ordinance”** means the Site Location Ordinance (Ordinance #02-10) which was subsequently amended on the 5th day of August, 2002 by Ordinance No. 02-51.

**“Parties”** means Onyx, and its parent corporation, Onyx Waste Services, Inc., a Wisconsin corporation, and the City of Batavia.

**“Pre-Payment Amount”** means the requested accelerated payment of the Host Benefit Fee (as adjusted pursuant to Section 6(d) herein) payable on such minimum tonnages requested by the City.

**“Recyclables” means curbside recyclable materials.**

**“Recyclables Allowance” means twenty percent (20%) of the total tonnage of Waste and Recyclables received during that Operating Year.**

**“Sludge” means non-hazardous wastewater treatment sludge from the City’s sewage treatment plant.**

**“Sludge Allowance” means the amount of Sludge which the City shall be permitted to deliver free of charge to the Landfill.**

**“Ten Cent Increase” means the additional ten cents (\$0.10) for each ton received at the Waste Transfer Facility that is in excess of 400 tons per day, on an annual average basis.**

**“Tipping Fee” means the fee for acceptance of the City Residential Waste.**

**“Unauthorized Waste” means the following, as well as such other waste which is not defined as Waste or City Waste herein: (i) Regulated Hazardous Wastes, (ii) Regulated PCB Material, (iii) Potentially Infectious Medical Wastes, (iv) Liquid Wastes, (v) Sewage Treatment Sludge, (vi) Regulated Asbestos Containing Material, (vii) Radioactive Wastes, (viii) Lead-Acid (automotive) Batteries, (ix) White Goods (such as stoves and washing machines) and (x) Tires.**

**“Waste” means garbage, general household and commercial waste, landscape waste, industrial lunchroom and office waste, and construction and demolition debris.**

**“Waste Transfer Facility” means a municipal solid waste transfer station on the Onyx Property.**

**“Yearly Waste-In Cap” means two hundred eighty six thousand (286,000) tons of Waste and Recyclables combined in any Operating Year, excluding City Waste.]**

### **3. Property Covered.**

This Agreement shall encompass all or a portion of the Onyx Property ~~to which is legally described on Exhibit A, attached hereto~~. The actual portion of the Onyx Property that is subject to this Agreement shall be that which is included by Onyx in the Local Siting Application.

~~{3}~~

### **4. Authorized Waste.**

a. The Waste Transfer Facility shall receive only ~~{municipal waste (as such term is defined in the Ordinance on the date hereof), which includes garbage, general household and commercial waste, landscape waste, industrial lunchroom and office waste, and construction and demolition debris ("Waste")}~~ **[Municipal Waste, which includes Waste]**. The Waste Transfer Facility shall also be permitted to receive and transfer ~~{curbside recyclable materials ("Recyclables")}~~ **[Recyclables]**, which shall not include construction and demolition debris. The Waste Transfer Facility shall also be permitted to accept ~~{“City Waste”, which for the purposes of this Agreement shall mean Waste generated by the}~~ City ~~{as part of conducting the City’s normal government operations and services, including, but not limited to, leaves collected by the City from residential buildings (“Leaf Waste”), street sweepings, and ditch maintenance and flood debris; provided, however, that City}~~ Waste ~~{shall not include sewage treatment sludge}~~.

b. Onyx shall not accept Unauthorized Waste ~~{(as defined herein)}~~ at the Waste Transfer Facility. If any Unauthorized Waste is received at the Waste Transfer Facility, such Unauthorized Waste shall be removed from the wastestream and transferred to an appropriate facility for proper recycling or disposal within the designated timeframes contained within or conditioned in the Local Siting Application ~~{(as defined herein)}~~ or the City’s Final Approval~~{(as defined herein)}~~.**[.]**

~~{Unauthorized Waste shall include the following (as well as such other waste which is not defined as Waste or City Waste herein):~~

~~Regulated Hazardous Wastes~~

~~Regulated PCB Material~~

~~Potentially Infectious Medical Wastes~~

~~Liquid Wastes~~

~~Sewage Treatment Sludge~~

~~Regulated Asbestos-Containing Material~~

~~Radioactive Wastes~~

~~Lead Acid (automotive) Batteries~~

~~White Goods (such as stoves and washing machines)~~

~~Tires~~

~~4}~~

**[5]. Transfer Capacity.**

a. Capacity. Onyx shall restrict the amount of Waste received at the Waste Transfer Facility to ~~{one thousand (1,000) tons per day of Waste and Recyclables combined, on an annual daily average basis ("Capacity")}~~ **[the Capacity]**, except with the prior written consent of the City Council or such other agent designated by the City to act in emergency situations; provided, however, that the City recognizes that there will be daily, seasonal and, at times, annual fluctuations in waste disposal volume, given weather conditions and seasonal variations affecting Onyx. The annual daily average shall be calculated by dividing the total number of tons of Waste and Recyclables received at the Waste Transfer Facility during the Operating Year ~~{as hereinafter defined,}~~ divided by the number of days the facility was operational during that Operating Year. For purposes of this calculation, each operating weekday (Monday through Friday) shall count as a one (1) operating day, and each operating Saturday shall count as one-half (1/2) operating day. In no event shall the number of operating days in the Operating Year exceed 286 for purposes of this calculation. In addition, in no event shall Onyx accept more than

~~{two hundred eighty six thousand (286,000) tons of Waste and Recyclables combined in any Operating Year (the “Yearly Waste In Cap”)}~~ **[the Yearly Waste-In Cap]**. City Waste shall be excepted from the definition of Waste and Recyclables for purposes of, and shall not be included within, this calculation. In the event that the cumulative amount of Waste and Recyclables received in any given Operating Year under this Agreement is less than the Capacity, Onyx shall not be entitled to carry such shortfall amount forward as a credit against the Yearly Waste-In Cap in any subsequent year(s). Unless Increased Capacity is approved as provided in Section ~~{4(b)}~~ **[5(b)]** hereof, in the event that the cumulative amount of Waste and Recyclables received in any given Operating Year under this Agreement is greater than the ~~{Capacity of 286,000 tons}~~ **[Yearly Waste-In Cap]**, Onyx shall pay a penalty to the City of Ten Dollars (\$10.00) for each ton of Waste and Recyclables in excess of 286,000 tons that is received during such Operating Year, said penalty to be paid within thirty (30) days after the end of such Operating Year.

b. Increased Capacity. The City agrees to consider the future requests of Onyx ~~{to increase the allowable amount of Waste and Recyclables that may be received at the Waste Transfer Facility during the Operating Year (“Increased Capacity”)}~~ **[for an Increased Capacity]**. The City shall have the sole discretion to approve or deny such requests but agrees that the approval of such a request shall not require Onyx to obtain further approval from the City pursuant to Section 39.2(a) of the Act unless otherwise required by State law. Onyx also agrees not to make a request to the City ~~{to}~~ for Increased Capacity until after the Settlers Hill Landfill notifies the ~~{Illinois Environmental Protection Agency (“IEPA”)}~~ **[IEPA]** of its intent of closure, or June 30, 2006, whichever is sooner. Thereafter, Onyx agrees that it shall make further requests for Increased Capacity no more frequently than every three (3) years. ~~{If the City approves a request by Onyx for Increased Capacity, the Capacity plus the increase in~~

capacity in excess of the Capacity granted from time to time shall hereinafter be referred to as the “New Total Capacity.”} Onyx agrees that each request for Increased Capacity shall be for no more than five-hundred (500) additional tons of Waste and Recyclables per day on an annual average daily basis. **[No amendment to this Agreement allowing Increased Capacity shall be approved sooner than ninety (90) days after the first public meeting at which the request is considered. No Increased Capacity shall be approved until the City Council has reviewed the request and made a specific determination at a public meeting that the Increased Capacity is needed and appropriate, that the impacts of any operational changes due to the increase from factors such as traffic, noise and litter will not adversely affect the health, safety and welfare of the citizens, and that the operation, with increased tonnage, will be in the best interest of the City. The City may take revenues and any other amendments to this Agreement into account in making such a determination. The City Council may require that a traffic impact study be performed prior to the granting of any Increased Capacity and may require other studies deemed necessary at the time of a request for Increased Capacity. Onyx acknowledges that, regardless of any determination made by the City in reviewing such a request, the City shall have total discretion to grant or deny the same.**

**6] {5}. Host Benefits.**

a. Initial Payment. In addition to the amount set forth in Section {7(a)} **[8(a)]** hereof, Onyx agrees to pay the City an initial amount of fifty thousand dollars (\$50,000.00) within 30 days after the Anniversary Date {(as hereinafter defined)}.

b. Host Benefit Fee. In addition, Onyx shall pay to the City a Host Benefit Fee (“Host Benefit Fee”)[,] commencing on the Anniversary Date {(as such term is hereinafter defined)} and continuing thereafter for the term of this Agreement. The Host Benefit Fee, including the

Additional Fee~~{(as such term is hereinafter defined)}~~, if applicable, shall be calculated in accordance with ~~{Section 5(c)}~~ **[Sections 6(c)]** and ~~{5(d)}~~ **[6(d)]** hereof ~~{("Annual)}~~ **[("Annual Host Benefit Fee")]**. In exchange for ~~{said}~~ **[an]** Annual Host Benefit Fee, the City agrees not to levy any additional fees or taxes against Onyx, the Onyx Property, the Waste Transfer Facility, or on Onyx's transfer of Waste or Recyclables or its operation of the Waste Transfer Facility; provided, however, the foregoing shall not apply to real estate taxes, to any other fee or tax validly and uniformly made against all members of a class of taxpayers other than as owner or operator of a waste transfer station or solid waste management facility, to any fees or taxes for which Onyx is obligated pursuant to State law or to any solid waste management fee that may be authorized by State law.

c. Calculation. Onyx shall pay the City an Annual Host Benefit Fee in accordance with the following provisions:

(i) The Host Benefit Fee shall be calculated on a quarterly basis, applied to each ton of Waste received at the Waste Transfer Facility during the previous quarter of each ~~{“Operating Year”, which for purposes of this Agreement shall be the year commencing on the Anniversary Date}~~ **[Operating Year]**; a new Operating Year shall commence on each anniversary of the Anniversary Date thereafter. The initial Host Benefit Fee shall be one dollar ninety cents (\$1.90) per ton on the first four hundred (400) tons of Waste received per day at the Waste Transfer Facility as calculated on an annual average basis in accordance with Section ~~{4}~~ **[5]** of this Agreement, and two dollars (\$2.00) per ton on each ton received that is in excess of 400 tons per day, as calculated on an annual average basis in accordance with Section ~~{4}~~ **[5]** of this Agreement; provided, however, that ~~{such additional ten cents (\$0.10) for each ton received that is in excess of~~

~~400 tons per day, on an annual average basis, ("Ten Cent Increase")~~ **[any Ten Cent Increase]** shall be paid within thirty (30) days after the end of the Operating Year. In addition, if the tonnage of Recyclables received at the Waste Transfer Facility in any Operating Year exceeds ~~{twenty percent (20%) of the total tonnage of Waste and Recyclables received during that Operating Year ("Recyclables Allowance")}~~ **[the Recyclables Allowance]**, then Onyx shall pay a Host Benefit Fee on each ton of Recyclables received in excess of the Recyclables Allowance. Onyx agrees to submit to the City, for the City's review and approval, a procedure for ensuring that each combined load of Waste and Recyclables is weighed in such a manner as to provide separate weights for Waste and Recyclables received in each such load.

(ii) During the first Operating Year, Onyx shall pay a Host Benefit Fee on the actual number of tons of Waste and Recyclables, which are subject to the Host Benefit Fee, that are accepted at the Waste Transfer Facility during the first Operating Year.

(iii) If during the second Operating Year the Waste Transfer Facility does not receive at least 78,650 tons of Waste and Recyclables, which tons are subject to the Host Benefit Fee then in effect, then Onyx shall pay an additional per ton fee ~~{("Additional Fee")}~~ **[("Additional Fee")]** on the difference between 78,650 tons and the actual number of tons of Waste and Recyclables, which tons are subject to the Host Benefit Fee, that are accepted at the Waste Transfer Facility during the second Operating Year. For purposes of this ~~{Section 5, the}~~ **[Agreement,]** Additional Fee shall be equal to the Host Benefit Fee in effect during the Operating Year for which the Additional Fee is payable, and such Additional Fee shall be paid within thirty (30) days after the end of the Operating Year.

(iv) If during the third Operating Year the Waste Transfer Facility does not receive at least 92,950 tons of Waste and Recyclables, which tons are subject to the Host Benefit Fee then in effect, then Onyx shall pay the Additional Fee on the difference between 92,950 tons and the actual number of tons of Waste and Recyclables, which tons are subject to the Host Benefit Fee, that are accepted at the Waste Transfer Facility during the third Operating Year.

(v) If during the fourth Operating Year the Waste Transfer Facility does not receive at least 101,100 tons of Waste and Recyclables, which tons are subject to the Host Benefit Fee then in effect, then Onyx shall pay the Additional Fee on the difference between 101,100 tons and the actual number of tons of Waste and Recyclables, which tons are subject to the Host Benefit Fee, that are accepted at the Waste Transfer Facility during the fourth Operating Year.

(vi) If during the fifth Operating Year or any Operating Year thereafter, the Waste Transfer Facility does not receive at least 114,400 tons of Waste and Recyclables, which tons are subject to the Host Benefit Fee then in effect, then Onyx shall pay the Additional Fee on the difference between 114,400 tons and the actual number of tons of Waste and Recyclables, which tons are subject to the Host Benefit Fee, that are accepted at the Waste Transfer Facility during the fifth Operating Year and each subsequent Operating Year thereafter, unless the Yearly Waste-In Cap is subsequently increased, resulting in a New Total Capacity, in which case Section 5(c)(vii) shall apply.

(vii) If at anytime after the execution of this Agreement, Onyx receives from the City approval for ~~{increased capacity}~~ **[Increased Capacity]**, resulting in a New Total Capacity, the Additional Fee shall be paid on the difference between the number of

tons that is equal to the New Total Capacity approved multiplied by forty percent (40%) and the actual number of tons of Waste and Recyclables, which tons are subject to the Host Benefit Fee, that are accepted at the Waste Transfer Facility during the applicable Operating Year. By way of example but not limitation, if the New Total Capacity is 1,500 tons per day of Waste and Recyclables and the actual number of tons of Waste and Recyclables, which tons are subject to the Host Benefit Fee, that are received during the Operating Year is 500, then Onyx would pay an Additional Fee on 100 tons, calculated as follows:

1500 (New Total Capacity) x 40%	= 600 tons
Actual tons received	= <u>500</u> tons
Tons for which Additional Fee is Paid	= 100

(viii) If the City notifies Onyx in writing within two (2) years after the Anniversary Date that it wishes to accelerate payment of all or any portion of the Host Benefit Fee payment due from Onyx to the City for the minimum tonnages stated in Sections ~~{5(c)(iii)}~~ **[6(c)(iii)]**, (iv) (v) and (vi) during the second, third, fourth and fifth Operating Years under this Agreement, Onyx shall pay to the City within ninety (90) days after the date of such notice the ~~{requested accelerated payment of such Host Benefit Fee (as adjusted pursuant to Section 5(d) herein) payable on such minimum tonnages requested by the City ("Pre-Payment Amount")}~~ **[Pre-Payment Amount]**. Such Pre-Payment Amount shall be discounted at the ~~{published Wall Street Journal Prime}~~ **[Discount]** Rate ~~{less one half point ("Discount Rate")}~~ that is in effect at the time such request for the Pre-Payment Amount is made. If a Pre-Payment is made to the City, the provisions of Section ~~{5}~~ **[6]** (c)(iii), (iv), (v) and (vi) hereof shall no longer be applicable to the extent of such Pre-Payment Amount; provided, however, Onyx shall be

required to pay a Host Benefit Fee for the applicable Operating Years for each ton of Waste or Recyclables, which are subject to the Host Benefit Fee, in excess of the specific amount of tons stated in Section ~~{5(e)(iii)}~~ **[6(c)(iii)]**, (iv), (v) and (vi) hereof.

(ix) Onyx shall not be required to pay any Host Benefit Fee, Additional Fee, Ten Cent Increase or any other fee for City Waste received at the Waste Transfer Facility or otherwise handled by Onyx for the City.

d. Annual Adjustment. The Host Benefit Fee shall be adjusted upward annually on the anniversary of the date of this Agreement, beginning on the date that is the first anniversary of the date of this Agreement, by the percentage of increase during the previous year in the Revised Consumer Price Index for All Urban Consumers for Chicago, Illinois, the Revised Consumer Price Index for the United States, [such Indices being published from time to time by the United States Department of Labor Statistics (individually “Index;” collectively “Indices”)] or 1.5%, whichever of the three is greater (“Annual Adjustment”). Each Annual Adjustment for years after the first Annual Adjustment shall be based on the amount of the adjusted Host Benefit Fee from the previous year. If the Index shall cease to be published, the parties shall designate a comparable index, which shall then be used for determining the annual rate of adjustment. The Ten Cent Increase, described in Section 5(c)(i) hereof, shall not be subject to the Annual Adjustment.

e. Payment. Except for the Host Benefit Fee on those Recyclables that are subject to such fee, the Ten Cent Increase and the Additional Fee, all of which shall be paid within thirty (30) days after the end of the Operating Year, the Host Benefit Fee payable under Sections ~~{5(e)}~~ **[6(c)]** and ~~{5(d)}~~ **[6(d)]** above shall be payable to the City on a quarterly basis. Onyx shall pay the City the Host Benefit Fee by the 30th day of the month following the end of each

quarter of each Operating Year. Each payment shall be accompanied by a report documenting the data used in determining the payment amount.

f. City Waste Disposal. In the first Operating Year, the City shall be permitted to deliver **[a City Waste Allowance of]** up to five thousand (5,000) tons ~~{of City Waste, excluding Unauthorized Waste, free of charge to the Waste Transfer Facility (“City Waste Allowance”)}~~, and Onyx shall manage said waste in accordance with all applicable laws and regulations. The City Waste Allowance shall be ~~{escalated}~~ **[increased]** at the rate of three percent (3%) per year for each of the five Operating Years after the first Operating Year, provided, however, that the City Waste Allowance shall not exceed five thousand six hundred twenty seven (5,627) tons per year. No more than forty percent (40%) of the City Waste Allowance for any Operating Year shall be City Waste that is not Leaf Waste. If the City delivers more Waste than the applicable City Waste Allowance during an Operating Year, the City shall pay a fee to Onyx that is equal to ninety percent (90%) of the Tipping Fee (described in Section ~~{31(b)}~~ **[32(b)]** hereof) for each ton of City Waste ~~{(defined in Section 3(a) hereof)}~~ in excess of the City Waste Allowance. If the amount of City Waste that is not Leaf Waste exceeds forty percent (40%) of the City Waste Allowance in any Operating Year, then the City shall pay a fee to Onyx that is equal to ninety percent (90%) of the Tipping Fee for each ton of City Waste, which is not Leaf Waste, that is excess of forty percent (40%) of the City Waste Allowance in the applicable Operating Year. Such payments shall be made within thirty (30) days after the end of the applicable Operating Year. Notwithstanding the foregoing, if Onyx identifies a disposal location for the City’s Leaf Waste that, in the City’s opinion, is reasonably accessible to the City, then the City shall deliver its Leaf Waste to such location, free of charge, and the City Waste Allowance for the applicable Operating Year shall be reduced by the tonnage of such Leaf Waste, based on a conversion

factor of 500 pounds for each cubic yard, provided that such reduction shall not exceed sixty percent (60%) of the City Waste Allowance for that Operating Year.

g. City Sludge Disposal. Onyx shall accept **[Sludge]** for disposal ~~{, free of charge, at its Orchard Hills}~~ **[at the]** Landfill ~~{, located in Davis Junction, Illinois, ("Landfill") non-hazardous wastewater treatment sludge from the City's sewage treatment plant ("Sludge")}~~. Onyx warrants that the Landfill has, or is able to obtain and maintain, all necessary permits to accept the Sludge. The Sludge shall meet all applicable requirements as amended from time to time for disposal in the Landfill. In the first Operating Year, the City shall be permitted to deliver **[a Sludge Allowance of]** up to three thousand (3,000) tons ~~{of Sludge free of charge to the Landfill ("Sludge Allowance")}~~, and Onyx shall manage said Sludge in accordance with all applicable laws and regulations. The Sludge Allowance shall be ~~{escalated}~~ **[increased]** at the rate of three percent (3%) per year for each of the five Operating Years after the first Operating Year, provided, however, that the Sludge Allowance shall not exceed three thousand three hundred seventy seven (3,377) tons per year. If the City delivers more Sludge than the applicable Sludge Allowance during an Operating Year, the City shall pay a fee to Onyx that is equal to ninety percent (90%) of the posted Gate Rate at the Landfill for each ton of Sludge in excess of the Sludge Allowance. Such payment shall be made within thirty (30) days after the end of the applicable Operating Year. The City shall be responsible for transporting, and the cost of transporting, Sludge to the Landfill.

h. No Fees on City Waste. The City agrees that Onyx shall not be required to pay any fee, including but not limited to the Host Benefit Fee and the Ten Cent Increase, for any City Waste that is received at the Waste Transfer Facility.

~~{6.}~~

**7. Other Fee Increases.**

In the event that Onyx hereafter enters into any agreement to pay money or fees (described as "Host Benefit Fee" in Sections ~~{5(b)}~~ **[6(b)]**, (c) (d) and (e) herein) to another ~~{county, township, or municipality in the Illinois Counties of Cook, DuPage, Kane, Will, Lake, McHenry, DeKalb, Grundy or Kendall ("Local Unit of Government")}~~ **[Local Unit of Government]** for a solid waste transfer facility that has as its allowable permitted daily capacity no greater than fifty percent (50%) more than the allowable permitted daily capacity of the Waste Transfer Facility, and if the host benefit fee provided for in said agreement is greater than the total Per Ton Fees (including the basic Host Benefit Fee, the Ten Cent Increase and the Additional Fee, but not including the Initial Fee) that Onyx would pay in the then current Operating Year under this Agreement, assuming Onyx fully utilized all of the then permitted annual Capacity, the Host Benefit Fee herein shall be automatically changed and adjusted upward to effectuate in this Agreement the same more favorable host benefit fee terms contained under such other agreement. It shall be the explicit and affirmative duty of Onyx to inform the City if and when Onyx enters into such an agreement with any of the Local Units of Government set forth above, and to immediately provide a copy of same to the City.

~~{7.}~~

**8. Reimbursement of City's Costs for City Location.**

Onyx agrees to reimburse the City the amount of one hundred fifty thousand dollars (\$150,000.00) ~~{of the direct and indirect costs incurred by the City in investigating the suitability of the City Location for a waste transfer station and obtaining control over such location ("Investigation Costs")}~~ **[for the Investigation Costs]**, subject to the following terms and conditions:

a. Onyx shall pay to the City the sum of fifty thousand dollars (\$50,000.00) within fifteen (15) days after the execution of this Agreement by the parties; and

b. Onyx shall pay to the City the sum of one hundred thousand dollars (\$100,000.00) within fifteen (15) days after ~~{“Final Approval” (as defined in Section 28(b) herein)}~~ **[Final Approval]**. If such approval is not obtained, Onyx shall not be obligated to make this payment.

~~8.}~~

**9. Hours of Operation.**

Onyx may accept Waste and Recyclables at the Waste Transfer Facility Monday through Friday from 6:00 a.m. until 6:00 p.m., and shall clean the Waste Transfer Facility floor by 9:00 p.m. Onyx may accept Waste and Recyclables at the Waste Transfer Facility on Saturday from 6 a.m. to 2 p.m., and shall clean the Waste Transfer Facility floor by 4:00 p.m. Onyx shall not accept Waste or Recyclables at the Waste Transfer Facility on Sunday. Notwithstanding the foregoing, Onyx may accept Waste and Recyclables at the Waste Transfer Facility through 6:00 p.m. on Saturday when road traffic has been substantially delayed due to bad weather, when the Waste Transfer Facility has been closed for a holiday during the previous week, or in the event of an emergency when the Waste Transfer Facility is extending service to the emergency when such extension of service has been approved, either orally or in writing, by the City’s Director of Public Works or such other designated agent.

~~9.}~~

**10. Parking Facilities.**

Sufficient parking shall be provided on the site of the Waste Transfer Facility for all employees and all vehicles necessary for the safe and efficient operation of the Waste Transfer Facility, including all vehicles waiting to be weighed, loaded or covered.

~~{10.}~~

**11. Transfer Station Operations.**

a. The method of transfer of the Waste and Recyclables accepted at the Waste Transfer Facility shall not incorporate baling or mechanical means of consolidation prior to transfer from the facility. Moreover, there shall be no attempt to manually or mechanically separate, segregate, sort, or speculatively stockpile any Recyclables for a period longer than that which would violate any other provisions set forth within other sections of this Agreement.

b. Onyx agrees to store no more than two (2) fully or partially loaded transfer trailers, which are enclosed or suitably covered so as to prevent waste from leaving the vehicle, inside the Waste Transfer Building overnight, and such trailers shall be the first trailers removed from the facility the following day.

c. Onyx agrees to store no more than two (2) fully or partially loaded transfer trailers, which are enclosed or suitably covered so as to prevent waste from leaving the vehicle, inside the Waste Transfer Building for more than 24 hours if such 24-hour period occurs over a Saturday, Sunday or holiday. Under no circumstance shall Waste be allowed to be stored under the terms of this paragraph for longer than 48 hours.

d. Transfer trailers utilizing the Waste Transfer Facility shall be suitably covered so as to prevent waste from leaving the vehicle after being loaded and prior to exiting the Transfer Station Building.

e. Onyx agrees that all loaded transfer trailers utilizing the Waste Transfer Facility shall exit the facility southbound on Kirk Road to Interstate 88 and shall access Interstate 88 at the Kirk Road/Farnsworth Road interchange.

f. Onyx agrees to require any of its own (or any other companies') packer trucks servicing other municipalities and utilizing the Waste Transfer Facility to access the facility only from those thoroughfares which are more specifically designated, delineated, and identified in Exhibit C, which is attached hereto and incorporated herein by this reference.

g. Onyx shall not park empty waste collection or transfer trailers overnight on the Onyx Property, unless such parking is approved by the City's Final Approval~~{, as hereinafter defined in Section 28(b)}.~~

h. Onyx shall not store roll off boxes and other collection containers on the Onyx Property, unless such storage is approved by the City's Final Approval~~{, as hereinafter defined in Section 28(b)}.~~

i. The Waste Transfer Facility shall be designed in a manner as to provide adequate vehicle queuing areas to effectuate safe and efficient vehicle movements and assure that waste collection or waste transfer vehicles will not queue on City rights-of-way under routine operating conditions, and shall cooperate with the City in working out a queuing plan for non-routine conditions.

~~{11.}~~

## **12. Landscaping.**

Onyx agrees that it shall install and maintain appropriate landscaping on the Onyx Property which is compatible with and complements the surrounding area pursuant to a plan approved by the City. This plan shall include a scheme of shrubbery placement which provides continual screening around the perimeter of the Facility in a manner and form acceptable to the City.

~~{12.}~~

**13. Adequate Number of Employees.**

Onyx agrees that it shall provide an adequate number of employees to effectively and safely operate the Waste Transfer Facility.

~~{13.}~~

**14. Stormwater Management.**

Onyx agrees that it shall manage site stormwater in conformance with all applicable State and local rules and regulations in conformance with plans approved by the City.

~~{14.}~~

**15. Litter Control and Management.**

a. Onyx shall control litter by discharging and loading all Waste within an enclosed portion of the Waste Transfer Facility. Vehicles hauling Waste to, or removing Waste from, the Waste Transfer Facility, shall be suitably covered so as to prevent waste from leaving the vehicles. The Waste Transfer Facility shall be surrounded by a solid fence, no less than eight (8) feet high, to aid the interception of blowing litter. At a minimum, one (1) employee shall be assigned to patrol the site during hours of operation, to collect any blowing litter.

b. Onyx shall agree to conduct litter patrol for the entirety of Paramount Parkway, Louis Bork Drive, Suncast Lane, Pierson Drive and Hunter Drive rights-of-way and the Hubbard Avenue right-of-way from Kirk Road on the west to 1,000 feet east of Hunter Drive on the east on an as needed, but not less than weekly, basis. Onyx also agrees to provide litter patrol for the Kirk Road right-of-way between Hubbard Street on the north and the Illinois Prairie Batavia Path on the south on an as needed, but not less than weekly, basis, after the Settlers Hill Landfill permanently ceases accepting waste, or December 31, 2006, whichever is sooner. As necessary or upon the request of the City, but at least quarterly, Onyx shall conduct a litter clean up effort

along Kirk Road between Fabyan Parkway on the north and Illinois Route 56 on the south. With the consent of the landowners, the clean up effort shall include up to 100 feet of property adjacent to the east side of the Kirk Road right of way.

~~{15.}~~

**16. Inspections By City Officials.**

The City shall have the right to inspect the Waste Transfer Facility anytime during the Facility's permitted operating hours. Upon arrival at the Facility, the City official making the inspection shall announce his or her presence to the on-site Onyx representative in responsible charge or then in charge, and the City agrees that such official shall be accompanied by at least one (1) Onyx representative during the site inspection.

~~{16.}~~

**17. Courtesy Facilities.**

Onyx agrees, to the degree possible, to incorporate a courtesy drop-off area into the facility design, for the convenient use and benefit of the citizens of the City.

~~{17.}~~

**18. Public Relations.**

Onyx shall cooperate with the City to conduct public tours of the Waste Transfer Facility. These tours shall be conducted in a frequency and manner that is acceptable to Onyx, but no less than two times per month. Onyx shall also cooperate by allowing access to the Waste Transfer Facility[, **during both construction and normal operating hours (in the company of an Onyx representative and following such safety precautions as are deemed necessary)**] for the production of a Batavia Access Television film for education of the public, provided, however,

such film shall be mutually approved by the City and Onyx prior to its broadcast or other publication.

~~{18.}~~

**19. Dust Control.**

Onyx agrees that all interior access drives, parking areas, and vehicle maneuvering areas on the Onyx Property shall be paved. Furthermore, at least one (1) street sweeper shall be employed at the Waste Transfer Facility on a daily basis to clean: the Waste Transfer Facility tipping floor; site access drives; paved vehicle maneuvering areas; and 500 feet of the paved public right of way in each direction from the Waste Transfer Facility's exit drive. Onyx shall install a misting system within the Waste Transfer Building to mitigate the generation of dust.

~~{19.}~~

**20. Odor Control.**

Onyx agrees to conduct all waste transfer operations completely indoors. Moreover, Onyx agrees to have the tipping floor free of waste and cleaned with a mechanical street sweeper by the end of each operating day. Onyx also agrees to incorporate an odor neutralization system within the misting system proposed within the Waste Transfer Building.

~~{20.}~~

**21. Noise Control.**

All equipment utilized for operations shall be equipped with mufflers or other sound suppressing devices required for compliance with 35 Ill. Admin. Code 901.101 through 901.103 and 901.121.

~~{21.}~~

**22. Rodent Control.**

Onyx shall retain a pest control service on an on-going basis to address the potential for rodent infestation, whereby such service shall inspect the Waste Transfer Facility on an as needed, but no less than monthly, basis. **[Onyx will have any reports issued by the pest control service copied to the City as issued]** ~~{22}~~.

**23. Facility Hotline.**

Onyx agrees, upon first receipt of Waste or Recyclables at the Waste Transfer Facility, to establish a facility hotline, with a local or tollfree number, whereby complaints by area citizens will be formally cataloged. Said catalogue will be furnished to the City on a quarterly basis along with Host Benefit Fee payments. Onyx and the City shall periodically review the nature of complaints received and agree to work cooperatively to address such citizens' concerns to the degree possible. Onyx shall provide a 24-hour number for City staff, Police or Fire contact purposes.

~~{23}~~

**24. Sanitary Sewer and Water.**

Onyx shall have the right to connect the Waste Transfer Facility to the City's sanitary sewer and potable water systems and receive sanitary sewer and water services, in accordance with applicable local rules and regulations. Onyx shall be responsible for all costs and expenses associated with the installation and maintenance of the service lines associated with such connections within the property line of the Onyx Property. Onyx shall pay for the foregoing sanitary sewer and water services in accordance with generally applicable sanitary sewer and water rates established from time to time by the City. Notwithstanding anything to the contrary contained herein, the provisions of this Section ~~{23}~~ **[24]** shall become effective upon the date of execution of this Agreement.

~~{24.}~~

**25. Necessary Equipment for Operations.**

Onyx agrees that it shall provide sufficient equipment, in useable condition, to handle the Waste and to efficiently and safely operate the Waste Transfer Facility.

~~{25.}~~

**26. Fire, Spill, and Accident Prevention.**

a. Personnel Training. Prior to starting the first day of on-site employment, operating personnel shall be required to complete forty (40) hours of hazard communication training in accordance with OSHA Standard 1910.1200. Onyx shall also cooperate with the Batavia Fire Department so that said department is familiar with the operations at the facility.

b. Equipment Training. All operating personnel shall receive training to ensure that equipment is operated in accordance with local, state, and federal regulations.

c. Fire Control and Prevention. The Waste Transfer Facility shall be equipped with a sprinkler system that is designed in accordance with the requirements of the National Fire Protection Association and the Batavia Building Ordinance.

d. Materials Handling Procedures. Flammable or combustible liquids shall be stored in accordance with OSHA requirements and local regulations.

e. Spill Response Procedures.

(i) All operating personnel shall be trained in the procedures for isolating and cleaning up any spill. If the nature of the spill is hazardous and it is determined that on-site operating personnel cannot safely control and manage the spill, the appropriate outside emergency response agencies shall be immediately notified. Operating personnel

shall be instructed to first implement control measures to prevent the spill from spreading.

(ii) Spill control devices such as absorbent booms or oil-dry shall be kept on site. Surfaces that come in contact with spilled material shall be thoroughly cleaned and decontaminated.

(iii) Pursuant to federal regulations (40 CFR 302.6), in the event of a release of any hazardous substance to the environment in a reportable quantity, operating personnel shall immediately notify the National Response Center at (800) 424-8802. Pursuant to the Superfund and Reauthorization Act, 40 CFR 355.40 Title III, the community emergency coordinator of any adjacent areas potentially affected by the release shall be notified.

f. Load Checking Program.

(i) The scale house operator shall obtain the weight of the load, the name of the hauler, the time of arrival, the vehicle number, and the source and type of waste in the load. The scale house operator shall refuse facility access to unauthorized vehicles or to vehicles attempting to deliver Unauthorized Waste.

(ii) A spotter directing vehicle traffic at the Waste Transfer Facility shall observe the refuse hauling vehicles as they tip their loads. The spotter shall inspect the loads to verify that no Unauthorized Waste is present.

(iii) The loader operator shall inspect the waste on the tipping floor prior to consolidating and compacting it for loading onto the transfer trailers.

(iv) Once per week, a randomly-selected waste load shall be inspected for Unauthorized Waste.

(v) Unauthorized Waste that does not represent a health hazard shall be reloaded onto the collection vehicle that delivered it. If the Unauthorized Waste is suspected to be hazardous in nature, Onyx shall isolate the waste and contact a hazardous waste contractor to transport and dispose of the waste in a permitted facility. If lead acid batteries are recovered, they shall be collected and transported to a lead-acid battery dealer.

g. Site Security. The Onyx Property shall be surrounded by a fence with locking gates to control access to the Waste Transfer Facility. A sign shall be posted at the entrance to the Waste Transfer Facility to identify which types of waste are acceptable at the Waste Transfer Facility. The sign shall include the following information:

- Facility name, address, and phone number
- Site permit number
- Hours of operation
- Prohibition of Unauthorized Waste
- Penalties for trespassing or Unauthorized Waste dumping
- Name and telephone number of emergency response agencies
- Name, address, and telephone number of facility operator.

~~{26.}~~

**~~27.~~ Effective Date.**

This Agreement shall become effective upon execution of the Agreement by both parties.

~~{27.}~~

**28. Anniversary Date.**

For purposes of calculating the Host Benefit Fees, the Anniversary Date shall be the date when Waste or Recyclables are first received at the Waste Transfer Facility.

~~{28.}~~

**29. Schedule of Performance.**

a. Onyx agrees to submit ~~{an application requesting local siting approval for the Waste Transfer Facility which satisfies the completeness and submittal requirements of the City Siting Ordinance and Section 39.2 of the Act (“Local Siting Application”)}~~ **[a Local Siting Application]** within 180 days after execution of this Agreement. However, Onyx may request, at its sole discretion, up to one ninety (90) day extension and one subsequent sixty (60) day extension upon payment to the City of twenty five thousand dollars (\$25,000) per extension. Onyx agrees that no later than 330 days after the execution of this Agreement, Onyx will file a Local Siting Application such that the City Council is able to render a formal decision on the application in accordance with the ~~{Batavia}~~ **[City]** Siting Ordinance and Section 39.2 of the Act.

b. Within 90 days after receiving ~~{final and nonappealable local siting approval for the Waste Transfer Facility from the City (“Final Approval”)}~~ **[Final Approval]**, if such approval is granted by the City, Onyx agrees to submit to the ~~{Illinois Environmental Protection Agency (“IEPA”)}~~ **[IEPA]** a development permit application which comports with and satisfies all applicable statutory and regulatory requirements for such permit. For purposes of this Agreement, Final Approval shall occur when: the City has approved Onyx’s Local Siting Application on terms and conditions that are acceptable to Onyx; and either (1) such approval has not been appealed pursuant to Section 40.1 of the Act, or (2) if such an appeal has been filed, such approval has been upheld by the Pollution Control Board and, if such appeal is not solely on grounds that Onyx has not satisfied one or more of the nine criteria set forth in Section 39.2(a) of the Act, by the Illinois Appellate Court and, if applicable, the Illinois Supreme Court.

c. Within 30 days after receiving Final Approval, Onyx agrees to place seventy five thousand dollars (\$75,000) into an escrow account, pursuant to an ~~{escrow agreement}~~

~~established with a national title insurance company or with such other escrow agent that is acceptable to the Parties (“Escrow Agreement”)~~ **[Escrow Agreement]**. The Escrow Agreement shall provide that Onyx shall be authorized to withdraw twenty five thousand dollars (\$25,000) from the escrow account within 15 days after the occurrence of each of the following events:

- (i) Receipt of a valid development permit from the IEPA for the Waste Transfer Facility.
- (ii) Receipt of a valid operating permit from the IEPA for the Waste Transfer Facility.
- (iii) The Waste Transfer Facility first receives Waste or Recyclables.

If the above events do not occur within two years after Final Approval, Onyx shall forfeit the then existing balance in the escrow account and any interest accrued thereon, and the City shall have the option to purchase the Onyx Property, and accompanying approvals, as outlined in Section ~~{33}~~ **[34]** of this Agreement. The City shall have sixty (60) days after said two-year period to exercise the option; closing of the purchase of the Onyx Property shall occur no later than sixty (60) days after the exercise of said option. Upon the occurrence of the above events set forth in subsections (i)-(iii) above, Onyx shall be entitled to any interest which has accrued on the escrow account.

~~{29.}~~

**30. Execution in Good Faith.**

Onyx agrees that all data, studies, and testimony rendered in connection with its Local Siting Application will be performed with such level of professional care and in such sufficient detail as provided for in Section 39.2(a) of the Act which would constitute the Applicant’s commercially reasonable best efforts to obtain such an approval.

~~{30.}~~

**31. Standdown Clause.**

During the period in which Onyx is preparing a Local Siting Application ~~{as defined within Section 28(a) of this Agreement,}~~ or during which such application is pending, the City agrees that it shall not file an application for local siting approval for a waste transfer station for the City Location or for any other location in the City. If, for whatever reason, Onyx fails to file the Local Siting Application, or withdraws such an application, within 330 days after the date of execution of this Agreement, Onyx agrees that it shall not file an application for local siting approval for 12 months for property within the City, unless granted written permission by the City to the contrary.

~~{31.}~~

**32. Hauling Agreement.**

a. At the time of the execution of this Agreement, the City and Onyx have entered into a mutually agreeable Hauling Contract which provides that Onyx shall be the City's residential waste hauling contractor; such hauling contract is attached hereto as Exhibit D.

b. The City agrees that if any time after the Anniversary Date of this Agreement Onyx is not the City's waste hauling contractor, the City shall require, through an appropriate contract, the company then hauling ~~{the residential waste generated within the}~~ City ~~{("City" Residential "Waste")}~~ **[Waste]** to transfer such waste through the Waste Transfer Facility. Onyx agrees to accept such City Residential Waste from the company then hauling such residential waste. Onyx agrees the ~~{fee for acceptance of such City Residential Waste ("Tipping Fee")}~~ **[Tipping Fee]** shall be

thirty-five dollars (\$35.00) per ton, commencing on the first anniversary of this Agreement, and said fee shall increase by the **[same]** percentage of increase during the previous year ~~{pursuant to}~~ **[as]** the Annual ~~{Increase}~~ **[Adjustment of the Host Fee]**, as described in Section ~~{5(d)}~~ **[6(d)]** of this Agreement.

~~{32.}~~

**33. Notice of Closure.**

Onyx agrees to notify the City in writing ~~{at least 300 days prior to initiating closure of the Waste Transfer Facility ("Notification Period")}~~ **[prior to the Notification Period]**. During such Notification Period, Onyx agrees to continue to operate the Waste Transfer Facility. The City may utilize such Notification Period to determine if it wishes to purchase the Onyx Property (and all accompanying approvals and permits), pursuant to the terms of Sections ~~{32}~~ **[33]** and ~~{33}~~ **[34]** of this Agreement, or entertain proposals from other contractors to purchase (on the terms set forth in Sections ~~{32}~~ **[33]** and ~~{33}~~ **[34]** of this Agreement) the Onyx Property and operate the Waste Transfer Facility. If the City, or its designated agents and assignees, do not exercise the right to purchase the Onyx Property, and all accompanying approvals and permits, by the end of the 300-day period, Onyx may at that time cease operations at the Waste Transfer Facility and shall retain ownership and control of the Onyx Property and all accompanying approvals and permits. In the event Onyx gives the City notice of its intent to close, the City, at its sole discretion, shall have the right to assign its rights under this Section ~~{32}~~ **[33]** to its designated agents or assignees.

~~{33.}~~

**34. Facility Purchase.**

If the City, or its designated agents and assignees pursuant to Section ~~{32}~~ **[33]** hereof, exercises the right to purchase the Onyx Property under the terms of Section ~~{32}~~ **[33]** or Section ~~{33}~~ **[34]** of this Agreement, both Parties agree that the purchase price that the City shall pay to Onyx shall not be more than the sum total of the following:

a. Onyx's actual costs of preparing and presenting the Local Siting Application, including the fees and costs of consultants, witnesses and attorneys and all hearing costs, provided that the City shall in no event be required to pay more than \$150,000 of such costs.

b. Onyx's actual costs of preparing applications for development and operating permits from the IEPA, including all consulting costs in connection therewith, provided that the City shall in no event be required to pay more than \$50,000 of such costs.

c. The actual purchase price paid by Onyx to acquire the Onyx Property, including the building and improvements thereon, increased by the **[same percentage annual increase as the Annual]** Adjustment from the date Onyx purchased the Onyx Property.

d. The documented contract costs of the improvements to the Onyx Property.

~~{34.}~~

**35. Records.**

Onyx shall maintain daily records of the amounts and types of Waste received at the Waste Transfer Facility in accordance with the City Siting Ordinance and shall provide monthly summaries of such records to the City upon request **[in Excel or Access format]**. In addition, upon reasonable advance notice, the City, its authorized agents and representatives shall be permitted to inspect such records maintained by Onyx. The City shall also be permitted to inspect any and all records maintained by Onyx concerning compliance with any and all applicable federal, state and local laws, statutes, regulations, rules and/or ordinances relating to the operation of the Waste Transfer Facility.

~~{35.}~~

**36. Weighing of Waste Materials.**

a. For the purposes of calculating applicable Host Benefit Fees and confirming compliance with Capacity or New Total Capacity limitations, as the case may be, Onyx shall operate and maintain weighing facilities which will record the weight, date, time, nature of payload, and vehicle identification of each Waste vehicle entering and exiting the Waste Transfer Facility. Material acceptance records shall be submitted to the City quarterly in conjunction with the payment of the applicable Host Benefit Fees.

b. Onyx shall test and recalibrate the weighing facilities as often as required by State law, but not less than once per calendar year of operation. A certificate of calibration shall be submitted to the City annually. If the weighing facilities are not functional, or are temporarily out of service for testing purposes, the weight of materials accepted at the Waste Transfer Facility, for the purposes of calculating applicable Host Benefit Fees, shall be based on a reasonable estimate, based on truck volumes and data obtained during the prior three (3) months, at the Waste Transfer Facility.

~~{36.}~~

**37. Compliance with Applicable Laws.**

Onyx shall operate the Waste Transfer Facility in accordance with all applicable and duly enacted federal laws, state and local rules, regulations and ordinances.

~~{37.}~~

**38. Default; Remedies.**

a. Defaults. The occurrence of any one or more of the following events shall constitute a material default and breach of this Agreement by Onyx[:]

(i) The failure of Onyx to make timely payment of any fee, charge or other payment of any type, kind or sort required to be made by Onyx under this Agreement after ten (10) days written notice of non-payment.

(ii) The failure of Onyx to properly maintain or renew any permit, license, authorization, bond, insurance and/or financial assurance mechanism or instrument required pursuant to the terms and conditions of this Agreement, or otherwise required by law, statute, regulation, or municipal code.

(iii) The failure of Onyx to correct or remedy promptly in the proper and required manner any actual violation by Onyx of any law, statute, rule, regulation, permit or ordinance relating to the development, operation, closure/post closure care of the Waste Transfer Facility or the Onyx Property or relating to any services to be rendered under this Agreement by Onyx. For purposes of this Agreement, Onyx shall be deemed to have acted promptly if it corrects or commences correction of the violation in question within the time allowed by law, or within the time otherwise allowed by a court, tribunal or a

governmental agency of competent jurisdiction. Notwithstanding the foregoing, Onyx shall take all reasonable steps necessary to correct any such violation upon the first to occur of: (1) Onyx's receipt of notice of any violation, or (2) Onyx's actual knowledge of any such violation.

(iv) Except for Sections 10, 14 and 18 hereof, the failure of Onyx to observe or perform any of the other covenants, terms, conditions or provisions of this Agreement to be observed or performed by Onyx, where such failure shall continue for a period of thirty (30) days after written notice thereof from the City to Onyx; provided, however, that if the nature of Onyx's default is such that more than thirty (30) days are reasonably required for its cure, and the City agrees in writing that this is the case, and such acknowledgment in writing shall not be unreasonably withheld, then Onyx shall not be deemed to be in default if Onyx commences such cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion.

(v) The failure of Onyx to observe or perform any of the covenants, terms, conditions or provisions of Sections 10, 14 and 18 of this Agreement to be observed or performed by Onyx, where such failure shall continue for a period of forty-eight (48) hours after written notice thereof from City to Onyx; provided, however, that if the nature of Onyx's default is such that more than forty-eight (48) hours are reasonably required for its cure, and the City agrees in writing that this is the case, and such acknowledgment in writing shall not be unreasonably withheld, then Onyx shall not be deemed to be in default if Onyx commences such cure within said forty-eight (48) hour period and thereafter diligently

prosecutes such cure to completion.

(vi) (1) The making by Onyx of any general assignment, or general arrangement for the benefit of creditors; (2) the filing by or against Onyx of a petition to have Onyx adjudged a bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against Onyx, the same is dismissed within sixty (60) days of filing; (3) the appointment of a trustee or receiver to take possession of substantially all of Onyx's assets located at, or serving, the Waste Transfer Facility or of Onyx's interest in this Agreement, (where possession is not restored to Onyx within thirty (30) days); or (4) the attachment, execution or other judicial seizure of substantially all of Onyx's assets located at the Waste Transfer Facility or of Onyx's interest in this Agreement, (where such seizure is not discharged within thirty (30) days).

b. Remedies. In the event of any default or breach by Onyx under Section 37(a) hereof, the City may in its sole discretion at any time thereafter, by written notice and without limiting the City in the exercise of any right or remedy which it may otherwise have by reason of such default or breach:

(i) Pursue, and make claim or suit to ensure the proper development and construction of the Waste Transfer Facility and the conducting of all other operations to be undertaken by Onyx under this Agreement.

(ii) Elect to terminate this Agreement; in which event City may recover from Onyx all damages, costs and expenses it may incur by reason and consequence of Onyx's default, including (but not limited to) reasonable attorney's

fees, court costs and litigation expenses, as well as the present value at the time of such termination of the balance of any anticipated payments and/or charges reserved in this Agreement for the remainder of the stated original term, as well as any and all other damages and losses incurred by City as a consequence of Onyx's default, (all of which amount shall be immediately due and payable from Onyx to City.

(iii) Pursue any other remedy now or hereafter available to City under applicable laws or judicial decisions.

(iv) The City shall be entitled to apply any and all bonds and/or financial assurances which Onyx has been required to post and provide to cover any and all expenses and costs incurred by the City in fulfilling and satisfying Onyx's duties and obligations under this Agreement, and Onyx shall take all steps necessary to enable the City to utilize any and all such bonds and/or financial assurances provided that the use of any such bonds and financial assurances shall not relieve Onyx from liability for any short fall which may arise;

~~{38.}~~

**39. Penalties.**

The City may assess a penalty of up to One Thousand Dollars (\$1,000) per occurrence of every default by Onyx under Section 37(a) of this Agreement. Each day of such default shall be deemed a separate occurrence.

~~{39.}~~

**40. Interest on Past Due Obligations; Default Expenses.**

a. Except as otherwise expressly provided herein, any amount due to the City not paid when due shall bear interest at one percent (1%) per month. Payment of such interest shall not otherwise excuse or cure any default by Onyx under this Agreement.

b. In the event of a default by Onyx under Section ~~{37(a)}~~ **[38(a)]** of this Agreement, and in the event that the City brings legal proceedings to enforce and protect its rights and remedies under this Agreement, Onyx shall pay all reasonable attorney's fees, court costs and expenses of litigation incurred by the City should the City prevail.

~~{40.}~~

**41. Onyx Responsibility.**

Onyx shall assume responsibility for the full and complete performance of all services and obligations made incumbent upon Onyx by the terms of this Agreement and by all relevant and/or applicable federal, state and/or local statutes, laws, regulations, rules, directives, ordinances and mandates. The City shall thus deem Onyx (and not Onyx's contractors or subcontractors) to be the point of contact with regard to any and all claims, demands, insurance, financial responsibility, coverage, indemnity and payment issues or other matters which may from time to time arise (including payment of any and all fees and charges due and owing from Onyx to the City pursuant to the terms and conditions of this Agreement).

~~{41.}~~

**42. Assignment of Rights.**

This Agreement shall be binding upon and inure to the benefit of the Parties hereto, and their respective successors and assigns. Onyx shall not ~~{assign this Agreement}~~ **[subcontract, assign or transfer this Agreement, in whole or in part, or its rights or obligations hereunder, directly or indirectly, by operation of law or otherwise (including, without**

**limitation, the transfer of its equity or substantially all of its assets by sale, merger or otherwise)]** without the written consent of the City, which consent shall not be unreasonably withheld. The City shall retain all rights provided for under this Section even if the Waste Transfer Facility undergoes a temporary closure or ceases accepting Waste or Recyclables, for whatever reason.

~~{42.}~~

**43. Insurance.**

Onyx shall purchase and maintain in force and effect such insurance as is necessary to fully protect Onyx and the City from those claims and other matters described in Section ~~{47}~~ [48] of this Agreement. Such policies of insurance coverage shall include onsite/offsite environmental impairment and liability insurance in the amounts of \$2,000,000 per occurrence and \$4,000,000 in the aggregate, as well as comprehensive general liability insurance in the amount of \$2,000,000 per occurrence and \$4,000,000 in the aggregate. So as to ensure maintenance of adequate levels of future insurance coverage for the term of this Agreement, Onyx shall adjust and increase such levels of insurance coverage outlined above as necessary during each five (5) year period included in this Agreement to account for increases in the ~~{revised Consumer Price}~~ Index ~~{("Index")}~~ for the preceding five (5) years.

~~{43.}~~

**44. Waivers.**

No waiver by City of any specific provision hereof shall be deemed a waiver of any other provision hereof or of any subsequent breach by Onyx of the same or any other provision. The City's consent to or approval of any act shall not be deemed to render unnecessary the obtaining of City's consent to or approval of any subsequent act by Onyx for which such consent or

approval is required by this Agreement. The acceptance of payments hereunder by City shall not be deemed a waiver of any preceding breach by Onyx of any provision hereof (other than the failure of Onyx to previously pay the particular payment so accepted), regardless of City's knowledge of such preceding breach at the time of acceptance of such payment.

~~{44.}~~

**45. Force Majeure.**

Neither party shall be liable for its failure to perform under this Agreement to the extent due to contingencies beyond its reasonable control, including, without limitation, strikes, riots, war, fire, acts of God, compliance with any law, regulation or order, whether valid or invalid, of the United States of America or any other governmental body or any instrumentality thereof, whether now existing or hereafter created.

~~{45.}~~

**46. Authority to Enter into Agreement.**

Onyx and the City hereby represent and warrant to each other that the individuals executing this Agreement in their official capacities have been duly authorized and empowered to sign this Agreement. The City shall provide Onyx with a certified copy of the resolution of its City Council authorizing the execution of this Agreement by the undersigned representatives of the City.

~~{46.}~~

**47. Severability; Amendment.**

If any provision of this Agreement is held invalid by a court of competent jurisdiction, the other provisions of this Agreement shall not be affected thereby.

No amendment, modification or change to this Agreement shall be effective unless the same shall be in writing and duly executed by the Parties.

~~{47.}~~

**48. Indemnification.**

Onyx shall indemnify and hold the City and its officers, agents and employees harmless from ~~{any and all costs, expenses, attorneys' fees, fees, damages and judgments ("Liability")}~~ **[Liability]** incurred by the City and/or its officers, agents or employees by reason of, related to or in connection with, any and all operations by Onyx at the Onyx Property or any breach of the terms and conditions of this Agreement by Onyx. This indemnification is not intended to be, nor shall it be, applicable to any Liability to the extent that the negligent, reckless or willful acts or omissions of the City or its agents, officers or employees caused such loss or Liability.

~~{48.}~~

**49. Termination.**

This Agreement shall terminate on the earlier of: (a) the date that is thirty ~~{30}~~**[(30)]** years from the ~~{date of the}~~ Anniversary Date ~~{hereof}~~; or (b) the date on which the Waste Transfer Facility on the Onyx Property ceases to operate, for whatever reason~~{,}~~**;** or (c) the cessation of operations due to the order of any federal, state or local governmental body, agency or judicial authority that was not a result of substandard or negligent actions or operations by Onyx at the Waste Transfer Facility; or (d) the date the City exercises its option to purchase the Property and accompanying approvals pursuant to Section ~~{28(e)(ii) hereof.}~~ **[29(c) hereof; or (e) the date the option described in Section 29(c) expires without the City having exercised said option.]**

~~{49.}~~

**50. Notices.**

All notices, demands, requests, consents or other communications required by, or to be given pursuant to this Agreement, shall be in writing and delivered to the intended recipient, by personal service, by registered or certified U.S. mail, return receipt requested, postage prepaid, by confirmed facsimile transmission, or by confirmed courier delivery service, to the following addresses (which are subject to change by a like prior notice):

**[a.] If to the City:**

City of Batavia  
Attn: City Clerk  
100 N. Island Ave.  
Batavia, IL 60510  
Fax: 630-879-0710

With Copies to:

City of Batavia  
Attn: City Administrator  
100 N. Island Ave.  
Batavia, IL 60510  
Fax: 630-879-0710, and

City of Batavia  
Attn: City Attorney  
100 N. Island Ave.  
Batavia, IL 60510  
Fax: 630-879-0710

**[b.] If to Onyx:**

Onyx Waste Services, Inc.  
Attn: Regional Vice President  
1525 Kautz Road  
Suite 1000  
West Chicago, IL 60185  
Fax: (630) 587-1144

With Copies to:

Office of the General Counsel  
Onyx Waste Services, Inc.  
125 S. 84<sup>th</sup> St., #200  
Milwaukee, WI 53214  
(414)479-7419

Freeborn and Peters  
311 S. Wacker Drive, Suite 3000  
Chicago, IL 60606-6677  
Attn: Gerald P. Callaghan  
Fax: (312) 360-6574

~~{50.}~~

**51. Governing Law and Venue.**

This Agreement shall be governed by the laws of the State of Illinois. Venue for purposes of any dispute which may arise between the parties shall be deemed to be the Circuit Court in and for Kane County, Illinois.

~~{51.}~~

**52. Rights of Third Parties.**

This Agreement does not grant any rights to third parties, and third parties are specifically excluded as beneficiaries under this Agreement. All rights and obligations hereunder run only to Onyx and the City.

~~{52.}~~

**53. Cumulative Remedies.**

No remedy or election hereunder shall be deemed exclusive, but shall, wherever possible, be cumulative with all other remedies at law or in equity.

~~{53.}~~

**54. Covenants and Conditions.**

Each provision of this Agreement performed by Onyx shall be deemed both a covenant and a condition.

~~{54.}~~

**55. Termination.**

Termination of this Agreement shall not relieve Onyx of its obligations under the terms and conditions of the same prior to the date of termination.

~~{55.}~~

**56. Binding Effect.**

This Agreement shall bind the Parties, their successors, and assigns.

IN WITNESS WHEREOF, the City and Onyx have caused this Agreement to be executed by their duly authorized representatives on the day and year written above.

ONYX WASTE SERVICES  
MIDWEST, INC.

CITY OF BATAVIA

By: \_\_\_\_\_

By: \_\_\_\_\_

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

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

Attest:

Attest:

By: \_\_\_\_\_

By: \_\_\_\_\_

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

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

~~{502689v7}~~ [502689v8]

**EXHIBIT A**

**LEGAL DESCRIPTION**

THE NORTH 271.22 FEET OF LOT 4 AND LOT 11 (EXCEPT THE NORTH 1.22 FEET), IN  
BATAVIA INDUSTRIAL PARK, IN THE CITY OF BATAVIA, KANE COUNTY, ILLINOIS

----- REVISION LIST -----

The bracketed numbers refer to the Page and Paragraph for the start of the paragraph in both the old and the new documents.

[1:2 1:2] Changed	"Agreement (the "Agreement") is" to "Agreement is"
[1:2 1:2] Changed	"corporation ("Onyx")," to "corporation,"
[1:2 1:2] Changed	"its parent" to "its controlling parent"
[1:2 1:2] Changed	"Corporation ... Parties)." to "Corporation."
[1:4 1:4] Changed	"property located ... Property")" to "the Onyx Property"
[1:5 1:5] Changed	"municipal ... Facility")" to "Waste Transfer Facility"
[1:6 1:6] Changed	"waste transfer ... Onyx Property" to "Waste Transfer Facility"
[1:9 1:9] Changed	"property " to "the City Location "
[1:9 1:9] Changed	"acquire ("City ... part hereof;" to "acquire;"
[2:3 2:2] Changed	"the Illinois ... Protection Act" to "the Act,"
[2:3 2:2] Changed	"Act ("Act")," to "Act,"
[2:4 2:3] Changed	"enacted a ... "Ordinance") to" to "enacted the Ordinance to"
[4:5 4:2] Add Paras	"Definitions. ... excluding City Waste."
[4:6 7:5] Changed	"Property, ... attached hereto." to "Property."
[4:7 7:6] Changed	"3. Authorized" to "Authorized"
[4:8 7:7] Changed	"municipal ... ("Waste")" to "Municipal ... includes Waste"
[4:8 7:7] Changed	"curbside recyclable ... ("Recyclables")" to "Recyclables"
[4:8 7:7] Changed	"accept "City ... treatment sludge." to "accept City Waste."
[5:1 7:8] Changed	"Waste (as ... herein) at" to "Waste at"
[5:1 7:8] Changed	"Application ... herein) or" to "Application or"
[5:1 7:8] Changed	"(as defined herein)." to "."
[5:2 7:9] Del Paras	"Unauthorized Waste ... Tires"
[5:13 7:9] Changed	"4" to "5"
[5:14 8:1] Changed	"one thousand ... ("Capacity")" to "the Capacity"
[5:14 8:1] Changed	"Year, as hereinafter defined, divided" to "Year divided"
[5:14 8:1] Changed	"two hundred ... Waste-In Cap")" to "the Yearly Waste-In Cap"
[5:14 8:1] Changed	"4(b) " to "5(b) "
[5:14 8:1] Changed	"Capacity of 286,000 tons" to "Yearly Waste-In Cap"
[6:1 9:1] Changed	"to increase ... Capacity")" to "for an Increased Capacity"
[6:1 9:1] Changed	"City to for" to "City for"
[6:1 9:1] Changed	"Illinois Environmental ... ("IEPA) " to "IEPA "
[6:1 9:1] Changed	"years. If ... Capacity." Onyx" to "years. Onyx"
[7:1 9:1] Changed	"5." to "No amendment ... the same."
[7:1 9:2] Changed	"5" to "6"
[7:2 10:1] Changed	"7(a) " to "8(a) "
[7:2 10:1] Changed	"Date (as hereinafter defined)." to "Date."
[7:3 10:2] Changed	"Fee") commencing" to "Fee"), commencing"
[7:3 10:2] Changed	"Date (as such ... defined) and" to "Date and"
[7:3 10:2] Changed	"Fee (as such ... defined)," to "Fee,"
[7:3 10:2] Changed	"Section 5(c) " to "Sections 6(c) "

[7:3 10:2] Changed "5(d) " to "6(d) "

[7:3 10:2] Changed ("Annual " to ("Annual "

[7:3 10:2] Changed "said " to "an "

[8:2 10:4] Changed "Operating ... Anniversary Date" to "Operating Year"

[8:2 10:4] Changed "accordance ... Agreement," to "accordance ... Agreement,"

[8:2 10:4] Changed "accordance ... Agreement;" to "accordance ... Agreement;"

[8:2 10:4] Changed "such additional ... Increase") " to "any Ten Cent Increase "

[8:2 10:4] Changed "twenty percent ... Allowance)" to "the Recyclables Allowance"

[9:2 11:2] Changed ("Additional Fee") " to ("Additional Fee") "

[9:2 11:2] Changed "Section 5, the " to "Agreement, "

[10:2 12:3] Changed "increased capacity" to "Increased Capacity"

[11:1 13:2] Changed "Sections 5(c)(iii)," to "Sections 6(c)(iii),"

[11:1 13:2] Changed "requested ... ("Pre-Payment Amount)" to "Pre-Payment Amount"

[11:1 13:2] Changed "published ... Journal Prime " to "Discount "

[11:1 13:2] Changed "Rate less ... Rate") that" to "Rate that"

[11:1 13:2] Changed "5 " to "6 "

[11:1 13:2] Changed "Section 5(c)(iii), " to "Section 6(c)(iii), "

[12:1 14:2] Changed "5(c) " to "6(c) "

[12:1 14:2] Changed "5(d) " to "6(d) "

[12:2 14:3] Changed "deliver up" to "deliver a ... Allowance of up"

[12:2 14:3] Changed "tons of City ... Allowance")," to "tons,"

[12:2 14:3] Changed "escalated " to "increased "

[12:2 14:3] Changed "31(b) " to "32(b) "

[12:2 14:3] Changed "Waste (defined ... hereof) in" to "Waste in"

[13:1 15:1] Changed "accept for" to "accept Sludge for"

[13:1 15:1] Changed ", free of ... Orchard Hills " to "at the "

[13:1 15:1] Changed "Landfill, ... ("Sludge")." to "Landfill."

[13:1 15:1] Changed "deliver up" to "deliver a ... Allowance of up"

[13:1 15:1] Changed "tons of Sludge ... Allowance")," to "tons,"

[13:1 15:1] Changed "escalated " to "increased "

[14:2 16:2] Changed "6. Other" to "Other"

[14:3 16:3] Changed "5(b)" to "6(b)"

[14:3 16:3] Changed "county, township, ... Government)" to "Local Unit of Government "

[15:1 17:1] Changed "7. Reimbursement" to "Reimbursement"

[15:2 17:2] Changed "of the direct ... ("Investigation Costs)" to "for the Investigation Costs"

[15:4 17:4] Changed "Final Approval" ... 28(b) herein)" to "Final Approval"

[15:5 17:5] Changed "8. Hours" to "Hours"

[16:1 18:1] Changed "9. Parking" to "Parking"

[16:3 18:3] Changed "10. Transfer" to "Transfer"

[17:4 19:3] Changed "Approval, ... Section 28(b)." to "Approval."

[17:5 19:4] Changed "Approval, ... Section 28(b)." to "Approval."

[17:7 19:6] Changed "11. Landscaping." to "Landscaping."

[18:2 19:8] Changed "12. Adequate" to "Adequate"

[18:4 20:2] Changed "13. Stormwater" to "Stormwater"

[18:6 20:4] Changed "14. Litter" to "Litter"

[19:1 21:1] Changed "15. Inspections" to "Inspections"

[19:3 21:3] Changed "16. Courtesy" to "Courtesy"

[19:5 21:5] Changed "17. Public" to "Public"

[19:6 21:6] Changed "Facility for" to "Facility, ... necessary) for"

[19:7 21:7] Changed "18. Dust" to "Dust"

[20:2 22:1] Changed "19. Odor" to "Odor"

[20:4 22:3] Changed "20. Noise" to "Noise"

[20:6 22:5] Changed "21. Rodent" to "Rodent"

[20:8 22:6] Changed "22" to "Onyx will ... as issued"

[21:1 23:1] Changed "23. Sanitary" to "Sanitary"

[21:2 23:2] Changed "23 " to "24 "

[21:3 23:3] Changed "24. Necessary" to "Necessary"

[21:5 23:5] Changed "25. Fire," to "Fire,"

[24:6 26:4] Changed "26. Effective" to "Effective"

[24:8 26:6] Changed "27. Anniversary" to "Anniversary"

[24:10 26:8] Changed "28. Schedule" to "Schedule"

[24:11 26:9] Changed "an application ... Application") " to "a Local Siting Application "

[24:11 26:9] Changed "Batavia " to "City "

[24:12 26:10] Changed "final and ... Approval")" to "Final Approval"

[24:12 26:10] Changed "Illinois Environmental ... (IEPA)" to "IEPA "

[25:1 27:1] Changed "escrow agreement ... Agreement")" to "Escrow Agreement"

[25:5 27:5] Changed "33 " to "34 "

[26:1 27:6] Changed "29. Execution" to "Execution"

[26:3 28:1] Changed "30. Standdown" to "Standdown"

[26:4 28:2] Changed "Application ... Agreement, or" to "Application or"

[26:5 28:3] Changed "31. Hauling" to "Hauling"

[27:1 28:5] Changed "hauling the ... City ("City" to "hauling City "

[27:1 28:5] Changed "Waste") " to "Waste "

[27:1 28:5] Changed "fee for acceptance ... ("Tipping Fee") " to "Tipping Fee "

[27:1 28:5] Changed "the percentage" to "the same percentage"

[27:1 28:5] Changed "pursuant to " to "as "

[27:1 28:5] Changed "Increase" to "Adjustment of the Host Fee"

[27:1 28:5] Changed "5(d) " to "6(d) "

[27:2 29:1] Changed "32. Notice" to "Notice"

[27:3 29:2] Changed "at least 300 ... ("Notification Period")" to "prior to the Notification Period"

[27:3 29:2] Changed "of Sections 32 and 33 of" to "of Sections 33 and 34 of"

[27:3 29:2] Changed "in Sections 32 and 33 of" to "in Sections 33 and 34 of"

[27:3 29:2] Changed "Section 32 to" to "Section 33 to"

[28:1 29:3] Changed "33. Facility" to "Facility"

[28:2 29:4] Changed "Section 32 hereof," to "Section 33 hereof,"

[28:2 29:4] Changed "Section 32 or" to "Section 33 or"

[28:2 29:4] Changed "33 " to "34 "

[28:5 30:2] Changed "the Adjustment" to "the same percentage ... Adjustment"

[28:7 30:4] Changed "34. Records." to "Records."

[29:1 30:5] Changed "request." to "request in ... Access format."

[29:2 30:6] Changed "35. Weighing" to "Weighing"

[29:5 31:2] Changed "36. Compliance" to "Compliance"  
 [30:2 31:4] Changed "37. Default;" to "Default;"  
 [30:3 31:5] Changed "Onyx." to "Onyx:"  
 [33:4 35:4] Changed "38. Penalties." to "Penalties."  
 [34:1 35:6] Changed "39. Interest" to "Interest"  
 [34:3 36:2] Changed "37(a) " to "38(a) "  
 [34:4 36:3] Changed "40. Onyx" to "Onyx"  
 [34:6 36:5] Changed "41. Assignment" to "Assignment"  
 [34:7 36:6] Changed "assign this Agreement " to "subcontract, ... otherwise) "  
 [35:1 37:1] Changed "42. Insurance." to "Insurance."  
 [35:2 37:2] Changed "47 " to "48 "  
 [35:2 37:2] Changed "the revised ... ("Index")" to "the Index "  
 [35:3 37:3] Changed "43. Waivers." to "Waivers."  
 [35:5 37:5] Changed "44. Force" to "Force"  
 [36:1 38:2] Changed "45. Authority" to "Authority"  
 [36:3 38:4] Changed "46. Severability;" to "Severability;"  
 [36:6 38:7] Changed "47. Indemnification." to "Indemnification."  
 [36:7 38:8] Changed "any and all ... ("Liability") " to "Liability "  
 [36:8 39:1] Changed "48. Termination." to "Termination."  
 [37:1 39:2] Changed "30 " to "(30) "  
 [37:1 39:2] Changed "the date of ... Date hereof;" to "the Anniversary Date;"  
 [37:1 39:2] Changed "reason, or" to "reason; or"  
 [37:1 39:2] Changed "28(c)(ii) hereof." to "29(c) hereof; ... said option."  
 [37:2 39:3] Changed "49. Notices." to "Notices."  
 [37:4 39:5] Changed "If" to "a. If"  
 [38:2 40:6] Changed "If" to "b. If"  
 [38:20 40:24] Changed "50. Governing" to "Governing"  
 [38:22 40:26] Changed "51. Rights" to "Rights"  
 [38:24 41:1] Changed "52. Cumulative" to "Cumulative"  
 [39:2 41:3] Changed "53. Covenants" to "Covenants"  
 [39:4 41:5] Changed "54. Termination." to "Termination."  
 [39:6 41:7] Changed "55. Binding" to "Binding"  
 [39:16 42:1] Changed "502689v7" to "502689v8"