

FRANCHISE AND LEASE AGREEMENT
BETWEEN THE CITY OF AVALON
AND
CR&R INCORPORATED
FOR SOLID WASTE, RECYCLABLES, GREEN WASTE, C&D AND
DEBRIS BOX COLLECTION SERVICES AND SOLID WASTE
FACILITY OPERATION

DATED MARCH 20, 2013

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AGREEMENT
BETWEEN THE CITY OF AVALON
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DEBRIS BOX COLLECTION SERVICES
AND SOLID WASTE FACILITY OPERATION

FRANCHISE AND LEASE AGREEMENT

THIS FRANCHISE AND LEASE AGREEMENT is made and entered into this 20th day of March 2013, between the City of Avalon, (hereinafter "the City") and CR&R Incorporated, a California corporation (hereinafter "the Company"). Unless otherwise specified in this Agreement, any action authorized, or required to be taken by the City may be taken by the City Council (hereinafter "Council") or by an official or agent designated by the Council.

RECITALS

The Legislature of the State of California, by enactment of California Public Resources Code Sections 40000 et seq. and California Public Resources Code Section 49300, declares that it is within the public interest to authorize and require local agencies to make adequate provision for Solid Waste handling within their jurisdictions.

The Council has determined that the public health, safety and well being of its residents requires that Solid Waste collection and disposal, including, but not limited to, the frequency of collection, the means of collection and the transportation, scope, charges and fees, location, and extent of such services, be provided by an exclusive contract.

The City desires to secure comprehensive recycling services for all Solid Waste generators within the City.

The City owns the landfill located at Pebbly Beach, Santa Catalina Island, California, which is more particularly described in ATTACHMENT 1 ("Landfill"), the materials recovery facility located adjacent to the Landfill and more particularly described in ATTACHMENT 1 ("MRF") and the residential hazardous waste facility located at Roaring Canyon, Santa Catalina Island, California, which is more particularly described in ATTACHMENT 2 ("Hazardous Waste Facility").

The Council, having determined that the Company by demonstrated experience, reputation, and capacity is qualified to exclusively provide for the collection of Solid Waste, Recyclables, and Green Waste within the corporate limits of the City and to transport such materials to places of disposal or processing, desires that the Company be engaged to perform such services on the terms and conditions set forth in this Agreement.

The Council further desires to lease the Landfill and MRF to Company and for Company to operate these facilities and the Hazardous Waste Facility on the terms and conditions set forth below.

The City must comply with the Source Reduction and Recycling and Household Hazardous Waste elements required of it pursuant to the California Integrated Waste Management Act of 1989.

NOW, THEREFORE, intending to be legally bound, the parties agree as follows:

1. DEFINITIONS

For the purposes of this Agreement, the following words or phrases shall have the following meanings.

AB 939. AB 939 means the California Integrated Waste Management Act of 1989 (Division 30 of the California Public Resources Code), as amended, supplemented, superseded, and replaced from time to time.

Agreement. Agreement means this Franchise and Lease Agreement, including all attachments and future amendments.

Applicable Law. Applicable Law means all laws, regulations, rules, orders, judgments, decrees, permits, approvals, or other requirement of any governmental agency having jurisdiction over the (1) collection, handling, processing, and disposition of Solid Waste, Recyclables and Green Waste and/or (2) operation, maintenance, repair, closure or post-closure of any Disposal Facility that are in force on the Effective Date and as they may be enacted, issued, or amended during the term of this Agreement.

Bin. Bin means a front-loaded or otherwise receptacle provided by the Company for Commercial Customers and electing Multiple-Family Dwellings which is picked up by Collection trucks.

Bulky Waste. Bulky Waste means large items of Solid Waste such as appliances, furniture, branches, and other oversize wastes whose large size precludes or complicates their placement in containers or handling by normal collection, processing, or disposal methods, but excluding Excluded Waste; construction and demolition (C&D), items larger than five cubic yards or heavier than 500 pounds; and items of excessive size or density, such as engine blocks, spas, boats, and trailers.

Cart. Cart means an industry standard receptacle for disposal of residential Solid Waste, Green Waste, and Recyclables, in a range of sizes, including approximately 35-60 gallons. A Cart may have wheels and has a handle for ease of movement and a tight-fitting, attached lid and is designed to be dumped manually or mechanically into a Solid Waste collection vehicle.

City. City means the City of Avalon in the State of California.

City Charges. City Charges means any charges that the City includes in the Rates in addition to the Company Service Fee to cover City-related programs, administrative costs, and/or other expenses.

City Representative. City Representative means the City Manager, or designee.

Collection, Service, or Collection Service. Collection, Service, or Collection Service means all or any part of the activities involved in the Collection of Solid Waste, Green Waste, and/or Recyclable Materials specified in this Agreement and their transportation to a Designated Disposal Site, Recyclables Processing Facility, or Green Waste Processing Facility.

Commercial Customer. Commercial Customer means a Customer that receives Commercial Service, including, but not limited to, those Multiple-Family Dwellings and Mobile Home Park Customers that use Bin, Debris Box or Compactor Service.

Commercial Premises. Commercial Premises means all industrial, manufacturing, and warehouse establishments; wholesale and retail stores; service establishments; professional offices; other business establishments; government facilities; schools; and construction sites.

Commercial Recycling. Commercial Recycling means the collection, processing, and marketing of those Recyclable Materials that are collected from Commercial Customers under this Franchise.

Commercial Service. Commercial Service means Bin, Debris Box, Compactor or Cart Service provided under this Franchise to Commercial Premises and Bin, Debris Box or Compactor service provided to Multiple-Family Dwellings.

Compactor. Compactor means a compacting unit that loads a detachable or non-detachable Bin or Debris Box. The detachable or non-detachable Bin or Debris Box serves as a receptacle of Solid Waste and has a capacity of one (1) cubic yard or larger.

Company. Company means CR&R Incorporated.

Company Service Fee or Service Fee. Company Service Fee or Service Fee means the compensation provided to the Company for Services performed pursuant to this Agreement.

Construction and Demolition Debris or C&D Debris. Construction and Demolition Debris or C&D Debris means waste building materials, packaging, and rubble resulting from construction, remodeling, repair, and demolition operations on pavements and on houses, commercial buildings, and other structures, but not including any Excluded Waste.

Council. Council means the City Council of the City of Avalon.

Curbside. Curbside means that part of a property, within five feet of the Public Street without blocking sidewalks, driveways, or on-street parking. If extraordinary circumstances preclude such a location, Curbside shall be considered a placement suitable to the Customer, convenient to the Company's equipment, and mutually agreed to by the Customer and the Company.

Current Employees. Current Employees means the employees of a private waster hauler providing substantial similar services as undertaken by the Company under this Agreement on February 1, 2013. However, Current Employees shall be limited to those employees working full-time on Santa Catalina Island.

Customer. Customer means an individual or entity that receives any Services provided by the Company. Customer shall also mean the person, organization, or corporation receiving Services to which billing statements are sent. Customer also means those generators of Recyclable Materials in the City to whom the Company provides Collection Service under this Agreement.

Debris Box. Debris Box means a receptacle for Solid Waste and C&D Debris having a capacity of greater than three (3) cubic yards that is picked up in its entirety by a dedicated truck for emptying at a separate location. Also known as a roll-off box or drop box.

Designated Disposal Site. The Designated Disposal Site means a transfer station or sanitary landfill designated by the City for delivery of Solid Waste collected by the Company under this Agreement.

Disposal. Disposal means the final disposition of Solid Waste collected by the Company, whether occurring at the Designated Disposal Site or after subsequent delivery to a different facility.

Disposal Facilities. Disposal Facilities mean the Landfill, MRF and Hazardous Waste Facility.

Effective Date. Effective Date means July 1, 2013, the date that Franchise Services shall commence under this Agreement.

Electronic Waste or E-Waste. Electronic Waste or E-Waste means waste containing or consisting of electronic devices and components, such as computers, monitors, terminals, computer cards and components, computer peripheral devices, main frame computers, keyboards, mice, printers and scanners, mini-systems, power supply units, servers, connectors/cables, storage discs, consumer electronics, printed circuit boards, televisions, chips and components, cellular and other phones, telecommunications equipment, and fax machines and copiers, but not including Excluded Waste.

Excluded Waste. Excluded Waste means Hazardous Waste; Medical and Infectious Waste; volatile, corrosive, biomedical, infectious, biohazardous, and toxic substances or material; waste that the Company reasonably believes would, as a result of or upon disposal, be a violation of local, state, or federal law, regulation, or ordinance, including

land use restrictions or conditions; waste that cannot be disposed of in Class III landfills; waste that in Company's reasonable opinion would present a significant risk to human health or the environment, cause a nuisance, or otherwise create or expose the Company or the City to potential liability; and Special Waste. Excluded Waste does not include de minimis volumes or concentrations of waste of a type and amount normally found in residential Solid Waste after implementation of programs for the safe collection, recycling, treatment, and disposal of Household Hazardous Wastes in compliance with Sections 41500 and 41802 of the California Public Resources Code.

Franchise. Franchise means the rights granted to and responsibilities assumed by the Company under the terms and conditions of this Agreement.

Franchise Materials. Franchise Materials means all Solid Waste, Recyclable Materials, and Green Waste, including C&D Debris, generated in the City and included within the Franchise.

Franchise Services or Services. Franchise Services or Services mean all of the duties and obligations of the Company hereunder as stated in this Agreement.

Garbage. Garbage means Solid Waste as defined herein.

Green Waste. Green Waste means all tree and plant trimmings, grass cuttings, dead plants, weeds, leaves, branches, and similar plant materials, but not including Excluded Waste, palm material, or items longer than five (5) feet or with a diameter greater than six (6) inches.

Green Waste Processing Facility. Green Waste Processing Facility means a facility used by the Company for handling, processing, and preparing collected Green Waste for marketing.

Hazardous Waste. Hazardous Waste means a waste, or combination of wastes, which, because of its quantity, concentration, or physical, chemical, or infectious characteristics, may do either of the following:

- (1) Cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible or incapacitating reversible illness.
- (2) Pose a substantial present or potential hazard to human health or environment when improperly treated, stored, transported, or disposed of, or otherwise managed. (California Public Resources Code Section 40141.)

Hazardous Waste Facility. Hazardous Waste Facility means the disposal facility accepting residential Hazardous Waste, Household Hazardous Waste, Universal Waste and E-Waste located at Roaring Canyon, Santa Catalina Island, California, which is more particularly described in ATTACHMENT 2.

Household Hazardous Waste. Household Hazardous Waste shall have the meaning set forth in Title 14, California Code of Regulations, Section 18502 or successor laws and regulations as may be amended from time to time.

HDPE (High Density Polyethylene). HDPE means a recyclable plastic that includes, but is not limited to, milk jugs.

Landfill. Landfill means the landfill located at Pebbly Beach, Santa Catalina Island, California, which is more particularly described in ATTACHMENT 1.

Landfill Facilities. Landfill Facilities mean the Landfill and MRF.

Litter/Recycling Receptacles. Litter/Recycling Receptacles means the public litter/recycling containers located in the downtown area of the City as specified in ATTACHMENT 3 attached hereto, as well as all future additions specified by the City and mutually agreed to by the Company.

Medical and Infectious Waste. Medical and Infectious Waste means biomedical waste generated at residences in excess of legal limits or at hospitals, public or private medical clinics, dental offices, research laboratories, pharmaceutical industries, blood banks, mortuaries, veterinary facilities, and other similar establishments.

Monthly Remittance. Monthly Remittance means the monthly payment made to the City for such payments due by the Company to the City as required by this Agreement.

MRF. MRF means the materials recovery facility located adjacent to the Landfill and more particularly described in ATTACHMENT 1.

Multiple-Family Dwelling. Multiple-Family Dwelling means any building or structure, or portion thereof, used for residential purposes and having three (3) or more distinct living units. Multiple-Family Dwellings, at the Owner's request, may be provided with Residential Service using Carts or with Commercial Service using Bins, Debris Boxes or Compactors.

Owner. Owner means the person, organization, or corporation holding legal title to the real property constituting the premises to which any Service is provided.

Parties. Parties means the City and the Company.

PET (Polyethylene, Terephthalate). PET means a recyclable plastic that includes, but is not limited to, 2-liter soda bottles.

Processing or Process. Processing or Process means treatment, sorting, or other activities intended to improve the market value of Recyclables or Green Waste.

Public Street. Public Street means a public way used for public travel.

Rates. Rates means the Company Service Fees plus any City Charges for Franchise Service billed.

Recycle, Recycling, or Recycled. Recycle, Recycling, or Recycled means the process of separating, collecting, sorting, cleansing, treating, reconstituting, or otherwise processing materials that are or would otherwise be disposed of in a landfill and returning them to the economic mainstream in the form of raw material for new, reused, or reconstituted products which meet the quality standards necessary to be used in the marketplace.

Recyclable Materials or Recyclables. Recyclable Materials or Recyclables means those materials that may be separated on a commercially reasonable basis from Solid Waste and returned to the economic mainstream in the form of raw material for new, reused, or reconstituted products which meet the quality standards necessary to be used in the marketplace. Subject to mutually agreed revision by the Parties, Recyclable Materials or Recyclables include, newspaper (including inserts, coupons, and store advertisements), corrugated cardboard, mixed waste paper (including office paper, computer paper, magazines, junk mail, catalogs, Kraft bags and Kraft paper, paperboard, egg containers, phone books, brown paper, grocery bags, colored paper, construction paper, envelopes, legal pad backings, shoe boxes, and cereal and other similar food boxes), glass containers (including colored glass bottles and jars), aluminum (including beverage containers, foil, food containers, and small scrap metal), plastic milk and juice containers, steel or tin cans, small scrap metal, PETE and HDPE plastic containers (natural and colored), used motor oil and oil filters, and any other commercially viable recyclable materials mutually agreed to by the Company and the City, but excluding food waste. Recyclables are further defined in ATTACHMENT 4.

Recyclables Processing Facility. Recyclables Processing Facility means a facility used for handling, processing, and preparing collected Recyclable Materials for marketing. The MRF is a Recyclables Processing Facility.

Refuse. Refuse means waste material intended for Disposal, but not including Excluded Waste, and has the same meaning as Solid Waste.

Residential Customer. Residential Customer means a Customer that receives Residential Service, including those Multiple-Family Dwellings and Mobile Home Park Customers that use Cart Service.

Residential Recycling. Residential Recycling means the collection, processing, and marketing of those Recyclable Materials that are collected from Residential Customers under this Franchise.

Residential Service. Residential Service means Collection Service normally provided under this Franchise to all Single-Family Residences and those Multiple-Family Dwellings that receive Cart Service.

Self Haul. Self Haul means the transport of Solid Waste, Recyclables, Green Waste, or C&D Debris from a residence or Commercial Premises, where the waste being generated is taken directly to an authorized landfill, transfer station, Recyclables Processing

Facility, or Green Waste Processing Facility. The transport must be accomplished by the Customer, Owner, or person or entity that generates the Solid Waste, Recyclables, Green Waste, or C&D Debris and may not be transported by a company, agent, or other third party hired for such use.

Service Area. Service Area means the jurisdictional boundary of the City, including all areas hereafter annexed or otherwise added to the territorial limits of the City.

Signature Date. Signature Date means the date of execution of this Franchise Agreement by both Parties.

Single-Family Residence. Single-Family Residence means any one-unit house or mobile home, and any building or structure, or portion thereof, that is used for residential housing purposes and has two (2) or fewer distinct living units.

Solid Waste. Solid Waste means and includes all forms of residential and commercial waste generated within City limits and intended for Disposal. Solid Waste as defined in California Public Resources Code, Section 40191 and regulations promulgated thereunder and without limitation includes all putrescible and nonputrescible solid, semisolid, and liquid wastes, including garbage, trash, refuse, rubbish, ashes, industrial wastes, demolition and construction wastes, abandoned vehicles and parts thereof, discarded home and industrial appliances, dewatered, treated, or chemically fixed sewage sludge which is not hazardous waste, manure, vegetable or animal solid or semisolid wastes, and other discarded solid and semisolid wastes. Excluded from the definition of Solid Waste are Excluded Waste, Recyclable Materials, Green Waste, and C&D Debris if other provisions of this Agreement discuss collection and disposal of such materials. Notwithstanding any provision to the contrary, "Solid Waste" may include de minimis volumes or concentrations of waste of a type and amount normally found in residential solid waste after implementation of programs for the safe collection, recycling, treatment, and disposal of Household Hazardous Waste in compliance with Sections 41500 and 41802 of the California Public Resources Code.

Special Waste. Special Waste means flammable waste; waste transported in a bulk tanker; liquid waste; sewage sludge; pollution control process waste; residue and debris from the cleanup of a hazardous material spill or release of chemical substances, commercial products, or any other Special Wastes; contaminated soil, waste, residue, debris, and articles from the cleanup of a site or facility formerly used for the generation, storage, treatment, Recycling, reclamation, or Disposal of any other Special Wastes; dead animals; manure; waste water; explosive substances; and radioactive substances.

State. State means the State of California.

Ton. Ton means 2,000 pounds.

Transport. Transport means the hauling of Solid Waste or Green Waste to a Designated Disposal Site, of Recyclables to a Recyclables Processing Facility, and of Green Waste to a Green Waste Processing Facility.

Uncontrollable Circumstances. Uncontrollable Circumstances means any acts of god, such as landslides, lightning, fires, storms, floods, pestilence, freezing, and earthquakes; explosions; sabotage; civil disturbances; acts of a public enemy; wars; blockades; riots; eminent domain; condemnation or other taking; or other events of a similar nature, not caused or maintained by the City or the Company, which event is not reasonably within the control of the Party claiming the excuse from its obligations due to such event, to the extent such event has a material adverse effect on the ability of a Party to perform its obligations thereunder. Events which could have been prevented by reasonable precautions, including compliance with agreements and Applicable Law, shall not be considered an Uncontrollable Circumstance. Labor unrest, including but not limited to, strike, work stoppage or slowdown, sickout, picketing, or other concerted job action lawfully conducted by the Company's employees or lawfully directed at the Company or a subsidiary are not considered Uncontrollable Circumstances, but shall excuse performance to the extent provided in Section 10.6.

Universal Waste. Universal Waste means any waste matter which the State of California classifies as 'universal waste,' including, but not limited to, items and materials listed in 22 CCR 66261.9, as it may be amended, as well as any items listed below not classified by the State of California as 'universal waste.' Universal Waste includes, but is not limited to, the following:

E-Waste;
Batteries (except automobile batteries);
Thermostats;
Lamps with fluorescent tubes, high intensity discharge lamps, sodium vapor lamps, and other lamps with hazardous waste characteristics;
Cathode ray tubes;
Aerosol cans;
Mercury-containing items, including light switches, pressure gauges, and thermometers;
Appliances, devices, and other objects containing electronic components, including (but not limited to) computers, computer monitors, cellular telephones, copiers, fax machines, DVD players, VCRs, and televisions; and
Prescription and non-prescription drugs, not including controlled substances.

WTE Facility. WTE Facility means a facility or equipment that produces electricity directly through combustion or other process or produce a combustible fuel commodity, such as liquified petroleum (LP) gas, methane, methanol, ethanol or synthetic fuels, from Solid Waste, Green Waste and/or Recyclables.

2. REPRESENTATIONS AND WARRANTIES OF THE COMPANY

The Company, by acceptance of this Franchise, represents and warrants that:

A. Existence and Powers. The Company is duly organized and validly existing as a corporation under the laws of the State of California, with full legal right and power to enter into and perform its obligations under this Agreement.

B. Company Authorization and Binding Obligation. The Company has the authority to enter into and perform its obligations under this Agreement. The Company or its authorized representative has taken all actions required by law and its governing documents to authorize the execution of this Agreement. The persons signing this Agreement on behalf of the Company warrant and represent that they have authority to do so. This Franchise constitutes the legal, valid, and binding obligation of the Company

C. No Conflict. Neither the execution nor the delivery by the Company of this Franchise nor the performance by the Company of its obligations hereunder: (1) conflicts with, violates, or results in a breach of any law or governmental regulation applicable to the Company; (2) conflicts with, violates, or results in a breach of any term or condition of any judgment, decree, agreement (including, without limitation, the certificate of incorporation of the Company), or instrument to which the Company is a party or by which the Company or any of its properties or assets are bound, or constitutes a default under any such judgment, decree, agreement, or instrument; or (3) will result in the creation or imposition of any encumbrance of any nature whatsoever upon any of the properties or assets of the Company.

D. No Litigation. There is no action, suit, or other proceeding as of the Signature Date of the Agreement, at law or in equity, or to the best of the Company's knowledge, any investigation, before or by any court or governmental authority, pending or threatened against the Company which may materially and adversely affect the validity or enforceability of this Franchise or any such agreement or instrument entered into by the Company in connection with the transactions contemplated hereby, or which could materially and adversely affect the ability of the Company to perform its obligations hereunder, or which would have a material adverse effect on the financial condition of the Company or its parent company.

E. No Legal Prohibition. The Company has no knowledge of any Applicable Law in effect on the Signature Date which would prohibit the performance by the Company of this Franchise and the transactions contemplated hereby.

F. The Company's Investigation. The Company has made an independent investigation (satisfactory to it) of all conditions and circumstances surrounding the Agreement, the City's needs, and the Company's ability to provide Services. The Company has relied solely on its own investigation of the City, its Customers, and service needs in preparing its proposal and entering into this Agreement.

G. Information Supplied by the Company. The information supplied by the Company in all submittals made in connection with negotiation and execution of this Agreement, including all materials in the ATTACHMENTS of this Agreement and all representations and warranties made by the Company throughout this Agreement, are true, accurate, correct, and complete in all material respects on and as of the Signature Date of this Agreement.

H. Representatives of the Company. The Company has designated in writing a responsible officer who shall serve as the representative of the Company and who shall

have authority in all daily operational matters related to the Agreement. The City may rely upon action taken by such designated representative as action of the Company.

I. Contingency Plan. The Company shall submit to the City within thirty (30) days of the Effective Date of this Agreement a written "Contingency Plan" demonstrating the Company's specific arrangements to provide vehicles and personnel and to maintain uninterrupted Service during mechanical breakdowns, and strikes.

J. Rules and Regulations. The Company hereby agrees to observe and comply with the operating rules and regulations of the Designated Disposal Site, including without limitation those governing delivery procedures, receiving hours, vehicle and waste inspection, Hazardous Waste screening, litter control, and safety measures.

K. Company Proposal. Company understands and agrees that City has relied on the written promises regarding Company's level of Services and customer outreach and programs set forth in its proposal submitted to the City as supplemented by the February 25, 2013 letter and collectively attached as ATTACHMENT 9. To the extent this Agreement and Company's proposal are in conflict, the document that provides the highest level of Services or programs to the City and its residents shall govern.

3. GRANT OF EXCLUSIVE AGREEMENT AND REQUIREMENT OF MANDATORY SERVICES

3.1 **GRANT OF FRANCHISE**. The City hereby grants to the Company, for the term hereinafter set forth, the exclusive right and privilege to collect and transport to any legally authorized landfill or other disposal site or sites all Solid Waste, Green Waste, and Recyclables, including C&D Debris and Debris Box materials, generated, kept, and/or accumulated within the City limits as those limits, unless otherwise exempt from Collection pursuant to the terms and conditions of this Agreement. The Collection of Solid Waste or Recyclables from the Litter/Recycling Receptacles or any Recycling receptacles provided pursuant to Section 4.3.4 are expressly exempted from this Agreement. City may request that Company provide Collection of the Solid Waste or Recyclables from the Litter/Recycling Receptacles or any Recycling receptacles provided pursuant to Section 4.3.4, provided that such decision shall be considered a change in the Services subject to Section 6.4. Moreover, the Collection of Solid Waste, Recyclables and Green Waste by City is expressly exempted from this Agreement. The City also hereby leases the Landfill Facilities to Company and Company shall have the exclusive right and responsibility for operating the Landfill Facilities on the terms and conditions set forth in this Agreement. Company shall also have the exclusive right and responsibility for operating the Hazardous Waste Facility on the terms and conditions set forth in this Agreement.

3.2 **MANDATORY COLLECTION**. The City hereby agrees and covenants to the Company that it will at all times during the term of this Agreement require by ordinance or otherwise that all Single-Family Residence, Multiple-Family Dwellings, and Commercial Premises within the City which generate Solid Waste

shall be required to have mandatory service from Company pursuant to the exclusive franchise granted in this Agreement, with the exception of those certain Customers exempted from Service requirements as provided in Section 3.5 and those Customers who comply with Sections 6-2.103 and 6-2.403 of the Avalon Municipal Code.

3.3 SELECTION OF DISPOSAL SITE. The City shall have the right to select the Designated Disposal Site. Initially, the Designated Disposal Site is the Landfill for Solid Waste. The City may change the Designated Disposal Site at any time, with ninety (90) days' written notice to the Company. Should the change in site increase the Company's cost of Transport, Processing, and/or Disposal, the Company Service Fee shall be adjusted to cover such increased costs as agreed to by City and Company.

3.4 COMPANY RESPONSIBILITY. The Company hereby accepts and assumes responsibility to perform and fulfill all the terms, covenants, conditions, and obligations required under this Agreement. The Company agrees to perform all of its obligations under this Agreement for the term hereof. The Company shall furnish all the labor and equipment necessary for the Collection and Disposal of all Solid Waste, for the Collection, Processing, and Transport of all C&D Debris, Recyclables, and Green Waste and for the operation and maintenance of the Disposal Facilities, subject to the terms, conditions, and provisions of this Agreement.

3.5 EXCEPTIONS TO FRANCHISE

3.5.1 Excepted Services. The following services are expressly excluded from this Franchise:

1) The rental, lease, or sale of publicly owned Compactors and identified privately owned Compactors as determined in writing by City, provided that the Company shall have the exclusive right to provide hauling services for Compactors unless used exclusively for the collection of Self Haul materials.

2) Self Haul of Solid Waste, C&D Debris and Recyclables as permitted in the Avalon Municipal Code whereby materials are delivered by a Residential or Commercial Customer directly to a disposal or processing facility using the Customer's own equipment. Customers cannot subcontract any portion of the Self Haul to any entity other than the Company.

3) The discretionary Collection of Solid Waste, Recyclables and Green Waste by City,

3.5.2 Exempt Materials. The Company shall not have the exclusive right and privilege to collect the following materials. However, the granting of this Franchise shall not preclude an Owner, resident, or commercial entity

from contracting for the categories of materials described below to be delivered to, collected and/or transported by the Company or others, provided that nothing in this Franchise is intended to or shall be construed to excuse any person from obtaining from the City any authorization which is otherwise required by law:

1) Recyclable Materials donated or sold by Residential Customers or Commercial Customers to any party of their choice.

2) Materials which would otherwise constitute Franchise Materials that are removed from a premise by a company as an incidental part of a gardening, landscaping, tree trimming, cleaning, maintenance, construction, or similar service offered by that company rather than as a waste hauling service. This provision does not allow the hauling of materials by any business hired for the purposes of yard, garage, or building cleanup and removal of debris.

3) The Company's exclusive Franchise in this Agreement shall not include governmental entities if and to the extent the City has no legal power to include them in the exclusive Franchise. The provisions of this Franchise shall not preclude or prohibit the City or any officer or employee thereof or any employee of the State, or any governmental subdivision thereof, from collecting, removing, and disposing of Franchise Materials from the City or State facilities. Moreover, this subsection does not affect Company's responsibility to provide free City service pursuant to Section 4.2.5.

4) Materials which would otherwise constitute Franchise Materials collected from the Litter/Recycling Receptacles located within the public right-of-way which are initially described in ATTACHMENT 3 or any Recyclable receptacles provided pursuant Section 4.3.4. City may modify the number or location of such receptacles as it wishes in its sole discretion. However, Company shall Collect all Franchise Materials from the Litter/Recycling Receptacles or any Recyclable receptacles provided pursuant Section 4.3.4 if requested to do so by the City. Such election shall be considered a change in the Services subject to Section 6.4.

3.6 TERM OF AGREEMENT

The term of this Agreement shall be for the period commencing on July 1, 2013, and ending on June 30, 2023 ("Initial Term"). The Initial Term may be extended for two additional five-year periods (the "First Extension" and "Second Extension"). The First Extension and Second Extension shall take effect automatically on expiration of the Initial Term or First Extension, as applicable, as long the parties have not provided each other with at least one-year written notice of their decision not to execute the First Extension or Second Extension, as applicable, for reasons attributable to the Company's or City's performance of the Agreement.

3.7 PAYMENTS TO CITY

3.7.1 Recyclable Materials. Company shall pay the City fifty percent (50%) of all monthly net revenues received by Company for the sale or transfer of Recyclable Materials and Green Waste collected by Company under this Franchise or received by Company while operating the Disposal Facilities. Company shall remit the monthly payments required under this section on or before the fifteenth of each month representing the amount due for the prior calendar month. All payments shall be submitted with an invoice or other documentation indicating the total gross and net revenues, applicable Company costs, weight of total Recyclables, Green Waste and each category separated by price and price per pound or other applicable unit of measurement.

3.7.2 Audits. The relevant books and records of the Company shall be subject to audit and inspection for the purpose of reviewing operations, accounts receivable and customer service, by either Party, its auditors or other agents, at any reasonable time upon reasonable notice. Such audit or inspection shall take place at a City facility, if reasonably practicable, or at a Company facility on Santa Catalina Island, Los Angeles County. The City shall initially bear the cost of such audit. If such audit discloses a material breach of this Agreement or an underpayment of other sums due to the City under this Agreement in excess of five percent (5%) of the amount which should have been paid, the Company shall promptly tender to the City the amount of such underpayment, together with interest at the rate of ten percent (10%) computed from the date of underpayment, and shall further reimburse the City for the entirety of its audit costs, including, without limitation, auditor's costs and expenses, internal costs and expenses, and legal and other third party expenses. If such audit discloses an underpayment of less than five percent (5%), the Company shall promptly repay such underpayment, together with interest at the rate of ten percent (10%) computed from the date of underpayment, and the City shall bear the costs of the audit. If such audit discloses an overpayment, the City shall promptly repay such underpayment and the City shall bear the costs of the audit.

3.8 GROWTH IN ACCOUNTS

The Company shall provide service to all existing or new Customers within the City limits requiring or requesting Service during the term of Agreement. The City and the Company shall determine the number of Customers in each service category for Residential Service and Commercial Service, within 90 days of the Effective Date of the Agreement but not later than October 1, 2013. The Company shall be entitled to a proportional increase in the Company Service Fee equal to the number of new customers (Residential or Commercial or any combination) once the customer base established on or before October 1, 2013 has increased by at least 5%. The Company will be responsible for tracking this

information and providing the City notice once the 5% threshold is reached and the City agrees to meet with the Company to determine a proportional adjustment to the Company Service Fee. Once agreement is reached, the number of customers will become the new benchmark and all future increases of 5% will be based on this formula.

3.9 ANNEXATION

The City shall promptly provide written notice to the Company regarding any geographic area that has been or will be annexed to or de-annexed from the City. If such notice is given, the provisions of the Agreement shall apply to the annexation, and the Company shall provide Services to Customers in the geographic area no later than fourteen (14) days after receiving the written notice, unless otherwise directed by the City.

3.10 TITLE TO SOLID WASTE, RECYCLABLES, AND GREEN WASTE

All Solid Waste, Recyclables, and Green Waste collected pursuant to this Agreement shall remain the property of the Customer until such time as it is collected for disposal. It is expressly understood that all Solid Waste, Recyclables, and Green Waste collected under this Franchise becomes the property of the Company upon Collection, subject to the requirement of delivery of Solid Waste to the Designated Disposal Site. The Company is hereby granted the right to retain, dispose of, and otherwise use such Franchise Materials, or any part thereof, in any fashion or for any lawful purpose desired by Company, and to retain any benefit or profit resulting therefrom except as required by Section 3.7. Solid Waste Refuse which is disposed of at a Designated Disposal Site shall become the property of the owner or operator of the Designated Disposal Site once deposited there by the Company. In the event the Designated Disposal Site is a Disposal Facility, Company shall retain title to the Solid Waste, Recyclables, and Green Waste upon Collection. Title to all Franchise Materials deposited at the Disposal Facilities shall be vested in Company.

3.11 CONDITIONS TO EFFECTIVENESS OF AGREEMENT

This Agreement shall not become effective and the City shall not be obligated to permit this Agreement to become effective and to perform the undertakings provided for in this Agreement unless each and all of the conditions set out below are satisfied, or waived, in written form and in whole or in part by the City. Waiver of any of the following as a condition to the effectiveness of this Agreement will not preclude the City from pursuing any claim or breach of this Agreement. This Section may supersede the Effective Date of this Agreement.

3.11.1 Accuracy of Representations. The representations and warranties made by the Company in this Agreement and in its proposal are true and correct on and as of the Signature Date.

- 3.11.2 Verification of Insurance Coverage and Faithful Performance Bond. On or before the Effective Date, the Company shall submit, to the satisfaction of the City, endorsements of insurance coverage and faithful performance bond.
- 3.11.3 Absence of Litigation. There is no litigation pending on the Signature Date in any court challenging the award or execution of this Agreement or seeking to restrain or enjoin its performance, or which may affect the Company's ability to perform under the terms of this Agreement. The Company shall notify the City in writing within thirty (30) days of any litigation which may in any way affect its performance of Franchise Services under this Agreement.
- 3.11.4 Current Employees. After the Signature Date and Prior to the Effective Date, Company shall offer employment to all Current Employees. Current Employees shall be offered a position with Company that is substantially similar to their position with their current employer in responsibility and the same or better in pay and benefits contingent on passing the company's pre-hire requirements and provided the pay and benefits is consistent with the industry market for Los Angeles County. Company shall comply with all applicable law when making such offers and otherwise employ all Current Employees and indemnify the City from its failure to do so pursuant to Section 9.1.
- 3.11.5 Reimbursement of Execution Fees. Company shall reimburse City for attorneys' fees and other administrative costs up to the amount of twenty thousand dollars (\$20,000) incurred in connection with negotiating and executing this Agreement, expressly including any fees or costs incurred in connection with the request for proposals process. City shall provide Company with an invoice of such fees and costs within ten (10) days of the Signature Date, which shall be payable within ten (10) days of Company's receipt thereof.

4. COLLECTION SERVICES OF COMPANY

4.1 COLLECTION SERVICES PROVIDED BY COMPANY

The Company may require separate written contracts to be negotiated between the Company and Customers generating Special Waste. The Company shall, in accordance with the terms of this Agreement, Applicable Law, and best industry practices, provide all labor, materials, facilities, services, and equipment necessary to:

- Collect, Transport, and Dispose of all Solid Waste;
- Collect, Transport, Process, Recycle, and market all set-out Recyclables and Green Waste in the Service Area;
- Provide public education, reporting, and other requirements, as well as Customer Services within the City. The following Sections describe these services.

4.2 SOLID WASTE COLLECTION

- 4.2.1 Single-Family Residence Service. The Company shall, twice per week, collect the Solid Waste which has been placed at Curbside prior to the Company's normal weekly collection time. Beginning August 2013 and to be completed by September 1, 2013 and without expense to City or Customer, the Company shall provide Carts sufficient to provide the level of Service requested by each Customer. In addition, upon request, the Company, without expense to the City or Customer, shall provide a Solid Waste Cart to a new Residential Customer that has no such container within five (5) working days after notice, of, or request for, Service, or in the case of annexations, within fourteen (14) days of the annexation effective date. Prior to the earlier of the delivery of the Cart set forth in this Section or September 1, 2013, Company shall collect all Solid Waste from each Customer in the same manner and subject to the same conditions as the City's incumbent waste hauler provided such services as of the Signature Date.
- 4.2.2 Multiple-Family Dwelling Service (Commercial). The Company shall, twice per week, collect the Solid Waste which has been placed in Solid Waste Carts at Multiple-Family Dwellings within the City prior to the Company's normal weekly collection time, provided that in no event shall the Company be required to collect any additional Solid Waste which is not placed in a receptacle unless such Multiple-Family Dwelling is not placing Solid Waste in receptacles when CR&R services begin and such customer does not request a receptacle. Beginning August 2013 and to be completed by September 1, 2013 and without expense to City or Customer, Company shall furnish or provide Carts, Bins, Compactors or Debris Boxes for use in Collection, as appropriate, to all Multiple-Family Dwellings which generate Solid Waste within the City. The size of the receptacles shall be determined by City and the Company. In addition, the Company, without expense to the City or Customer, and within five (5) working days after notice, shall provide a Solid Waste receptacle sufficient to provide the requested level of Service to a new Commercial Customer subject to this subsection that has no such container. Bins, Compactors and Debris Boxes shall be placed on hard surface locations which are accessible to the Company. Use of Bins, Compactors or Debris Boxes by Customers may be exclusive or shared as determined by City and Company. Receptacles shall, at all times, be maintained in a well-kept appearance. Bins, Compactors and Debris Boxes must be maintained with lids. Customers shall be responsible for sanitation and deodorizing of such Bins, Compactors and Debris Boxes. Prior to the earlier of the delivery of the receptacle set forth in this Section or September 1, 2013, Company shall collect all Solid Waste from each Customer in the same manner and subject to the same conditions as the City's incumbent waste hauler provided such services as of the Signature Date.

- 4.2.3 Commercial Service. The Company shall collect Solid Waste as often as requested by Commercial Customers, including multiple collection per day and collections during weekends, provided that the Solid Waste which has been placed in appropriate Solid Waste receptacles at Commercial Premises within the City, provided that in no event shall the Company be required to collect any additional Solid Waste which is not placed in a receptacle. Beginning August 2013 and to be completed by September 1, 2013 and without expense to City or Customer, the Company shall furnish or provide Carts, Bins, Compactors or Debris Boxes for use in Collection, as appropriate, to all Commercial Premises which generate Solid Waste within the City. The size of the receptacles shall be determined by the Customer and the City. If the City makes such election, the Company, without expense to the City or Customer, and within five (5) working days after notice, shall provide a Solid Waste receptacle sufficient to provide the requested level of Service to a new Commercial Customer that has no such container. At all times, Bins, Compactors and Debris Boxes shall be placed on hard surface locations which are accessible to the Company. Use of Bins, Compactors or Debris Boxes by Customers may be exclusive or shared as determined by City and Company. Receptacles supplied by the Company shall, at all times, be maintained in a well-kept appearance. Bins, Compactors and Debris Boxes must be maintained with lids. Customers shall be responsible for sanitation and deodorizing of such Bins, Compactors and Debris Boxes. If permitted by City, Company shall also collect grease placed by Customers into jars or other appropriate containers for collection. Prior to the earlier of the delivery of the receptacle set forth in this Section or September 1, 2013, Company shall collect all Solid Waste from each Customer in the same manner and subject to the same conditions as the City's incumbent waste hauler provided such services as of the Signature Date.
- 4.2.4 Cleanup. The Company shall be responsible for cleanup of any Solid Waste dropped or spilled by its employees or agents during collection or transport.
- 4.2.5 Free City Service. The Company shall provide free Solid Waste, Recyclables and Green Waste Collection Service for all City-owned, City-leased, or City-rented municipal parks, offices, and facilities. The Company shall provide free C&D Debris Collection Service for all City-owned, City-leased, or City-rented municipal parks, offices, and facilities, except in extraordinary circumstances as determined in good faith by City and Company. Company shall provide Collection services for the Litter/Recycling Receptacles if requested by City which shall be considered a change in Services subject to Section 6.4.
- 4.2.6 Hours of Collection. Collection Service of all Carts, Bins, Compactors and Debris Boxes in Residential Service areas and from Commercial Premises adjacent to Residential Service areas shall not start before 6:00

a.m. or continue after 6:00 p.m., subject to change by resolution of the Council. However, the hours of Collection may be extended temporarily as a result of extraordinary circumstances or conditions with the prior consent of the City Representative.

4.2.7 Residential Cart Replacement. The Company, without expense to the City or the Customer, and within seventy-two (72) hours after notice, shall provide one replacement every four (4) years of lost or stolen Carts, shall provide one replacement per year for graffiti-"tagged" Carts, and shall replace Carts damaged due to normal wear and tear within the time frame of one Collection cycle. The Company shall maintain records of lost, stolen, damaged and graffiti-"tagged" Carts by specific address. The Company may charge for additional replacement Carts based on the actual cost of the Carts and their delivery.

4.3 RECYCLING

4.3.1 Residential Recycling. The Company shall Collect, Process, Recycle, and Transport Recyclables listed in ATTACHMENT 4 from all Residential Customers, including those Multiple-Family Dwellings that use Cart Service. The Company shall not be required to collect Recyclables from a Cart if the Recyclables are commingled with Solid Waste or Green Waste. In the event the Recyclables and Solid Waste are commingled to the extent that they cannot easily be separated by the Company or the nature of the material renders the Recyclable Materials contaminated, the Company will leave the material in the Solid Waste Cart and will leave a non-collection notice explaining the reason for non-Collection of the Solid Waste and Recyclables. Beginning August 2013 and to be completed by September 1, 2013 and without expense to City or Customer, the Company shall provide the Customer the requested amount of Recyclable Carts or other receptacle sufficient to provide the level of Service requested by each Customer. In addition, the Company, without expense to the City or Customer, shall provide a Recyclable Cart to a new Residential Customer that has no such container within five (5) working days after notice, of, or request for, Service, or in the case of annexations, within fourteen (14) days of the annexation effective date. Prior to the earlier of the delivery of the receptacle set forth in this Section or September 1, 2013, Company shall collect all Recyclables from each Customer in the same manner and subject to the same conditions as the City's incumbent waste hauler provided such services as of the Signature Date.

4.3.2 Commercial Recycling. The Company shall Collect, Process, and Transport Recyclables listed in ATTACHMENT 4 from all Commercial Premises that participate in Recycling Service. The Company will develop and implement quality assurance procedures to monitor the Recycling performance of Commercial Customers. Beginning August 2013 and to be completed by September 1, 2013 and without expense to City or

Customer, the Company shall provide approved Recycling Containers to each participating Commercial Premises. Recycling Containers shall be provided within fifteen (15) working days of sign-up and Owner's or manager's provision of a proper site. Recycling Containers shall be sited in accordance with all policies and regulations of the City. Prior to the earlier of the delivery of the receptacle set forth in this Section or September 1, 2013, Company shall collect all Recyclables from each Customer in the same manner and subject to the same conditions as the City's incumbent waste hauler provided such services as of the Signature Date.

- 4.3.3 Cleanup. The Company shall be responsible for cleanup of any Recyclables dropped or spilled by its employees or agents during Collection or Transport.
- 4.3.4 Free City Service. The Company shall provide free Recyclables Collection for all City-owned, City-leased, or City-rented municipal parks, offices, and facilities. In addition, Company shall provide up to ten (10) public Recyclable receptacles as requested by the City along Crescent Avenue from the Avalon Pier to Marilla Way. At its option, City may request that Company Collect Recyclables from these receptacles, but such election shall be considered a change in Service subject to Section 6.4.
- 4.3.5 Hours and Schedule of Collection. To the extent Company uses separate vehicles to collect Recyclables, collection of Recyclables from all Residential Customers and Commercial Customers shall be made on a regular schedule on the same day as Solid Waste Collection. Collection Service in Residential Service areas and from Commercial Premises adjacent to Residential Service areas shall not start before 6:00 a.m. or continue after 6:00 p.m., subject to change by resolution of the Council. However, the hours of Collection may be extended temporarily as a result of extraordinary circumstances or conditions with the prior consent of the City Representative.
- 4.3.6 Construction and Demolition Debris. The Company shall encourage builders and demolition companies ("Construction Companies") to source-separate their C&D Debris for future Recycling. The Company will develop and distribute educational materials for Construction Companies with regard to recycling of C&D Debris. The educational materials will be distributed in coordination with the issuance of building permits in the manner to be provided in the City ordinance. Prior to disposal, the Company shall salvage Recyclables from C&D Debris collected pursuant to this Agreement and to retain funds derived therefrom subject to the terms of Section 3.7. In addition, Company shall pay City Sixty Dollars (\$60) per ton (pre-processing) for all C&D Debris processed at the MRF, which shall be payable in the same manner and at the same time as

payments pursuant to Section 3.7. Company shall include documentation in all reports required under Section 3.7 indicating the date and amount of all C&D Debris received at the MRF and amount paid to the City for such C&D Debris. The price per ton set forth in the preceding sentence shall be adjusted annually in the same manner as the Company Service Fee.

4.4 GREEN WASTE

- 4.4.1 Residential Green Waste Collection. The Company shall Collect, Transport, and Process Green Waste placed in Solid Waste Carts or bundled for larger items at residences, as described herein. Residential Customers that do not receive Green Waste Services by Cart may place their Green Waste within their Solid Waste Cart or other receptacle. Tree trimmings, brush, shrubs, or other materials susceptible to being bundled shall be securely tied in bundles not heavier than fifty (50) pounds nor more than five (5') feet in length and twenty-four (24") inches in diameter. Beginning August 2013 and to be completed by September 1, 2013 and without expense to City or Customer, the Company shall provide the Customer the requested amount of Green Waste Carts sufficient to provide the level of Service requested by each Customer. In addition, the Company, without expense to the City or Customer, shall provide a Solid Waste Cart to a new Residential Customer that has no such container within five (5) working days after notice of, or request for, Service, or in the case of annexations, within fourteen (14) days of the annexation effective date.
- 4.4.2 Commercial Green Waste Collection. Subscribing to Green Waste Service will be optional for Commercial Customers. The Customer seeking the Service must contact the Company to initiate the Service, and Service will be provided only to those Commercial Premises that are located in areas where the Company is already providing such Service to residences and to which the City agrees to extend the Service.
- 4.4.3 Cleanup. The Company shall be responsible for cleanup of any Green Waste dropped or spilled by its employees or agents during Collection or Transport.
- 4.4.4 Free City Service. The Company shall provide free Green Waste Collection for all City-owned, City-leased, or City-rented municipal parks, offices, and facilities.
- 4.4.5 Hours and Schedule of Collection. Collection of Green Waste from all Residential Customers and subscribing Commercial Customers shall be made on a regular weekly schedule on the same day as Solid Waste Collection. Collection Service shall not start before 6:00 a.m. or continue after 6:00 p.m., subject to change by resolution of the Council. However, the hours of Collection may be extended temporarily as a result of

extraordinary circumstances or conditions with the prior consent of the City Representative.

4.4.6 Holiday Tree Collection. The Company shall collect holiday trees at Curbside on the regular day of Collection Service each year from December 26 through February 1.

4.4.7 Non-Collection Due to Contamination. Except as required above, the Company shall not be required to collect Green Waste if it is commingled with Solid Waste or Recyclables. In the event the Green Waste is commingled with non-Green Waste materials to the extent that they cannot easily be separated by the Company, the Company will leave the Green Waste uncollected and will leave a non-collection notice explaining the reason for non-Collection.

4.5 COLLECTION OF CONTAMINATED MATERIALS

Under no circumstances shall the Company's employees knowingly collect Hazardous Waste or remove unsafe or poorly containerized Hazardous Waste from Customer premises. If the Company determines that material placed in a container for collection is Hazardous Waste, Excluded Waste, or other material that may not be legally accepted at the Designated Disposal Site, Recyclables Processing Facility, or Green Waste Processing Facility or that presents a hazard to Company employees, the Company shall have the right to refuse to accept such material. The Company shall leave a non-collection notice indicating the reason for refusing the material. The Company shall contact the generator and request that the generator arrange for proper disposal service. If the Hazardous Waste, Excluded Waste, or other objectionable material is identified at time of delivery to the Designated Disposal Site, Recyclables Processing Facility, or Green Waste Processing Facility and the generator cannot be identified, the Company shall be solely responsible for handling and arranging transport and disposition of the Hazardous Waste, Excluded Waste, or other objectionable material.

5. OPERATION OF LANDFILL FACILITIES

5.1 OPERATION OF DISPOSAL FACILITIES

The City hereby leases the Landfill Facilities to the Company and Company agrees to operate the Landfill Facilities in accordance with the terms of this Agreement, Applicable Law, and best industry practices, including to provide all labor, materials, facilities, services, and equipment necessary to:

- Operate and maintain the Landfill in compliance with all Applicable Law;
- Operate and maintain the MRF in compliance with all Applicable Law;

The City also hereby contracts with Company for Company to operate the Hazardous Waste Facilities in accordance with the terms of this Agreement, Applicable Law, and best industry practices.

The following Sections describe these requirements.

5.2 LANDFILL

Company agrees to accept and deposit all Solid Waste collected by the Company pursuant to this Franchise at the Landfill. Company further agrees to accept and deposit Solid Waste generated from such areas and lands as described in writing by City.

- 5.2.1 Rent. Company shall pay the City \$1 annually as rent for leasing the Landfill. Such amount shall be due upon the anniversary of the Effective Date and may be included in the remittance of any other payment due to the City under this Agreement.
- 5.2.2 Acceptance of Waste. Company shall only accept and deposit Solid Waste, including all C&D Debris after Recyclable Materials are removed, as permitted by Applicable Law. Without limiting the foregoing, Company shall not accept or deposit any Excluded Waste, Universal Waste, E-Waste, Green Waste or Recyclables at the Landfill, except as provided by this Agreement. Company shall be solely responsible for complying with this section and shall indemnify and hold the City harmless from its failure to do so. From Friday of Memorial Day Weekend through the Tuesday after Labor Day, Company shall accept residential Solid Waste from residents for no charge at the MRF during normal operating hours.
- 5.2.3 Disposal Fees. Company may charge such Disposal Fees for the privilege of depositing Solid Waste within the Landfill. Disposal Fees are currently set forth in ATTACHMENT 5 and may be adjusted with the City's written approval. Company shall not charge Customers Disposal Fees directly for normal Solid Waste Collection as described in Section 4.2. All Disposal Fees for such Customers shall be included in the Rates charged by the City. Company may charge Disposal Fees directly to others. However, Company shall not charge any Disposal Fees for Solid Waste deposited at the Landfill by the City or otherwise Collected by Company.
- 5.2.4 Permits. Company shall obtain and maintain all permits and approvals required under the Applicable Law to operate and maintain the Landfill. Company shall not apply for a waiver of any term or condition of any such permit without City's prior written consent. Company shall be responsible for all fees and charges to obtain and maintain such permits and approvals. However, in the event Company is required to obtain and maintain a permit from the Regional Water Quality Board for the Landfill, City agrees to pay a one-half of such permit fee in an amount not to exceed six thousand one hundred sixteen dollars and fifty cents (\$6,116.50). City

may agree to pay any additional amounts in the event that one-half of the permit fee exceeds this amount in its sole and complete discretion.

- 5.2.5 Closure and Post-Closure Fund. Upon written request of Company, City shall provide any evidence reasonably necessary for Company to demonstrate that the City has complied with Applicable Law regarding any closure or post-closure requirements for the Landfill.
- 5.2.6 Operating Hours. Company shall operate the Landfill and accept Solid Waste for deposit at least five (5) days a week, excepting City-approved holidays, at least from 8:00 am to 12:00 pm and 1:00 pm to 5:00 pm. City may authorize adjustments to this schedule in writing. In addition, Company shall operate the Landfill during all other times to receive, at a minimum, Franchise Materials Collected by Company or City during weekends or holidays.
- 5.2.7 Extension of Landfill Life. Provided all other conditions remain substantially the same, including but not limited to annual tonnage volume or Uncontrollable Circumstances, Company warrants that the baler installed pursuant to Section 5.3.7 will increase the life of the Landfill beyond its current anticipated closure date of January 1, 2023 to approximately January 1, 2033 (“New Closure Date”). In the event the baler does not increase the life of the Landfill to the New Closure Date, Company shall be responsible for all indirect and direct costs incurred by the City, expressly including, the cost incurred by City or its contractor to send all applicable Solid Waste, Recyclables and Green Waste from Santa Catalina Island to a Designated Disposal Facility. Company’s warranties and responsibilities in this section are in addition to and are unaffected by any physical improvements to the Landfill to increase its life, expressly including, but not limited to Section 5.2.8. In the event of any such improvements, Company and City shall meet and confer regarding calculating a New Closure Date to account for the increased Landfill capacity attributable to such improvements.
- 5.2.8 Increase in Landfill Height. City shall have the option to increase the current height of the Landfill to extend its life. Notwithstanding Section 5.2.4, City shall be responsible for all planning, permitting and construction costs of such project. However, Company shall pay up to Two Hundred Thousand Dollars (\$200,000) to City for such planning and permitting expenses. Company shall promptly reimburse City for all planning and permitting expenses, up to the agreed upon amount, upon receipt of written invoice for the same from City. Company shall cooperate with City as may be required for City to undertake any studies, plans or improvements pursuant to this Subsection.

5.3 MRF

Company agrees to accept and process all Solid Waste, Recyclables and Green Waste, including C&D Debris, collected by the Company pursuant to this Franchise at the MRF. Company is further authorized to accept and process all Solid Waste, Recyclables and Green Waste, including C&D Debris, generated from such areas and lands as described in writing by City.

- 5.3.1 Rent. Company shall pay the City \$1 annually as rent for leasing the MRF. Such amount shall be due upon the anniversary of the Effective Date and may be included in the remittance of any other payment due to the City under this Agreement.
- 5.3.2 Waste Diversion. Company shall only accept and process Solid Waste, Recyclable Materials, Green Waste and C&D Debris at the MRF as permitted by Applicable Law. Without limiting the foregoing, Company shall not accept or process any Excluded Waste, Universal Waste or E-Waste at the MRF. To the extent possible, Company shall recover and divert all Recyclable Materials and Green Waste from Solid Waste and Green Waste. Company shall be solely responsible for complying with this section and shall indemnify and hold the City harmless from its failure to do so. Company shall not refuse to accept and process Solid Waste, Recyclable Materials, Green Waste and C&D Debris at the MRF if it has been generated or collected from any area specified by City pursuant to Section 5.2.
- 5.3.3 Green Waste Processing. Company shall chip, compost and otherwise process all Green Waste at the MRF. To the extent possible, Company shall divert all Green Waste from the Landfill.
- 5.3.4 Sale of Recyclables and Green Waste. Company shall sell, transfer or otherwise dispose of all Recyclables and Green Waste received at the MRF in accordance with Applicable Law. Pursuant to Section 3.7.1, Company shall pay City fifty percent of the net revenues received by Company for the sale of Recyclables and Green Waste collected under the Franchise. In addition, Company shall pay City fifty percent of the net revenues of any Recyclables and Green Waste directly deposited or sold to the Company at the Landfill or MRF.
- 5.3.5 Operating Hours. Company shall operate the MRF and accept Solid Waste, Recyclables, Green Waste and C&D Debris for processing at least five days a week, excepting City-approved holidays, at least from 8:00 am to 12 pm and 1:00 pm to 5:00 pm. City may authorize adjustments to this schedule in writing. In addition, Company shall operate the MRF during all other times to receive, at a minimum, Franchise Materials Collected by Company or City during weekends or holidays.
- 5.3.6 Permits. Company shall obtain and maintain all permits and approvals required under the Applicable Law to operate and maintain the MRF.

Company shall not apply for a waiver of any term or condition of any such permit without City's prior written consent. Company shall be responsible for all fees and charges to obtain and maintain such permits and approvals.

- 5.3.7 Baler. Within six (6) months of the Effective Date, Company shall purchase and install, at its sole cost, a baler with at least 200 horsepower at the MRF capable of creating Solid Waste bales at the Landfill with a bale weight of approximately 2,200 pounds. The size of the bale shall be substantially similar to the size of bales produced at the MRF as of the Effective Date. The replacement baler shall operate in good working order consistent with industry best practices. Upon the expiration or termination of this Agreement, Company shall transfer title to the baler and any accompanying warranties to the City. Company shall execute any documentation necessary to do so. Company shall also purchase the existing baler from the City at the price of Sixty Thousand Dollars (\$60,000) which shall be due and payable upon removal of the existing baler.

5.4 HAZARDOUS WASTE FACILITY

Company agrees to operate, accept, process and dispose of all Hazardous Waste deposited and generated by the City, Residential Customers and Multi-Family Dwelling Commercial Customers at the Hazardous Waste Facility without charge. Company is further authorized to accept and process any Hazardous Waste generated from such areas and lands as described in writing by City. City hereby grants Customer a license and/or right of entry necessary to access the Hazardous Waste Facility during the term of and subject to the terms and conditions of this Agreement.

- 5.4.1 Residential Hazardous Waste. Company shall accept and dispose of Hazardous Waste generated from Residential Customers as permitted by Applicable Law. Company shall not accept any Hazardous Waste generated from Commercial Customers. Company shall be solely responsible for complying with this section and shall indemnify and hold the City harmless from its failure to do so.
- 5.4.2 Permits. City shall obtain and maintain all permits and approvals required under the Applicable Law to operate and maintain the Hazardous Waste Facility. Company shall not apply for a waiver of any term or condition of any such permit without City's prior written consent. City shall be responsible for all fees and charges to obtain and maintain such permits and approvals.
- 5.4.3 Operating Hours. Company shall operate the Hazardous Waste Facility and accept Hazardous Materials for deposit at least two days a week at least from 12:00 pm to 3:00 pm. City may authorize adjustments to this schedule in writing.

- 5.4.4 Repairs. Company shall not make any repairs or improvements to the Hazardous Waste Facility without the City's prior written consent. Company shall notify City whenever repairs or improvements are necessary or advisable.
- 5.4.5 Staffing and Training. Without otherwise limiting the provisions of Section 6.1.5, City shall reimburse Company for any necessary training for the operation of the Hazardous Waste Facility for one (1) supervisor and two (2) employees. Company shall provide City with an invoice and other necessary documentation prior to such reimbursement. In no event may the reimbursement provided under this section exceed two thousand dollars (\$2,000).
- 5.4.6 Hazardous Materials Response. Company shall also assist City as requested by City in complying with all Applicable Laws regarding emergency Hazardous Waste release response, including providing clean-up and disposal services.
- 5.4.7 Disposal. At least monthly, Company shall arrange for all Hazardous Waste received at the Hazardous Waste Facility to be shipped in compliance with Applicable Law outside of Santa Catalina Island and be ultimately disposed of as required by Applicable Law. City shall reimburse Company for such shipping costs upon receipt of an invoice and other necessary documentation. These reimbursements shall be included with monthly reports in section 6.6.1.

5.5 GENERAL

- 5.5.1 Notices. Company shall immediately notify City in the event it receives a notice or communication from any regulatory agency regarding any alleged or actual violation of Applicable Law at the Disposal Facilities. Company shall provide City with a copy of such notice or communication as soon as possible. Company shall provide City with the opportunity to review and comment on any draft response to any notice or communication and shall provide City with a copy of the final response.
- 5.5.2 Reservation of Rights. City reserves the right to grant easements to utilities, telecommunications, flood control and other public or quasi-public uses or services over the Disposal Facilities without compensation to Company, provided such use will not unreasonably interfere with Company's use of the Disposal Facilities.
- 5.5.3 Title. City represents and warrants that it has sufficient authority and title to the Disposal Facilities to Lease to Company for the Term of the Agreement. Company acknowledges that it has been afforded an opportunity to examine title and to purchase any title insurance Company

deems necessary. Company shall not create any lien, encumbrance or other title exceptions against Company's interest in any Disposal Facility.

- 5.5.4 Entry by City. Company shall permit City to enter upon the Disposal Facilities at any time, and City shall be liable for any damage to Company's personal property in the course thereof, but only to the extent that damage was caused by the negligence of City or its personnel.
- 5.5.5 Sublease. Company shall not assign or sublicense all or any portion of any Disposal Facility without the express written consent of the City, which consent may be withheld in the City's sole discretion, notwithstanding sections 1995.260 and 1995.270 of the California Civil Code as they may be amended. Any unauthorized assignment or sublease shall be void and City shall have the right to immediately terminate this Agreement.
- 5.5.6 Taxes. In addition to the rents and other payments required to be paid under this Agreement, Company shall pay any and all taxes, assessments, and other charges of any description including, without limitation, any possessory interest tax (collectively, "Impositions") levied or assessed from the date of this Agreement until the termination of this Agreement by any governmental agency or entity on or against the Disposal Facilities or any portion thereof, or on or against any interest in the Disposal Facilities (including the leasehold interest created by this Agreement), or any improvements or other property in or on the Disposal Facilities.

City warrants that as the Signature Date, no Impositions have been levied against the Disposal Facilities. In the event Impositions are levied during the term of this Agreement, Company may request that City meet in good faith to determine whether to increase the Company Service Fee to account for such Impositions.

Any and all Impositions and installments of Impositions required to be paid by Company under this Agreement shall be paid by Company at least ten (10) days before each such Imposition, or installment thereof, become delinquent, and the official and original receipt for the payment for such Imposition or installment thereof shall immediately be given to the City.

Company shall have the right to contest, oppose, or object to the amount or validity of any Imposition levied on or assessed against the Disposal Facilities or any portion thereof and may in good faith diligently conduct any necessary proceeding to prevent or void or reduce the same; provided, however, that the contest, opposition, or objection must be filed before the Imposition at which it is directed become delinquent, and written notice of the contest, opposition, or objection must be given to the jurisdiction making such imposition in a timely manner. No such contest, opposition, or objection shall be continued or maintained after the date on which the

Imposition at which it is directed becomes delinquent unless Company has met one of the following conditions: (1) Paid such Imposition under protest prior to its becoming delinquent; or (2) Obtained and maintained a stay of all proceedings for enforcement and collection of the Imposition by posting such bond or other matter as may be required by law for such a stay.

The City further shall not be required to join in any proceeding or contest brought by Company, unless the provisions of any law require that the proceeding or contest be brought by or in the name of the City or any owner of the Disposal Facilities. In that case, the City shall join in the proceeding or contest or permit it to be brought in the City's name but such action shall be without cost to the City.

Company shall, as between the City and Company, have the duty of attending to, preparing, making, and filing any statement, return, report, or other instrument required or permitted by law in connection with the determination, equalization, reduction, or payment of any Imposition that is or may be levied on or assessed against the Disposal Facilities, or any portion thereof, or any interest therein, or any improvements or other property on the Disposal Facilities.

Company shall indemnify, defend and protect the City, and its directors, officers, employees, volunteers and agents and the Disposal Facilities and any improvements now or hereafter located on the Disposal Facilities free and harmless from any claims, causes of action, liabilities, losses, damages, expenses, including attorneys' fees and costs, resulting from any Impositions required by this Section to be paid by Company, and from all interest, penalties, and other sums imposed thereon, and from any sale or other proceeding to enforce collection of any such Imposition.

Should Company fail to pay within the time specified in this Section any Impositions required by this Section to be paid by Company, the City may, without notice to or demand on Company, pay, discharge, or adjust such imposition for the benefit of Company and then recover any paid amount from Company in the same manner as any Monthly Remittance.

- 5.5.7 Condemnation. Company takes and leases the Disposal Facilities subject to all encumbrances, easements, rights and right-of-way of record and upon the condition and understanding that in the event of condemnation by any legal entity having the power to do so, Company shall be deemed to have a leasehold interest in the land and shall be entitled to a portion of any payments made as a result of the condemnation in accordance with applicable law. Company shall have a leasehold interest in the Disposal Facilities under or by virtue of this Agreement. Such claim of interest shall be made only if Company is not in default (after the expiration of the applicable cure period) of any substantive provisions contained herein. If

the entire or a material portion of the leased property is taken by condemnation, either party shall have the election to terminate this Agreement. The termination date shall be the date of taking.

- 5.5.8 Mechanic's Liens. Company shall keep the Disposal Facilities free from any liens arising out of any work performed, material furnished, or obligations incurred by Company, or any tenant or subtenant thereof. Company shall not be considered in violation of this provision if it provides a bond in lieu of the lien which is in conformance with applicable law and which is in an amount and form reasonably acceptable to the City.
- 5.5.9 No Relocation Assistance. Company acknowledges that Company is not entitled to relocation assistance or any other benefits under the Uniform Relocation Assistance Act or any other applicable provision of law upon termination of this Agreement.
- 5.5.10 Utility Service. Company shall be solely responsible for obtaining and for the cost of any and all utility service at the Disposal Facilities. City, in its sole discretion, shall grant any easements, licenses or other approvals necessary to provide utility service to the Disposal Facilities.
- 5.5.11 Nuisance; Waste. Company shall not commit any waste on the Disposal Facilities and shall keep the Disposal Facilities free of any loose debris or equipment. Company shall use or maintain the Disposal Facilities in any manner that would constitute a public or private nuisance. Company shall clean up any unauthorized dumping adjacent to the boundaries of any Disposal Facility.
- 5.5.12 Fire Risk. Without limiting Company's obligations under Section 5.5.11, Company shall keep dry grasses and other combustible materials properly cleared so that no undue fire hazard to adjacent areas exists. Company shall conform to all directives issued by the County of Los Angeles Fire Warden, including furnishing of necessary fire hydrants and hoses as may be required. Company shall also obtain prior written approval from Southern California Edison ("SCE") in dumping and burning of combustible materials on any Disposal Facility if within forty (40) feet of SCE high voltage power lines.
- 5.5.13 No Outside Storage. Excepting when necessary during periods of renovation and restoration, Company shall not store or permit the storage of goods, materials, equipment or property of any kind, excluding vehicles, upon the Premises unless such property is stored within buildings or structures located thereon or unless outside storage authorized by City in writing.
- 5.5.14 Improvements. Except as permitted in Section 6.9.1, Company shall not make any modifications or improvements to the Disposal Facilities

without City's prior written consent, which may be given in its sole discretion. For the Landfill Facilities, Company shall be responsible for the entire cost of any improvements and repairs and shall ensure that the Disposal Facilities are maintained and operated in good working order consistent with industry best practices, expressly including, but not limited to, undertaking all necessary and advisable preventive maintenance and repairs to the Disposal Facilities and their equipment. For the Hazardous Waste Facility, City shall be responsible for any improvements and repairs. However, Company shall advise City when such repairs or improvements are necessary or advisable.

5.5.15 Ornamental Landscaping. Company shall not remove from the Disposal Facilities or any adjacent area any of the trees, vines, shrubbery or ornamental growth located on the Landfill Facilities without the City's prior written consent.

5.5.16 Hazardous Materials.

a) For purposes of this Agreement, the term "Hazardous Substances" means: (a) any substance, products, waste, or other material of any nature whatsoever which is or becomes listed, regulated, or addressed pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 United States Code Section 9601 et seq.; the Resources Conservation and Recovery Act, 42 United States Code Section 6901 et seq.; the Hazardous Materials Transportation Conservation and Recovery Act, 42 United States Code Section 1801 et seq.; the Clean Water Act, 33 United States Code Section 1251 et seq.; the Toxic Substances Control Act, 15 United States Code Section 2601 et seq.; the California Hazardous Waste Control Act, Health and Safety Code Section 25100 et seq.; the Hazardous Substance Account Act, Health and Safety Code Section 25330 et seq.; the California Safe Drinking Water and Toxic Enforcement Act, Health and Safety Code Section 25249.5 et seq.; California Health and Safety Code Section 25280 et seq. (Underground Storage of Hazardous Substances); the California Hazardous Waste Management Act, Health and Safety Code Section 25170.1 et seq.; California Health and Safety Code Section 25501 et seq. (Hazardous Materials Release Response Plans and Inventory); or the California Porter-Cologne Water Quality Control Act, Water Code Section 13000 et seq., all as amended (the above cited California state statutes are hereinafter collectively referred to as "the State Toxic Substances Law"); or any other federal, state, or local statute, law, ordinance, resolution, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning any Hazardous Substance, now or at any time hereinafter in effect; (b) any substance, product, waste or other material of any nature whatsoever which may give rise to liability under any of the above statutes or under any statutory or common law theory based on negligence, trespass, intentional tort, nuisance or strict liability or

under any reported decisions of a state or federal court; (c) petroleum or crude oil, other than petroleum and petroleum products which are contained within regularly operated motor vehicles; and (d) asbestos.

b) City makes no warranty or representation whatsoever concerning the Disposal Facilities, including without limitation, the condition, fitness or utility for any purpose thereof, of any improvements thereto with applicable laws, ordinances or governmental regulations. Company's right to use the Disposal Facilities is strictly on an "as is" basis with all faults. City hereby disclaims all warranties whatsoever, express or implied, regarding the condition of the soil (or water), geology, and any warranty of merchantability or habitability or fitness for a particular purpose.

c) Except as otherwise provided, Company shall not use, create, generate, store, deposit, dispose of or allow any Hazardous Substances on, under, about or within the Disposal Facilities in violation of any federal, state, or local law, rule, regulation, order, decree or other requirement listed in paragraph (1) above. The acceptance, storage and disposal of Hazardous Waste in compliance with Applicable Law at the Hazardous Waste Facility shall not be a violation of this section and shall not be subject to its notice and removal requirements. Moreover, accepting or disposing of any material permitted to be accepted at the applicable Disposal Facility by Applicable Law shall not be a violation of this section. d) City or its officers shall at all times have the right to go upon and inspect the Disposal Facilities and the operations conducted thereon to assure compliance with the requirements herein stated. This inspection may include taking samples for chemical analysis of substances and materials present and/or testing soils on the Disposal Facilities and taking photographs.

e) Company shall, within forty-eight (48) hours, of the discovery by Company of the presence of, or believed presence of, a Hazardous Substance as defined herein, give written notice to City in the event that Company knows or has reasonable cause to believe that any release of Hazardous Substance has come or will come to be located on, under, about or within the Disposal Facilities in violation of this section. The failure to disclose in a timely manner the release of a Hazardous Substance, including but not limited to, an amount which is required to be reported to a state or local agency pursuant to law (e.g., California's Hazardous Materials Storage and Emergency Response Act, Health and Safety Code Section 25550 et seq.) shall be grounds for termination of this Agreement by City in addition to actual damages and other remedies provided by law. Company shall immediately clean up and completely remove all Hazardous Substances placed by Company on, under, about or within the Disposal Facilities, in a manner that is in all respects safe and in accordance with all applicable laws, rules and regulations.

f) In the event Hazardous Substances are discovered, Company shall disclose to City the specific information regarding Company's discovery of any Hazardous Substances placed on, under, about or within the Disposal Facilities by Company or its employees or agents, and provide written documentation of its safe and legal disposal.

g) Breach of any of the covenants, and Company's failure to cure within thirty (30) days of Company's receipt of written notice from City, shall give City the authority to either immediately terminate this Agreement or assume control of the Disposal Facilities. In either case, Company will continue to be liable under this Agreement to remove and mitigate all Hazardous Substances placed by Company on, under, about or within the Disposal Facilities. Company shall be responsible for, and bear the entire cost of removal and disposal of, all Hazardous Substances introduced to the Disposal Facilities by Company. Upon termination of this Agreement, Company shall, in accordance with all laws, remove from Disposal Facilities any equipment or improvements placed on the Disposal Facilities by Company that may be contaminated by Hazardous Substances.

h) Company shall defend, indemnify and hold City and its officials, officers, employees, contractors and agents free and harmless from any and all claims, liability, injury, damage, costs, or expenses (including, without limitation, the cost of attorney's fees) arising as a result of the presence or use of any Hazardous Substances placed or caused to be placed by Company or its partners, affiliates, agents, officials, officers, contractors or employees on the Disposal Facilities. The foregoing indemnity is intended to operate as an agreement pursuant to, among other requirements, Section 107, subdivision (e) of CERCLA, 42 United States Code Section 9607, subdivision (e), and California Health and Safety Code Section 25364, to insure, protect, hold harmless and indemnify each Party from any liability created by the other Party pursuant to such sections.

5.5.17 Vacating the Property. At the expiration of the term or at any sooner termination of this Agreement, Company shall quit and surrender possession of Disposal Facilities in as good order and condition as they were delivered to Company on the Effective Date, reasonable wear and tear and damage by the elements excepted. Company agrees to pay any costs incurred by City if Company fails to comply with this provision, including reasonable attorneys' fees and costs expended on any action by City to compel removal by Company. If Company does not restore the Disposal Facilities as required, City may restore the Disposal Facilities at Company's sole cost and expense.

6. OTHER COMPANY REQUIREMENTS

6.1 GENERAL

- 6.1.1 Availability of Representatives. A responsible representative of the Company who is qualified to respond to public inquiries shall be available at the Company's office during office hours, excluding lunchtime closure, for communication with the City or the public.
- 6.1.2 Company-Provided Equipment. The Company shall provide an adequate number of waste collection receptacles and pieces of equipment for the Collection, Disposal, and Transportation Services for which it is responsible under this Agreement.
- 6.1.3 Bulky Item Collection. The Company shall offer the residents "On-Demand Bulky Item Collection Service. Residents will be able to request up to three (3) times per year a maximum of (2) items per collection of bulky-items on their normal collection day. The definition of Bulky-items can be found in Section 1.
- 6.1.4 Collection on Holidays. If the day of collection on any given route falls on a holiday observed by the Designated Disposal Site to which the Company delivers the City's Solid Waste or Green Waste, the Company shall provide Collection Service for such route on the next workday following such holiday, thereby adjusting subsequent workdays that week.
- 6.1.5 Employees. The Company shall exercise reasonable care to hire responsible employees, to supervise the work of such employees, and to discipline and, if necessary, discharge an employee failing to meet reasonable standards for performance of work under this Agreement. The Company shall comply with applicable state and federal law pertaining to employment, including, but not limited to, applicable equal opportunity employment and affirmative action requirements. Company shall ensure all employees are properly trained and licensed for their respective duties. All employees shall undergo drug and alcohol testing to the extent required by Applicable Law or requested by the City. However, in no event may the City require Company's employees to undergo drug and alcohol testing exceeding that required for City employees, unless otherwise required by Applicable Law.
- 6.1.6 Enforcement. The Company shall notify the City of illegal piles of Solid Waste, Recyclables, or Green Waste placed in the street within forty-eight (48) hours of the Company's observation of the materials. The City shall have primary responsibility for the collection of illegal Solid Waste or Recyclable Materials, but the Company shall reasonably cooperate with the City's request to assist with such collection to the extent the Company has suitable equipment and personnel in the neighborhood, such collection will not unreasonably interfere with the Company's performance of its responsibilities under this Agreement, and such collection will not require

the Company to incur any excessive expense. The Company shall have responsibility for the collection of illegal Green Waste.

- 6.1.7 Manner of Collection. The Company shall perform all Collection Services in a quiet and courteous manner and ensure that all Carts are placed on the premises from which they were removed in an upright position, with lids closed, and within five (5) feet of where they were originally placed before collection.
- 6.1.8 Office Facilities. The Company shall establish and maintain at all times during the term hereof an office within the City limits or on Santa Catalina Island.
- 6.1.9 Service Schedule: The Company shall provide electronic maps (which may be in "portable document format" or other similar format) identifying the schedule for Refuse, Recyclables and Green Waste Collection. The electronic maps shall provide adequate detail for customers to identify specific service days for all locations within the Service Area. These maps shall also be available on the Company webpage.
- 6.1.10 Office Hours. The Company's office hours shall be, at a minimum, from 8:00 a.m. to 5:00 p.m. daily, except for a lunch hour and Saturdays, Sundays, and holidays. A representative of the Company shall be available during office hours for communication with the public at the Company's principal office.
- 6.1.11 Service Complaints. All Service or Disposal Facility complaints shall be directed to the Company. The Company shall respond to all complaints, other than missed pickups, within twenty-four (24) hours if the twenty-four (24) hour period ends during the office hours specified in Section 6.1.9 or, if not, on the next business day. The Company shall be responsible for the prompt and courteous attention to, and prompt and reasonable resolution of, all complaints and shall use its best efforts to resolve all such complaints within the two (2) business days next following the date on which such complaint is received. Complaints that cannot be reasonably resolved may be appealed to the City Representative or designee for final resolution.
- 6.1.12 Complaint Log. The Company agrees to maintain a log of all oral and written service complaints registered with the Company from Customers, Service recipients, those using the Disposal Facilities or the public within the Service Area ("Complaint Log"). The Company shall record in the log all written and oral complaints, noting the name and address of complainant, date and time of complaint, nature of complaint, and nature and date of resolution. Such log shall be kept so that representatives of the City, upon request, may conveniently inspect it. The Company shall deliver, along with quarterly reports specified in Section 6.5 or otherwise

upon request of the City, a summary of complaints by number and type and excerpts from the log reflecting action to date.

- 6.1.13 Missed Pickups. In the event of a missed pickup, the Company shall complete the pickup the same day if the complaint is received by 12:00 p.m. or by 12:00 p.m. the following day if the complaint is received after 12:00 p.m.
- 6.1.14 Liquidated Damages for Failure to Respond. The City Representative may levy a charge for failure to meet the requirements of this Agreement, pursuant to Section 10.1.
- 6.1.15 Service Response to Communication from the City. The Company shall respond, either verbally or by e-mail correspondence, to all requests made by the City within 48 hours.
- 6.1.16 Technical Working Group. Representatives from the Company and City will meet at least quarterly to discuss issues related to this Agreement.
- 6.1.17 Telephone. The Company shall maintain a toll-free telephone system during office hours, which will have available service representatives sufficient to handle the volume of calls typically experienced by the Company. Customers must be able, with reasonable convenience, to reach the Company's office by phone during office hours. The Company shall also maintain an after-hours toll-free telephone number for use during other than normal business hours. The Company shall have a representative, answering service, or voicemail system available at said after-hours toll-free telephone number during all hours other than normal office hours. Any recording shall advise callers to call 911 in the event of an emergency. The Company shall provide the City the means to contact the Company directly by telephone on a 24-hour basis in the event of an emergency. The Company shall at all times maintain the capability of responding to Customer telephone calls in Spanish as well as in English and shall maintain the capability of responding to telephone calls through Telecommunications Device for the Deaf (TDD) services.

6.2 CHANGE IN OPERATIONS/ADMINISTRATION OR SCHEDULE

The Company shall notify the City in writing of any material changes in, or to the operation to provide Franchise Services (e.g. vehicle routes, equipment type, crew size), administration (e.g., management), and schedule five (5) days in advance of the time such material change is implemented. Any changes to the Collection operation shall meet the Service requirements and performance standards and all other terms of this Agreement. In the case of changes to the Collection schedule, the Company must notify all affected Customers at least fourteen (14) days prior to any change in a Collection day. The Company shall not permit any Customer to

go more than seven (7) days without service in connection with a Collection schedule change other than in the event of an Uncontrollable Circumstance.

In addition, the City may direct the Company to modify the Collection schedule in around schools and in other high traffic areas to avoid Collection during peak traffic hours, as determined by the City. The City shall endeavor to notify the Company at least three (3) days in advance of planned City-directed work, such as road or repair or utility upgrade projects, that may restrict access to streets where the Company is scheduled to perform Services. The City will, to the extent feasible, schedule such work to prevent Company Service interruptions or delays.

6.3 ACCUMULATION OF SOLID WASTE AND DUMPING

The Company shall direct its drivers to note the addresses of any location at which they observe significant or ongoing accumulation of Solid Waste or Green Waste that is not being delivered for Collection, and the address, or other location description, at which these materials have been dumped in an apparently unauthorized manner. The Company shall deliver the address or description to the City within forty-eight (48) hours of such observation.

6.4 MODIFICATIONS OR SCHEDULE CHANGE OF FRANCHISE SERVICES

Upon receiving a written request from the City, the Company shall provide reasonable modification of any Franchise Service subject to establishment of appropriate and mutually agreed-upon compensation for providing the service. Granting of any such modified Franchise Service shall be contingent upon Council approval of a modified Company Service Fee and a corresponding modified Rate(s).

6.5 REPORTS

The Company shall provide the City with reports as deemed necessary by the City and at a frequency defined in this section. Reports will contain the information required by the City for compliance with Applicable Law and for the City to measure the Company's performance of items in this Agreement, but will be limited to information directly attributable to the Collection Services and operation of the Disposal Facilities. Such reports shall include, but will not be limited to, Commercial Customer audits, and public education and outreach. The Company agrees to provide additional reports regarding its performance of the Agreement as may be reasonably requested by the City to meet future reporting requirements of the City or the State of California. The City or a consultant to the City, on request, has the right to review the records of the Company related to this Agreement at reasonable times and upon reasonable notice.

6.6 GENERAL

All reports shall be provided electronically in software acceptable to the City.

6.6.1 Monthly Reports.

Monthly reports to the City shall be due on the 30th day of the month following the previous calendar month and shall include:

The number of Tons (gallons or numbers of filters), separately calculated, for Cart, Bin, Debris Box/Compactor Service (combined), Green Waste, and used oil and oil filters, collected and delivered to the Designated Disposal Site and/or Recyclables and Green Waste Processing Facilities.

The number of Tons (gallons or numbers of filters), separately calculated, for Solid Waste, Green Waste, and used oil and oil filters, received by and delivered to the Disposal Facilities.

The quantity of Green Waste Collected for each route.

The quantity and type of waste delivered to and received by the Hazardous Waste Facility and any other information required by Applicable Law or requested by the City. Any information necessary for calculating reimbursements due to the Company under 5.4.7.

Any information requested by City regarding the operation of the Landfill, including the materials received at or disposed of at the Landfill.

The number of Tons, separately calculated by category, of Recyclables and Green Waste delivered to and processed by the MRF. The number of Tons, separately calculated by category and price or all Recyclables and Green Waste transferred, disposed of or sold by the Company. Any additional information necessary for calculating the Monthly Remittance in 3.7.1.

The Company Service Fee, Monthly Remittances and other items requested by the City.

6.6.2 Quarterly Reports.

Quarterly reports to the City shall be due on the 30th day of the month following the previous calendar quarter and shall include:

Detailed review of the number and type of complaints received over the past quarter, including how they were resolved and the elapsed time between receipt of the first complaint and final resolution of the complaint.

A summary narrative of problems encountered with Collection and Processing activities and actions taken. Information shall include the type and number of notification tags left at Customer locations for Customers with multiple violations; haul-or-call tags; instances of property damage or injury, poaching, or scavenging; significant changes in operation; market factors; and publicity conducted.

A summary of a log on praises and complaints and resolutions of complaints, including a summary of the type and number of complaints. The Company shall provide a record of all calls related to missed pickups and responses to such calls.

The quarterly report may include the monthly report that is due that month, in one document.

6.6.3 Annual Reports.

Annual reports to the City shall be due in both printed and electronic format on August 15th of each year, beginning August 15, 2014, and shall include:

Reviewed financial statements for the operation of the services provided for under this Agreement by an independent external auditor selected by the Company for the operation and services covered under the Agreement. The Company will pay all review costs.

A summary of the prior year's monthly Company Service Fee, any other payments to City, and Monthly Remittances.

Account data submitted electronically in software acceptable to the City (including, without limitation, Excel), including the number of accounts for each Service category.

Public education and information activities undertaken during the year, including Collection notification tags, community information and events, and other activities related to the provision of Collection Services. The report shall include a narrative assessment of the impact of these activities on Recycling and Green Waste participation and amounts collected from Single-Family Residences, Multiple-Family Dwellings, and Commercial Customers.

The number of Tons, calculated separately, for Cart, Bin, Debris Box and Compactor Service collected and delivered to the Designated Disposal Site and/or the Recyclables and Green Waste Processing Facilities. The number of Service accounts shall be indicated by Service classification level for Single-Family Residences, Multiple-Family Dwellings, and Commercial Customers. The information shall include the number of Bins, Debris Boxes, Compactors and Carts distributed by size and Customer type. This effort will include route/service verification by the Company prior to submittal of the information to the City.

All information requested by City to permit it to review the operation and maintenance of the Disposal Facilities.

The annual report may include the monthly and quarterly reports that are due in that month, in one document.

6.7 ADDITION OF NEW NON-FRANCHISE SERVICES

Upon receiving a written request from the City, the Company shall provide any other exclusive or non-exclusive services not covered by this Franchise, and that it is qualified to provide, including, but not limited to, assistance to the City in the event of natural disasters, subject to establishment of appropriate and mutually agreed upon compensation for providing the service. Granting of any such new service shall be contingent upon Council approval of a new Service Fee(s) and a corresponding new Rate(s) as provided in ATTACHMENT 8.

6.8 COMPANY VEHICLES

The Company shall at all times comply with all applicable rules, statutes, orders, and requirements adopted by any governmental agency with jurisdiction over air quality, including, but not limited to, the California Air Resources Board and South Coast Air Quality Management District. In addition to any indemnification obligations set forth elsewhere in this Agreement, the Company shall defend, indemnify, and hold harmless the City against any fines, penalties, losses, or claims arising out of the Company's failure to comply with this paragraph.

Company may utilize up to five (5) Collection vehicles for all Collection Service with four (4) vehicles regularly utilized and one (1) vehicle as a back-up. Company shall be responsible for obtaining any and all vehicle permits for use of the Collection vehicles within the City. All vehicles shall be powered by liquefied petroleum (LP)-gas unless otherwise approved in writing by City.

All vehicles used by Company under this Agreement shall be registered with the Department of Motor Vehicles of the State of California, shall be kept clean and in good repair, shall be uniformly painted, and shall be washed at least twice every seven (7) calendar days. The Company's name, phone number, vehicle number or other similar information required by City shall be prominently displayed on its vehicles.

The Company shall immediately clean up any fluids and/or waste spilled from Collection vehicles, and shall deploy and remove absorbent materials to the extent necessary to absorb all fluids. The Company shall provide the City with a copy of any spill report that the Company is required to provide, and at the same time it is provided, to the State Office of Spill Prevention and Response. When necessary, the Company shall apply a suitable cleaning agent to the street surface or shall employ hydraulic steam cleaning to provide adequate cleaning. Each of the Company's Service vehicles shall at all times be equipped with petroleum absorbent materials and a broom and shovel to be used for cleanup activities. The Company shall comply at all times with all recommendations or limitations concerning laden weight of collection vehicles established by the State of California or any government agency, and/or the vehicle manufacturer.

Company shall prepare magnetic signage and City shall be permitted to attach such City-related signage and advertisements to Company vehicles to advertise

City-sponsored events or activities. City and Company shall meet and confer as necessary regarding how such signage will be displayed.

6.9 LP CONVERSION AND FACILITIES

6.9.1 LP FACILITY

Company shall be solely responsible for ensuring an adequate supply of LP gas for its vehicles and for any golf carts retrofitted pursuant to this Section. Company may install an LP gas storage and dispensing facility at the MRF at its sole cost and expense in compliance with all applicable law. At City's election, Company shall transfer title to such facility to City and execute any documentation necessary for such transfer. Company shall ensure such facility remains in good working order and safe for the general public to utilize.

6.9.2 GOLF CART RETROFIT

Company shall, at its sole cost and expense, retrofit up to one hundred twenty-five (125) golf carts operating within the City to LP gas during the term of this Agreement. Company shall advertise the retrofit opportunity to City residents and businesses pursuant to this subsection as may be reasonably required by City, and Company and City shall meet in good faith to determine how applications for retrofitting will be processed. Any golf cart operating within the City shall be entitled to utilize the LP gas dispensing facility operated by Company pursuant to Section 6.9.1.

6.10 WASTE TO ENERGY

At its option, City may install or construct a WTE Facility at the Disposal Facilities or otherwise on Santa Catalina Island. Company shall assist City as necessary to evaluate the feasibility of and to plan, purchase, install or construct the WTE Facility. City and Company agree to meet in good faith as requested by City to consider the cost allocations of any activities in this Section. However, Company understands and agrees that, at a minimum, City shall be entitled to 25-50% of the net revenue received from the operation of the WTE Facility. Net revenue shall be calculated as revenue received from any saleable product produced by the WTE Facility, excluding any operational costs and electricity or LP gas used by Company for the Services or operation of the Disposal Facilities.

7. CONFIDENTIALITY

The City and the Company each acknowledge that the financial information provided by the Company to the City on this Agreement constitutes highly confidential, proprietary information, of which disclosure to the public would result in unfair competitive disadvantage to the Company, its parent Company and/or affiliated entities. The Company, its parent Company and/or such affiliated entities shall be entitled to injunctive relief to prevent such disclosure which is in excess of the disclosure the City is required to make under applicable state and federal laws and regulations. The City agrees to

contest all attempts by third parties to obtain disclosure of such financial information that is not otherwise required to be disclosed by state and/or federal laws and regulations.

8. SERVICE RATES & COMPANY SERVICE FEES

8.1 SERVICE RATES

The City shall bill and collect from each Customer at the Rates provided in ATTACHMENT 8 to this Agreement and as adjusted from time to time by the City. City shall ensure it imposes adequate Rates to pay Company the Company Service Fee. However, Company understands and agrees that City may be required to comply with Proposition 218 and other applicable law when raising or imposing the Rates. City shall not be in breach of this Agreement if its residents lawfully delay or prevent City from raising or imposing the Rates. In such event, City and Company shall meet in good faith to consider alternatives and options, which may include permitting Company to terminate the Agreement without cause.

8.2 COMPANY SERVICE FEE

City shall pay Company the Company Service Fee in the annual amount of One Million Three Hundred Seventy-Six Thousand Two Hundred Thirty-Nine Dollars (\$1,376,239). The Company Service Fee shall be paid in equal monthly installments by the City by the tenth of each month. The Company Service Fee shall be adjusted annually on July 1st of each year in an amount equal to the decrease or increase in the Consumer Price Index All Urban Consumers ("CPI") Los Angeles Orange Riverside County area during the prior April - April period as calculated herein. The base for computing the potential increase or decrease shall be the Consumer Price Index [All Urban Consumers] (base years 1982-1984 = 100) Los Angeles- Riverside-Orange Counties CMSA, published by the United States Department of Labor, Bureau of Labor Statistics ("index"). If the index has changed over the beginning index (or the index as of the most recent prior adjustment date, as the case may be), the Company Service Fee for the following year shall be set by multiplying the then-current Company Service Fee by a fraction, the numerator of which is the adjustment index and the denominator of which is the beginning index. If the index is changed so that the base year differs from that used as of the year preceding that adjustment date, the index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics.

9. INDEMNITY, INSURANCE

9.1 INDEMNIFICATION OF THE CITY

The Company agrees to and shall indemnify, defend with counsel acceptable to the City, and hold harmless the City, its officers, officials, employees, volunteers, agents and assigns from and against any and all damages (whether special, general or punitive), loss, liability, fines, penalties, forfeitures, claims, demands, actions, proceedings or suits (whether administrative or judicial), in law or in equity, of every kind and description (including, but not limited to, injury to and death of any person and damage to property, strict liability, product liability, or for contribution or indemnity claimed by third parties),

arising or resulting from or in any way connected with: (i) the operation of the Company, its agents, employees, affiliates and subcontractors, in performing or failing to perform this Agreement; (ii) the failure of the Company, its agents, employees, affiliates and subcontractors to comply in all respects with Applicable Laws, ordinances and regulations, and/or applicable permits and licenses; (iii) the acts of Company, its officers, employees, agents, affiliates and subcontractors in performing this Agreement for which strict liability is imposed by law; (iv) the maintenance and operation, of the Disposal Facilities; (v) the processing, marketing, and end use of Recyclable Materials and Green Waste; and (vi) the execution of the Agreement to the extent a third party challenges City's approval of same or process for approving same. The foregoing indemnity shall apply only to the extent such loss, liability, penalty, forfeiture, claim, demand, action, proceeding, suit, injury, death or damage is not caused by the negligence of the indemnities.

9.2 AB 939

To the extent permitted by Public Resources Code Section 40059.1, and to the extent noncompliance is caused by the Company's breach of or noncompliance with a provision of this Agreement, the Company agrees to protect and defend the City, with counsel selected by the City, and to indemnify and hold harmless the City from and against all fines or penalties imposed by the State of California if the waste diversion goals specified in the California Public Resources Code are not met by the City with respect to the Solid Waste collected by the Company under this Agreement. If, following written demand by the City, the Company fails to indemnify the City from and against such fines or penalties, the City may make a claim against the bond established pursuant to Section 9.5 for amounts owed by the Company pursuant to this Section, and the Company shall replenish the bond so that the principal amount is restored to the full amount required in Section 9.5.

9.3 HAZARDOUS SUBSTANCES INDEMNIFICATION

The Company shall indemnify, defend with counsel acceptable to the City, protect and hold harmless the City, its officers, officials, employees, agents, assigns and any successor or successors to the City's interest from and against all claims, damages (including but not limited to special, consequential, natural resources and punitive damages), injuries, response mediation and removal costs, losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties, and attorney and expert fees for the adverse party and expenses (including but not limited to attorney's and expert witness fees and costs incurred in connection with defending against any of the forgoing or in enforcing this indemnity) of any kind whatsoever paid, incurred or suffered by, or asserted against, the City or its officers, officials, employees, or agents arising from or attributable to the negligence or willful misconduct of Contractor in handling Hazardous Waste either knowingly or under circumstances in which a reasonable person would or should have known that Hazardous Waste was being handled. The foregoing indemnity is also intended to operate as an Agreement pursuant to Section 107(e) of CERCLA, 42 U.S.C. Section 9607(c) and

California Health and Safety Code Section 25364, to defend, insure, protect, hold harmless and indemnify the City from liability.

9.4 INSURANCE SCOPE AND LIMITS

The Company shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Company, its agents, representatives, employees or subcommands. With respect to General Liability and Pollution and/or Environmental Impairment Liability coverage shall be maintained for a minimum of five (5) years after the latter of the expiration or termination of the Agreement and any amendment or extension, which continuing coverage may be maintained through continuous policy renewals. The maintenance of claims made against any insurance required of the Company shall not be considered a waiver by City of any claim or liabilities it may have against the Company.

9.4.1 Minimum Scope of Insurance. Coverage shall be at least as broad as:

Insurance Services Office form number GO 0002 (Ed. 1/73) covering comprehensive General Liability and Insurance Services Office form number GO 0404 covering Broad Form Comprehensive General Liability; or Insurance Services Office Commercial General Liability coverage ("Occurrence" form CG 0001.) or substantially equivalent coverage.

Insurance Services Office form number CA 0001 (Ed. 1/78), covering Automobile Liability, code 1 (any auto) and endorsement CA 0025.

Worker's Compensation Insurance as required by the State of California and Employer's Liability Insurance.

Pollution and/or Environmental Impairment Liability and/or Errors & Omissions.

9.4.2 Minimum Limits of Insurance. The Company shall maintain limits no less than:

1) Fire: One or more policies covering the Disposal Facilities of extended fire insurance coverage in an amount equal to the replacement value of the Disposal Facilities. Company shall be a named insured and City shall be a "loss payee" under the policies of fire insurance. Any payment resulting from damage or destruction to any Disposal Facility shall be paid into an escrow account and shall be used by Company solely and exclusively for the repair, reconstruction or replacement of said buildings or facilities. In the event that Company fails to undertake such repairs, construction or replacement within ninety (90) days, or such additional time as may be approved by the City, following the damage or destruction to said buildings or facilities, the entire proceeds of the fire insurance policy shall be paid to City. In the event that Company shall fail

or neglect to take out or to maintain said fire insurance, City may, but nothing herein contained shall be deemed to create any obligation or liability on its part to do so, secure fire insurance for such period as Company shall fail or neglects to do so, and City shall have the right to collect the cost of the insurance policy from Company.

2) General Liability: \$8,000,000 combined single limit per occurrence for general comprehensive liability, including but not limited to coverage for premises operations, explosion and collapse hazard, underground hazard, contractual insurance, property damage, independent contractors and personal injury or death,. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

3) Automobile Liability: \$3,000,000 combined single limit per accident for bodily injury and property damage.

4) Worker's Compensation and Employer's Liability: \$1,000,000 each accident, \$1,000,000 policy limit bodily injury or disease, \$1,000,000 each employee bodily injury by disease.

5) Pollution and/or Environmental Impairment Liability and/or Errors and Omissions: \$5,000,000 each occurrence/\$5,000,000 policy aggregate covering liability arising from the release of waste materials and/or irritants, contaminants or pollutants. Such coverage shall, if commercially available, without involvement of the City, automatically broaden in its form of coverage to include legislated changes in the definition of waste materials and/or irritants, contaminants or pollutants. The policy shall stipulate this insurance is primary and no other insurance carried by the City will be called upon to contribute to a loss suffered by the Company hereunder and waive subrogation against the City and other additional insureds.

6) Deductible and Self-Insured Retentions. The deductibles or self-insured retentions for the General Liability will be \$0, for Automobile Liability policies may be no greater than \$25,000 and for the Pollution Liability policy are \$5 million, which are for the account of the Company, shall be the sole responsibility of the Company and shall be maintained at that level by the Company during the term of this Agreement.

9.4.3 Other Insurance Provisions. The policies are to contain, or be endorsed to contain, the following provisions:

1) Automobile liability and general liability: The City, its officers, officials, employees and volunteers are to be covered as additional insureds with respect to liability arising out of automobiles owned, leased,

hired or borrowed by or on behalf of the Company; and with respect to liability arising out of work or operations performed by or on behalf of the Company, including materials, parts or equipment furnished in connection with such work or operations.

The Company's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, agents and volunteers, but only with respect to liabilities arising out of the services provided by the Company under this Agreement. Any insurance or self-insurance maintained by the City, its officers, officials, employees, agents or volunteers shall be excess of the Company's insurance and shall not contribute with it.

Each insurance policy required by this clause shall be occurrence-based, or an alternate form as approved by the City and shall be endorsed to state that coverage shall not be canceled by the insurance company except after thirty (30) days prior written notice has been given to the City. Pollution coverage may be claims made.

The Company's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurance company's liability.

The Automobile Liability policy shall be endorsed to add the Motor Carrier Act endorsement (MCS-90), TL 1005, TL 1007 and/or other endorsements required by federal or state authorities or substantially equivalent coverage.

2) Worker's Compensation and Employers Liability Coverage: The insurance company shall agree to waive all rights of subrogation against the City, its officers, officials, employees and volunteers for losses arising from work performed by the Grantee for the City.

3) All Coverages: Each insurance policy required by this clause shall be occurrence-based or an alternate form as approved by the City and endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City. Pollution coverage may be claims made.

9.4.4 Acceptability of Insurance Company. Insurance is to be placed with insurance companies with a current A.M. Best's rating of no less than A: VII if admitted. If pollution and/or Environmental Impairment and/or errors and omissions coverage's are not available from an "Admitted" insurer, a Non-Admitted insurance company may write the coverage with the City's permission. A Non-Admitted company shall be an A.M. Best's rating of A: X or higher.

- 9.4.5 Verification of Coverage. The Company shall furnish the City with endorsements effecting coverage required by this clause or certificates evidencing such coverage. The endorsements or certificates are to be signed by a person authorized by that insurance company to bind coverage on its behalf. All endorsements or certificates are to be received and approved by the City before work commences.
- 9.4.6 Subcontractors. The Company shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.
- 9.4.7 Other Provisions. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City, its officers, officials, agents, employees and volunteers. The City, its officers, officials, agents, employees and volunteers shall be named as additional insured's on all policies.

9.5 FAITHFUL PERFORMANCE BOND

Within thirty (30) days of execution of this Agreement, the Company shall file with the City a bond, payable to the City, in a form acceptable to the City, securing the Company's faithful performance of each and every one of its obligations under this Agreement. The performance bond shall become ATTACHMENT 6 to this Agreement. The principal sum of the bond shall be \$1,500,000. The bond shall be executed as surety by a corporation authorized to issue surety bonds in the State of California, with a financial condition and record of service satisfactory to the City. The bond shall be in a form specified by the City Representative. Alternatively, the Company may deposit a letter of credit or open a certificate of deposit in the name of the City to be held to secure this faithful performance. The performance bond shall remain in force for the duration of this Agreement. The Company shall pay the premium for the bond. If, following written demand by the City, the Company fails to pay amounts owed by the Company to the City pursuant to this Agreement, the City may make a claim against the bond established pursuant to this Section for such amounts, and the Company shall replenish the bond so that the principal amount is restored to its original amount. The City may reconsider the principal sum of the bond upon Company's request on or after the second anniversary of this Agreement.

9.6 REVOCATION OF PREVIOUS AGREEMENTS.

This Agreement, rather than any preceding Agreements between the City and the Company, shall govern with respect to the Company and City rights, duties and obligations relating to this Franchise. Upon execution of this Agreement, all previous Agreements shall terminate and be of no further force and effect except with respect to covenants therein for acts and omissions occurring prior to the date of termination.

9.7 COMPLIANCE WITH APPLICABLE LAW AND CITY ORDINANCE.

Company agrees that it will comply with all Applicable Law and those provisions of the Avalon Municipal Code which are applicable to the work or business in which it is herein franchised, and with any and all amendments to such applicable provisions during the term hereof, but only to the extent they are not inconsistent with or do not conflict with the terms and conditions of this Agreement without regard to this Section.

10. BREACH, DEFAULT AND REMEDIES

10.1 LIQUIDATED DAMAGES

In the event that the Company fails to perform reasonably any of the Company's obligations under this Agreement, other than due to an Uncontrollable Circumstance, the Company shall be in breach of this Agreement. The Parties recognize that if the Company fails in such performance; the City and residents of the City will suffer damages and that it is and will be impractical and extremely difficult to ascertain and determine the exact amount of damages which the City and residents will suffer. Therefore, without prejudice to the City's right to treat uncorrected non performance as an event of default, the Parties agree that the following liquidated damage amounts represent a reasonable estimate of the amount of such damages, provided, however, that the City may not assert a claim for both actual damages and liquidated damages with respect to same act or omission. Upon delivery of written notice to the Company, the City may impose liquidated damages upon the Company, in addition to any other available remedies the City may have as outlined in ATTACHMENT 7.

The City may determine the occurrence of events giving rise to liquidated damages through the observation of its own employees or representative, or by investigation of Customer complaints.

Prior to assessing liquidated damages, the City shall give the Company notice of its intention to do so. The notice shall include a brief description of the incident or non-performance. The Company may review (and copy at its own expense) all information in the possession of the City relating to the incident or non-performance. The Company may, within ten (10) days after receiving the notice, request a meeting with the City. If a meeting is requested, the City Representative or his/her designee shall hold it. The Company may present evidence in writing and through testimony of its employees and others relevant to the incident or non-performance. The City Representative or designee shall provide the Company with a written explanation of his or her determination on each incident or non-performance prior to authorizing the assessment of liquidated damages. The assessment of liquidated damages issued by the City shall appear on the next monthly statement and the Company shall, at its own expense, remit to the City damages specified in said assessment as part of the Monthly Remittance.

10.2 EVENTS OF DEFAULT

Each of the following, if material, shall constitute an event of default (“Event of Default”) hereunder, in each case subject to any applicable cure rights, including without limitation the cure rights provided in the final paragraph of this Section:

- 10.2.1 Failure to Correct Breach. The Company fails to correct any breach within the applicable Cure Period (as defined below).
- 10.2.2 Misrepresentation. The Company makes a material misrepresentation to the City in this Agreement or in the statements or materials submitted to the City by the Company in connection with this Agreement as of the time the representation or disclosure is made.
- 10.2.3 Result of Performance Review. The Company makes any material breach of this Agreement as determined in a Performance Review conducted pursuant to and subject to the provisions of Section 11, which breach is not cured during the applicable Cure Period.
- 10.2.4 Seizure or Attachment of Equipment. There is a seizure or attachment (other than a prejudgment attachment) of, or levy affecting possession on, the operating equipment of the Company, including without limit its vehicles, maintenance or office facilities, or any part thereof of such proportion as to impair the Company’s ability to perform under this Agreement and which cannot be released, bonded, or otherwise lifted within forty-eight (48) hours excluding weekends and the City approved holidays.
- 10.2.5 Company Bankruptcy. The Company files a voluntary petition for debt relief under any applicable bankruptcy, insolvency, debtor relief, or other similar law now or hereafter in effect, or consents to the appointment of or taking of possession by a receiver, liquidator, assignee (other than as a part of a transfer of equipment no longer useful to the Company or necessary for this Agreement), trustee (other than as security for an obligation under a deed of trust), custodian, sequestrator (or similar official) of the Company for a part of the Company’s operating assets or any substantial part of the Company’s property, or shall make any general assignment for the benefit of the Company’s creditors, or shall fail generally to pay the Company’s debts as they become due.
- 10.2.6 Court Order or Decree. Any court having jurisdiction enters a decree or order for relief in respect of the Company, in any involuntary case brought under any bankruptcy, insolvency, debtor relief, or similar law now or hereafter in effect, or the Company consents to or fails to oppose any such proceeding, or any such court enters a decree or order appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of the Company or for any part of the Company’s operating

equipment or assets, or order the winding up or liquidation of the affairs of the Company.

- 10.2.7 Failure to Provide Performance Assurances. The Company fails to provide commercially reasonable assurances of performance or fails to maintain the Faithful Performance Bond as specified in Section 9.5.
- 10.2.8 Failure to Notify City. The Company fails to notify the City in a timely manner of any receipt of notice of violation or official communication from those regulatory agencies regulating any Company activities under this Agreement, including, but not limited to, California Department of Resources Recycling and Recovery, Los Angeles County, the South Coast Air Quality Management District, and any water quality regulatory agency.
- 10.2.9 Lapse of Financial Requirement. There is a lapse of any insurance or bond required under this Agreement.
- 10.2.10 Regulatory Violation. The Company violates any orders or filings of any regulatory body having jurisdiction over Company relative to this Agreement, provided the Company may contest any such orders or filings by appropriate proceedings conducted in good faith, in which case no breach of the Franchise and this Agreement shall be deemed to have occurred.
- 10.2.11 Cessation of Services. The Company ceases to provide Collection, Transportation, Processing, or Recycling Services as required under this Agreement for a period of two (2) consecutive days or more, for any reason within the control of Company, subject to the provisions of Section 10.6.
- 10.2.12 Disposal Facilities. Company fails to properly maintain, operate, repair or otherwise use any of the Disposal Facilities.
- 10.2.13 Failure to Meet Payment or Reporting Requirements. The Company fails to make any payment required under this Agreement and/or refuses to provide City with required information, reports, and/or records in a timely manner as provided for in the Agreement.
- 10.2.14 Unremedied Acts or Omissions. The Company commits any act or omission which violates the terms, conditions, or requirements of this Agreement, AB 939 or any Applicable Laws and which is not corrected or remedied within the time set in the written notice of the violation or, if the Company cannot reasonably correct or remedy the breach within the time set forth in such notice, the Company should fail to commence to correct or remedy such violation within the time set forth in such notice and diligently effect such correction or remedy thereafter.

10.2.15 Cure Rights. Notwithstanding any other provision of this Section to the contrary, the City shall provide the Company with reasonable notice of and a reasonable opportunity to cure any breach of this Agreement during the time periods set forth below (the "Cure Period"). Any breach that is timely cured by Company shall not be determined to constitute an Event of Default. The Company shall begin cure of any breach or default as soon as it becomes aware of the breach or default, whether discovered by the Company or through notice from the City. Upon becoming cognizant of the default, the Company shall proceed to cure such default as follows:

Immediately, if the default is such that in the determination of the City, the health, safety, or welfare of the public is endangered thereby; or

Within thirty (30) days of giving or receiving notice of default, provided that if the nature of the default is such that it will reasonably require more than thirty (30) days to cure, the Company shall have such additional time as is reasonably needed to expeditiously complete a cure. During any default cure period, the Company shall provide the City weekly written status of progress in curing such default.

10.3 RIGHT TO TERMINATE UPON DEFAULT

Upon an Event of Default by the Company, the City shall have the right to terminate this Agreement, subject to review as provided in Section 11.

10.4 POSSESSION OF COMPANY PROPERTY UPON TERMINATION

In the event of termination for default, the City shall have the right to take possession of any and all of the Company's land, equipment, records relating to provision of services including, but not limited to, Customer lists and route maps, and other property used or useful in the Collection, Processing, and Transport of Solid Waste, Recyclables, or Green Waste in the provision of Services under this Agreement, and the billing and collection of fees for these Services and to use such property. The City shall pay reasonable compensation to the Company for the temporary use of such land, equipment, and other property. The City shall have the right to retain the possession of such property until other suitable arrangements can be made for the provision of Solid Waste, Recyclables, or Green Waste Services that may include the award of an Agreement to another waste hauling company. The Company shall furnish the City with immediate access to all of its business records related to its route maps, schedules, and billing of accounts for Services. The City's right to take possession of such portion of Company's land, equipment, and other property shall continue only for the period of time necessary to make alternative arrangements for the Collection, Transport and Disposal of Solid Waste, Recyclable Materials or Green Waste, which period shall not exceed a maximum of ninety (90) days.

10.5 CUMULATIVE SPECIFIC PERFORMANCE

The City's right to terminate the Agreement under Section 10.3 and to take possession of the Company's properties under Section 10.4 is not exclusive, and the City's termination of the Agreement shall not constitute an election of remedies. Instead, all remedies provided for in this Agreement shall be in addition to any and all other non-duplicative legal and equitable rights and remedies which the City may have under law or as otherwise provided in this Agreement.

By virtue of the nature of this Agreement, the urgency of timely, continuous, and high-quality service, the lead time required to effect alternative service, and the rights granted by the City to the Company, the remedy of damages for a breach hereof by the Company is inadequate and the City shall be entitled to injunctive relief.

10.6 EXCUSE FROM PERFORMANCE

10.6.1 Excuse from Performance. The Parties shall be excused from performing their respective obligations hereunder in the event they are prevented from so performing by Uncontrollable Circumstances beyond the control of and not the fault of the Party claiming excuse from performance hereunder.

10.6.2 Inexcuse from Performance. None of the following shall be considered an excuse from performance: (a) general economic conditions, interest or inflation rates, or currency fluctuation or changes in the cost of fuel, commodities, supplies or equipment; (b) changes in the financial condition of the Company or any of its subsidiaries or subcontractors affecting their ability to perform their obligations; (c) the consequences of errors, neglect or omissions by the Company or any subcontractors; (d) any failure or inability of the Company or of any subcontractors or supplier to furnish labor, materials, service or equipment for any reason; (e) equipment failure; or (f) changes in market prices for, or the unavailability of markets for, the sale or purchase of Recyclable Materials or Green Waste.

10.6.3 Notice. The Party claiming excuse from performance shall, within two (2) days after such party has notice of such cause, give the other Party notice of the facts constituting such cause, efforts undertaken by the Company to attempt to perform this Agreement, the estimated timelines for such performance, and asserting its claim to excuse under this Section, provided, that failure to give such notice shall not eliminate the excuse from performance except to the extent the other Party shall have been prejudiced by such failure.

10.6.4 Waiver of Damages. In the event that either Party duly and validly exercises its rights to termination and damages under this Agreement, the Parties hereby waive any claim against each other for any damages sustained thereby, except for any due and valid counterclaims or other claims on account of any breach of this Agreement.

10.7 RIGHT TO DEMAND ASSURANCES OF PERFORMANCE

If the Company is: (i) the subject of any labor unrest including work stoppage or slow down, sickout, picketing or other concerted job action; (ii) appears in the reasonable judgment of the City to be unable to regularly pay its bills as they become due; or (iii) is the subject of a civil or criminal investigation, charge, judgment or order entered by a federal, state, regional or local agency for violation of a law relating to performance under this Agreement, and the Council believes in good faith that the Company's ability to perform under the Agreement has thereby been placed in substantial jeopardy, the City may, at its option and in addition to all other remedies it may have, demand from the Company reasonable assurances of timely and proper performance of this Agreement, in such form and substance as the Council believes in good faith is reasonably necessary in the circumstances to evidence continued ability to perform under the Agreement.

10.8 THE CITY'S RIGHT TO PERFORM UPON DEFAULT

10.8.1 City's Right to Perform. In addition to any and all other legal or equitable remedies, in the event that the Company, for any reason whatsoever, fails, refuses or is unable to perform any Franchise Service at the time and in the manner provided in this Agreement, for a period of more than seventy-two (72) hours, and if, as a result thereof, should Solid Waste, Recyclable Materials, or Green Waste accumulate in City to such an extent, in such a manner, or for such a time that such failure, refusal or inability persists and the City Representative should find that such accumulation endangers or menaces the environment, public health, safety or welfare, then the City shall have the right, but not the obligation, without payment to the Company upon twenty-four (24) hours prior notice to the Company to do either one or both of the following at Company's sole expense: (i) cause to be performed such services with other personnel without liability to the Company; (ii) take possession of any or all of the Company's land, equipment and other property used or useful in providing one or more of the Franchise Services and to provide one or more of the Franchise Services.

10.8.2 Notice. Notice of the Company's failure, refusal or neglect to perform one or more Franchise Services may be given orally by telephone to the Company at its principal office and shall be effective immediately. Written confirmation of such oral notification shall be sent to the Company within twenty-four (24) hours of the oral notification.

10.8.3 Company's Cooperation. The Company further agrees that in such event:

It shall fully cooperate with the City to affect the transfer of possession of property to the City for the City's use.

It shall, if the City so requests and to the extent feasible, keep in good repair and condition all of such property, provide all motor vehicles with

fuel, oil and other service, and provide such other service as may be necessary to maintain said property in operational condition.

10.8.4 Not a Taking by the City. The City's exercise of its contractual rights under this Agreement: (i) does not constitute a taking of private property for which compensation must be paid; (ii) shall not create any liability on the part of the City to the Company; and (iii) does not exempt the Company from the indemnity provisions of this Agreement, which are meant to extend to circumstances arising under this Section to the extent the circumstances are the result of the Company's acts or omissions.

10.8.5 Limited Possession of Company's Property. The City's right to so perform services otherwise required of Company hereunder and to so take possession of such portion of Company's land, equipment and other property shall continue only for the period of time during which Company fails, refuses or is unable to collect, transport and dispose of Solid Waste, Recyclable Materials, or Green Waste which it is required by this Agreement to so collect, transport and dispose, and shall cease at such time as Company is ready and able to perform its obligations hereunder. To the extent caused by the Company's failure, refusal or inability to perform any Franchise Service, except as provided in Section 10.6.1, the City's costs of and damages related to operating such equipment, land, and other property or retaining the services of an alternative service provider, as reduced by any revenues received or savings realized by the City from such operations and City's or the alternative service provider's performance of the Services, may be an element of the City's damages claim against the Company to the extent otherwise permitted by this Agreement and subject to the Company's indemnification obligations under this Agreement.

10.9 PERFORMANCE REVIEW

The City may require a "Performance Review" of the at anytime during the term of this Agreement, but without waiving any other rights the City may have to monitor and review the Company's performance under this Agreement. The City shall give the Company notice of its intent to conduct the "Performance Review" not later than 30 days prior to the start of the Performance Review. The Performance Review shall be conducted as set forth below.

10.9.1 Scope of Performance Review. The Performance Review shall:

- 1) Be performed by a qualified firm under contract to the City. The City shall select the qualified firm with input from the Company.
- 2) Be limited to matters reasonably related to the Company's performance of its obligations under the Agreement.

- 3) Be conducted in a manner that ensures the confidentiality of the Company's trade secrets including, without limitation, financial information.
- 4) Be conducted in consultation with the Company and in a manner that does not unduly interfere with the Company's operations or business activities.
- 5) Subject to the foregoing, address all appropriate areas which may include, but are not limited to the following areas, and shall provide specific recommendations, as appropriate, for improvement in each area, namely (in each case only to the extent relating to the performance of the Company's obligations under the Agreement):
 - 6) Compliance with the terms of this Agreement and Applicable Laws.
 - 7) Overall organizational structure and management systems and procedures.
 - 8) Efficiency and effectiveness of operations.
 - 9) Staffing practices, including the deployment of management and supervisory personnel.
 - 10) Financial management practices, including the Company's billing and collection system and its policies with regard to uncollected Customer accounts.
 - 11) Employee job and safety training, and management of Hazardous Waste.
 - 12) Procedures for receiving and resolving Customer complaints and concerns.
 - 13) Procedures for the maintenance, safety check, and replacement of equipment.
 - 14) Utilization, safety, and suitability of facilities, equipment, and personnel.
 - 15) Comparison with practices of businesses deemed similar to the Company with respect to operations similar to those required by the Agreement for jurisdictions similar to the City. The Company shall supply adequate information on operations for other jurisdictions that it deems comparable including, but not limited to, for each category of Service Rates charged, number of customers, annual revenues line item costs and profit.

City shall initially bear the cost of any Performance Review, and the Company shall cooperate fully with the Performance Review, and provide within thirty (30) days of request, all operational, financial and other information reasonably necessary for purposes of conducting the Performance Review. If the City concludes that the Company has unreasonably failed to cooperate or provide reasonably necessary information, then the City and the Company shall meet and confer in good faith in an effort to agree on a resolution of the dispute. If the parties are unable to agree on the informal resolution or cure of the breach within ten (10) business days, the City shall have the right to terminate this Agreement if:

- 1) following the ten-day meeting period above, the City shall have given written notice to the Company specifying that a particular default or defaults exist which will, unless corrected, constitute a material breach of this Agreement on the part of the Company,
- 2) the Company fails to correct such default or fails to take reasonable steps to commence to correct the same within ten (10) days from the date of the notice given by the City and the Company thereafter fails to diligently continue to take reasonable steps to correct such default, and
- 3) the Company fails to reimburse City for its actual costs of conducting the Performance Review within ten (10) days of any invoice detailing such costs.

11. DISPUTE RESOLUTION

11.1 REFERENCE OF DISPUTE

Except as provided in Section 10.1, any dispute seeking damages and any dispute seeking other legal or equitable relief, including but not limited to specific enforcement of any provision hereof, shall be heard and determined as provided below in this Section.

11.2 DISPUTE RESOLUTION PROCEDURES.

- 11.2.1 Negotiations. In the event that any dispute may arise, the Parties shall first seek to resolve any disputes by negotiations between a senior executive of the Company and the City Representative (the "Senior Executives").
- 11.2.2 Notification. When a party believes there is a dispute relating to the Agreement, the Party will give the other Party written notice of the dispute.
- 11.2.3 Meeting among Senior Executives. The Senior Executives shall meet at a mutually acceptable time and place within thirty (30) days after the date of the notice to exchange relevant information and to attempt to resolve the dispute. If a Senior Executive intends to be accompanied at a meeting by

an attorney, the other party's Senior Executive shall be given at least three (3) business days' notice of such intention and may also be accompanied by an attorney.

11.2.4 Confidentiality. All negotiations are confidential and shall be treated as compromise and settlement negotiations under the State of California Rules of Evidence.

11.2.5 City Council. If the dispute has not been resolved within thirty (30) days after the date of the notice of a dispute, or if the party receiving such notice fails or refuses to meet within such time period, either party may submit the dispute to the Council for resolution by making written request to the Council within forty-five (45) days after the date of notice of a dispute. The Council shall consider the dispute at a meeting to be held within thirty (30) days following receipt of such request. At such hearing, the Council may determine to terminate the Agreement, at its option.

11.2.6 Litigation. If a dispute has not been resolved to the satisfaction of the parties within sixty (60) days after the written submission to the Council, then either party may initiate litigation in the courts of the State of California, which shall have exclusive jurisdiction over such disputes. The exclusive venue for such disputes shall be Los Angeles County.

11.3 INTERIM MEASURES

Notwithstanding the requirements for alternative dispute resolution procedures (such as negotiation and submission to the Council), either Party may apply to the courts of the State of California for equitable relief, including temporary restraining orders, injunctions, attachments and conservation orders in appropriate circumstances.

11.4 COSTS AND ATTORNEY'S FEES

In the event of any action or litigation to enforce this Agreement, for interpretation or construction of this Agreement, or on account of any default under or breach of this Agreement, the nonprevailing party to such action, arbitration or litigation covenants and agrees to pay to the prevailing Party therein, in addition to all other relief, all costs and expenses, expressly including, but not limited to, reasonable attorneys' fees incurred by such prevailing party in connection with such action or litigation, including, but not limited to, any appeal thereof, which costs, expenses and attorneys' fees shall be included in and as a part of any judgment rendered in such action or litigation.

11.5 PUNITIVE DAMAGES

Penal, punitive, treble, multiple, consequential, incidental or similar damages may not be recovered or awarded.

12. INDEPENDENT CONTRACTOR

It is expressly understood and agreed that the Company shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant or employee of the City; that the Company shall have the exclusive control over the details of the services and work performed hereunder and all persons performing the same; that the Company shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors, if any; and that nothing herein shall be construed as creating a partnership or joint venture between the City and the Company. Neither the Company nor its officers, employees, agents or subcontractors shall obtain any rights to retirement benefits, workers' compensation benefits or any other benefits which accrue to City employees.

13. DRIVING SURFACE DAMAGE

The Company is responsible for damage to driving surfaces where Carts, Bins, Debris Boxes, or Compactors serviced by the Company are located on public or private property, other than ordinary wear and tear, when the City or a Customer can demonstrate that the damage is the result of vehicles exceeding the maximum weight limits allowed by Applicable Law or the Company's negligent operation of vehicles. The Company shall provide to the City or any Customer upon request such records as the Company possesses concerning weight limits and loaded weights of the Company's vehicles.

14. RIGHT OF ENTRY

To the extent that the City possesses the authority to grant such right, the Company shall have the right, until receipt of written notice revoking permission to pass is delivered to the Company, to enter or drive on any private street, court, place, easement or other private property for the purpose of Collecting or Transporting Solid Waste for the Owner of the private street, easement, or property, or his/her lawful occupant.

15. LAW TO GOVERN

It is understood and agreed by the Parties hereto that the laws of the State of California shall govern the rights, obligation, duties, and liabilities of the Parties to this Agreement and shall govern the interpretation of this Agreement.

16. FEES AND GRATUITIES

The Company shall not, nor shall it permit any agent, employee or subcontractor employed by it to, request, solicit, demand or accept, either directly or indirectly, any compensation or gratuity for the collection of materials otherwise required to be collected under this Agreement, other than acceptance by drivers of holiday gifts offered by customers of a reasonable value .

17. AMENDMENT

Except for rate adjustments, this Agreement may be amended or modified only by a written agreement duly authorized and executed by both the City and the Company.

18. ASSIGNMENT

“Assignment” means: (i) a sale, exchange or other transfer of this Agreement, the Company’s rights hereunder, or substantially all of the Company’s assets dedicated to service under this Agreement to a third party; (ii) a sale, exchange or other transfer of thirty (30) percent or more of the outstanding common stock of the Company, except to related parties for estate or tax planning purposes; (iii) any reorganization, consolidation, merger re-capitalization, stock issuance or re-issuance, voting trust, pooling Agreement, escrow arrangement, liquidation or other transaction to which the Company or any of its shareholders is a party which results in a change of ownership or control of thirty (30) percent or more of the value or voting rights in the stock of the Company; and (iv) any combination of the foregoing (whether or not in related or contemporaneous transactions) which has the effect of any such transfer or change of ownership, provided that the effect of such occurrence is to change control of the Company or responsibility for this Agreement to an entity that is not controlled by Company’s ultimate parent entity (as defined on the Effective Date of this Agreement in 16 CFR § 801.1(a)(3)). For purposes of this Section, the term “proposed assignee” shall refer to the proposed assignee(s) or other successor(s) in interest pursuant to the assignment. If the Company is a subsidiary of another corporation or business entity, any “Assignment,” as defined above, by the parent company or corporation shall be considered an Assignment by the Company, provided, however, that no such occurrence shall constitute an “Assignment” if, following such occurrence, the surviving ultimate parent entity is owned by a large, fluid aggregation of shareholders where no shareholder owns more than ten percent (10%) of the voting securities of the surviving ultimate parent entity (excluding, however, any such shareholder that prior to such transaction owned 10% or more of the voting securities of the ultimate parent entity of Company). Notwithstanding any other provision of this Section, reorganizations, mergers, consolidations, sales of equity or assets or similar transactions between or among entities owned by the same ultimate parent, including but not limited to the Company and regardless of which entity is the survivor, do not constitute an Assignment.

The Company acknowledges that this Agreement involves rendering a vital service to the City’s residents and businesses, and that the City has relied upon the Company’s representation of its experience and financial resources in qualifying the Company to perform the services under this Agreement. Except as provided in this Section, the Company shall not make an Assignment to any other person or entity without the prior written consent of the City. Any such Assignment without the consent of the City shall be void and the attempted Assignment shall constitute a material breach of this Agreement. Under no circumstances shall the City be required to consider any proposed Assignment if the Company has committed an Event of Default at any time during the period of consideration. The sole standard for the City’s consent to any Assignment shall be whether the Company (or, if applicable, a new entity succeeding to the rights, duties and

obligations of Company under this Agreement), after the Assignment, has sufficient financial and operational capability to adequately and faithfully render the services called for in this Agreement for the remaining term of the Agreement. In no event shall the City's consent be withheld on the basis of personal taste, convenience or sensibility or because of City's desire for better or different commercial terms than those contained in this Agreement.

If the Company requests the City's consideration of and consent to an Assignment, the City may deny or approve such request as provided in this Section. The City need consider no request by the Company for consent to an Assignment unless and until the Company has met the following requirements:

- 1) The Company shall pay the City its reasonable expenses for attorney's fees and investigation costs to investigate the suitability of any proposed assignee, and to review and finalize any documentation required as a condition for approving any such Assignment.
- 2) The Company shall furnish the City with audited financial statements of the proposed assignee's operations for the immediately preceding five (5) operating years.
- 3) The Company shall furnish the City with satisfactory proof that the proposed assignee has the demonstrated technical and financial capability to perform all Franchise Services, including:
 - 4) That the proposed assignee has at least 10 years of Solid Waste management experience on a scale equal to or exceeding the scale of operations conducted by Company under this Agreement.
 - 5) In the last five (5) years, the proposed assignee has not received any citations or other censure from any State, federal or local laws and the assignee has provided City with a complete list of such citations and censures.
 - 6) The proposed assignee has at all times conducted its operations in an environmentally safe and conscientious fashion.
 - 7) The proposed assignee conducts its Solid Waste management practices in accordance with sound Solid Waste management practices in full compliance with all federal, State and local laws regulating the collection and Disposal of Solid Waste, including Hazardous Wastes.
- 8) Letters of credit, lines of credit, or other financial assurances that confirm the assignee's financial ability to perform the Agreement, and the City may require changes to the insurance coverages provided in this Agreement (including without limitation insurance products, coverage limits, deductibles and self-insured retentions) as appropriate in view of the assignee's financial capability and to confirm the assignee's financial

ability to perform all Franchise Services and its other responsibilities under this Agreement.

9) Any other information required by City to ensure the proposed assignee can fulfill the terms of this Agreement in a timely, safe and effective manner.

10) Any application for an Assignment shall be governed by the following conditions:

11) Any application for an Assignment shall be made in a manner prescribed by the City Representative. The application shall include an Assignment fee in an amount to be set by resolution of the Council to cover the cost of all direct and indirect administrative expenses including consultants and attorneys, necessary to adequately analyze the application, a reasonable share of any fees or payments paid to Company by the entity seeking to take over this Agreement, and to reimburse the City for all direct and indirect expenses. In addition, the Company shall reimburse the City for any and all additional costs related to the Assignment requested and not covered by the Assignment fee. Bills shall be supported with evidence of the expense or cost incurred. The applicant shall pay such bills within (30) days of receipt.

If the City consents to an Assignment at the point of transition, the Company shall cooperate with the City and subsequent contractor(s) or subcontractor(s) to assist in an orderly transition which shall include the Company providing route lists and billing information. If any entity succeeds to the rights, duties and obligations of the Company under this Agreement in conformity with the terms of this Section (including with the City's consent, where required), such new entity shall assume all of the rights, duties and obligations of the Company under this Agreement arising following the Assignment and the City shall release the Company of all obligation and liability under this Agreement arising subsequent to the date of the Assignment.

The Company shall not delegate or subcontract its obligations under this Agreement to any other person or entity without the prior written consent of the City, other than a delegation or subcontract to an affiliate of the Company.

19. NOTICES

All notices, demands, requests, consents or other communications which this Agreement contemplates or authorizes, or requires or permits either party to give to the other (other than those that the context makes clear are to be delivered to the City Representative or the Company Representative), shall be in writing and shall be personally delivered or sent by 1st Class mail, postage prepaid, return receipt requested, addressed to the respective party as follows:

To City:	City of Avalon 410 Avalon Canyon Rd P.O. Box 707 Avalon, CA 90704 Attention: City Manager
With Copies to:	Best Best & Krieger, LLP 300 South Grand Avenue, 25th Floor Los Angeles, CA 90071 Attention: Scott Campbell, Esq.
To COMPANY:	CR&R Incorporated 11292 Western Avenue PO Box 125 Stanton, CA 90680 (714) 826-9049 Attention: Dean Ruffridge Senior Vice President
Copy to:	CR&R Incorporated 11292 Western Avenue PO Box 125 Stanton, CA 90680 Attention: David Fahrion Division President

or to such address as either party may from time to time designate by notice to the other given in accordance with this Section. Such notice shall be deemed effective on the date personally served or, if mailed, three (3) business days from the date such notice is deposited in the mail.

20. SEVERABILITY

If any provision of this Agreement shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect the validity and enforceability of any of the remaining provisions of this Agreement.

21. EXECUTION OF AGREEMENT

Notwithstanding any provision of this Agreement, rule of construction, or presumption of law to the contrary, this Agreement shall be void and of no force and effect if an authorized representative of the Company has not executed the Agreement on the fifteenth (15th) calendar day after execution by the City's authorized representative.

22. PREVAILING WAGES

Company is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., (“Prevailing Wage Laws”), which require the payment of prevailing wage rates and the performance of other requirements on “public works” and “maintenance” projects. If the services performed under this Agreement, expressly including the installation of the replacement baler pursuant to Section 5.3.7 are being performed as part of an applicable “public works” or “maintenance” project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Company agrees to fully comply with such Prevailing Wage Laws. City shall provide Company with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Company shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the services available to interested parties upon request, and shall post copies at the Company’s principal place of business and at all Disposal Facilities, if applicable. Company shall defend, indemnify and hold the City, its officials, officers, employees, agents, and volunteers free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

[Signature Page Follows]

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

<p>“CITY”</p>	<p>“COMPANY”</p>
<p>CITY OF AVALON a Municipal corporation of the State of California</p> <p>By: _____ City Manager</p>	<p>CR&R, INCORPORATED, a California corporation</p> <p>By: _____ Dean Ruffridge, Senior Vice-President</p>
<p>APPROVED AS TO FORM:</p> <p>By: _____ City Attorney</p>	<p>By: _____ David Fahrion, President / Solid Waste Division</p>

ATTACHMENT 1. LANDFILL AND MRF

EXHIBIT 'A'

19.1

LEGAL DESCRIPTION

BEING A PORTION OF L.A.C.A. MAP NO. 59, A.M. 1 TO 7, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A LEAD AND BRASS TAG MARKED: "L.A. CO." ENGR AS SHOWN ON COUNTY SURVEYOR'S MAP NO. 8-5338 AND LOS ANGELES COUNTY F.B. 3494-10 AS POINT S-18; THENCE SOUTH 26° 40' 20" EAST 1141.39 FEET TO THE NORTHEAST CORNER OF THE FURNACE LOCATED IN THE PEBBLY BEACH MATERIAL RECOVERY FACILITY; THENCE NORTH 18° 47' 52" EAST 56.44 FEET TO THE TRUE POINT OF BEGINNING; THENCE SOUTH 45° 28' 18" EAST 78.97 FEET TO A TANGENT CURVE CONCAVE TO THE SOUTHWEST HAVING A RADIUS OF 140.00 FEET; THENCE SOUTHEASTERLY ALONG SAID CURVE 78.38 FEET THROUGH A CENTRAL ANGLE OF 32° 02' 15" TO A POINT OF COMPOUND CURVE CONCAVE WESTERLY HAVING A RADIUS OF 754.00 FEET, A RADIAL LINE THROUGH SAID POINT BEARS NORTH 77° 25' 16" EAST; THENCE SOUTHERLY ALONG SAID CURVE 98.34 FEET THROUGH A CENTRAL ANGLE OF 07° 28' 21" TO A POINT OF COMPOUND CURVE CONCAVE NORTHWESTERLY HAVING A RADIUS OF 588.00 FEET, A RADIAL LINE THROUGH SAID POINT BEARS NORTH 84° 53' 37" EAST; THENCE SOUTHWESTERLY ALONG SAID CURVE 137.50 FEET THROUGH A CENTRAL ANGLE OF 13° 23' 53" TO A NON-TANGENT LINE; THENCE ALONG THE FOLLOWING COURSES: SOUTH 73° 33' 35" WEST 227.94 FEET, SOUTH 03° 11' 08" EAST 32.04 FEET, SOUTH 20° 49' 21" EAST 45.41 FEET, SOUTH 08° 46' 52" EAST 47.10 FEET, SOUTH 36° 58' 58" EAST 69.45 FEET, SOUTH 45° 09' 40" WEST 32.55 FEET, SOUTH 32° 31' 08" WEST 72.61 FEET, NORTH 85° 13' 21" WEST 104.09 FEET, NORTH 47° 01' 03" WEST 113.89 FEET, NORTH 50° 11' 28" WEST 210.65 FEET, NORTH 22° 29' 56" WEST 72.21 FEET, NORTH 09° 04' 15" WEST 85.00 FEET, NORTH 01° 05' 22" WEST 188.00 FEET, NORTH 14° 01' 45" EAST 80.00 FEET, NORTH 28° 24' 34" EAST 89.00 FEET, NORTH 41° 42' 43" EAST 79.00 FEET, NORTH 64° 44' 59" EAST 67.87 FEET, NORTH 78° 21' 40" EAST 59.00 FEET, SOUTH 76° 47' 12" EAST 110.00 FEET, SOUTH 09° 49' 20" EAST 145.75 FEET, AND NORTH 74° 02' 03" EAST 137.36 FEET TO THE TRUE POINT OF BEGINNING.

THE ABOVE DESCRIBED PARCEL OF LAND CONTAINS 334,107 SQUARE FEET OR 7.370 ACRES.

ALSO IS SHOWN ON A CERTAIN MAP DESIGNATED AS EXHIBIT 'B' ATTACHED HERETO AND INCORPORATED BY REFERENCE HEREIN.

3-13-98
DATE

BY	RVJ.
DATE	3/9/98
SCALE	NONE
	1.28/ 5:255

PROJECT ENGINEER:
ANACAL ENGINEERING CO.
 CIVIL ENGINEERING & LAND SURVEYING
 1900 E. LA PALMA AVE. - SUITE 202 -
 ANAHEIM, CALIFORNIA 92805
 PHONE - (714)774-1533 FAX (714)774-4890

LOCATION	PEBBLY BEACH CATALINA, CA
SHEET NO	1 OF 2

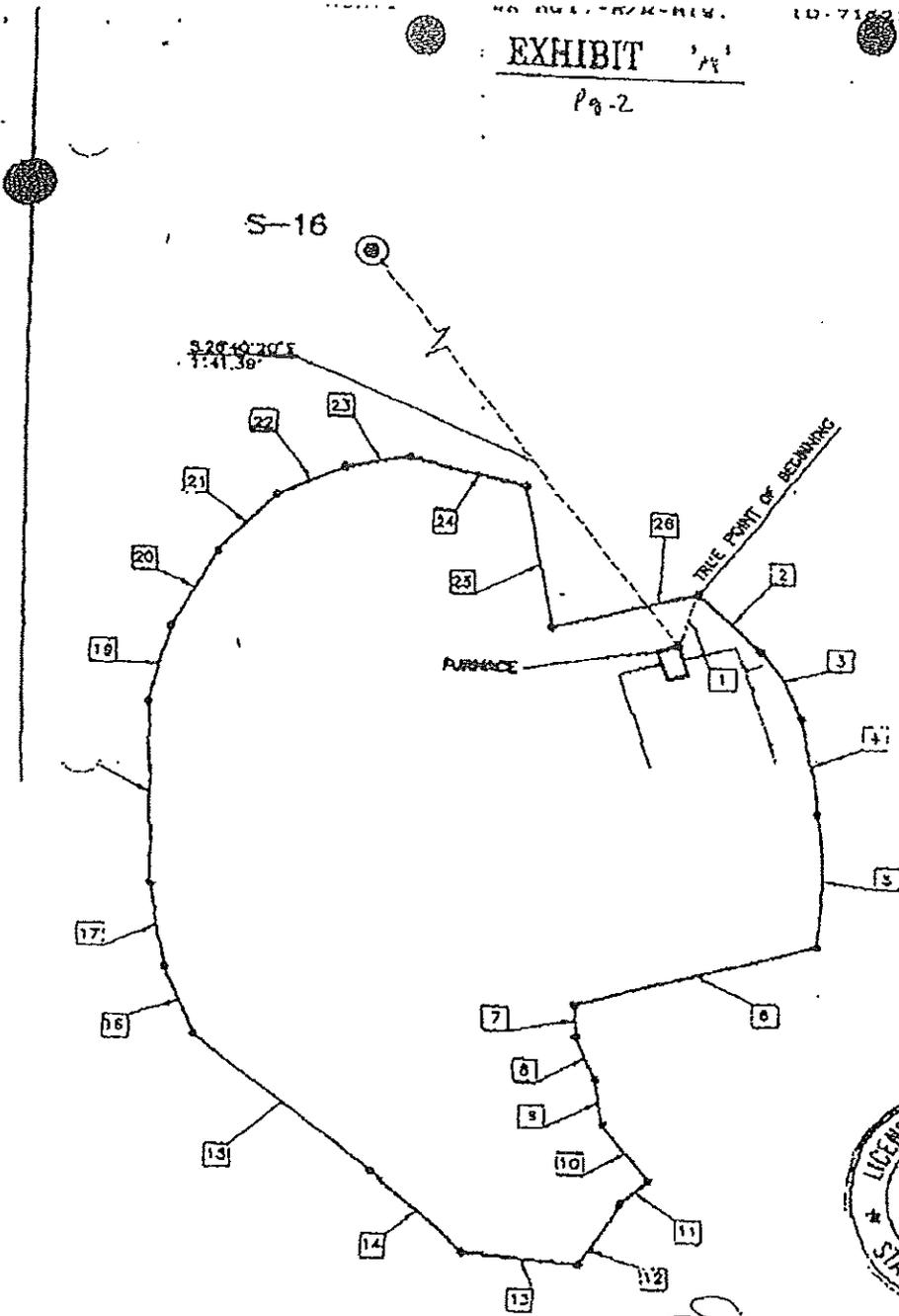
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7

EXHIBIT

Pg. 2

LINE	BEARING / DELTA	DIST / RADIUS	LENGTH
1	N. 18° 47' 02" E	56.44'	
2	S. 48° 28' 18" E	72.87'	
3	$\Delta = 32° 02' 15"$	R = 140.00'	L = 78.28'
4	$\Delta = 07° 28' 21"$	R = 754.00'	L = 88.34'
5	$\Delta = 13° 23' 53"$	R = 588.00'	L = 137.54'
6	S. 73° 33' 33" W	227.94'	
7	S. 03° 11' 08" E	32.04'	
8	S. 20° 49' 21" E	45.41'	
9	S. 08° 48' 32" E	47.10'	
	10' 58" E	69.45'	
	18' 40" W	32.54'	
	11' 08" W	72.81'	
	13' 21" W	104.09'	
	11' 03" W	113.89'	
	1' 28" W	210.15'	
	19' 54" W	72.21'	
	14' 13" W	85.60'	
	15' 22" W	108.00'	
	11' 45" E	80.00'	
	14' 34" E	88.00'	
21	N. 41° 42' 43" E	79.00'	
22	N. 84° 44' 58" E	87.87'	
23	N. 78° 21' 40" E	59.00'	
24	S. 78° 47' 12" E	110.00'	
25	S. 09° 49' 20" E	145.75'	
26	N. 74° 03' 03" E	137.36'	



C. J. QUEYREL 12 2988

3-13-98

DATE 3/9/98	PROJECT ENGINEER: ANACAL ENGINEERING CO. CIVIL ENGINEERING & LAND SURVEYING 1900 E. LA PALMA AVE. - SUITE 202 - ANAHEIM, CALIFORNIA 92805 PHONE: (714) 774-1743 FAX: (714) 774-4693	LOCATION PEEBLY BEACH CATALINA CA
		SHEET NO. 2 OF 2

ATTACHMENT 2. HAZARDOUS WASTE FACILITY

[TO BE INSERTED]

ATTACHMENT 3. LITTER/RECYCLING RECEPTACLES

The approximately 200 trash containers at the following locations:

Turn around above Hermit Gulch Campground
Metropole from Beacon to Crescent
Sumner from Beacon to Crescent
Catalina from Third Street to Crescent
Fuel Dock
Green Pier
Casino Dingy Dock
Casino Way Showers
Crescent from Casino Way to Pebbly Beach Road
The Mole
Pebbly Beach Road from Crescent to Abalone Point
City Garage and Warehouse in Falls Canyon
Joe Machado Field
Field of Dreams
Las Casitas Civic Center Buildings
2 City Parks
Mt. Ada, Buena Vista Point

ATTACHMENT 4. RECYCLABLES

Paper

Cardboard
Boxboard or chipboard (e.g., shoe boxes, tissue boxes, cereal boxes)
Newspaper
Magazines, catalogs, and glossy paper
Paper bags
Telephone books
Paper packaging or containers
Egg cartons
Junk mail
Phone books and soft cover books
Envelopes (labels or windows okay)
Office paper (all colors)
Shredded paper in clear bags

Plastic

All containers accepted (#1-7)
Bottles and jugs
All colors – lids/caps removed
Rinsed and empty
Tubs and containers (e.g., yogurt, margarine)
Plastic bags (stuff several bags inside each other)
Buckets and crates
Toys (e.g., plastic tricycles)
Clamshell trays and deli containers
Plant pots (no ceramic)
Laundry baskets

Glass

Bottles and jars (labels okay)
All colors, lids removed

Metal

Aluminum cans
Tin and steel cans
Clean aluminum pans and foil
Empty aerosol cans
Small scrap
Pots, pans, and utensils
Loose lids from jars

This definition may be amended from time to time by agreement of the parties. In no event shall "Recyclables" include Hazardous Waste.

ATTACHMENT 5. DISPOSAL FEES

			<u>7/1/2012</u>
Metal per ton			\$507.32
	Scrap		
	White		
Construction & Demolition per ton			\$294.15
MSW per ton			\$125.72
Haz Mat			
Refrigerators per ton			\$507.32
		*Freon Handling	
		*Residential	\$32.29
		*Commercial	\$32.29
Freezers per ton			\$507.32
		*Freon handling	n/a
		*Residential	\$32.29
		*Commercial	\$32.29
Air Conditioners per ton			\$507.32
		*Residential	\$32.29
		*Commercial	\$32.29
Coolers per ton			\$507.32
		*Residential	\$32.29
		*Commercial	\$32.29
Dehumidifiers per ton			\$507.32
		*Residential	\$32.29
		*Commercial	\$32.29
E-Waste Fees			
Televisions per ton			\$507.32
		Large - handling fee	\$45.97
		Small - handling fee	\$45.97
Computer monitors			\$507.32
		handling fee	\$45.97
Handling/Labor Fees			
Appliances per ton (other than above)			\$507.32
		handling fee	\$7.65
Furniture			\$125.72
		small - handling fee	\$7.65
		medium - handling fee	\$7.65
		large - handling fee	\$7.65
Roll-off Rental plus tonnage			\$7.65

ATTACHMENT 6. COMPANY FAITHFUL PERFORMANCE BOND

[TO BE INSERTED]

ATTACHMENT 7. LIQUIDATED DAMAGES.

Liquidated Damages. In the event that the Company fails to perform fully any of the Company's obligations under this Agreement, other than due to an Uncontrollable Circumstance, the Company shall be in breach of this Agreement. Upon delivery of written notice to the Company and subject to the terms of this Attachment 7, the City may impose liquidated damages upon the Company, in addition to any other available remedies the City may have as outlined in ATTACHMENT 6.

1. Failure to correct a missed pickup within the specified times, which exceeds fifteen (15) such failures annually: \$25.00 per occurrence; each additional 24-hour working day period: \$100.00.
2. Failure to provide Carts, Bins, Debris Boxes, Compactors or other Collection containers to Service Recipient within seven days of the Customer's request for service, which exceeds fifteen (15) such failures annually: \$100.00 per day starting on day 8.
3. Failure to deliver collected Solid Waste to the Designated Disposal Facility, which exceeds five (5) such failures annually: \$1,000 per incident.
4. Failure to repair or replace any Cart, Bin, Debris Box, Compactor or other Collection container, when so required by this Agreement, which exceeds fifteen (15) such failures annually: \$25.00 per occurrence.
5. Undertaking collection operations during hours outside of allowable collection hours, which exceeds fifteen (15) such failures annually: \$25 per incident.
6. Failure to clean up spillage or litter during Franchise collection activity, which exceeds fifteen (15) such failures annually: \$25.00 per occurrence.
7. Failure to take commercially reasonable steps to resolve legitimate billing complaint within seven working days from the complaint: \$100.00 per occurrence.
8. Failure to tag materials not collected due to contamination or inappropriately setout, which exceeds fifteen (15) such failures annually: \$25.00 per occurrence.
9. Failure to attain through commercially reasonable efforts final complete deployment of Carts, Bins, Debris Boxes, Compactors or other Collection containers and collection fleet for collection service on or before the Effective Date: \$100.00 per day.
10. Failure to remit Monthly Remittance to City when due: \$100.00 per occurrence plus late fees of three-quarters of one percent per month for every month thereafter until paid.

11. Failure to maintain or submit documents and reports as required under the terms of this Agreement after ten days' notice: \$100.00 per incident per day.

Liquidated damages will only be assessed after Company has been given the opportunity but failed to rectify, in a timely manner, the breach as described in this Agreement. Prior to assessing liquidated damages, City shall give Company notice of its intention to do so. The notice will include a brief description of the incident(s)/non-performance. Company may review (and make copies at its own expense) all information in the possession of the City relating to incident(s)/non-performance. Company may, within ten (10) days after receiving the notice, request a meeting with the City. Company may present evidence in writing and through testimony of its employees and others relevant to the incident(s)/non-performance. City will provide Company with a written explanation of its determination on each incident(s)/non-performance prior to authorizing the assessment of liquidated damages.