



**CITY of NOVI CITY COUNCIL**

**Agenda Item 6  
May 23, 2016**

**SUBJECT:** Approval for Material Recovery Facility Services Agreement between the City of Novi and the Resource Recovery and Recycling Authority of Southwest Oakland County (RRRASOC), for the delivery of all recyclable materials collected by the City to RRRASOC's facility of which the City will receive a portion of the revenue based upon its contribution in exchange for a small membership fee.

**SUBMITTING DEPARTMENT:** City Manager's Office

**CITY MANAGER APPROVAL:** 

**BACKGROUND INFORMATION:** The Material Recovery Facility Services (MRF) Agreement, which would run to at least October 1, 2023 is being proposed for City Council approval, with the City of Novi to provide all recyclable materials to the MRF in Southfield during the time of the agreement, and to receive a portion of revenue sharing in exchange for a small administrative fee. Any contract the City may enter into for the collection of recyclable materials must also require the contractor to deliver the materials to the MRF.

The City will not be charged directly for the processing of the recyclable materials. RRRASOC operates the MRF in conjunction with a North Carolina based company, Resource Recovery Systems, LLC (RRS). In exchange for the City paying a small pro-rata share of RRRASOC's administrative expenses, the City will receive a portion of the revenue sharing between RRRASOC and RRS that is based upon how much material the City provides to the MRF. The City's membership contribution will be calculated on a per capita basis, and the estimate shall be communicated to the City no later than May 1 of each year.

If at any time the City, or its contractor, fails to deliver its recycling to the MRF, RRRASOC may terminate the agreement prior to the agreed upon expiration date. RRRASOC may also assess a lump-sum penalty against the City for the decrease in homes providing recycling to the MRF.

The City Attorney's office has reviewed the agreement and finds it to be in an acceptable form, as outlined in David Gillam's letter from January 22, 2016 (attached). Other member communities, including many of Novi's neighbors, contract with RRRASOC for recycling services as well and have signed similar agreements.

**RECOMMENDED ACTION:** Approval of the Material Recovery Facility (MRF) service agreement through October 1, 2023 with the Resource Recovery and Recycling Authority of Southwest Oakland County (RRRASOC) for the City, or its contractor, to provide all recyclable materials collected to the MRF in Southfield of which the City will receive a portion of the revenue based upon its contribution in exchange for a small membership fee.

	1	2	Y	N
Mayor Gatt				
Mayor Pro Tem Staudt				
Council Member Burke				
Council Member Casey				

	1	2	Y	N
Council Member Markham				
Council Member Mutch				
Council Member Wrobel				



JOHNSON ROSATI SCHULTZ JOPPICH PC

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January 22, 2016

Victor Cardenas  
Assistant City Manager  
City of Novi  
45175 Ten Mile Road  
Novi, MI 48375

Re: RRRASOC Material Recovery Facility (MRF) Services Agreement

Dear Mr. Cardenas:

At your request, we have reviewed the proposed Material Recovery Facility ("MRF") Services Agreement between the City and the Resource Recovery and Recycling Authority of Southwest Oakland County ("RRRASOC"). **The proposed Agreement is acceptable as to form.**

In summary, the Agreement would require the City to deliver (or cause to be delivered) all residential recyclable materials (as defined) that are collected by the City to the RRRASOC MRF in Southfield. Any contract the City may enter into for the collection of recyclable materials must require the contractor to deliver those materials to the MRF.

Pursuant to the agreement between RRRASOC and the operator of the MRF (FCR, L.L.C. of Charlotte, North Carolina), there will not be a direct charge to the City (or its contractor) to process the recyclables. The City will, however, be required to pay a pro-rata share of RRRASOC's annual administrative expenses. At the same time, the City will receive a portion of any revenue sharing between RRRASOC and FCR, which is based upon the number of tons of recyclables delivered to the MRF and market prices for those recyclables.<sup>1</sup>

If for some reason the City (or its contractor) fails to collect and deliver its recyclables to the MRF, RRRASOC would be authorized to suspend or terminate the Agreement, and to also assess a lump-sum penalty against the City based upon the decrease in the number of homes providing recyclables to the MRF for processing.

Consistent with the agreement between RRRASOC and FCR, the Agreement between RRRASOC and the City would run through at least October 1, 2023, unless terminated earlier by RRRASOC due to a default by the City.

Victor Cardenas  
January 22, 2016  
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Other RRRASOC member communities that contract for recycling services have signed similar agreements. If you have any questions or want to discuss this Agreement any further, please contact our office.

Sincerely,

JOHNSON, ROSATI, SCHULTZ & JOPPICH, P.C.



David W. Gillam

cc: Thomas R. Schultz

<sup>1</sup> RRRASOC General Manager Mike Csapo has estimated that the City's member contribution, which is calculated on a per capita basis, would be approximately \$20,000 per year. While the amount of revenue sharing will vary depending upon volume and pricing, he has estimated that Novi's annual portion will be comparable to Farmington Hills' share, which has averaged nearly \$49,000 per year for each of the last five years.

## **MRF Services Agreement**

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THIS MRF SERVICES AGREEMENT made and executed pursuant to the provisions of Act No. 451, Public Acts of Michigan, 1994, as amended ("Act 451"), and Act No. 179, Public Acts of Michigan, 1947, as amended ("Act 179"), this 23 day of May by and between the RESOURCE RECOVERY AND RECYCLING AUTHORITY OF SOUTHWEST OAKLAND COUNTY, a public corporation organized and existing under Act 179 (the "Authority"), and the CITY OF NOVI, County of Oakland, a Michigan municipal corporation organized and existing under the Constitution and laws of the State of Michigan and its successors (the "Participating Municipality").

### **WITNESSETH:**

WHEREAS, the Participating Municipality has determined that a comprehensive solid waste management system for the proper disposal and processing of solid waste and the related recovery of recyclable materials is necessary for the public health, safety and welfare of the Participating Municipality; and

WHEREAS, the Authority has been incorporated under and in pursuance of the provisions of Act 179 for the purpose of assuring the efficient and proper disposal of solid waste to the full extent permitted by law, by acquiring, constructing and operating facilities for such purpose, together with incidental and appurtenant facilities for the sale of recyclable materials, and by contracting with private parties for services for such purpose; and

WHEREAS, the Authority manages and operates a solid waste management system (the "System") so as to provide integrated solid waste management and disposal services to its constituent members, including the Participating Municipality; and

WHEREAS, pursuant to the provisions of Act 179 and Act 451, and as otherwise permitted by law, the Authority may contract for the acquisition, construction and equipping of the MRF; and

WHEREAS, the Authority issued a Request for Expressions of Interest ("RFEI") and thereafter a Request For Proposal ("RFP") regarding the Operation of the RRRASOC Material Recovery Facility (MRF) and the Processing and Marketing of RRRASOC Residential Recyclables (as defined in Act 451); and

WHEREAS, pursuant to the RFEI and RFP process, FCR submitted its proposal for operation and maintenance of the MRF, and the Authority, after review of the proposals, has selected FCR as the prospective provider of MRF services; and

WHEREAS, the Authority and FCR have entered into a AGREEMENT FOR OPERATION, concerning, among other things, the operation and maintenance of the MRF; and

WHEREAS, the Residential Recyclable Materials collected within the Participating Municipality are essential to the execution of the AGREEMENT FOR OPERATION; and

WHEREAS, the Participating Municipality desires to contract with the Authority for the provision of recycling services to be provided by the Authority; and

WHEREAS, this Agreement has been executed by the Participating Municipality pursuant to a resolution of the governing body of the Participating Municipality adopted on May30, 2016, and shall become effective as of July1, 2016;

IT IS, THEREFORE, AGREED BY AND BETWEEN THE PARTIES HERETO, for and in consideration of the mutual obligations and covenants of each other, as follows:

# MRF Services Agreement

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## ARTICLE I DEFINITIONS

Capitalized terms used herein and not otherwise defined shall have the meanings established in the AGREEMENT FOR OPERATION. The following terms shall have the meanings set forth below except as otherwise provided in the AGREEMENT FOR OPERATION or unless the context clearly requires otherwise.

"Act 94" means Act No. 94, Public Acts of Michigan, 1933, as amended.

"Act 179" means Act No. 179, Public Acts of Michigan, 1947, as amended.

"Act 451" means Act No. 451, Public Acts of Michigan, 1994, as amended.

"Agreement" means this Agreement.

"AGREEMENT FOR OPERATION" means the "AMENDED AND RESTATED AGREEMENT FOR OPERATION OF THE RRRASOC MRF AND PROCESSING AND MARKETING OF RESIDENTIAL RECYCLABLES" between the Authority and Resource Recovery Systems, LLC, (RRS) a subsidiary of FCR, LLC, having a principal place of business at 809 W. Hill Street, Charlotte, NC 28208, pursuant to which FCR provides recycling services to the Authority.

"Authority" means the Resource Recovery and Recycling Authority of Southwest Oakland County organized and existing under Act 179, of which the Participating Municipality is one constituent municipality, or its successors.

"Authority Administrative Expenses" means the operating expenses of the Authority, including, but not limited to, rent, wages and salaries, professional services, supplies, depreciation, capitalized expenses, and employee benefits.

"Collection Agreement" means any agreement between the Participating Municipality and a hauler of Solid Waste pursuant to which the Participating Municipality's Solid Waste and Recyclable Materials are collected and transported to a disposal area for disposal and/or to a recycling facility for recycling in accordance with applicable Federal, state and local laws and regulations.

"Commencement Date" means October 1, 2008.

"FCR" means FCR, LLC, having a principal place of business at 809 W. Hill Street, Charlotte, NC 28208.

"MRF" means the materials recovery facility owned by RRRASOC and of which the Participating Municipality has an undivided equity share and which is operated and maintained by RRS, including all elements, components, structures, equipment, and improvements thereto, designed to be capable of reclaiming Recyclable Materials and handling Nonrecyclable Waste, as described more fully in the AGREEMENT FOR OPERATION.

"Non-residential Recyclable Materials" means any Recyclable Materials generated within the Participating Municipality and discarded by the generator that are not Residential Recyclable Materials.

"Recyclable materials" shall have the meaning set forth in Act 451.

"Residential Recyclable Materials" means Recyclable Materials which are the subject of the AGREEMENT FOR OPERATION and which are generated and discarded by the Single Family Residences or specified Multiple Family Residences within the Participating Municipality.

## **MRF Services Agreement**

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"RRS" means Resource Recovery Systems, LLC, (RRS) a subsidiary of FCR, LLC, having a principal place of business at 809 W. Hill Street, Charlotte, NC 28208, engaged by the Authority to operate and maintain the MRF.

"Solid Waste" shall have the meaning set forth in the AGREEMENT FOR OPERATION.

"System" means the waste collection, transportation, disposal or resource recovery system now or hereafter operated and managed by the Authority, and every aspect thereof (including but not limited to plants, works, system, rights, processes, contracts, equipment, sanitary landfills, transfer stations, recycling facilities and composting facilities) that is acquired, constructed, or operated, or is to be acquired, constructed, or operated by or on behalf of, or available by contract or lease with, the Authority.

"Term" means the period of the Agreement as set forth in Section 803.

### **ARTICLE II MRF AVAILABILITY AND PARTICIPATING MUNICIPALITY USE**

**Section 201. Participating Municipality use of Recycling Services.**

The Participating Municipality agrees to use the System and the MRF for the exclusive provision of recycling services with respect to the Residential Recyclable Materials that are subject to the Participating Municipality's municipal collection. The Participating Municipality agrees to deliver or cause to be delivered all Residential Recyclable Materials which are subject to its police power and municipal collection and collected by itself or by any franchisees, permittees and contractors of the Participating Municipality to the MRF. The Participating Municipality will cause any Collection Agreement to which it may be party from time to time to provide for delivery of source-separated Residential Recyclable Materials to the MRF. The Participating Municipality shall have the right, but not the obligation, to require that all or a portion of the Non-residential Recyclable Materials generated and discarded within the Participating Municipality be delivered to the MRF.

**Section 202. MRF Availability.**

The Authority shall schedule the MRF to be available for the processing of Recyclable Materials as specified in the AGREEMENT FOR OPERATION.

**Section 203. MRF Availability for Others.**

MRF services shall be provided to the Participating Municipalities on a first-priority basis. In order to maximize MRF operating efficiency and augment MRF revenues, RRS may permit to be delivered to the MRF Recyclable Materials from sources other than those that are collected by the Authority or the Participating Municipality or their agents. The Authority shall share in such revenues according to the terms and conditions of the AGREEMENT FOR OPERATION.

**Section 204. Weighing of Recyclable Materials.**

The Participating Municipality may from time to time request the Authority to verify the volume of Recyclable Materials being processed by the MRF and to provide the Participating Municipality with such information. The Authority shall use its best efforts to accommodate any such request within the limits of the AGREEMENT FOR OPERATION.

### **ARTICLE III PARTICIPATING MUNICIPALITY CHARGES; CHARACTER OF OBLIGATION**

**Section 301. Authority Administrative Expenses.**

The Participating Municipality agrees to pay its pro-rata share of the annual Authority Administrative Expenses in the amount approved by the Board of the Authority each year in accordance with the

## MRF Services Agreement

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Authority's customary budget process. The estimated Authority Administrative Expenses for the next upcoming fiscal year of the Authority shall be estimated by the Authority and transmitted to the Participating Municipality not later than May 1 of each year. Payment by the Participating Municipality shall be due no later than September 1 of each year. Following the completion of the Authority's annual audit, to the extent that actual Authority Administrative Expenses differed from estimated Authority Administrative Expenses, the difference shall be divided pro-rata among the Authority's constituent municipalities and corresponding adjustment will be made in the Participating Municipality's pro-rata payment for the then-current Authority fiscal year. To the extent that the Authority receives revenues from RRS for the sale of Recyclable Materials as set forth in Article 6 of the AGREEMENT FOR OPERATION, or other revenues which lawfully may be used to pay Authority Administrative Expenses and which are so used, such revenues may be applied to payment of Authority Administrative Expenses in the discretion of the Board and, if so applied, the Participating Municipality shall receive a pro-rata credit against its payment obligation for the then-current Authority fiscal year.

### ARTICLE IV OPERATION AND MAINTENANCE OF THE MRF

#### Section 401. AGREEMENT FOR OPERATION

To provide for the operation and maintenance of the MRF, the Authority has entered into the AGREEMENT FOR OPERATION with RRS, which provides generally for the following:

- (a) The acceptance by RRS for processing of all Recyclable Materials delivered by the Participating Municipality to the MRF.
- (b) Performance guarantees of RRS to the Authority as to the ability of the MRF to process Recyclable Materials.
- (c) Maintenance by RRS and the Authority of records of volumes of Recyclable Materials processed.
- (d) The hours during which the MRF shall remain open to receive Recyclable Materials.
- (e) The recovery and sale of Recyclable Materials at the MRF and the standards thereof.
- (f) Payment of liquidated damages and other remedies and procedures in the event RRS is in default of its obligations under the AGREEMENT FOR OPERATION.
- (g) Continuing compliance of the MRF with environmental laws, regulations, ordinances, and judicial and administrative decrees, rulings and orders of federal, state and local governmental bodies.
- (h) Compliance by RRS with all federal and Michigan legislation and regulations governing fair employment practices and equal employment opportunity.
- (i) Agreement by RRS not to discriminate against any employee or applicant for employment, training, education or apprenticeship connected with its performance of the Agreement for Operation with respect to his or her hire, promotion, job assignment, tenure, terms, conditions, or privileges of employment on the basis of race, color, creed, national origin, age, marital status, gender, or handicap.
- (j) Access by the Authority to records of RRS relating to the operation of the MRF and the processing of Recyclable Materials.
- (k) Maintenance of the MRF and grounds.

The terms and conditions of the AGREEMENT FOR OPERATION to the extent applicable to the Participating Municipality, are hereby incorporated herein by reference.

#### Section 402. Non-Competition.

Neither the Participating Municipality nor the Authority shall own, manage, operate, or maintain, or contract to own, manage, operate or maintain, a recycling facility in direct or indirect competition with the MRF.

# MRF Services Agreement

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## ARTICLE V PARTICIPATING MUNICIPALITY GENERAL COVENANTS AND REPRESENTATIONS

### Section 501. Authorization, Execution.

The Participating Municipality represents and warrants that the execution and delivery of the Agreement, the consummation of the transactions contemplated hereby, and the fulfillment of and compliance with the terms and conditions of the Agreement, are within its powers, have been duly authorized and are not in contravention of the law or its charter and will not violate any resolution, ordinance, provision of law, any order of any court or other agency of government, or any court order, indenture, agreement or other instrument or restriction to which the Participating Municipality is now a party or by which it is bound, or be in conflict with, result in a breach of or constitute a default (with due notice or the passage of time or both) under any such indenture, agreement, or other instrument or restriction.

### Section 502. Enforceability.

The Participating Municipality represents and warrants that the Agreement is the legal, valid and binding obligation of the Participating Municipality enforceable in accordance with its terms except to the extent the rights and remedies set forth herein may be limited by bankruptcy, reorganization, insolvency, or other laws affecting creditors' rights generally or by general principles of equity.

### Section 503. No Litigation.

The Participating Municipality represents and warrants to the Authority that there is no pending litigation or governmental proceeding or, to the best of its knowledge, threatened litigation or governmental proceeding which would adversely affect the operation of the MRF or of the performance of any of its obligations under the Agreement. The Participating Municipality shall notify the Authority of the occurrence of any such litigation or pending proceeding as soon as the same becomes known to the Participating Municipality or substantial likelihood of the occurrence of such litigating or proceeding is reasonably evidence to the Participating Municipality.

## ARTICLE VI AUTHORITY GENERAL COVENANTS AND REPRESENTATIONS

### Section 601. Authorization, Execution.

The Authority represents and warrants that the execution and delivery of the Agreement, the consummation of the transactions contemplated hereby, and the fulfillment of and compliance with the terms and conditions of the Agreement, are within its powers, have been duly authorized and are not in contravention of law or its Articles of Incorporation and will not violate any resolution, ordinance, provision of law, any order of any court or other agency of government, or any court order, indenture, agreement or other instrument or restriction to which the Authority is now a party or by which it is bound, or be in conflict with, result in a breach of or constitute a default (with due notice or the passage of time or both) under any such indenture, agreement, or other instrument or restriction.

### Section 602. Enforceability.

The Authority represents and warrants that this Agreement is the legal, valid and binding obligation of the Authority enforceable in accordance with its terms except to the extent the rights and remedies set forth herein may be limited by bankruptcy, reorganization, insolvency or other laws affecting creditors' rights generally, or by general principles of equity.

### Section 603. No Litigation.

The Authority represents and warrants to the Participating Municipality that there is no pending litigation or governmental proceeding, or, to the best of its knowledge, threatened litigation or governmental proceeding which would adversely affect the use of the MRF site or operation of the MRF or of the



## **MRF Services Agreement**

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performance of any of its obligations under the Agreement. The Authority shall as soon as practicable notify the Participating Municipality of the occurrence or threatened occurrence of any such litigation or governmental proceeding as soon as the same becomes known to the Authority.

### **Section 604. Uniform Agreements.**

The Authority represents and warrants to the Participating Municipality that each MRF Services Agreement which the Authority executes with the other constituent units of the Authority shall be substantially similar to the Agreement in every material respect, provided that the foregoing shall not prohibit the Authority and any constituent unit from agreeing to a scope of services to be provided by the Authority that may differ from the scope of services provided by the Authority to the Participating Municipality hereunder.

## **ARTICLE VII DEFAULTS AND REMEDIES**

### **Section 701. Defaults and remedies.**

If the Participating Municipality shall default at any time in the performance of any of its obligations hereunder, the Authority shall have the right to use all the remedies provided by law and in equity to correct said default, including specific performance and the right to terminate this agreement. In particular, in the event the Participating Municipality or any of its agents fails for any reason to collect and deliver to the Authority Recyclable Materials within the control and jurisdiction of the Participating Municipality as required by this Agreement, the Authority may suspend or terminate this Agreement and assess the Participating Municipality a lump-sum charge equal to the total aggregate payments due in accordance Article 3 of the AGREEMENT FOR OPERATION. Any such assessment shall be calculated by the General Manager of the Authority with reference to Article 3 of the AGREEMENT FOR OPERATION and shall be final unless disapproved by the Board of the Authority within 30 days of the assessment. The calculation shall be binding upon the Participating Municipality. Except as provided herein, no remedy conferred upon or reserved to the parties hereto is intended to be exclusive of any other available remedy or remedies, but each and every other remedy given under the Agreement or now or hereafter existing at law or in equity. Any default by the Authority hereunder shall not relieve the Participating Municipality of its obligations hereunder provided that MRF services continue to be provided pursuant to Article II hereof. The Authority may assign its rights under this Article to RRS.

## **ARTICLE VIII MISCELLANEOUS**

### **Section 801. Waivers and Amendments.**

No delay or omission to exercise any right or power accruing upon any default, omission or failure of performance hereunder shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be exercised from time to time and as often as may be deemed expedient. In the event any provision contained in the Agreement shall be breached by either party and thereafter duly waived by the other party to empowered to act, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

No waiver or amendments of the Agreement shall be established by conduct, custom or course of dealing, but solely by an instrument in writing duly executed by the parties of the contract.

### **Section 802. Notices.**

Any notice necessary or proper to be given to any of the parties hereto may be served in the following manner:

- (a) If to the Authority, by delivering the same to the General Manager thereof; and

## MRF Services Agreement

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- (b) If to the Participating Municipality, by delivering the same to the Participating Municipality's City Manager or his or her deputy.

All notices shall be given in writing, provided that notice may be verbal, if confirmed in writing within one (1) business day after such notice is given.

Section 803. Term of Agreement.

The term of this Agreement shall be in accordance with Article 2 of the AGREEMENT FOR OPERATION, except as provided by Article VII hereof.

Section 804. Extensions.

The Term of the Agreement may be extended by the agreement of the parties.

Section 805. Assignment.

Except as hereinafter provided, the duties and obligations of the Participating Municipality as specified in the Agreement shall not be assigned, in whole or in part, during the term of the Agreement, except to the extent that such assignment benefits and serves a legitimate public purpose of the Participating Municipality and the Authority and only upon the written consent of the Authority, in which event the Participating Municipality shall be authorized to assign the Agreement, but only to the extent and in the manner that does not impair the Authority's ability to perform its obligations under any agreement to which it is a party. In no event shall any assignment relieve the Participating Municipality of its obligation to perform any of its other obligations hereunder.

Section 806. Benefits of Agreement.

The Agreement shall inure to the benefit of and be binding upon the respective parties hereto, their successors and assigns.

Section 807. Governing Law.

The Agreement shall be governed by and construed in accordance with the laws of the State of Michigan.

Section 808. Severability.

If any clause, provision or section of the Agreement be ruled invalid or unenforceable by any court of competent jurisdiction, the invalidity or unenforceability of such clause, provision or section shall not affect any of the remaining clauses, provisions or sections.

Section 809. Entire Agreement.

This Agreement, with respect to the obligations referred to herein, constitutes the entire agreement between the Authority and the Participating Municipality, and supersedes all prior agreements and understandings, both written and oral, between the parties with respect to the subject matter hereof.

Section 810. Headings.

Any headings preceding the texts of the several Articles and Sections hereof, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of the Agreement, nor shall they affect its meaning, construction or effect.

## MRF Services Agreement

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IN WITNESS WHEREOF, the RESOURCE RECOVERY AND RECYCLING AUTHORITY OF SOUTHWEST OAKLAND COUNTY, by its Board, and the CITY OF NOVI, Michigan by its City Council, have each caused its name to be signed to this instrument by its duly authorized officers and its seal to be affixed hereto the day and year first above written.

In the presence of:

Resource Recovery and Recycling Authority of  
Southwest Oakland County

\_\_\_\_\_

By \_\_\_\_\_  
Chairman

\_\_\_\_\_

By \_\_\_\_\_  
Secretary

In the Presence of:

CITY OF \_\_\_\_\_

\_\_\_\_\_

By \_\_\_\_\_  
Robert J. Gatt, Mayor

\_\_\_\_\_

By \_\_\_\_\_  
Maryanne Cornelius, City Clerk