

**OPERATING AND MANAGEMENT
CONTRACT DOCUMENTS**

FOR

CITY OF ANN ARBOR

MATERIAL RECOVERY FACILITY/TRANSFER STATION

As Amended by

Amendment #1 Approved by City Council on 6/5/95

and

Amendment #2 As Approved by City Council on 8/7/95

and

Amendment #3 As Approved by City Council on 6/15/98

FILE NO. _

RFP NO. 294_

CITY OF ANN ARBOR
100 North Fifth Avenue
Ann Arbor, Michigan 48107

OPERATING AND MANAGEMENT CONTRACT

TABLE OF CONTENTS

Contents **iii**

Recitals **1**

Article I: Definitions **1**

 Section 1.01: Definitions 1

 Section 1.02: Terms Generally 14

 Section 1.03: Notices Generally 14

Article II: Ownership, Operation and Maintenance of the Facility..... **14**

 Section 2.01: Overall Responsibilities 14

 Section 2.02: Safety of Persons and Property 16

 Section 2.03: Personnel 16

 Section 2.04: Facility Equipment and Spare Parts 17

 Section 2.05: Operating Hours 17

 Section 2.06: Inspection and Visitation Rights 17

 Section 2.07: Operation and Maintenance Manuals 18

 Section 2.08: Maintenance Logs 19

 Section 2.09: Litter Control 19

 Section 2.10: Equipment Repair and Replacement Accounts..... 19

 Section 2.11: Ownership 25

 Section 2.12: Records and Reports 25

 Section 2.13: Anti-Scavenging 26

Article III: Term of Contract **26**

 Section 3.01: Life of Contract 26

 Section 3.02: Five (5) Year Renewal Options 27

Article IV: Delivery, Processing and Disposition of Material **27**

 Section 4.01: Guaranteed Facility Capacity 27

 Section 4.02: Inadvertent Deliveries of Non-Recyclable Material 28

 Section 4.03: Identification, Rejection, or Processing of Recyclable Material or Solid Waste Not Conforming to Facility Delivery Standards 28

 Section 4.04: Removal and Disposal of Process Residue and Bypassed Recyclable Material and Solid Waste 29

 Section 4.05: Contractor Obligation to Process All Recyclable Material. 30

 Section 4.06: Weighing and Shipping Records..... 30

| | | |
|----------------------|--|-----------|
| Article V: | Contractor Guarantees of Facility Performance and Remedies for Failure to Perform..... | 32 |
| | Section 5.01: Guaranteed Facility Capacity | 32 |
| | Section 5.02: Guaranteed Product Quality..... | 32 |
| | Section 5.03: Performance Tests after Acceptance Date..... | 32 |
| | Section 5.04: Remedies for Failure of Contractor to Meet Guaranteed Facility Capacity | 33 |
| | Section 5.05: Remedies for Failure of Contractor to Meet Guaranteed Product Quality Performance..... | 34 |
| | Section 5.06: Performance Guarantee..... | 35 |
| Article VI: | Payments to Contractor and to the City | 37 |
| | Section 6.01: Payments to be Made..... | 37 |
| | Section 6.02: Net Service Fee | 38 |
| | Section 6.03: Revenue Sharing..... | 40 |
| | Section 6.04: Billing and Payment of Net Service Fee | 42 |
| | Section 6.05: Billing and Payment of Other Fees, Direct Costs or Charges..... | 42 |
| | Section 6.06: Late Payments..... | 43 |
| | Section 6.07: Landfill Charge Deposit | 43 |
| Article VII: | Shutdowns and Reductions in Capacity | 43 |
| | Section 7.01: Maintenance of the MRF/TS | 43 |
| | Section 7.02: Shutdowns or Reductions in Capacity Caused By Uncontrollable Circumstances..... | 44 |
| | Section 7.03: Insurance Benefits | 44 |
| | Section 7.04: Covenant to Continue Work | 44 |
| Article VIII: | Marketing | 45 |
| | Section 8.01: Approval of Contracts | 45 |
| | Section 8.02: Contracts Become Amendments to Marketing Plan..... | 45 |
| | Section 8.03: Submission of Materials Marketing Plan | 46 |
| | Section 8.04: Content of Materials Marketing Plan | 46 |
| | Section 8.05: Transportation Costs..... | 48 |
| | Section 8.06: All Product Must Be Marketed..... | 49 |
| | Section 8.07: Reporting Requirements..... | 49 |
| Article IX: | Changes to Facility..... | 50 |
| | Section 9.01: City Design Changes..... | 50 |
| | Section 9.02: Changes in Design or Construction | 50 |
| | Section 9.03: Contractor Design Changes to MRF/TS | 50 |
| | Section 9.04: Impact of Design Changes | 51 |
| Article X: | Insurance, Safety and Loss Control..... | 51 |
| | Section 10.01: Contractor's Insurance..... | 51 |
| | Section 10.02: Insurance Proceeds..... | 52 |
| | Section 10.03: No Limitation..... | 52 |
| Article XI: | Indemnification and Waiver..... | 53 |

| | | |
|----------------------|--|-----------|
| Section 11.01: | Indemnification | 53 |
| Section 11.02: | Waiver..... | 53 |
| Section 11.03: | Exclusion of Consequential Damages | 53 |
| Section 11.04: | Payment and Defense | 54 |
| Section 11.05: | Survival..... | 54 |
| Article XII: | Events of Default..... | 54 |
| Section 12.01: | Remedies for Default | 54 |
| Section 12.02: | Events of Default by Contractor..... | 55 |
| Section 12.03: | Events of Default by the City..... | 57 |
| Article XIII: | Termination..... | 58 |
| Section 13.01: | Mitigation..... | 58 |
| Section 13.02: | Termination by the City..... | 58 |
| Section 13.03: | Termination by Contractor | 59 |
| Section 13.04: | City Rights to Contractor Technical Information..... | 59 |
| Article XIV: | Warranties and Guarantees of Equipment and Material | 59 |
| Article XV: | Confidentiality | 60 |
| Section 15.01: | Confidential Information | 60 |
| Section 15.02: | Michigan Freedom of Information Act..... | 60 |
| Section 15.03: | Identification of Confidential Information..... | 61 |
| Article XVI: | Representations | 61 |
| Section 16.01: | Representations of the City | 61 |
| Section 16.02: | Representations of Contractor..... | 62 |
| Article XVII: | Miscellaneous | 63 |
| Section 17.01: | Uncontrollable Circumstances..... | 63 |
| Section 17.02: | MRF/TS Access | 64 |
| Section 17.03: | Fair Employment Practice | 64 |
| Section 17.04: | Assignment | 66 |
| Section 17.05: | Subcontracts, Assignment, and Default | 66 |
| Section 17.06: | Notices | 67 |
| Section 17.07: | Relationship of the Parties | 68 |
| Section 17.08: | Waiver..... | 68 |
| Section 17.09: | Amendment | 68 |
| Section 17.10: | Authorized Representative | 68 |
| Section 17.11: | Contract Governed by Michigan Law | 68 |
| Section 17.12: | No Other Contract..... | 68 |
| Section 17.13: | Successors and Assigns | 69 |
| Section 17.14: | Execution of Documents..... | 69 |
| Section 17.15: | Severability..... | 69 |
| Section 17.16: | Payment Guarantee..... | 69 |

Schedule 1: Performance Guarantees and Testing Procedures

Schedule 2: Construction Contract

Schedule 3: Full Parent Guarantee

**Schedule 4: City of Ann Arbor Materials Recovery Facility/Transfer Station
Construction and Operation: Request for Proposals**

Schedule 5: Contractor's Proposal

Schedule 6: Performance Bond or Letter of Credit

Schedule 7: Facility Delivery Standards

Schedule 8: Sample Invoices and Tipping Fee Schedule

Schedule 9: Maintenance Log and Renewal/Replacement Schedule

OPERATING AND MANAGEMENT CONTRACT

THIS OPERATING AND MANAGEMENT CONTRACT ("Contract") is entered into on the First day of November, 1993, between the CITY OF ANN ARBOR, a Michigan Municipal Corporation, 100 N. Fifth Avenue, Ann Arbor, Michigan 48107 ("City"), and Resource Recovery Systems, Inc. ("Contractor") a corporation, incorporated under laws of the State of Delaware, 50 Main Street, Centerbrook, CT, 06409-1001.

RECITALS

In consideration of the mutual premises set forth below, the Contractor and the City agree as follows:

ARTICLE I: DEFINITIONS

As Amended by Amendments #1, #2 & #3 Approved by City Council on 6/5/95, 8/7/95 & 6/15/98

Section 1.01: Definitions

For purposes of this Contract, the following words and phrases shall be given the following respective meanings:

"Acceptance" means that all Acceptance Standards have been met or, if all Acceptance Standards have not been met as of the most recent Acceptance Test, that Contractor and the City mutually agree in writing that the MRF/TS may be accepted.

"Acceptance Date" means the date of the MRF/TS acceptance in accordance with this Operating Contract which is September 22, 1995.

"Affiliate" means any group of trades or businesses under common control as those terms are used in 26 USC §1060(d) of which the Contractor is a member.

"Anniversary" means the date on which the initial or extended terms of the Contract would terminate if not further extended by the City.

"Billing Month" means each calendar month in each Billing Year, except that (a) the first Billing Month shall begin on the Day of the calendar month on which the Acceptance Date occurred and end on the last Day of the calendar month, and (b) the last Billing Month shall end concurrently with the end of the term of this Operation and Management Contract.

"Billing Period" means each month-long period during which services are provided by the Contractor as described in Section 6.04.

"Billing Year" means, for each Billing Year other than the first and last, the 12 month period commencing on the first Day of July following the calendar year in which the first Billing Month occurs and ending on the last Day of June, and each 12 month period following. The first Billing Year shall commence on the first Day of the Billing Month following the Acceptance Date and shall end on the last Day of June following the first Billing Month, and the last Billing Year shall end concurrently with the earlier of the termination or expiration of the Operating and Management Contract.

"Business Day" means any Day occurring on Monday through Friday, except City Holidays.

"Bypassed Recyclable Material" means the Tons of Recyclable Material which the Contractor was obligated to Process which were not Processed, as described in Section 4.04 of this Contract.

"Capacity Guarantee" means compliance of the MRF/TS with the Performance Standards for the Daily Guaranteed Recyclables Capacity and Daily Guaranteed Solid Waste Transfer Capacity-

"Change in Law" means the enactment, adoption, promulgation, modification or repeal after the Contract Date of any federal, State, or local statute having jurisdiction with respect to the operation and management of the MRF/TS, which necessitates a Design Change and necessarily modifies the Contractor's guarantees of MRF performance by establishing requirements with respect to the operation and management the MRF/TS which are more burdensome than the most stringent requirements in effect in Washtenaw County, Michigan, on the Contract Date.

"Capital Repair" means any renewal, repair or replacement, greater than One Thousand Dollars (\$1,000.00) in value, of a capital asset that is part of the MRF/TS which either extends or enhances the useful life of the asset in accordance with generally accepted accounting principles.

"City Fault" means any breach, failure, non-performance or non-compliance by City or any agent, employee, contractor, subcontractor at any tier, or independent contractor hired by the City with any of the terms and provisions of this Operating Contract caused by any reason other than an Uncontrollable Circumstance or Contractor Fault.

"City Holiday" means New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day or other City Holidays as may be designated from time to time by the City in writing.

"City Indemnified Parties" means the City and its respective officers, servants employees and agents, and consultants.

"Construction Contract" means the Construction Contract of even date entered into between the City and Contractor which is incorporated by reference.

"Container Sorting Line" means the processing system for sorting glass, plastic and metal containers as described in the Construction Contract.

"Contract Date" means the date of the signing of this Operating Contract by the Parties.

"Contractor Fault" means any breach, failure, non-performance or non-compliance by Contractor with any of the terms and provisions of this Operating Contract caused by any reason other than an Uncontrollable Circumstance or City Fault.

"Contractors" means any contractor, subcontractor, and suppliers or material providers hired by Contractor.

"Day" shall mean a calendar day, beginning at 12:01 a.m. in the eastern time zone of the United States coinciding with the calendar day, whether or not a Sunday or City Holiday.

"Design Change" means any change made to the MRF/TS pursuant to Article IX of this Contract.

"Direct Costs" means, in connection with any cost or expense incurred by either Party pursuant to the terms of this Contract, the sum of (A) the product of (i) the costs of the Party's payroll directly related to the performance of any obligation of a Party pursuant to the terms of this Contract, consisting of compensation and fringe benefits, including vacation, sick leave, holidays, retirement, Worker's Compensation Insurance otherwise provided by either Party pursuant to the provisions of Article X, Federal and State unemployment taxes and all medical and health insurance benefits, times (ii) 1.10, plus (B) the product of (i) payments of reasonable costs to subcontractors necessary to and in connection with the performance of the obligation times (ii) 1.075 for supervision of the subcontractors, plus (C) the costs of materials, services, direct rental costs and supplies purchased (equipment manufactured or supplied by the Contractor or its Affiliates shall be considered purchased materials at its actual invoice cost, provided the cost is an arm's length fair market value cost), times (ii) 1.10, plus (D) the costs of travel and subsistence incurred by any employee of the Party.

Summarized, Direct Cost is the sum of

(A) = (Payroll, Benefits & Payroll Taxes) x 110%
(excludes supervision)

(B) = (Subcontractor Costs) x 107.5%

(C) = (Materials, Services, Rental & Supplies) x 110%

(D) = Travel & Subsistence

Items eligible for Direct Cost Payment are:

- Allowed Transportation Deduct from Product Revenues
- Additional Hours of Operation at City Request
- Drawdowns from Capital Repair and Capital Replacement Accounts
- Determination of non-conforming loads
- Remediation for Unacceptable Waste
- Special Recyclable Material Sorts
- Special Solid Waste Sorts

Performance Testing

City share of negative Net Revenues

Termination

Delivery to alternative location during shutdown

Design Change when Firm Price Cannot be Agreed on

Freedom of Information Act Requests

For payment of Direct Costs by the other Party, the City or the Contractor shall provide documentation describing the reason for incurring the Direct Cost, the amount of the Direct Cost, the event or Section of this Contract giving rise to the Party's right to incur the Direct Cost and that the Direct Cost is at a fair market value price for the service or materials supplied. With respect to Direct Costs incurred by the Contractor, the amount shall be increased to provide for the payment of a profit only when expressly authorized pursuant to the terms of this Contract. The increase, when applicable, shall be an amount equal to ten (10%) percent of the Direct Costs, exclusive of the costs of travel and subsistence incurred by any employee of the Contractor.

"Event of Default" means any one of more of those events described in Article XII.

"Facility Delivery Standards" means those standards enumerated in Schedule 7 of this Operating and Management Contract.

"Facility Throughput" means the amount, in tons, of Recyclable Material and Solid Waste processed per Day into Products by Contractor at the MRF/TS.

"Fact-Finding Dispute Resolution Process" means that in the event that either Party has reasonable grounds to believe that the other Party has failed to fulfill any of its duties or obligations under the Contract, or that its expectations of receiving due performance under this Contract may be impaired, that Party may give written notice to the other Party regarding its complaint. The other Party shall have 15 Days to respond. Either Party may then request the Parties' Authorized Representative to attend a resolution meeting that will be scheduled within 21 Days from the date of request for the meeting. If both Parties agree, a mutually acceptable independent third party fact-finder can be retained to facilitate a decision as part of this process, the fees for which will be shared equally by both Parties. If the Parties cannot,

through good faith discussions, resolve the dispute, each will be free to pursue all available legal or equitable remedies without prejudice.

"Guaranteed Facility Capacity" means the daily, monthly and annual quantities of Recyclable Material and Solid Waste which Contractor guarantees the MRF/TS will accept and process as set forth in the Construction Contract.

"Guaranteed Maximum Process Residue" Defined as 7% for the combined Process Residue of the container processing line and paper processing line as calculated by the Residual Material Test described in Schedule 1 (Performance Guarantees and Testing Procedure).

"Guaranteed Product Quality" means the Product specifications set forth in described in Schedule 1 (Performance Guarantees and Testing Procedure).

"Hazardous Waste" means any material or substance which, as of the Contract Date, and for the duration of this Operating and Management Contract (adopting any future changes in the statutory definitions of the following statutes or regulations or any newly promulgated statutes or regulations), and by reason of its composition or characteristics is (a) hazardous waste, substance or material as defined in the Solid Waste Disposal Act, 42 USC §6901 et seq., as amended, replaced or superseded, and the regulations implementing same, or (b) material the disposal of which is regulated by the Toxic Substances Control Act, 15 USC §2601, et seq., as amended, replaced or superseded, and the regulations implementing same, (c) special nuclear or by-products material within the meaning of the Atomic Energy Act of 1954, (d) hazardous waste substance or material as defined in the Comprehensive Environmental Response, Compensation and liability Act of 1980, 42 USC §6901 et seq. as amended, replaced or superseded, and the regulations implementing same or (e) treated as hazardous waste or substance or material under applicable Federal, State or local law. If any governmental agency or unit having appropriate jurisdiction shall determine that substances are hazardous or harmful to health when Processed at the MRF/TS, then thereafter any substances or materials shall be Hazardous Waste for purposes of this Contract.

"Infectious Waste" means any of the following when not generated from a household or from a farm operation or agricultural business: (1) cultures and stocks of infectious agents and associated biologicals, including laboratory waste, biological production wastes, discarded live and attenuated vaccines, culture dishes, and related devices; (2) liquid human and animal waste, including blood and blood products and body fluids, but not including urine or materials stained with blood or body fluids; (3) pathological waste; (4) sharps; (5) contaminated wastes from animals that have been exposed to agents infectious to humans, these being primarily research animals, and (6) waste treated as Infectious Waste pursuant to Federal, State or local laws. If any governmental agency or unit having appropriate jurisdiction shall determine that substances are infectious then thereafter any substance shall be Infectious Waste by purpose of this Contract.

"Landfill" means any landfill the City may designate during the term of this Contract.

"Landfill Charges" means the charges from the designated landfill for disposal of City Solid Waste, not including charges for disposal of Process Residue.

"Major Equipment" means the Container Sorting Line, Paper Sorting Line, Solid Waste Sorting Line, Solid Waste Compaction and Transfer Line and all related equipment.

"Materials Marketing Plan" means the plan prepared by the Contractor pursuant to Article VIII of this Contract.

"Materials Recovery Facility/Transfer Station" or "MRF/TS" means the materials recovery facility and transfer station, together with appurtenant structures and equipment to be operated and maintained by the Contractor pursuant to this Contract in accordance with Article II and Article IV, as well as any Capital Projects.

"Maximum Residue Guarantee" means the maximum amount of Process Residue resulting from the processing of Recyclable Material as specified in Schedule 1 (Performance Guarantees and Testing Procedures).

"Merchant Activity Compensation" means the contributions made by the Contractor to the City in the form of a royalty, franchise, commission or host fee as identified in the Contractor's Proposal Bid Forms.

"Merchant Activity Credit" means the credit to the Net Service Fee to reflect any merchant activity compensation to the City as described in Section 6.02(f) of this Contract.

"Minimum Product Quality" means the minimum Product quality specified in Schedule 1 (Performance Guarantees and Testing Procedures).

"MRF/TS Site" means, with respect to the MRF/TS, the real property, easements and the rights of way located in Ann Arbor, Michigan, as described in the Construction Contract, upon which the MRF/TS is to be constructed.

"Net Revenues" means revenues received by the Contractor from the sale of Facility-produced Products to Purchaser minus 1) Direct Costs of the Contractor or its affiliates or actual amount billed for third party services associated with Product transportation (which shall not include the cost of loading Product onto containers or vehicles) to the Purchasers in the Primary Market; and 2) Direct Costs of the Contractor or its affiliates associated with the acquisition price of any Recyclable Materials.

"Net Service Fee" means the net payment as calculated in Section 6.02.

"Non-Recyclable Material" means materials not identified as Recyclables-Material in this Contract.

"Nonmarketable Recovered Materials" means materials recovered from Processing Recyclable Materials which are removed from the MRF/TS following notice by the Contractor demonstrating that they are not marketable using all reasonable efforts even at a negative value or the City instructs the Contractor not to market at prevailing markets. The notice is subject to dispute by the City and any dispute is subject to resolution.

"Nonrecyclable Material" means that portion of Solid Waste, exclusive of Rejected Material, Hazardous Waste or Infectious Waste, that is not Recyclable Material.

"Operating and Maintenance Manuals" means drawings, diagrams, schematics, instructions, parts lists, schedules, procedures, preventative maintenance checklists and other literature and/or protocols provided by equipment suppliers or subcontractors or developed by the Contractor during the term of the Operating and Management Contract to provide guidance in and define minimum performance requirements for operating, maintaining and repairing all major equipment and other mechanical, electrical and instrumentation and control systems installed in the facility and for the building, building site and all other fixtures.

"Operating Day" means any Day that the MRF/TS is obligated to be open for the acceptance and/or processing of Recyclable Material and Solid Waste pursuant to the terms of this Contract.

"Operating Month" means any month that the MRF/TS is obligated to be open for the acceptance and/or processing of Recyclable Material and Solid Waste pursuant to the terms of this Contract.

"Operating Week" means any week that the MRF/TS is obligated to be open for the acceptance and/or processing of Recyclable Material and Solid Waste pursuant to the terms of this Contract.

"Operating Year" means each twelve (12) month period during the term of this service Contract commencing on the Acceptance Date.

"Paper Sorting Line" means the processing system for sorting different paper products as described in the Construction Contract

"Party" or "Parties" means either the City or the Contractor, as the context of the usage of the term may require.

"Pass Through Taxes" means federal, state and local sales, use and value added taxes, personal property taxes, and any land rental or real estate taxes which arise out of and directly from the performance of this Operating and Management Contract or which relate to the MRF/TS or MRF/TS Site or any environmental or other taxes, fee or levies, imposed on the Contractor as a processor or hauler of Recyclable Material or Solid Waste at the MRF/TS. Payroll taxes and taxes on income are not Pass Through Taxes. The Contractor shall not be reimbursed for any Pass Through Tax as defined in this Agreement that are incurred or become due after June 30, 1998.

"Performance Standard" means the measures of performance identified in Schedule 1 (Performance Guarantees and Testing Procedures).

"Performance Test" means a Test of the MRF/TS pursuant to Section 5.03 of this Operating and Management Contract and Schedule 1 (Performance Guarantees and Testing Procedures), which Test shall evaluate the same criteria as the Acceptance Test from the Construction Contract.

"Pre-Sorted Materials" means Recyclable Material delivered to the MRF/TS not commingled but separated according to the Product categories for which Product Quality Specifications are given in Schedule 7 (Facility Delivery Standards).

"Primary Market" means the group of Purchasers indicated in the most recently submitted Materials Marketing Plan as primary, and not contingency, Purchasers of Facility produced Product, pursuant to Section 8.04 (c).

"Process Residue" or "Residual Material" or "Residue" means that portion of the as-received Recyclable Materials which are accepted and/or processed by the MRF/TS, and subsequently removed from the as-received Recyclable Material (i) by MRF/TS personnel prior to processing or (ii) by the MRF/TS's Processing System(s) because the material cannot be processed into a Product. Also means paper or container residue left after sorting, the weight of which is used to calculate the Process Residue using the Residual Material Test.

"Processing Guarantee" means the Contractor's obligation to process all Recyclable Materials and Solid Waste delivered to the MRF/TS by the City as required by the Operating and Management Contract and described in the form of a Performance Standard in Schedule 1 (Performance Guarantees and Testing Procedures) provided, however, that the Processing Guarantee is dependent upon delivery of Recyclable Material in the form provided in Schedule 7 (Facility Delivery Standards).

"Product," "Products" or "Recovered Materials" means that portion of the as-received Recyclable Materials which are processed by the MRF/TS into marketable industrial feedstocks, including but not limited to materials for which quality specifications are provided in Schedule 1 (Performance Guarantees and Testing Procedures), or Recyclable Material received at the MRF/TS that is sold.

"Product Quality" or "Product Specification" means those standards described in Schedule 1 (Performance Guarantees and Testing Procedures).

"Product Revenue" means the price obtained for Products.

"Purchaser" means any party who receives and pays for Product.

"Recyclable Materials" means those materials specifically identified as acceptable by the MRF/TS for processing in its Paper Sorting Line-or Container Sorting Line in the form identified in Schedule 7 (Facility Delivery Standards), including Pre-Sorted Materials and Recyclable Materials sorted from the Solid Waste Sorting Line and including residue material up to the limits specified in Schedule 1 (Performance Guarantees and Testing Procedures) of this Contract.

"Registered City Representative" means any City employee, office or agent formally registered with the Contractor as a representative of the City with reasonable knowledge of plant tour procedures.

"Rejected Material" means that portion of the Recyclable Material or Solid Waste delivered to the MRF/TS that consists of material that is not identified-as meeting the Facility Delivery Standards specified in Schedule 7.

"Replacement Contractor" means any entity other than Contractor that completes Contractor's obligations under this Operations and Management Contract and/or performs Contractor's duties and obligations under the Contract.

"Residual Material" means the Nonrecyclable Material resulting from the Processing of Recyclable Material.

"Residual Material Test" means the calculations, as defined in Schedule 1 (Performance Guarantees and Testing Procedures) used to determine the amount of residual material produced by the paper and container sort lines.

"Revenue" means revenue generated by the sale of Product.

"Scavenging" means the unauthorized removal of Recyclables by the City or its agents or contractors after Recyclables leave the generator or source as well as the unauthorized removal of Recyclables by someone after Recyclables are left at the curb by the generator but prior to removal by the City or its agents or contractors.

"Solid Waste" means all solid materials or substances generally discarded or rejected as being spent, useless, worthless, or valueless to the owners at the time of the discard or rejection, including but not limited to garbage, refuse, industrial and commercial waste, demolition and other construction debris; excluding Hazardous Waste and Infectious Waste.

"Solid Waste Sorting Line" means the processing system for sorting different Recyclable Materials from Solid Waste and for compacting and transferring Solid Waste as described in Schedule 1 (Technical Specifications).

"Subcontractor" means any subcontractor hired directly by Contractor or an Affiliate.

"System" means the Container, Paper and Solid Waste Sorting Lines and appurtenances to be furnished and installed by the Vendor at the Facility to Process Recyclable Materials into Recovered Materials and to compact and transfer Solid Waste.

"Ton" means two thousand (2,000) pounds.

"Tipping Fee" means the fees charged for Recyclable Material or Solid Waste tipped at the MRF/TS as described in Section 6.02(c) of this Contract.

"Transportation Costs" means the Direct Costs of the Contractor or its affiliates or actual amount billed for third party services associated with transporting Product to the Primary Market, as described in the most recently approved Materials Marketing Plan, provided, however, this term shall not include any Direct Costs associated with loading product onto transportation vehicles.

"Uncontrollable Circumstance" means:

(a) A catastrophe such as an act of God, hurricane, tornado, epidemic, landslide, lightning, earthquake, fire or explosion not caused by Contractor Fault or City Fault, flood or similar occurrence, an act of public enemy, war, blockade, insurrection, riot or civil disturbance, sabotage, or similar occurrence;

(b) The order, or injunction or judgment of any federal, State, or local court, administrative agency or governmental body or officer with jurisdiction in the City, including any exercise of the power of eminent domain, police power, condemnation or other taking by or on behalf of any public, quasi-public or private

entity; excepting decisions interpreting federal, State and local laws; provided, however, that the order or judgement shall not arise in connection with or be related to the negligent or willful action or inaction of the Party;

(c) The failure of any appropriate federal, State or local jurisdiction in the area of location of the MRF/TS Site to provide and maintain and assure the maintenance of all utilities necessary for the construction of Acceptance Testing or operation of the MRF/TS, directly resulting in a delay in Acceptance of the MRF/TS or a partial or total curtailment of operation of the MRF/TS; or

(d) A Change in Law; provided that a change in law is not an Uncontrollable Circumstance during any period the City chooses to exercise legally available challenges to the applicability of the law at its cost and expense and indemnify the Contractor for any fines, penalties or other costs of noncompliance with the provision.

(e) The denial of an application for, failure to issue, or suspension, termination, interruption, imposition of a new condition in connection with the renewal or failure of renewal on or after the Contract Date of any governmental Permit if such denial, suspension, termination, interruption, imposition or failure is not also the result of a wrongful or negligent act or omission or a lack of reasonable diligence of the Party asserting an Uncontrollable Circumstance, provided that the contesting in good faith of any such denial, suspension, termination, interruption, imposition or failure shall not constitute or be construed as such a wrongful or negligent act or omission or lack of reasonable diligence; or

(f) The failure of any subcontractor or supplier to furnish materials or equipment for the System on the dates agreed to in connection with the performance of the Work if such failure is caused by an Uncontrollable Circumstance if and to the extent, and only so long as the affected party is not reasonably able to obtain substitute materials or equipment.

Section 1.02: Terms Generally

The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation," except as the context may otherwise require. The words "agree," "agreement," "approval" and "consent" shall be deemed to be followed by the phrase "which shall not be unreasonably withheld or unduly delayed" except as the context may otherwise require.

Section 1.03: Notices Generally

Unless specifically provided elsewhere in this Contract, at least fifteen (15) Days prior written notice shall be required to be given by one Party to the other Party of any breach of this Contract by the other Party or failure to fulfill any requirement of this Contract by a Party, in order to allow the Party receiving the notice to cure any breach, or to commence and diligently pursue the cure of any breach which cannot reasonably be cured during the fifteen-day period, or to allow the Party time to prepare for, question or contest the fact that any requirement of this Contract has not been fulfilled.

ARTICLE II: OWNERSHIP, OPERATION AND MAINTENANCE OF THE FACILITY

As Amended by Amendments #1, #2 & #3 Approved by City Council on 6/5/95, 8/7/95 & 6/15/98

Section 2.01: Overall Responsibilities

(a) Contractor shall, at its sole cost and expense, provide all management, supervision, personnel, materials, equipment, services, and supplies (other than Recyclable Materials and Solid Waste after Acceptance) necessary to operate, maintain, and repair the MRF/TS and MRF/TS Site in accordance with the terms and provisions of this Operating Contract and the following schedules which are incorporated as part of this Contract:

- Schedule 1: Performance Guarantees and Testing Procedures
- Schedule 2: Construction Contract
- Schedule 3: Full Parent Guarantee
- Schedule 4: City of Ann Arbor Materials Recovery Facility/Transfer Station Construction and Operation: Request for Proposals
- Schedule 5: Contractor's Proposal (including Proposal Forms and Letters of Clarification)
- Schedule 6: Performance Bond or Letter of Credit
- Schedule 7: Facility Delivery Standards

- Schedule 8: Sample Invoices and Tipping Fee Schedule
- Schedule 9: Maintenance Log and Renewal/Replacement Schedule

This Contract, together with the Schedules, constitutes the entire Contract between the Contractor and the City with respect to the operation and maintenance of the MRF/TS. The Request for Proposals (RFP) and the Contractor's Proposal are incorporated as Schedules 4 and 5, except that any conflicts between the documents and the terms of the Contract shall be controlled by this Contract.

In case of a conflict among the documents in any requirement(s), the requirement(s) of the document highest on the list below shall prevail over any conflicting requirement(s) of a document lower on the list.

- (1) Schedules
- (2) Contract
- (3) Addenda in reverse chronological order
- (4) Proposal
- (5) RFP document (sections not previously listed above)

The City will maintain the entrance and entrance roads on the City's property up to the MRF/TS Site unless maintenance is required because of the negligent act or omission of Contractor, reasonable wear and tear excepted.

(b) Contractor shall, at its sole cost and expense, market or cause to be marketed all Products in accordance with the terms and provisions of this Operating Contract.

(c) The City shall deliver or cause to be delivered Recyclable Material and Solid Waste collected by City forces or contractors, after Acceptance of the MRF/TS at no cost to Contractor.

Section 2.02: Safety of Persons and Property

Contractor agrees that it will (a) take all steps necessary to prevent damage, injury or loss by reason of or related to the operation and maintenance of the MRF/TS, to all persons and to any property on or adjacent to the MRF/TS Site or adjacent thereto, including but not necessarily limited to trees, shrubs, lawns, walks, pavements, roadways, equipment, structures, and utilities; (b) establish and maintain safety procedures for protection of Contractor employees and all other

persons at the facility in compliance with all applicable laws, custom industry standards, and OSHA requirements; (c) enforce necessary safeguards at the facility for the safety and protection of any other person present at the MRF/TS; (d) comply with all applicable laws, ordinances, rules, regulations and lawful orders of any public authority relating to the safety of persons or property at the MRF/TS or their protection at the MRF/TS from damage, injury, loss; and (e) designate a qualified and responsible member of its organization stationed at the facility who shall be responsible for the facility safety and shall work with Federal, State, local, and municipal officials involved with matters of safety.

Section 2.03: Personnel

Contractor shall staff the MRF/TS with a sufficient number of hourly and salaried employees as is consistent with good management practices and in sufficient numbers to enable Contractor to perform all of Contractor's obligations and duties under this Operating Contract in a timely and efficient manner. All of Contractor's personnel shall be appropriately trained in accordance with all applicable rules, regulations and laws so as to ensure that the MRF/TS will be operated and maintained in accordance and consistent with applicable law and normal industry custom and in accordance with the Operating and Maintenance Manuals.

Section 2.04: Facility Equipment and Spare Parts

Contractor shall, at Contractor's sole cost and expense: (a) keep all equipment at the MRF/TS Site in good repair and operating condition at all times and maintain an adequate equipment and spare parts inventory as set forth in Schedule 2 (Construction Contract) and Schedule 4 (Request for Proposal), in order to repair and replace the same, if necessary, in a timely fashion and so as not to disrupt the operation of the MRF/TS; (b) operate the MRF/TS and equipment in compliance with all permits and applicable Federal, State, local and municipal laws, rules and regulations, including those established by OSHA; (c) notify the City promptly if any Major Equipment fails or is seriously damaged, in which event Contractor shall at all times maintain on hand at the MRF/TS all spare parts listed in Schedule 2 (Construction Contract) and Schedule 4 (Request for Proposal). A complete listing of the spare parts shall be on hand and transferred to the City at termination or expiration.

Section 2.05: Operating Hours - Receiving Hours, Processing Hours, Shipping Hours, and City Holidays

(a) Contractor shall keep the MRF/TS open for the receipt of Recyclable Material from 7:00 a.m. to 4:30 p.m. each Monday through Friday and from 8:00 a.m. to 1:00 p.m. each Saturday, excluding City Holidays.

(b) Contractor agrees to receive Recyclable Material at the MRF/TS at hours other than the hours specified in Section 2.05(a), if requested by the City. Contractor shall be paid for the Direct Costs of operating during the additional hours.

(c) Contractor may ship Products to Purchasers at any time that a person designated by the City is on duty to weigh the shipment in accordance with Section 4.06 and that the shipment of the Products does not violate any State, local, municipal, or agency law, regulation, permit or ordinance restricting hours of Product shipment.

(d) Contractor may, after obtaining the prior approval of the City, ship Products to Purchasers when a City staff person is not on duty to weigh the shipment. In this event Contractor shall promptly provide to the City a verified weight ticket from the MRF/TS scale and corroborating weight record from the Purchaser.

Section 2.06: Inspection and Visitation Rights

The City, its employees, officers or agents and its Engineer shall have the right to enter the MRF/TS and MRF/TS Site at any time during the MRF/TS's operating hours to inspect and verify Contractor's compliance with all of its obligations, including but not limited to its obligations (i) to operate and maintain the MRF/TS and MRF/TS Site in accordance with the provisions of this Operating Contract, and (ii) to meet Contractor's Performance Guarantees listed in Schedule 1. The City agrees that any inspection shall, to the extent reasonably possible, be conducted in a manner so as to minimize any interference with Contractor's operation and maintenance of the MRF/TS or the performance of its obligations under this Operating Contract. Nothing contained in this Section 2.06 shall be deemed to authorize the City's representatives or its agents to direct the activities of Contractor during inspections. The City may also permit educational tour participants and other visitors to inspect the MRF/TS during operational hours with notice of at least one day and let by a City representative or its agent registered with the Contractor.

All visitors must notify the Plant Manager of their presence, wear safety equipment as required, and follow all plant rules.

Section 2.07: Operation and Maintenance Manuals

Contractor shall deliver to the City two (2) copies of the Operation and Maintenance Manuals and any revision within ten (10) Days after a revision is finalized by Contractor.

Current versions of the Operations and Maintenance Manuals shall be kept at the MRF/TS site, at the Contractor's Corporate Headquarters and at the City's offices. Revised Operations and Maintenance Manuals, consistent with the requirements of this Contract, shall be filed with the City no later than July 1, 1998. The "As-Built" drawings (both hard copy and electronic CAD files) shall be considered part of the Operations and Maintenance Manuals and, as such, are required to be kept at each of the above specified locations.

Operation and Maintenance Manuals shall include detailed preventative maintenance procedures and protocols that are consistent with manufacturer's recommendations and industry best practices. Operation and Maintenance Manuals shall provide guidance in and define minimum performance requirements for operating, maintaining and repairing all major equipment and other mechanical, electrical and instrumentation and control systems installed in the facility and for the building, building site and all other fixtures.

Section 2.08: Maintenance Logs

The Contractor shall keep daily records of repairs and maintenance performed on all equipment, building, site improvements and fixtures at the MRF/TS Site including all preventative maintenance tasks as specified in the Operations and Maintenance Manuals. The format of the Maintenance Log and associated procedures for its use shall be approved by the City and be substantially in the form identified in Schedule 9 (Maintenance Log and Renewal/Replacement Schedule). A copy of the summary sheets for these records, certified to be true and accurate by the on-site Facility Manager, shall be delivered to the City monthly as part of the Monthly Invoice.

The Contractor will employ a full time diesel mechanic on-site at the facility for the remaining life of the Contract. If the Contractor does not have a full time diesel

mechanic on staff due to vacancy then they shall immediately engage in a hiring process that can reasonably be expected to allow the Contractor to fill that position.

Section 2.09: Litter Control

The Contractor shall operate the MRF/TS in a manner which will limit the generation of litter to the greatest extent possible and shall take all steps necessary to collect and dispose of any litter generated by the MRF/TS or on the MRF/TS Site. Any fine levied against the MRF/TS operation for litter violations shall be promptly paid by Contractor. All delivery trucks will be responsible for cleanup of litter resulting from spillage. All trucks must be tarped or covered. No truck will discharge contents without permission from designated Contractor Personnel.

Section 2.10: Equipment Repair and Replacement Accounts

(a) The Contractor is obligated to keep all components of the rolling stock, Major Equipment, MRF structure and the MRF site in good condition and working order at all times during the life of the Contract and be in compliance with all aspects of Section 2.04 (Facility Equipment and Spare Parts).

If an Acceptance or Performance Test or inspection shall demonstrate that any component of the MRF/TS is missing, not in good repair, in need of replacement, substantially different from that identified in Schedule 2 (Construction Contract) as modified by any Design Changes under Article IX of this Contract, or impairs the Contractor's ability to meet its performance guarantees, including reasonable compaction rates for solid waste, then an Event of Default may be declared as per Section 12.02 (g).

(b) The City shall establish two separate investment accounts for the purpose of accumulating deposits and earnings as needed for equipment repair or replacement as provided for in this Section. The first account shall be known as the Capital Repair Account. The second account shall be known as the Capital Replacement Account. For the life of this contract, money expended from these accounts shall only be released for actual expenses. Deposits into these accounts shall be made based on the following schedule.

(i) Effective July 1, 1998, deposits shall be made by the City into the Capital Repair Account no later than 30 days after the date of the invoice submitted for each month during the entire remaining term of the contract at a rate of \$3.00 (three dollars) for every ton of Merchant Solid Waste received at the facility

including Merchant Solid Waste loads that are run over the Mixed Waste Sorting Line. The \$3.00 figure shall remain fixed for the remaining term of the Contract.

(ii) Deposits shall be made by the City into the Capital Repair Account no later than 30 days after the date of the invoice submitted for each month during the entire term of the contract at a rate of \$1.25 (one dollar and twenty five cents) for every ton of City recyclable material received at the facility. The \$1.25 figure shall remain fixed for the remaining term of the Contract. The fund balance of the Capitalized Renewal and Replacement Fund as of July 1, 1998 shall be credited to the Capital Repair Account.

(iii) Effective July 1, 1998, deposits shall be made by the City into the Capital Replacement Account no later than 15 days after the first day of each month during the remaining term of the contract at a rate of \$6,250.00 (six thousand two hundred fifty dollars). This figure shall remain fixed for the remaining term of the Contract.

(iv) The City reserves the right to make additional Deposits in either account at its sole discretion.

(v) The Contractor reserves the right to make additional Deposits in either account at its sole discretion.

(c) During the first ten years of this Contract up until September 21, 2005, the Contractor shall not be entitled to reimbursement from the Capital Repair Account except for repair of the following major rolling stock items (Skid Steer, Forklift, Wheel Loader) and only upon written notice of reimbursement request to the City no more than sixty (60) days after incurring the expenses and receiving an invoice for the repair in order for any of these expenses to be eligible for reimbursement from the Capital Repair Account and in order to obtain the required consent of the City which shall not be unreasonably withheld. The Contractor may submit proposals for planned Capital Repair Account purchases in order to enable City purchase of these items as long as the procedures described in Section 2.10 (e) are followed as required to access the City procurement process.

In providing its consent the City shall consider the original expected life of the equipment, the status of reported repairs and preventative maintenance on the equipment, the actual versus planned repair for the items, and the actual rate of use of the equipment compared to the original design capacity. The written notice of

reimbursement request shall include the following, at a minimum: items to be repaired, original expected life of the items, repair and preventative maintenance history on the items, actual versus original design capacity for the items, actual versus planned repair for the items, Direct Cost of repair, and the new useful life of the repaired items.

If these requirements for timing and content of the written notice of reimbursement request are not met then the City is not obligated to act on the request until all required information is provided. Funding for expenditures that are covered by the Contractor obligation to keep the MRF/TS in good working order at all times during the life of the Contract will not be granted except for the aforementioned. Nor will funding requests for repair and replacement of equipment that is leased by the Contractor be granted unless that equipment is listed in Schedule 9 (Maintenance Log and Renewal/Replacement Schedule).

(d) After the first ten years of this Contract, effective September 22, 2005, the Contractor shall be entitled to reimbursement from the Capital Repair Account for the purpose of funding the repair of any and all Major Equipment purchased and installed at the MRF/TS that is identified in Schedule 9 (Maintenance Log and Renewal/Replacement Schedule) only upon written notice of reimbursement request to the City no more than sixty (60) days after incurring expenses and receiving an invoice for the repair in order for any of these expenses to be eligible for reimbursement from the Capital Repair Account and in order to obtain the required consent of the City which shall not be unreasonably withheld. The Contractor may submit proposals for planned Capital Repair Account purchases in order to enable City purchase of these items as long as the procedures described in Section 2.10 (e) are followed as required to access the City procurement process.

In providing its consent the City shall consider the original expected life of the equipment, the status of reported repairs and preventative maintenance on the equipment, the actual versus planned repair for the items, and the actual rate of use of the equipment compared to the original design capacity. The written notice of reimbursement request shall include the following, at a minimum: items to be repaired, original expected life of the items, repair and preventative maintenance history on the items, actual versus original design capacity for the items, actual versus planned repair for the items, Direct Cost of repair, and the new useful life of the repaired items.

Should the balance of funds in the Capital Repair Account fall to \$0.00 then the City shall halt any further reimbursements from the Account and shall have no obligation for reimbursement of any Contractor requests as specified in this section until such time as sufficient funds are again available in the Capital Repair Account to cover such requests. Upon termination or expiration of this Contract, all funds remaining in the Capital Repair Account shall become available for unrestricted use by the City.

(e) The Capital Replacement Account shall be used by the City with the advice and recommendation from the Contractor for the purpose of funding replacement of any and all Major Equipment purchased and installed at the MRF/TS and that has a replacement cost budgeted and scheduled in Schedule 9 (Maintenance Log and Renewal/Replacement Schedule). Replacement is defined to include major rebuild of an item that would incorporate a complete overhaul of all components of that item and extend the useful life of that item for a period of time approximately equivalent to the useful life of the original item to be replaced when it was first installed at the MRF/TS.

The Contractor shall provide written notice to the City prior to incurring expenses for the replacement of any component of the MRF/TS in order for any of these actual expenditures to be eligible for reimbursement from the Capital Replacement Account, and in order to obtain the required consent of the City which shall not be unreasonably withheld. The City shall notify the Contractor within fifteen (15) days of receipt of the written notice that the notice is considered to be administratively complete and then shall within fifteen (15) additional days either deny the request or submit the request to City Council or the City Administrator for approval pursuant to regular City procedures as defined below.

In providing its consent the City shall consider the original expected life of the equipment, the status of reported repairs and preventative maintenance on the equipment and the actual rate of use of the equipment compared to the original design capacity. The written notice shall include the following, at a minimum: items to be replaced, original expected life of the items, repair and preventative maintenance history on the items, actual versus original design capacity for the items, actual versus planned replacement for the items, Direct Cost of replacement, and the new useful life of the items.

If these requirements for timing and content of the written notice are not met then the City is not obligated to act on the request until all required information is provided. When a piece of equipment identified in Schedule 9 (Maintenance Log and Renewal/Replacement Schedule) is replaced by the Contractor, the Contractor may propose to do so through either a lease/purchase or outright purchase of that equipment, provided, however, that at the termination of the Contract the City will have all rights to ownership of that equipment including any modifications made during the course of the Contract absent any ongoing financial obligation, liens or other liabilities.

To complete the replacement of any approved items as defined above, the Contractor will prepare technical specifications for the equipment to be replaced (equivalent or better than the original specification for that equipment) subject to City review and approval of content and form. The procurement process shall be the City's procurement process or a process approved by the City. The City may, at its own discretion, procure the specified equipment through the City's own purchasing process. To the extent practical the City will cooperate with the Contractor to have the actual purchase made directly by the City.

Under no circumstances shall the City reimburse the Contractor from the Capital Replacement Account at a rate that is faster than the total annual budgeted amounts identified each year in Schedule 9 (Maintenance Log and Renewal/Replacement Schedule) for the specific line item obligations identified. The Contractor can allocate the total annual budgeted amounts between the line item obligations for that year as it sees fit in fulfilling its obligations for equipment replacement under this section for that year. The total annual budgeted amounts identified in Schedule 9 (Maintenance Log and Renewal/Replacement Schedule) shall accrue to the Account for future use should they not be expended as budgeted. Should these unexpended funds exist, Contractor may propose to the City additional unbudgeted replacement projects for reimbursement from those unexpended funds, approvals of which shall not be unreasonably denied.

The City shall be entitled to draw upon the Capital Replacement Account upon ten days written notice to the Contractor to make reasonable expenditures for the replacement of any and all components of the MRF/TS or any Capital Repair as defined in this Contract. The written notice shall include items to be replaced, shall consider the original expected life of the equipment and its rate of usage and shall provide the City's rationale for the expenditure of the funds. The Contractor may

submit proposals for other expenditures outside of the budgeted amounts from the Capital Replacement Fund for the replacement of any and all components of the MRF/TS as defined in this Contract, which proposals the City may consider and either approve or deny at its own discretion. The City understands that these Contractor proposals may include proposals for tipping floor surface replacement, building mechanical system replacement and site pavement resurfacing, approvals of which shall not be unreasonably denied

Any revenues received by the City from the salvage value of replaced equipment and rolling stock shall be placed in the Capital Replacement Account or used to reduce the cost of acquiring the replacement equipment. Upon termination or expiration of this Contract, all funds remaining in the Capital Replacement Account shall become available for unrestricted use by the City.

(f) A quarterly reporting and reconciliation of the fund shall be prepared by the City and provided to the City Administrator and the Contractor within 30 days of the conclusion of each quarter and in annual summary form within 60 days of the conclusion of each fiscal year.

Section 2.11: Ownership

Contractor may operate the MRF/TS and store Product only in the areas at the MRF/TS Site shown in Schedule 4 (Request for Proposal) as designated for the purposes and shall not occupy any other areas of the MRF/TS Site or interfere with activities of the City or permitted by the City in the other areas owned by the City.

Section 2.12: Records and Reports

Contractor shall prepare and maintain at the MRF/TS proper, accurate, and complete records and accounts of all transactions related to the MRF/TS. These accounts shall include but not be limited to insurance and regulatory inspection records, recovered materials records, visitors log, maintenance records, equipment replacement records and schedules, safety and accident reports, quantities of all unprocessed Recyclable Materials delivered to the MRF/TS, quantity of each designated Recyclable Material processed, quantity of Products delivered to Purchasers, identity and address of Purchasers, quantity of Products in inventory (estimate), and quantity and quality of Residue generated.

The Contractor shall provide the City with monthly reports submitted with the monthly invoice including but not limited to the following operating data:

scheduled Operating Days, Days of actual operation, changes in MRF/TS operation, quantity of unprocessed Recyclable Materials delivered and accepted at the MRF/TS, type and quantity of each Recyclable Material accepted, marketed and processed or disposed of, quantity of Product delivered to and identity and address of Purchaser, Product Revenues and Net Product Revenues received (broken down by type of material), maintenance summary including appropriate summary sheets from the full maintenance log, accounts payable report including name of vendor, amount owed, and aging of invoices; and anticipated operating schedule for the next month. All data included in reports to the City shall be broken down into three categories (City of Ann Arbor, University of Michigan and Other).

Contractor shall submit an annual report within sixty (60) Days after the end of each fiscal year that incorporates a summary of the monthly operation report for the preceding twelve-month period and summarizes all required data and records.

Contractor hereby grants to the City or its agent the right to inspect all books, records, plans, financial statements and other similar materials of Contractor insofar as they relate to the terms and conditions of this Contract and the performance of the obligations, upon reasonable notice to Contractor and insofar as any requests by the City are reasonable and professional.

The contractor agrees to cooperate in and facilitate an independent annual informational audit to establish the ultimate destination and general use of a representative sampling of Products from the MRF/TS and the associated Purchaser(s). Findings of audit shall be made public, except that such release of information shall not reveal trade secrets of the Contractor and/or Purchaser(s), nor identify the ultimate user of the Product as industrial feedstock if any, consistent with the provisions of Article XVI of this Contract.

Section 2.13: Anti-Scavenging

The City will maintain anti-scavenging provisions in its solid waste ordinance and in its contract terms and/or employment policies for collection of Recyclable Materials and Solid Waste.

ARTICLE III: TERM OF CONTRACT

As Amended by Amendments #1, #2 & #3 Approved by City Council on 6/5/95, 8/7/95 & 6/15/98

Section 3.01: Life of Contract

This Contract shall commence as of the date it was entered into by the Parties. The Parties' obligations as to delivery, processing and sale or disposal of Recyclable Material and Solid Waste shall be for a period beginning on the Acceptance Date of September 22, 1995 and extending for twenty (20) years thereafter until September 21, 2015 unless terminated earlier in accordance with Article XIII, or renewed in accordance with this Article III.

Should the Contractor have been determined to not be in full compliance with the multi-stage Acceptance Test procedure as provided for in the Construction Contract Schedule 1 (Technical Specifications) and Schedule 3 (Performance Guarantee and Acceptance Testing) then this Contract shall be automatically and immediately limited to ten (10) years from the Acceptance Date unless terminated earlier in accordance with Article XIII, or renewed in accordance with this Article III.

Section 3.02: Five (5) Year Reviews and Renewal Options

The City and Contractor agree to review the status of the Contract and Contractor performance during the fifth year of every five year period from the date this Contract was signed. In addition to Contractor performance the review shall address trends in recycling markets and technology and the need, if any, for changes in this Contract to respond to changing conditions. Any necessary changes agreed to by mutual consent shall be executed in accordance with Section 17.09 (Amendment) of this Contract. If mutual consent between the parties cannot be reached, the Contract will remain unchanged.

The City may exercise its option to extend this Contract for a period of five (5) years, and shall have additional options to extend this Contract for additional periods of five (5) years, provided however, that the City shall give the Contractor at least one (1) year written notice of its intention to exercise its option to renew, and further provided that the components of the Net Service Fee for each renewal period shall be mutually agreed to by the City and the Contractor. If the City fails to provide Contractor with notice pursuant to this section, this Operating Contract shall terminate on the last Day of the then applicable term.

ARTICLE IV: DELIVERY, PROCESSING AND DISPOSITION OF MATERIAL

Section 4.01: Guaranteed Facility Capacity

During each Operating Day, Month and Year, Contractor shall receive and process Recyclable Material and Solid Waste delivered to the facility by or on behalf of the City, up to the Guaranteed Facility Capacity, into Products, of at least the quality specified in the Schedule 1 (Performance Guarantees and Testing Procedures). Contractor shall not be permitted to accept any Recyclable Material or Solid Waste delivered (a) by any party other than the City, or (b) not on behalf of the City, without prior written consent of the City, nor shall Contractor be permitted to charge any user of the MRF/TS a Tip Fee or other form of user fee without the prior written consent of the City. The City's scalehouse operator will be authorized to make on-site interpretations of current City policies with regard to non-City users should any dispute arise. If Contractor fails to fulfill its obligation in accepting and processing Recyclable Material or Solid Waste, Contractor shall pay the City damages in accordance with Section 5.04.

Section 4.02: Inadvertent Deliveries of Non-Recyclable Material

The City shall use reasonable efforts to deliver or cause to be delivered to the MRF/TS only Recyclable Material and Solid Waste which conforms to Facility Delivery Standards. However, the Parties agree that any inadvertent delivery of Recyclable Material or Solid Waste in excess of Facility Delivery Standards, or Recyclable Material or Solid Waste which does not conform to Facility Delivery Standards, shall not constitute a breach of the City's obligations.

Section 4.03: Identification, Rejection, or Processing of Recyclable Material or Solid Waste Not Conforming to Facility Delivery Standards

(a) Contractor's obligation to accept and process Recyclable Material and Solid Waste delivered by or on behalf of the City shall not prohibit Contractor, in its sole discretion, from inspecting any vehicle delivering Recyclable Material or Solid Waste to the MRF/TS. If during any vehicle inspection, Contractor determines that the vehicle is delivering Recyclable Material or Solid Waste not conforming to the Facility Delivery Standards, Contractor shall require hauler to remove the vehicle from the MRF/TS Site. Contractor shall immediately notify the City of any rejection, stating the date and time of the rejection, the hauler and driver's name, the point of origin and the reason(s) for rejection and shall follow this with a report in writing of the same information delivered within two (2) Days to the City.

(b) If a load of Recyclable Material or Solid Waste delivered by or on behalf of the City is unloaded onto the MRF/TS tipping floor and Contractor determines that the load contains Hazardous Waste, Infectious Waste, or Recyclable Material or Solid Waste not conforming to Facility Delivery Standards, Contractor shall immediately notify the City's representative at the MRF/TS, who shall confirm or deny Contractor's determination. If Contractor's determination is confirmed, the non-conforming portion of the load shall be disposed of and any Direct Costs associated with such disposal shall be charged to the City.

(c) If the City's representative denies Contractor's determination of the conformity of any load of Recyclable Materials or Solid Waste, then Contractor shall segregate and store all Rejected Material, as defined herein, and shall notify the City sufficiently prior to their removal for disposal to permit the City's inspection. The City shall have the right to inspect the Rejected Material and to make its own determination as to whether the materials are in fact Rejected Materials or Residue or Solid Waste as defined herein, and the Contractor shall have the right to dispute the City's determination. If the materials are determined to be Residue or Solid Waste, Contractor shall absorb all Direct Costs associated with the segregation. If the materials are determined to be Rejected Materials, the City shall pay all Direct Costs associated with the segregation.

If the material is determined to be Rejected Material, Contractor shall report the same information within the same time period as stated in Section 4.03(a). The excess Direct Costs of disposing of the Rejected Material shall be charged to the City, in accordance with Section 4.03(b).

(d) If a delivered load cannot be processed because it is contaminated with Hazardous Waste or Infectious Waste, then the City shall have the option to remove and dispose of the Hazardous Waste or Infectious Waste, or may direct Contractor to so remove and dispose of the Hazardous Waste or Infectious Waste and the Direct Cost of removal and disposal shall be charged to the City.

(e) Nothing in this Contract shall be construed to mean that receiving Recyclable Material or Solid Waste, or the inadvertent receipt of Rejected Materials, Hazardous Waste or Infectious Waste at the MRF/TS Site, creates on the part of the City or the Contractor any ownership interest in, or confers on the City or the Contractor any title to, Recyclable Material, Solid Waste, Rejected Materials, Hazardous Waste or Infectious Waste.

Section 4.04: Removal and Disposal of Process Residue and Bypassed Recyclable Material and Solid Waste

(a) Contractor shall be responsible for the removal, transportation and disposal of all Process Residue to a location designated by the City. The cost and expense of the removal, transportation and disposal shall be paid by Contractor. The cost of transportation and disposal of Process Residue up to the amount permitted in this Contract, pursuant to the Guaranteed Maximum Process Residue, shall be the responsibility of the Contractor and shall be omitted from any Solid Waste Landfill Charges per Article 6 and Schedule 8 (Sample Invoices and Tipping Fee Schedule).

(b) Contractor shall be responsible for the transfer, transportation and disposal of all Solid Waste. The cost and expense of the transfer and transportation shall be paid by Contractor. The cost and expense of the disposal of all Solid Waste shall be reimbursed to the Contractor by the City as a Landfill Charge as indicated in Article 6 and in Schedule 8 (Sample Invoices and Tipping Fee Schedule).

The City shall designate a landfill for disposal. The City is designating and making available disposal services and guarantees of turn-around time at the Arbor Hills Landfill located in Washtenaw County as established in the City's Contract with Browning Ferris Industries of Michigan. Any landfill designated shall always be permitted in accordance with all applicable federal and State laws and shall be permitted to accept the particular Residual Material, Rejected Material, Bypassed Recyclable Material, Nonrecyclable Material, Nonmarketed Recovered Materials and Solid Waste delivered to it in accordance with all applicable federal and State

laws. If the landfill operator is unsuccessful in maintaining its operating permit, the City shall designate a different landfill meeting the above requirements and the tipping fee for Solid Waste Transfer shall be renegotiated.

Section 4.05: Contractor Obligation to Process All Recyclable Material

The Contractor shall use its best efforts to process all Recyclable Material delivered to the MRF/TS pursuant to the terms of this Contract and conforming to the Schedule 7 (Facility Delivery Standards) including Recyclable Materials in excess of the Guaranteed Facility Capacity.

Section 4.06: Weighing and Shipping Records

(a) All weighing of vehicles delivering Recyclable Materials and Solid Waste to the MRF/TS and shipping Product and Solid Waste from the MRF/TS will be performed by the City except as otherwise provided in Section 4.06(d). The City shall maintain the calibration of the scales at the scale house in accordance with the procedures established by the State of Michigan, in order to weigh all vehicles delivering Recyclable Material and Solid Waste to the MRF/TS Site or shipping processed Products to Purchasers from the MRF/TS. Each vehicle shall have its tare weight and identification number permanently affixed and conspicuously displayed in a location designated by the City or other form of identification as may be reasonably designated by the City. Either the City or Contractor may, from time to time, require a revalidation of the tare weight of any vehicle. Each loaded vehicle entering or exiting the MRF/TS Site shall be weighed, and the gross weight, tare weight, time of delivery and exit, nature of materials, and truck identification shall be accurately recorded on a weight record. Records of all weighing shall be maintained by the City. The City may use the scales for other purposes on an occasional basis.

(b) The City will maintain daily records of the total Tons of all Recyclable Material and Solid Waste delivered to the scales at the MRF/TS Site, identified by appropriate delivery vehicle identification, and the number of Tons of Recyclable Material and Solid Waste accepted by Contractor from each user.

(c) The City will maintain daily records of the total Tons of Products and Solid Waste leaving the MRF/TS Site according to Product category (office paper, motor oil, auto batteries, household batteries) and Purchaser or Landfill, and price

obtained or paid. Contractor shall provide information regarding Purchasers and prices to the City at the time the Products are weighed.

(d) The City shall provide Contractor with summaries on a monthly basis of all weigh tickets. Record copies shall be maintained by the City for a period of at least four (4) Operating Years following the Operating Year in which they were made. The City will provide Contractor and its auditors access to all records maintained by or on behalf of the City with respect to quantities of Recyclable Material and Solid Waste delivered to the MRF/TS, quantities of Products and Solid Waste leaving the MRF/TS, invoicing, accounts receivable, shipping costs, and pricing of materials.

ARTICLE V: CONTRACTOR GUARANTEES OF FACILITY PERFORMANCE AND REMEDIES FOR FAILURE TO PERFORM

As Amended by Amendments #1, #2 & #3 Approved by City Council on 6/5/95, 8/7/95 & 6/15/98

Section 5.01: Guaranteed Facility Capacity

Contractor hereby guarantees that the MRF/TS, provided sufficient Recyclable Material and Solid Waste are delivered to the MRF/TS, shall accept and/or process daily, monthly and annually sufficient Recyclable Material and Solid Waste to meet the Guaranteed Facility Capacity. All material delivered to the MRF/TS shall be processed by the MRF/TS in accordance with the terms of this Contract.

Section 5.02: Guaranteed Product Quality

Contractor hereby guarantees that the quality of each shipment or load of Product and Solid Waste produced by the MRF/TS from the receipt and processing of Recyclable Material and Solid Waste shall be Guaranteed Product Quality and that the amount of Residue remaining after the processing of the Recyclable Material into Products will be no greater than the Guaranteed Maximum Process Residue, as specified in Schedule 1 (Performance Guarantees and Testing Procedures).

Section 5.03: Performance Tests after Acceptance Date

(a) The Contractor shall, at the request of the City, cause the MRF/TS to undergo Performance Tests after the Acceptance Date, to determine whether the

performance of the MRF/TS has changed since the last Performance Test or Acceptance Test.

(b) If the City requests that the Performance Test be undertaken and the results of the Performance Test demonstrate that, with regard to Facility Capacity and Product Quality Guarantees as presented in Schedule 1, the MRF/TS continues to satisfy the Guarantees, then the City shall pay the Direct Costs of the Performance Test in excess of the costs normally incurred for operation and maintenance of the MRF/TS during the period of testing. If the MRF/TS fails to satisfy the Performance Test or Guarantees, then the Contractor shall pay the Direct Cost of the Performance Test and shall promptly correct deficiencies in the MRF/TS causing the failure of the Performance Test. A second test shall be performed within 30 Days at Contractor's expense. If Contractor fails the second test, the City shall have the option of terminating this Contract and/or requiring other action or payments as are described in Section 5.04 of this Contract.

Section 5.04: Remedies for Failure of Contractor to Meet Guaranteed Facility Capacity

If Contractor during any Operating Day, Week, Month or Year fails to accept sufficient Recyclable Material or Solid Waste to meet the respective Guaranteed Facility Capacity during any Operating Month for reasons other than the occurrence of an Uncontrollable Circumstance or the failure of the City to provide sufficient Recyclable Material or Solid Waste, then Contractor is responsible for damages equal to sixty dollars (\$60.00) times the number of tons not accepted. Additionally, if Contractor fails to process at the MRF/TS all accepted Recyclable Materials, it shall pay the City an amount equal to the City 's per ton revenue share for all tons sold during the immediately preceding calendar month times the number of tons accepted but not processed at the MRF/TS.

Contractor will guarantee that the compactor will be available to process at least 95% of all annual solid waste tonnage (total solid waste delivered less any materials recovered through the MSW sorting system) from the City and that the achieved compaction density shall be at 930 pounds per cubic yard or greater. Should the Contractor fail to achieve either or both of these criteria the Contractor shall take all steps necessary to restore the compactor performance as defined above as soon as practicable. The City has the option to direct haul its solid waste should

the compactor not be operating. In the event that the compactor is not available to process at least 95% of all solid waste tonnage delivered by the City then the Contractor will not be liable for the payment of damages to the City for the amount of waste not compacted. In this event, the Contractor will use its best efforts to restore the compactor to servicable conditions as soon as practicable in which the compactor can reasonably be expected to meet the performance conditions described in this section.

Section 5.05: Remedies for Failure of Contractor to Meet Guaranteed Product Quality Performance

(a) In the event of a breach of the Product Quality Guarantee, Contractor shall be obligated to undertake the procedures described herein and the City shall be entitled to the relief or damages as described herein.

A breach, for purposes of this section, shall occur upon the happening of either:

(i) If, a rejection or downgrading of twenty five (25) tons out of five hundred (500) tons of the same Product occurs within a six (6) month period, it shall be a breach; or

(ii) If more than two (2) loads are rejected or downgraded over any six month period, it shall be a breach.

Rejection means a refusal by the market to accept a load of Product as meeting the standards for the applicable Product Quality Guarantee.

Downgrade means acceptance by the market of a load of Product at a price per pound or Ton below the price quoted by the Purchaser, for Product of the quality level required by this Contract, prior to downgrading. It shall not be considered a downgrade if a Purchaser discounts payment (but not price per ton) for weight of moisture or dirt included in a load of Product.

Load means the standard size bulk shipment of a Product as routinely sent to a market.

Contractor shall give the City written notification of rejection or downgrading within three (3) Business Days after Contractor receives notification of the fact.

(b) It shall not be considered a rejection if Contractor reprocesses and remarkets Product at its sole expense (including all associated transportation expenses).

(c) In the event of a rejection or downgrading as defined herein, Contractor shall give written notice of the rejection or downgrading to the City, Unless otherwise agreed to by the Parties, Contractor shall, within (5) Business Days after giving the notification, provide the City with a written report specifying the nature and extent of the problem, the anticipated duration, impact costs (if any), a plan of remediation and the estimated costs of the remedial measures. The cost of the remedial measures shall be paid by the Contractor.

(d) Contractor shall be obligated to pay the City one hundred percent (100%) of the City's share of the Net Revenue shortfall for all loads rejected or downgraded after the downgrading or rejection after the breach.

(e) A breach under this Article V which is not corrected either within thirty (30) Days or in accordance with the the City approved plan shall be an Event of Default.

(f) It shall be an Event of Default if five percent (5%) of the delivered and accepted Recyclable Materials processed by the Paper and Container Sorting Lines in any consecutive 90 Day period (excluding Rejected Material and allowable Residue) is not successfully marketed as Product and must be disposed of as Solid Waste due to failure to meet Product Quality Guarantees.

Section 5.06: Performance Guarantee

The Surety Bond provided by the Contractor to the City pursuant to Section 6.02 of the Construction Contract shall remain in full force and effect until passage of the Acceptance Test. Upon passage of the Acceptance Test, the amount of the Surety Bond shall be reduced to Nine Hundred Thousand Dollars (\$900,000.00).

The Surety Bond shall be for one year in the form attached as Schedule 6 (Performance Bond or Letter of Credit) and shall be extended annually up until July 1, 1998. The Surety Bond guarantees the Contractor's full and faithful performance of this Operating Contract. At least sixty (60) days prior to its expiration the City and Contractor shall receive an irrevocable commitment from the bonding company to renew the Surety Bond. In the event that such notice is not received the

Contractor will have the responsibility and right to pursue remedial action for 30 days. If at the end of thirty (30) days a commitment for a suitable bond or Letter of Credit has not been put in place such event shall constitute an event of default by the Contractor.

Effective July 1, 1998, the Contractor shall deposit with the City a Letter of Credit in the aggregate amount of One Hundred Thousand Dollars (\$100,000.00) in the form as set forth in Schedule 6 (Performance Bond or Letter of Credit), which Letter of Credit shall guarantee the full and faithful performance of this Operating Contract.

Drawing down against letters of credit or the Performance Bond by the City may be done solely and strictly in accordance with the terms and conditions.

Certification by the City as to the conditions precedent for, and/or drawing down against, the letter of credit or the Performance Bond shall not create or give rise to a presumption of breach or default by Contractor in any legal action brought by or against Contractor.

In the event the Contractor shall challenge or dispute the entitlement of the City to draw down against the letters of credit or the Performance Bond or the amount of the drawdown and the challenge or dispute is resolved in favor of the Contractor, the Contractor shall be entitled to repayment in full of the amount of the drawdown that it is finally decided Contractor is entitled to, plus interest thereon computed from the date for the drawing down to the date of repayment at the posted prime rate for Chase Manhattan (Bank) plus one percentage point together with any reasonable court costs, court-awarded damages and attorney fees Contractor may have incurred in disputing or challenging the drawing down; provided, however, that the interest shall not be payable for any drawdowns taken in accordance with the terms of the letters of credit or the Performance Bond as a result of the City not receiving notice that the issuing bank intends to renew the letters of credit or the Performance Bond.

In the event the Contractor shall challenge or dispute the entitlement of the City to damages and the City elects not to draw down on the letter of credit or the Performance Bond and the challenge or dispute is resolved in favor of the City, the City shall be entitled to payment in full of the amount of the drawdown plus interest computed from the date of the breach giving rise to the liability for the damages

computed at the posted prime rate for Chase Manhattan (Bank) plus one percentage point together with any court costs, court-awarded damages and attorney fees the City may have incurred in obtaining judgment or an arbitrator's decision supporting the City's claim for the damages.

ARTICLE VI: PAYMENTS TO CONTRACTOR AND TO THE CITY

As Amended by Amendments #1, #2 & #3 Approved by City Council on 6/5/95, 8/7/95 & 6/15/98

Section 6.01: Payments to be Made

In consideration of the performance by the Contractor of its obligations under this Operating Contract, the City will pay Contractor:

- (a) the Net Service Fee in accordance with Section 6.02.
- (b) **Pass Through Taxes.** Contractor shall promptly notify the City of the imposition of, or attempted imposition of, any Pass Through Tax, and the City shall have the right to contest, at its expense, the imposition of any Pass Through Tax. Contractor shall take steps as may be necessary to assure that Contractor and its Subcontractors, suppliers, and major equipment vendors provide any information or data necessary to qualify for any available tax exemption or tax refund or drawback in connection with Pass Through Taxes. The Contractor shall not be reimbursed for any Pass Through Tax as defined in this Agreement that are incurred or become due after June 30, 1998.

The City shall assume all lease payments due after June 30, 1998 for the Compactor and be granted full title to the Compactor by the Contractor subject to the terms of the leasing contract and receipt of all completed and signed assignment documents necessary for the transaction. At that time, the City will indemnify the Contractor for lease payments due after all obligations have been met.

After June 30, 1998, i) the City will become obligated, upon submittal of a monthly invoice and background documentation by the Contractor, for all utilities including water, sewer, gas, electricity as required for the City to operate and provide services in the MRF Education Center for the remaining term of the Contract (all prior City obligations for these costs are waived by the Contractor); ii)

the City shall transfer title for the Mack Yard Tractor to the Contractor and costs for renewal, replacement and/or repair of the Yard Tractor will no longer be eligible for reimbursement from the Capital Repair Fund or the Capital Replacement Fund; and iii) the City agrees to provide for twenty street sweepings of the paved MRF/Transfer Station lot per year at an average of twice per month from March through December with those sweepings exempted from any fees at the MRF/Transfer Station.

Section 6.02: Net Service Fee

In consideration of the performance by the Contractor of its obligations under this Operating Contract, the City will pay Contractor the Net Service Fee on a monthly basis:

(a) Formula. The City shall pay Contractor a Net Service Fee in accordance with the following formula:

$$\text{NSF} = (\text{LC} + \text{TF} + \text{DF}) - (\text{NR} + \text{DC} + \text{MC}) + \text{PP}$$

Where:

- NSF = Net Service Fee
- LC = Landfill Charges
- TF = Tipping Fees
- DF = Diversion Fees
- NR = Net Revenue Share
- DC = Damages Credit
- MC = Merchant Activity Credit
- PP = Prior Period Adjustment

Each component of the Net Service Fee shall be computed in accordance with this Article VI and formulas identified in Schedule 8 (Sample Invoices and Tipping Fee Schedule), and will be adjusted as provided in this Contract or escalated in accordance with the provisions of Schedule 5, (Contractor's Proposal). Although calculated by components, the Net Service Fee is and shall be considered a single fee.

(b) Landfill Charges. Landfill charges for any monthly billing period, as provided for in accordance with Schedule 8 (Sample Invoices and Tipping Fee Schedule).

(c) Tipping Fees. Tipping Fees in the amounts identified for specific quantities of each class of Recyclable Material and Solid Waste identified in Schedule 5 (Contractor's Proposal) as determined by the tipping fees and formulas identified in Schedule 8 (Sample Invoices and Tipping Fee Schedule). These Tipping Fees for the City are determined by the actual quantity of all materials delivered to the facility whether from City trucks or other sources, as set forth in Schedule 5 (Contractor's Proposal) and Schedule 8 (Sample Invoices and Tipping Fee Schedule).

The City and the University shall be the sole beneficiary of the graduated Tipping Fee structure in Schedule 8 (Sample Invoices and Tipping Fee Schedule), and exempt from any Merchant Activity Fees, provided, however, that the University of Michigan Medical Center shall not be exempt from any Merchant Activity Fees.

(d) Diversion Fee. The Diversion Fee is the Charge per Ton of Recyclable Material removed from the Solid Waste Sorting Line as provided for in Schedule 8 (Sample Invoices and Tipping Fee Schedule) except that no Diversion Fee shall be charged for removal of OCC from the Solid Waste Sorting Line. The quantity of OCC removed from the Solid Waste Sorting Line shall be determined by actual bale count and average bale weight for purposes of calculating any payments to be made under this Section.

(e) Net Revenue Share. The Net Revenue Share for any monthly billing period shall be the City's share of the monthly Net Revenue from the sale of Products determined in accordance with the provisions of Section 6.03 of this Contract.

(f) Damages Credit. Damages Credit for any monthly billing period shall be calculated by adding together any amounts owed or credits due to the City for damages as provided for in Section 5.04 and Section 5.05 of this Contract.

(g) Merchant Activity Credit. A credit will be made to the Net Service Fee to reflect any Merchant Activity Compensation to the City based on contributions to debt retirement in the form of a royalty as identified in Schedule 5 (Contractor's Proposal) for solid waste tipped at the facility only as provided for in Schedule 8 (Sample Invoices and Tipping Fee Schedule). Effective July 1, 1998, this Merchant Activity Compensation for solid waste tipped at the facility shall be reduced to \$3/ton. The City shall pay this amount into the Capital Repair Account as provided

for in Section 2.10. Tonnage from all Merchant loads tipped at the Solid Waste tipping area of the Facility shall be used in calculating the Merchant Activity Compensation.

(h) **Prior Period Adjustment.** To the extent that the actual value of any item in a monthly billing statement cannot be accurately determined as of the date of billing, the item shall be billed on an estimated basis, and an adjustment shall be made to reflect the difference between the estimated amount and the actual amount of the item on the next billing statement for the month in which the actual amount is determined. This adjustment shall be known as the Prior Period Adjustment.

Section 6.03: Revenue Sharing.

After Acceptance, Net Revenues received from the sale of all Products shall be shared as follows:

(a) The Contractor shall retain the first \$40 per Ton in Net Revenues from the sale of all Product derived from all Recyclable Materials. This \$40 per Ton trigger price will be escalated annually at the same rate as the Tipping Fees as set forth in Schedule 8 (Sample Invoices and Tipping Fee Schedule)

(b) The Contractor shall credit the City for 35% of the Net Revenues above the Per Ton trigger price from the sale of Product derived from all Recyclable Materials.

(c) In the case of Negative Revenue the following provisions shall apply:

(i) No Product shall be landfilled without specific authorization from the City as provided for below.

(ii) The Contractor shall market any Product derived from City delivered Tons, even if that Product has a Negative Revenue, without charge to the City except for the tipping fees charged for originally receiving the material as provided for in Schedule 8 (Sample Invoices and Tipping Fee Schedule) except as described below in this Section.

Notwithstanding the provisions of this Section, mixed broken glass cullet, also known as aggregate, will always be marketed without charge to the City regardless of its Negative Revenue status.

(iii) If a Product, other than batteries or aggregate, has had a Negative Revenue for six (6) consecutive months or four consecutive full shipments (whichever of these two covers a shorter time period) then the Contractor shall continue to market the Product and pay twenty five percent (25%) of the Direct Cost for all Product derived from City delivered Tons. The City shall pay seventy-five percent (75%) of the Direct Cost for all Product derived from City delivered Tons. If the Contractor and the City mutually agree in writing to change the Facility Delivery Standards for the Product earning Negative Revenue, the City will be allowed by the Contractor to continue to deliver that Product commingled with other recyclables and the Contractor will be allowed to landfill that Product. The Contractor will bear the Direct Costs of sorting out the Product at its sole Cost. The Product that is derived from City delivered Tons may then be landfilled by Contractor with the Landfill Charges Paid by the City as part of the Net Service Fee. Contractor shall bear all other Direct Costs. If the City and the Contractor can not agree upon a revision to the facility delivery standards the City is obligated to pay the Contractor its Direct Cost to market negative net revenue recyclables as defined in this section that are delivered to the MRF/TS by the City.

(iv) If the battery Products have had a Negative Revenue for six (6) consecutive months or four consecutive full shipments (whichever of these two covers a shorter time period) then the Contractor shall continue to market the Product and the City shall pay one hundred percent (100%) of the Direct Cost for all Product derived from City delivered Tons. If the Contractor and the City mutually agree in writing to change the Facility Delivery Standards for the battery Products, the City will be allowed by the Contractor to continue to deliver that Product commingled with other recyclables and the Contractor will be allowed to landfill that Product. The Contractor will bear all the Direct Costs of sorting out the Product. The Product that is derived from City delivered Tons may then be landfilled by Contractor with the Landfill Charges Paid by the City as part of the Net Service Fee. Contractor shall bear all other Direct Costs. If the City and the Contractor can not agree upon a revision to the facility delivery standards the City is obligated to pay the Contractor its Direct Cost to market negative net revenue recyclables as defined in this section that are delivered to the MRF/TS by the City.

(d) Contractor shall not segregate or combine Product in any way that will generate negative Net Revenues from a shipment or load of Product if it is reasonably practicable to segregate or combine Product into loads which will

generate Net Revenues of zero dollars (\$0) or which will generate positive Net Revenues, unless the City waives the requirements in writing. Contractor shall operate in good faith in attempting to maximize the positive Net Revenues received by the City and minimize the negative Net Revenues paid by the City.

Section 6.04: Billing and Payment of Net Service Fee

(a) Contractor shall submit administratively complete invoices to the City for payment in accordance with the procedures set forth in this Section 6.04. All invoices shall be considered administratively complete after ten (10) Days from the date of receipt of the invoice by the City unless the Contractor is notified otherwise in writing prior to that time.

(b) Contractor shall submit separate invoices for the Net Service Fee and for any other payments required under this contract. For the Net Services Fee invoice, Contractor shall submit evidence of Product transportation costs to the City promptly upon calculation or receipt.

(c) The Net Service Fee statement shall be on an actual cost/revenue basis. The Contractor shall provide each Billing Period statement to the City by the fifteenth (15) calendar day of the month following the Billing Period. The City shall have fifteen (15) days after receipt of an administratively complete statement to make payment on the invoice. The City shall provide two checks for each payment, the first being for Landfill Charges which shall have as a co-payee the landfill designated by the City for delivery of Solid Waste, and the second check being for the balance due to the Contractor. Immediately upon receipt by the Contractor, the Contractor shall endorse the co-payee check and forward by overnight mail to the co-payee. In case of a net credit due the City, the Contractor shall submit a check to accompany the statement.

(d) Any Prior Period Adjustments shall be a separate line item on the Billing Period statement and clearly indicate which Billing Period the Adjustment is for.

Section 6.05: Billing and Payment of Other Fees, Direct Costs or Charges

If payments are owed to either Party under the terms of this Contract (other than for Net Service Fee), that Party shall submit an invoice along with documentation of any applicable fees, Direct Costs or charges to the other Party within fifteen (15) days after said fees, Direct Costs or charges are incurred by that Party. Payment shall be made within 30 days after the receipt of the invoice.

Section 6.06: Late Payments.

If either Party makes a payment or provides a credit more than thirty (30) Days after its due date or has withheld payment or credit of any amount in dispute, the prevailing Party shall be entitled to the late payment or disputed amount (or the portion determined to be due) plus interest on the amount to be paid from the date which the amount was due to the date of payment, at the interest rate equal to the Chase Manhattan (Bank) prime rate in effect from time to time during the period that the payment was withheld, plus one percent (1%).

The date a bill or payment is overdue is computed by determining the date the party to whom payment is owed supplied the other party with all required documentation and information for the payment and then adding the contractual time period for payment of that particular bill or payment.

Section 6.07: Landfill Charge Deposit

Contractor shall invoice the City within 15 days prior to the Acceptance Date for a deposit equal to the estimated Landfill Charges for a one month period. The Contractor shall refund the Landfill Charge deposit to the City by accepting a reduction of \$55,000 in the final payment from the City for the Construction Contract and the City shall then deposit the \$55,000 in the Capital Replacement Fund as provided for in Section 2.10 (a) (iv).

ARTICLE VII: SHUTDOWNS AND REDUCTIONS IN CAPACITY

Section 7.01: Maintenance of the MRF/TS

(a) Contractor shall use its best efforts to perform maintenance during periods when the MRF/TS is not open for the acceptance and processing of Recyclable Material and Solid Waste. If, however, Contractor performs maintenance during normal hours of operation, Contractor shall continue to be responsible for accepting Recyclable Material and Solid Waste to the extent of the Guaranteed Facility Capacity and providing for the safe and adequate storage of material received during the time.

(b) Contractor shall give notice to the City in writing fourteen (14) Days prior to the shutdown of the MRF/TS for maintenance. Additionally, the Contractor shall inform the City of all scheduled shutdowns for any scheduled maintenance

which is expected to cost more than Five Thousand Dollars (\$5,000) or which is expected to cause the MRF/TS to stop accepting deliveries of Recyclable Material and Solid Waste. Any notice shall indicate the expected time, duration, and nature of shutdown or maintenance. The Contractor shall also designate an alternative location for the delivery of Recyclable Materials and Solid Waste secured at the expense of the Contractor. The Contractor shall reimburse the City for all incremental Direct Costs incurred by the City in delivering the Recyclable Materials and/or Solid Waste to the alternative location. If unscheduled maintenance is necessary, the City shall be notified immediately by telephone or telefax and promptly in writing of the time, duration, and nature of the breakdown and/or maintenance required and completed.

Section 7.02: Shutdowns or Reductions in Capacity Caused By Uncontrollable Circumstances

(a) During periods of Uncontrollable Circumstances, the City and Contractor shall attempt to divert any Recyclable Material and Solid Waste that cannot be accepted by the MRF/TS to an appropriate off-site location in accordance with Section 17.01. When the Contractor resumes normal operation, the City shall within a reasonable time resume normal delivery of Recyclable Material and Solid Waste to the MRF/TS.

(b) The Contractor shall continue to be responsible for the security and protection of the MRF/TS during the period of shutdown.

(c) After any shutdowns, Contractor and the City shall use their best efforts to resume normal operation of the MRF/TS as soon as practicable.

Section 7.03: Insurance Benefits

If insurance benefits are paid as a result of any shutdown or reduction in capacity of the MRF/TS, the benefits shall be paid for the benefit of each Party as its interest may appear, and the benefits shall correspondingly reduce any obligation either Party may have to the other.

Section 7.04: Covenant to Continue Work

During resolution of any dispute under this Contract and subject to the provisions of Article VII, the Contractor and the City shall each continue to perform

all of their respective obligations under this Contract without interruption or slow down.

ARTICLE VIII: MARKETING

As Amended by Amendments #1, #2 & #3 Approved by City Council on 6/5/95, 8/7/95 & 6/15/98

Section 8.01: Approval of Contracts

The Marketing Plan required by the Construction Contract and this Operating and Management Contract shall be a general plan for the transportation and marketing of Products. Review of the Marketing Plan by the City shall not be construed to be an approval for any specific contract for sale of Products or transportation of Products. Contracts for the sale of quantities of Product in excess of Two (2) months of MRF/TS production for the Product and contracts for the transporting of Product for a term of two (2) months or more must be included in the Marketing Plan provided to the City. The City may direct Contractor to market Product to certain Purchasers on certain terms, provided, however, the City shall not require Contractor to enter into any agreement for the sale of Product which requires Product of a quality that exceeds the Minimum Product Quality Standards. If the City directs Contractor to enter into a contract for the sale of Product and Contractor demonstrates prior to contracting for the sale that there is a current contract or an outstanding offer, which may be accepted, to sell the Product on similar terms, and for a similar duration, but for a higher price, the City shall pay Contractor its share of Net Revenues not realized as a result of directing sale under the lower priced contract for City tonnage, University tonnage and any other tonnage that earns less revenue. Any Cost savings related to transportation of Product or MRF/TS operations shall be considered Net Revenues.

Section 8.02: Contracts Become Amendments to Marketing Plan

Where the City directs Contractor to enter into a contract as permitted by Section 8.01, the contract shall become part of and shall be reflected in the Materials Marketing Plan and all references in this Contract to the Marketing Plan, including for purposes of calculation damages, shall be references to the Marketing Plan as revised by this section.

Section 8.03: Submission of Materials Marketing Plan

The Contractor is required to submit a Materials Marketing Plan for City review. A Materials Marketing Plan must be submitted to the City annually within sixty (60) days of the beginning of the fiscal year and revised according to the procedures for the initial Marketing Plan.

Section 8.04: Content of Materials Marketing Plan

The following information, at a minimum, must be submitted to the City as part of the Materials Marketing Plan ("Plan").

(a) Statement of Materials Marketing Policy: The Plan shall include a detailed description of the organization of the marketing function. The description shall include at the minimum a flow diagram of the function and copies of forms and reports inherent to the function. Specific individuals and responsibilities shall be identified.

(b) Organization of Marketing Function: The Plan shall include a detailed description of the organization of the marketing function. The description shall include at the minimum a flow diagram of the function and copies of forms and reports inherent to the function. Specific individuals and responsibilities shall be identified.

(c) Identification of Specific Markets: The Plan will include a "Primary Markets Listing". The listing will include at least two final consumers of each material and sufficient detail concerning that Purchaser to facilitate the sale of materials to that Purchaser. The Plan will include a mechanism whereby additional names will be added to the Primary Markets Listing by the Contractor, as well as the following criteria for inclusion in the Primary Markets Listing:

- (i) Its compatibility with the Product specification of the MRF/TS's Product and the region's recycling programs and policies.
- (ii) The location where material must be delivered or status of the Purchaser to price Product FOB the MRF/TS.
- (iii) The credit-worthiness of the Purchaser as determined by a Dun and Bradstreet Report.

(iv) The history of any business relationship which Contractor, its employees, or the City and its employees has had with the Purchaser.

(d) Marketing Meetings: The Plan shall discuss a process whereby the Contractor and the City formally meet on an annual basis (and additionally as requested by City) to review and discuss marketing issues including pricing, contracts for sale of materials, quality control, and market trends.

(e) Marketing Strategy: The Plan will detail the marketing strategy to be employed by the Contractor and include the following elements:

- (i) Identifying all viable markets
- (ii) Soliciting specifications, pricing and contract proposals
- (iii) Soliciting transportation costs for each Product
- (iv) Negotiating with selected Purchaser
- (v) Monitoring all transportation and sales agreements
- (vi) Reviewing contracts as they may expire resulting in additional specifications, pricing or contract proposals

(f) MRF/TS Notification: The Plan shall detail the procedures whereby the City is notified of all Product sales and transportation Contracts on a timely basis to insure proper compliance with this Contract.

(g) Material Shipments: The Plan shall include a "Preferred Transportation Listing." The listing shall include at least two transportation options for the shipment of each Product from the MRF/TS to each final consumer of the Primary Markets Listing. Sufficient detail shall exist for each transportation option so as to facilitate the movement of Product. The Plan shall also detail the procedures whereby shipments of materials are scheduled.

(h) Quality Control: The Plan shall include the procedures whereby Product quality control is maintained and shall include the following:

- (i) Material Specifications
- (ii) Training

- (iii) Ongoing Quality Training
- (iv) On-Line Quality Control
- (v) Inventory Inspection
- (vi) Shipment Inspection
- (vii) Quality Deviance Notification and Procedures

(i) Contingency for Severe Market Depressions: The Plan shall detail the procedures and obligations of the Contractor in the event of a severe market depression. Included within the Plan will be the process whereby the City is notified of the event. Additionally, the Plan will provide the initial planning necessary for the emergency storage of materials in the event of a severe market depression.

Section 8.05: Transportation Costs

The Contractor shall use reasonable efforts to determine if the transportation costs on a per-load basis will exceed the amount of Product Revenue to be paid for the Product except in the case of mixed cullet made from broken glass, generally known as aggregate. The Contractor shall notify the City within two (2) Business Days of the cost differential and the number of loads or total tonnage involved and the projected effect of operations including increased costs. To the extent that the Contractor has become and remains obligated pursuant to contractual arrangements to deliver an agreed-upon number of loads or quantities of particular types of Product (but not to exceed three Days of shipment), the Contractor shall be permitted to complete the deliveries in fulfillment of its obligations.

Upon receipt of notification from the Contractor, the City shall respond by facsimile if possible within one (1) Business Day informing the Contractor as to the City's approval or disapproval of continued transportation of additional quantities or loads of the Products to Purchasers. Failure by the City to provide its response, by facsimile if possible, within one (1) Business Day shall be deemed to be a denial of authorization to continue transporting the additional loads or quantities of Products to Purchasers. Approval of the City, once given, may be withdrawn upon one (1) Day notice, by facsimile if possible, to the Contractor subject to the right of the Contractor to fulfill its contractual obligations to Purchasers.

In the event that the City fails to authorize the transport of additional loads or quantities of Products to Purchasers after being notified that the transportation costs on a per-load basis will exceed the amount of Product Revenues to be paid for the Products or, in the event that permission, once given, is withdrawn, the City and the Contractor shall jointly confer to determine within 14 Days the most practicable, economically feasible and lawful method for the disposition of the Product.

Section 8.06: All Product Must Be Marketed

Contractor shall be responsible for arranging for the marketing and transportation of all Products in accordance with the Materials Marketing Plan described in Section 8.04. In the event that market conditions of a specific Product for a Net Material Revenue greater than zero dollars (\$0) is not possible, the City and Contractor shall jointly confer to determine within 14 Days the most practicable, economically feasible and lawful method for the disposition of the Product. In no event shall the unmarketed Product be treated or considered as Residue Material under this Contract. Contractor shall also immediately prepare a marketing restoration plan to describe the nature of the market conditions, the potential financial impacts of the conditions, the steps to be taken by Contractor to restore the marketability of the materials and a time frame for the action. Except as otherwise directed by the City, the most financially beneficial strategy for the City must be pursued by Contractor.

In the event of termination of this Contract, Contractor agrees to assign to the City any agreements between Contractor and any third party for the marketing of Products from the MRF/TS which are assignable.

Section 8.07: Reporting Requirements

In addition to the reporting requirements described in Section 2.12 of this Contract, Contractor shall report monthly in writing as part of the Monthly Invoice and monthly by telephone regarding the marketing strategy used during the previous month, including any sales commitments for Products. Contractor shall respond to any reasonable inquiry of the City for additional information related to marketing including more frequent telephone marketing reports if requested by the City.

ARTICLE IX: CHANGES TO FACILITY

Section 9.01: City Design Changes

The City shall have the right to require changes to the design of the MRF/TS during the term of this Operating Contract. If any change adversely affects Contractor's costs, guarantees, warranties, Product revenues and/or any other obligations set forth in the Construction Contract or the Operating Contract, or affect Contractor's costs of operations and maintenance of the MRF/TS, the Guaranteed Facility Capacity, or the Guaranteed Product Quality, the affected number or standard shall be appropriately adjusted to reflect the increased costs or changed circumstances.

Section 9.02: Changes in Design or Construction

Contractor shall be solely responsible for the design, construction and installation of any Design Change required by the City. The City shall be responsible for all costs of changes in design, construction and installation of all approved changes to the MRF/TS.

Section 9.03: Contractor Design Changes to MRF/TS

Contractor shall have the right to make changes to the MRF/TS, at its sole cost and expense, but only after written notice to the City containing detailed information concerning the changes and expected effects on Contractor's guarantees of performance and only to the extent that the changes (i) do not adversely affect Contractor's guarantees of the MRF/TS's performance set forth in the Contracts, (ii) do not impair the quality and integrity of the MRF/TS as set forth in the plans and specifications of this Operating and Management Contract, and (iii) do not impair Contractor's ability to fulfill all of its obligations under the Construction Contract. The City must consent in writing before Contractor may proceed with any work relating to the change, which consent shall not be unreasonably withheld.

Section 9.04: Impact of Design Changes

With respect to any changes requested by the City pursuant to Section 9.01, Contractor shall furnish the City with (i) a statement of work, (ii) a firm price quotation for design and installation, and (iii) the effect, if any, on the Performance Guarantees set forth in Schedule 1 of this service Contract. Should the City and the Contractor be unable to agree to a firm price for design and installation the City may still require the Design Change to be completed and pay the Contractor its Direct Costs for the Design Change.

ARTICLE X: INSURANCE, SAFETY AND LOSS CONTROL

Section 10.01: Contractor's Insurance

The Contractor shall secure and maintain the insurance policies, including those set forth below, as will protect itself, its subcontractors and unless otherwise specified, the City from all claims for bodily injuries, death or property damage which may arise under this Contract; whether the acts were made by the Contractor or by any subcontractor or anyone employed by them directly or indirectly.

1. Workers' Compensation Insurance: The Contractor shall procure and maintain during the life of this Contract, Workers' Compensation Insurance, including Employers Liability Coverage, in accordance with all applicable Statutes of the State of Michigan.
2. Commercial General Liability Insurance: The Contractor shall procure and maintain during the life of this Contract, Commercial General Liability Insurance on an "Occurrence Basis" with limits of liability not less than \$3,000,000 per occurrence and/or aggregate combined single limit, Personal Injury, Bodily Injury and Property Damage. Coverage shall include the following extensions: (a) Contractual Liability; (b) Products and Completed Operations; (c) Independent Contractors Coverage; (d) Broad Form General Liability Extensions or equivalent; (e) Deletion of all Explosion, Collapse and Underground (XCU) Exclusions, if applicable.
3. Motor Vehicle Liability: The Contractor shall procure and maintain during the life of this Contract, Motor Vehicle Liability Insurance including Michigan No-Fault Coverages, with limits of liability of not less than \$3,000,000 per occurrence combined single limit Bodily Injury and Property Damage. Coverage shall include all owned vehicles, all non-owned vehicles and all hired vehicles.
4. Additional Insured: Commercial General Liability and Motor Vehicle Liability Insurance, as described above, shall include an endorsement stating the City of Ann Arbor and its employees, elected officials and agents as "Additional Insured".
5. Owner's & Contractor's Protective Liability: The Contractor shall procure and maintain during the life of this Contract, Owner's & Contractor's Protective

Liability with limits of liability not less than \$3,000,000 per occurrence and/or aggregate, combined single limit, Personal Injury, Bodily Injury and Property Damage. The City of Ann Arbor shall be "Named Insured" on the coverage. Thirty (30) days Notice of Cancellation shall apply to this policy.

In the case of all Contracts involving on-site work, insurance certificates shall be filed with the City giving satisfactory evidence of insurance as stipulated above before the work under this Contract begins. The certificates shall be maintained during the life of the Contract including the guarantee period and during any warranty work. All insurance certificates shall contain an unconditional thirty (30) Day written notice of cancellation in favor of the Engineer, and shall also name the City as an insured party. The insurer must be satisfactory to the City Attorney.

Section 10.02: Insurance Proceeds

The proceeds of any property insurance recoveries from the policies required to be maintained pursuant to this Article X shall be paid to the City Treasurer, which shall apply the proceeds as directed by the City.

Section 10.03: No Limitation

Nothing contained in this Article X or in this Contract shall be construed or deemed as limiting either Party's obligations under this Contract to pay damages or other costs and expenses as may be specifically provided for in other Articles of this Contract.

ARTICLE XI: INDEMNIFICATION AND WAIVER

Section 11.01: Indemnification

The Parties acknowledge that this Contract contemplates the Contractor acting on behalf of the City and as its agent in connection with the design, construction, start-up and Acceptance Testing of the MRF/TS to be owned by the City. Accordingly, (a) the Contractor agrees, to the extent permitted by law, that it shall defend, indemnify and hold harmless the City, its officers, agents, servants, and employees against and from all suits, losses, demands, payments, actions, recoveries, judgments and costs of every kind and description and from all damages to which the City or any of its officers, agents, servants and employees may be

subjected by reason of injury to the person or property of others resulting from the performance of the Contract, or through any improper or defective machinery, implements or appliances used by the Contractor in the Contract, or through any act or omission on the part of the Contractor or its agents, employees or servants. It shall further defend, indemnify and hold harmless the City, its officers, agents, servants and employees from all suits and actions of any kind or character whatsoever which may be brought or instituted by any subcontractor, material provider or laborer who has performed work or furnished materials in or about the Contract or by, or on account of, any claims or amount recovered for an infringement of patent, trademark or copyright.

Section 11.02: Waiver

The Contractor and the City waive any and every claim arising pursuant to the terms of this Contract for recovery from the other for any and all loss or damage to each other resulting from the performance of this Contract, which loss or damage is covered by collected insurance policy proceeds.

Section 11.03: Exclusion of Consequential Damages

Except for the liquidated damages provided for elsewhere in this Contract, in no event, whether because of a breach of any provision contained in this Contract or any other cause, whether based upon contract, tort (including negligence or strict liability), warranty, delay or otherwise, arising out of the performance or nonperformance by either Party of its obligations under this Contract, including, without limitation, suits by third Persons, shall either Party be liable for or obligated in any manner to pay consequential or damages of any nature incurred by either Party whether occurring during or subsequent to the performance of this Contract.

Section 11.04: Payment and Defense

Any obligation of a Party to act under this Article XI shall commence upon notice of any claim, charge or demand of potential liability, loss, fine, penalty or charge against any Contractor or City Indemnified Party. The Party responsible for payments under the indemnities contained in this Article XI may elect to defend any liability, loss, fine, penalty or charge with its counsel and may settle any matter by applying the settlement; provided however, no payment, confession of judgment, or acknowledgment of liability, loss, fine, penalty or charge shall be made against the City without its express written consent, and the City further reserves the right to select its own counsel in defense of the matter. Any obligation of a party to make

payment under this Article XI shall become due and payable when and as any liability, loss, fine, penalty or charge incurred by the Contractor or City Indemnified Party becomes due and payable. Time is of the essence in the performance of the obligations under the Article XI.

Section 11.05: Survival

This Article XI shall survive termination of this Contract.

ARTICLE XII: EVENTS OF DEFAULT

Section 12.01: Remedies for Default

Each Party shall have the right to terminate this Operating Contract for cause where there is an Event of Default on the part of the other Party. Absent an Event of Default, neither Party may terminate this Contract and the Parties shall be limited to damages, reimbursement, and other relief explicitly provided by this Contract, unless the Contract otherwise specifically provides. If the City declares an Event of Default by Contractor, the City may elect not to immediately terminate this Operating Contract or the Construction Contract but to collect damages in accordance with the Contract. The failure of the City to immediately terminate either Contract shall not prevent the City from later terminating either or both Contracts.

Section 12.02: Events of Default by Contractor

Each of the following shall constitute an Event of Default of the part of the Contractor:

(a) The failure by Contractor to fulfill, substantially in accordance with this Operating Contract, any of Contractor's obligations under this Operating Contract unless the failure or refusal can be excused or justified by an Uncontrollable Circumstance or default or failure or refusal to act by City. Such failure shall include but is not limited to the failure on the part of the Contractor to pay any undisputed amount required to be paid to the City under this Operating Contract within thirty (30) Days after the amount becomes due and payable.

(b) Failure by Contractor to operate the MRF/TS at a throughput rate of at least eighty five percent (85%) of the Guaranteed Facility Capacity as adjusted, for a

period of 90 Days during any consecutive 180 Day period. The 90 Days need not be consecutive to cause an Event of Default, unless the failure can be justified by an Uncontrollable Circumstance or failure to act by the City. Such failure shall be considered a substantial Contract default of the nature of 12.02 (c)

(c) Repeated substantial defaults or breaches of this Contract including representations, warranties or covenants by the Contractor. Despite each individual default or breach being eventually cured, such repeated substantial defaults or breaches constitutes an independent Event of Default for which the Contractor shall not have any further opportunity to cure the default.

(d) Notwithstanding any other provisions in this Contract an unscheduled or scheduled maintenance shutdown lasting more than 2 days or a shutdown caused by Uncontrollable Circumstances lasting more than thirty (30) days which forces the Contractor to stop accepting deliveries, unless Contractor redirects tonnage to another facility pursuant to Section 7.01 (b).

(e) The filing against Contractor of an involuntarily petition for bankruptcy, reorganization, or insolvency under the Federal Bankruptcy Code or under the laws of any other jurisdiction, if the petition is not discharged and/or withdrawn within sixty (60) Days of the date of the filing. Promptly upon the filing of any petition for involuntary bankruptcy, Contractor shall provide the City with all of the pertinent details relating to the petition(s), Contractor's most recent audited and unaudited financial statements, and any other information and data which are available and, as promptly as practicable, the other information and data requested by the City and deemed necessary for review. If the City shall determine from its review, in its sole and absolute discretion, that the petition lacks merit or Contractor has sufficient assets to pay all of its liabilities as they become due, the City may forbear from declaring an Event of Default.

(f) Contractor ceasing to pay its debts, unless contested in good faith, as they mature, or the written admission by Contractor that it is insolvent or bankrupt, or the filing by Contractor of a voluntary petition under the Federal Bankruptcy Act or under the laws of any other jurisdiction, or the consent or acquiescence by Contractor to the appointment by a court of a receiver, liquidator, or City Treasurer for all or a substantial portion of its property or business, or the making by Contractor of any arrangements with it for the benefit of its creditors involving an

assignment to a trustee, receiver or similar fiduciary, regardless of who designated, of all or a substantial portion of Contractor's property and assets.

(g) If the City determines that any of the following have occurred or are occurring, the City may declare an Event of Default.

(i) the MRF/TS or MRF/TS Site equipment or fixtures owned by the City have been or are being damaged or are not being properly maintained in accordance with manufacturer's recommendations or the Operating and Maintenance Plans.

(ii) the equipment ordered or installed by Contractor pursuant to this Contract is not the equipment specified in Schedule 5 (Contractor's Proposal) of this Contract except as otherwise authorized pursuant to this Contract.

(iii) The MRF/TS has been or is being designed, constructed, installed, maintained or operated in a manner which the City determines may impair warranties on any equipment, fixtures or other property of the City comprising part of the MRF/TS.

No action shall constitute an Event of Default giving the City the right to terminate this Operating Contract under this Section 12.02 unless and until:

(i) The City has given written notice to Contractor by certified mail, return receipt requested, specifying that a particular default or defaults exist which will, unless corrected, constitute a material breach of this Operating Contract on the part of Contractor, and

(ii) Except for an Event of Default described in Section 11.02 (c) and (d) (for which there shall be no opportunity to cure), Contractor has not corrected the default or has not taken adequate steps to promptly correct the same within thirty (30) Days from the date of receipt of the notice or initiated negotiations through the Fact-Finding Dispute Resolution Process as described in Article I.

(iii) In the event that Contractor persists in its failure to act despite written notice, the City may declare an Event of Default and terminate this Contract on thirty (30) Days additional written notice to Contractor, without a further opportunity for Contractor to cure the default.

If the City declares an Event of Default under this subsection, Contractor shall at the City's option immediately vacate the premises, if requested to do so by the City in writing by certified mail, return receipt requested, and shall immediately take whatever steps requested by the City, and/or that are otherwise necessary to correct the default.

Section 12.03: Events of Default by the City

Each of the following shall constitute an Event of Default on the part of the City:

(a) The failure of the City to fulfill its obligations substantially in accordance with the terms of this Operating Contract unless the failure or refusal can be excused or justified by an Uncontrollable Circumstance or default or failure or refusal to act by Contractor.

(b) The persistent and repeated failure on the part of the City to pay any undisputed amount required to be paid to Contractor under this Operating Contract within thirty (30) Days after the amount becomes due and payable unless the failure or refusal can be excused or justified by an Uncontrollable Circumstance or default or failure or refusal to act by Contractor.

No act shall constitute an Event of Default under Section 12.03 unless and until:

(i) Contractor has given written notice to the City by certified mail, return receipt requested, specifying that a particular default or defaults exist which will, unless corrected, constitute a material breach of this Operating Contract on the part of the City, and

(ii) the City has not corrected the default or has not taken adequate steps to promptly correct the same within thirty (30) Days from the date of receipt of the notice.

ARTICLE XIII: TERMINATION

Section 13.01: Mitigation

Contractor and the City agree that in the event one Party terminates the other Party due to an Event of Default, the injured Party is entitled to all rights and

benefits of this Operating Contract; provided, however, that the injured Party is obligated, to the extent not detrimental to its interests, to mitigate its damages, costs and expenses.

Section 13.02: Termination by the City

If the City terminates this Operating Contract for an Event of Default on the part of Contractor, Contractor shall:

(a) promptly vacate the MRF/TS and MRF/TS Site, if requested to do so by the City:

(b) pay to the City the actual quantifiable damages resulting from the breach and subsequent termination.

(c) pay to the City liquidated damages for non-quantifiable damages in the amount of twenty-five thousand dollars, (\$25,000) in addition to any liquidated damages due the City for violation of Section 17.03 (Fair Employment Practices) of this Contract.

(d) upon payment by Contractor to the City of all damages, losses, or other required payments, pursuant to the terms of this Contract, all of Contractor's and the City's obligations and representations shall cease, except as this Contract otherwise specifically provides.

Section 13.03: Termination by Contractor

If Contractor terminates this Operating Contract for an Event of Default on the part of the City then the City shall:

(a) pay to the Contractor the payments, if any, due and payable, for all work performed to the date of termination.

(b) pay to the Contractor consequential damages incurred by Contractor in connection with the termination, including reasonable cancellation charges, if any, from Contractors, Subcontractors, major equipment vendors, or suppliers, but not including any overhead costs.

(c) pay to the Contractor a one-time lump sum payment of Five Hundred Thousand Dollars (\$500,000)

(d) The City shall be credited for the amount of any adjustments favorable to the City, including any damages owed by Contractor to the City.

Section 13.04: City Rights to Contractor Technical Information

If this Operating Contract is terminated whether because of default or expiration or otherwise, Contractor shall provide all design information, including accurate drawings and specifications, construction and operational information and technology, both technical and non-technical, whether or not proprietary, and all patent, trademark and copyright licenses and permits and any other licenses required in order that the City may, at its option, operate and maintain or contract for the operation and maintenance of the MRF/TS. Additionally, all warranties of material and equipment, including those related to and covering the material and equipment manufactured by Contractor and/or Affiliate, shall be assigned by Contractor to the City.

ARTICLE XIV: WARRANTIES AND GUARANTEES OF EQUIPMENT AND MATERIAL

The Contractor warrants that the design assembly of the MRF/TS is suited to the purposes for which it is intended.

The Contractor warrants its design, assembly and construction against defects for the initial term of this Contract. The Contractor warrants the equipment and materials furnished under this Operating Contract against defects in material, assembly and construction under use as contemplated by this Operating Contract for the initial term of this Contract. These warranties do not limit in any way Contractor's obligation to process all Recyclable Material and Solid Waste in accordance with the terms of this Contract. The Contractor shall use its best efforts to obtain warranties and guarantees of material and equipment not manufactured by Contractor which are assignable to the City effective upon termination or completion of this Operating Contract. Contractor shall be obligated to repair or replace any construction, materials or equipment which is or becomes defective during the initial term of this Contract.

Contractor shall have the obligation to ensure that all work has been performed at an expert level of performance for persons regularly performing the kind of work

contemplated by this Contract, and that there are no material errors, omissions or defects in the work, design, construction or installation methods. Contractor's warranty of its design and construction, and of the equipment and materials, and its obligation to assign warranties and guarantees, shall survive termination of this Operating Contract prior to expiration of the initial term.

ARTICLE XV: CONFIDENTIALITY

Section 15.01: Confidential Information

The City acknowledges that Contractor may own Confidential Information used in connection with this Operating Contract. To the extent the Contractor has complied with Section 15.03, the City will hold the information confidential, except to the extent necessary to complete, repair, maintain or operate the MRF/TS and only as permitted by Michigan law.

Section 15.02: Michigan Freedom of Information Act

The rights and obligations of the Parties with respect to the Confidential Information are subject to the Michigan Freedom of Information Act (FOIA). The City shall promptly give Contractor notice of its receipt of any request for Confidential Information made under FOIA. The City shall consult with Contractor prior to submitting any response unless the City, in its sole judgment, determines that as a matter of Michigan law the information cannot be kept confidential. The Parties acknowledge and agree that the determination of the confidentiality of any information subject to the Contract shall be determined as an issue of Michigan law. All costs associated with attempting to keep Contractor information confidential, including Direct Costs incurred by the City, shall be paid by Contractor. The Contractor acknowledges that these costs include court costs, court awarded damages and attorney fees of the requesting party if a lawsuit is required for the requesting party to obtain the documents.

Section 15.03: Identification of Confidential Information

Any document or portion of a document containing Confidential Information which is delivered by Contractor into the possession of the City, its representative or consultant, shall be clearly labeled with the words "Confidential Information".

ARTICLE XVI: REPRESENTATIONS

Section 16.01: Representations of the City

The City represents that:

(a) The City is a Michigan municipal corporation and a home rule city. It is authorized to carry out the governmental functions and operations as contemplated by this Operating Contract and each other Contract or instrument entered into or to be entered into by the City pursuant to this Operating Contract.

(b) The City has the power, authority and legal right to enter into and perform this Operating Contract, and each other Contract or instrument entered into or to be entered into by the City pursuant to this Operating Contract. The execution, delivery and performance of the Contract(s) (i) have been authorized, (ii) have the requisite approval of all necessary governmental bodies, (iii) will not violate any judgment or order applicable to the City and (iv) do not constitute a default under or result in the creation of any lien, charge or encumbrance to which the City is a Party or by which the City or its assets may be bound or affected.

(c) This Operating Contract and each other Contract or instrument entered into by the City pursuant to this Operating Contract constitutes a legal, valid and binding obligation of the City.

Section 16.02: Representations of Contractor

Contractor represents that:

(a) It is a corporation organized, validly existing, and in good standing under the laws of the State of Delaware and is authorized to do business in the State of Michigan.

(b) It has full corporate power and authority to enter into, and be bound by, the terms and conditions of the Construction Contract, this Operating Contract, and any documents, Contract or instrument executed pursuant to them.

(c) It has been authorized to enter into the transactions contemplated by this Contract and no further corporate action is necessary.

(d) It has the power, authority and legal right to enter into and perform and be bound by the terms of this Operating Contract, and each other Contract or instrument entered into or to be executed into pursuant to the Construction and Operating Contracts. Further, the execution, delivery and performance of those Contracts:

- (i) has been authorized,
- (ii) has the requisite approval of any necessary governmental bodies,
- (iii) will not violate any judgment, order, law or regulation, and
- (iv) does not constitute a default under any obligation or result in the creation of any lien, charge, or encumbrance to which Contractor is a Party of by which Contractor or its assets may be bound or affected.

(e) There are no pending or threatened actions or proceedings before any court or administrative agency which would materially affect the ability of Contractor to perform its obligations under this Operating Contract, or under any other Contract or instrument executed or to be executed pursuant to this Operating Contract to which Contractor is, or will become, a Party.

(f) All affiliates have signed and filed with the City all required guarantees.

ARTICLE XVII: MISCELLANEOUS

As Amended by Amendment #3 Approved by City Council on 6/15/98

Section 17.01: Uncontrollable Circumstances

(a) Each Party to this Operating Contract will be excused for failure or delay in performance of any act required herein by reason of an Uncontrollable Circumstance, except that no Party shall be excused from making payments required by this Operating Contract as adjusted for output affected by the Uncontrollable Circumstance.

(b) Each Party shall assume the risk for all losses and damages directly incurred by them, except as otherwise explicitly set forth in this Operating Contract,

which arise out of an Uncontrollable Circumstance. Neither Party shall be entitled to recover from the other lost revenues due to any Uncontrollable Circumstance.

(c) The Party asserting that an Uncontrollable Circumstance exists shall, as a condition precedent to the right to claim the benefits resulting therefrom, notify the other Party of the Uncontrollable Circumstance promptly after becoming aware of the Uncontrollable Circumstance, and in any event not more than thirty (30) Days after its occurrence, and shall, within fifteen (15) Days of the initial notice, provide a written notice of: (i) all relevant information regarding the nature and duration of the Uncontrollable Circumstance; (ii) the effect, if any, on either Party's obligations under the Construction Contract and this Operating Contract; and (iii) available means of mitigation or saving costs as a result of the event. Each Party shall continue to keep the other Party advised with respect to the anticipated impact of an Uncontrollable Circumstance. In the event notice is not given within the thirty (30) Day period, the Party which is affected by the Uncontrollable Circumstance shall lose all right to claim to be excused from performance in any way as a result of the Uncontrollable Circumstance.

Section 17.02: MRF/TS Access

(a) During the term of this Operating Contract, the City and its representatives, invitees and representatives of regulatory agencies shall have the right of access to the MRF/TS provided that the visitation shall be conducted in a manner so as to minimize interference with Contractor's performance and operations and the invitees are accompanied by a Registered City Representative. In connection with any visits, the City shall cause its invitees to comply with all reasonable rules and regulations adopted by Contractor and approved by the City including the requirement that invitees are accompanied by a Registered City Representative, provided, however, that any areas designated on the plan contained in Schedule 5 (Contractor's Proposal) as "Viewing Area" and "City Office Space" shall be accessible to the City employees, officers and invitees at all times during MRF/TS operations. The City will make best efforts to notify the Contractor at least 24 hours in advance of visits by invitees and representatives of regulatory agencies.

Section 17.03: Fair Employment Practice

The Contractor, its agents or sub-Contractors, shall comply with Chapter 112 of Title IX of the Code of the City of Ann Arbor and in particular the following excerpts.

9:161 Affirmative Action by City Contractors

(1) All Contractors proposing to do business with the City of Ann Arbor, except those specifically exempted by regulations promulgated by the Administrator and approved by City Council, shall receive approval from the Director of the Personnel/Human Rights Department prior to entering into a contract with the City. The Contractors shall take affirmative action to insure that applicants are employed and that employees are treated during employment in a manner which provides equal employment opportunity and tends to eliminate inequality based upon race, national origin or sex.

(2) Each prospective Contractor shall submit to the City data showing current total employment by occupational category, sex and minority group. If, after verifying this data, the Director concludes that it indicates total minority and female employment commensurate with their availability within the Contractor's labor recruitment area, i.e., the area from which the Contractor can reasonably be expected to recruit, the Contractor shall be accepted by the Director as having fulfilled affirmative action requirements for a period of six (6) months at which time the Director shall conduct another review. Other Contractors shall develop an affirmative action program in conjunction with the Director. The program shall include specific goals and timetables for the hiring and promotion of minorities and females. The goals shall reflect the availability of minorities and females within the Contractor's labor recruitment area. In the case of construction Contractors, the labor recruitment area shall be the Ann Arbor-Ypsilanti standard metropolitan statistical area.

(3) In hiring for construction projects, Contractors shall make good faith efforts to employ local persons, so as to enhance the local economy.

(4) All contracts shall include provisions through which the Contractor agrees, in addition to any other applicable Federal or State labor laws:

- (a) To set goals, in conference with the Director, for each job category or division of the work force used in the completion of the City work;
- (b) To provide periodic reports concerning the progress the Contractor has made in meeting the affirmative action goals it has agreed to;
- (c) To permit the Director access to all books, records and accounts pertaining to its employment practices for the purpose of determining compliance with the affirmative action requirements.

(5) The Director shall monitor the compliance of each Contractor with the affirmative action agreement provisions of each contract. For instances of non-compliance, the Director shall develop procedures and regulations which provide the Contractor with notice of his non-compliance. The procedures and regulations shall include a provision for the posting of Contractors not in compliance.

(6) All the contracts shall provide further that breach of the obligation to take affirmative action shall be a material breach of the contract for which the City shall be entitled, at its option, to do any or all of the following:

- (a) To cancel, terminate, or suspend the contract in whole or part and/or refuse to make any required periodic payments;
- (b) Declare the Contractor ineligible for the award of any future contracts with the City for a specified length of time;
- (c) To recover liquidated damages of a specified sum, the sum to be that percentage of the labor expenditure for the time period involved which would have accrued to minority group members had the affirmative action not been breached;
- (d) Impose for each Day of non-compliance, liquidated damages of a specified sum, based upon the following schedule:

| <u>Contract Amount</u> | <u>Assessed Damages</u> <u>Per Day of</u> <u>Non-Compliance</u> |
|------------------------|---|
| \$ 5,000 - 24,999 | \$ 25.00 |
| 25,000 - 99,999 | 50.00 |
| 100,000 - 199,999 | 100.00 |
| 200,000 - 499,999 | 150.00 |
| 500,000 - 1,499,999 | 200.00 |
| 1,500,000 - 2,999,999 | 250.00 |
| 3,000,000 - 4,999,999 | 300.00 |
| 5,000,000 - and above | 500.00 |

- (e) In addition, the Contractor shall be liable for any costs or expenses incurred by the City of Ann Arbor in obtaining from other sources the work and services

to be rendered or performed or the goods or properties to be furnished or delivered to the City under this Contract.

Section 17.04: Assignment.

This Contract shall be binding on Contractor and its successors and assigns. Neither Party to the Operating Contract shall assign the Construction Contract, this Operating Contract, or any document or instrument executed in connection to them without the written consent of the other. Notwithstanding the foregoing, the City is permitted to assign these Contracts, and any related documents and instruments to the State of Michigan or an agency of the State of Michigan.

Section 17.05: Subcontracts, Assignment, and Default

Contractor shall insure that all contracts and subcontracts with Contractors, Subcontractors, Suppliers, and Major Equipment Vendors are assignable to the City and contain appropriate penalties for default. In the event of a termination of Contractor by the City, copies of all the contracts or subcontractors shall be promptly delivered to the City. Additionally, Contractor shall use its best efforts to have the contracts and subcontracts include the best available warranties and guarantees of service, materials, and equipment, and each contract and subcontract shall provide that in the event the contract or subcontract is assigned to the City, the City shall have access to the Contractor's file relating to its work under the contract as Contractor had prior to assignment.

Section 17.06: Notices

All notices, requests and other communications shall be deemed sufficient and properly given if in writing and delivered in person to the following addresses or sent by certified or registered mail, postage prepaid with return receipt requested, at the addresses; provided, if the notices, demands, request, or other communications are sent by mail they shall be deemed as given on the third Day following the mailing which is not a Saturday, Sunday, or Day on which United States Mail is not delivered:

- (a) If to the City:

Manager of Resource Recovery
City of Ann Arbor
100 N. Fifth Avenue

Ann Arbor, Michigan 48104

(b) If to the Contractor:

President
Resource Recovery Systems, Inc.
50 Main Street
Centerbrook, CT 06409-1001

Any Party may, by like notice, designate any further or different addresses to which subsequent notices shall be sent. Any notice signed on behalf of the notifying Party by a duly authorized attorney at law shall be valid and effective to the same extent as if signed on behalf of the Party by a duly authorized officer or employee.

Any notice period which expires on a Saturday or Sunday or a day the City is not open for regular business, shall instead expire on the next Business Day.

Section 17.07: Relationship of the Parties

Neither Party to this Operating Contract shall have any responsibility to perform services for or to assume contractual obligations which are the obligation of the other Party. Nothing in this Contract shall render either Party a partner, agent or representative of the other Party or create any fiduciary relationship between the Parties.

Section 17.08: Waiver

Unless otherwise specifically provided by the terms of this Operating Contract, no delay or failure to exercise a right resulting from any breach of this Operating Contract shall impair the right or be construed to be a waiver, so that right may be exercised from time to time and as may be deemed expedient. Any waiver is only effective if in writing and signed by the Party granting the waiver. If any provision, responsibility, warranty, or covenant contained in this Operating Contract is breached by either Party and thereafter waived by the other Party, the waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach under this Operating Contract.

Section 17.09: Amendment.

This document may not be amended except by written Contract signed by the authorized representatives of all Parties.

Section 17.10: Authorized Representative

Each Party shall identify an authorized representative to be primarily responsible for the interests of that Party. The City Administrator's Designee shall be the City's representative under this Operating Contract. The designated plant manager shall be Contractor's representative. The City and Contractor shall give notice to the other if either elects to change its authorized representative.

Section 17.11: Contract Governed by Michigan Law

This Operating Contract shall be governed by the laws of the State of Michigan.

Section 17.12: No Other Contract

All negotiations, proposals and contracts prior to the date of this Contract are void. There are no contracts or understandings other than those written or specified in this Contract. This Contract constitutes the entire contract between the City and the Contractor with respect to the operation and maintenance of the MRF/TS.

Section 17.13: Successors and Assigns.

This Operating Contract shall be binding upon and inure to the benefit of the respective successors, assigns, administrators, and trustees of the City and Contractor.

Section 17.14: Execution of Documents

This Operating Contract may be executed in any number of duplicate originals, any of which shall be regarded for all purposes as an original and all of which shall constitute by one and the same instrument.

Section 17.15: Severability

In the event that any provision of this Contract in any respect shall, for any reason, be determined to be invalid, illegal or unenforceable, the Parties shall negotiate in good faith for amendments, modifications or supplements of or to this Contract or other appropriate actions as shall, to the maximum extent practicable, implement and give effect to the intentions of the Parties as reflected in the Contract. The other terms of this Contract shall remain in full force and effect.

Section 17.16 Payment Guarantee

Contractor shall obtain guarantees from all affiliates to guarantee any payment required of the Contractor to the City pursuant to this Contract.

IN WITNESS of this Contract:

CITY OF ANN ARBOR

CONTRACTOR

Resource Recovery Systems, Inc.

By _____
Mayor

By _____
(Signature)

Its President

By _____
City Clerk

By _____
(Signature)

Its _____
(Title of Office)

Approved as to Substance:

By _____
City Administrator

Approved as to Form:

By _____
City Attorney

As Amended by Amendments #1, #2 & #3 Approved by City Council on 6/5/95, 8/7/95 & 6/15/98

SCHEDULE 1: PERFORMANCE GUARANTEES AND TESTING PROCEDURES

As Amended by Amendments #1 and #2 Approved by City Council on 6/5/95 and 8/7/95

1. The Contractor shall maintain a minimum of 100% availability of the system during the term of the contract.

2. The Contractor shall maintain a minimum of 99.99% availability of the system during the term of the contract.

SCHEDULE 2: CONSTRUCTION CONTRACT

As Amended by Amendments #1 Approved by City Council on 6/5/95

Full copy of this Schedule is part of the record copy available through the
City Clerk's Office, City of Ann Arbor

SCHEDULE 3: FULL PARENT GUARANTEE

Full copy of this Schedule is part of the record copy available through the

City Clerk's Office, City of Ann Arbor

**SCHEDULE 4: CITY OF ANN ARBOR MATERIALS RECOVERY
FACILITY/TRANSFER STATION CONSTRUCTION AND OPERATION:
REQUEST FOR PROPOSALS**

Full copy of this Schedule is part of the record copy available through the
City Clerk's Office, City of Ann Arbor

SCHEDULE 5: CONTRACTOR'S PROPOSAL

Full copy of this Schedule is part of the record copy available through the

City Clerk's Office, City of Ann Arbor

SCHEDULE 6: PERFORMANCE BOND OR LETTER OF CREDIT

Full copy of this Schedule is part of the record copy available through the
City Clerk's Office, City of Ann Arbor

As Amended by Amendments #1, #2 & #3 Approved by City Council on 6/5/95, 8/7/95 & 6/15/98

SCHEDULE 7: FACILITY DELIVERY STANDARDS

As Amended by Amendments #1 and #2 Approved by City Council on 6/5/95 and 8/7/95

As Amended by Amendments #1, #2 & #3 Approved by City Council on 6/5/95, 8/7/95 & 6/15/98

SCHEDULE 8: SAMPLE INVOICES AND TIPPING FEE SCHEDULE

As Amended by Amendments #1 and #2 Approved by City Council on 6/5/95 and 8/7/95

Full copy of this Schedule is part of the record copy available through the
City Clerk's Office, City of Ann Arbor

As Amended by Amendments #1, #2 & #3 Approved by City Council on 6/5/95, 8/7/95 & 6/15/98

SCHEDULE 9: MAINTENANCE LOG AND RENEWAL/REPLACEMENT
SCHEDULE

As Amended by Amendments #1, #2 & #3 Approved by City Council on 6/5/95, 8/7/95 & 6/15/98

AMENDMENT TO
AGREEMENT FOR PROFESSIONAL SERVICES
BETWEEN
RESOURCE RECOVERY SYSTEMS, INC.
AND
THE CITY OF ANN ARBOR

The City of Ann Arbor, a municipal corporation, 100 N. Fifth Avenue, Ann Arbor, Michigan 48107-8647 ("City") and Resource Recovery Systems, a wholly owned subsidiary of FCR, Inc. having its offices at 809 West Hill Street, Charlotte, North Carolina, 28208, ("Contractor") agree to amend the professional services agreement executed by the parties dated November 1, 1993 as follows:

- 1) Section 5.06, paragraph three is amended to read as follows:

Effective July 1, 1998, the Contractor shall deposit with the City a Letter of Credit or Performance Bond in the aggregate amount of One Hundred Thousand Dollars (\$100,000) in the form set forth in Schedule 6 (Performance Bond or Letter of Credit), which Letter of Credit or Performance Bond shall guarantee the full and faithful performance of this Operating Contract.

- 2) Section 4.06 (d) is amended to read as follows:

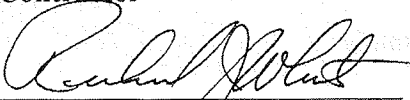
The City shall provide Contractor with summaries on a monthly basis of all weigh tickets. Record copies shall be maintained by the City for a period of at least two (2) Operating Years following the Operating Year in which they were made. The length of written record retention may be further adjusted upon mutual agreement of the City and Contractor, upon approval by the City Administrator. The City will also maintain electronic weighing and shipping records of all transactions relating to the operation of the MRF/TS over the lifetime of this Operating Contract. The City will provide Contractor and its auditors access to all records maintained by or on behalf of the City with respect to quantities of Recyclable Material and Solid Waste delivered to the MRF/TS, quantities of Products and Solid Waste leaving the MRF/TS, invoicing, accounts receivable, shipping costs and pricing of materials.

All terms, conditions, and provisions of the original agreement and subsequent amendments between the parties executed November 1, 1993, June 5, 1995, August 7, 1995 and June 15, 1998, unless specifically amended above, are to apply to this amendment and are made a part of this amendment as though expressly rewritten, incorporated, and included herein.


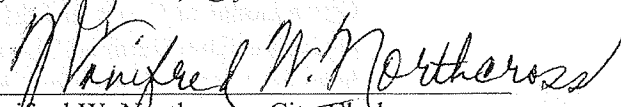
This amendment to the agreement between the parties shall be binding on the heirs, successors and assigns of the parties.

Dated this June 8, 1999.


For Contractor

By 
Richard J. White, Vice President, FCR, Inc.

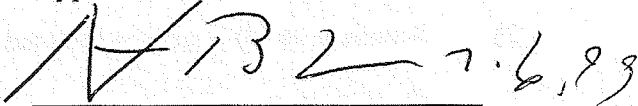
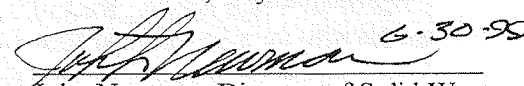
For City of Ann Arbor

By 
Ingrid B. Sheldon, Mayor
By 
Winifred W. Northcross, City Clerk

Approved as to form and content

 for
Abigail Elias, City Attorney
WJB
6/2/99

Approved as to substance


Neal G. Berlin, City Administrator
 6-30-99
John Newman, Director of Solid Waste
(rrsamd.4a.wpd)

AMENDMENT #1

As Approved by City Council on 6/5/95

and

AMENDMENT #2

As Approved by City Council on 8/7/95

TO THE
OPERATING AND MANAGEMENT CONTRACT DOCUMENTS
FOR

City of Ann Arbor

Materials Recovery Facility/Transfer Station

FILE NO. _____

RFP NO. 294

CITY OF ANN ARBOR
100 North Fifth Avenue
Ann Arbor, Michigan 48107

AMENDMENTS #1 AND #2 TO THE OPERATING AND MANAGEMENT CONTRACT

THESE AMENDMENTS #1 AND #2 TO THE OPERATING AND MANAGEMENT CONTRACT ("Contract") is entered into on the 5th day of June, 1995, between the CITY OF ANN ARBOR, a Michigan Municipal Corporation, 100 N. Fifth Avenue, Ann Arbor, Michigan 48107 ("City"), and Resource Recovery Systems, Inc. ("Contractor") a corporation, incorporated under laws of the State of Delaware, 50 Main Street, Centerbrook, CT, 06409-1001.

RECITALS

In consideration of the mutual promises set forth below, the Contractor and the City agree that the following sections shall be substituted for like numbered Sections of the original Operating and Management Contract Documents for the City of Ann Arbor Material Recovery Facility and Transfer Station:

ARTICLE I: DEFINITIONS

"Major Equipment" means the Container Sorting Line, Paper Sorting Line, Solid Waste Sorting Line, Solid Waste Compaction and Transfer Line and all related equipment.

"Net Revenues" means revenues received by the Contractor from the sale of Facility-produced Products to Purchaser minus 1) Direct Costs of the Contractor or its affiliates or actual amount billed for third party services associated with Product transportation (which shall not include the cost of loading Product onto containers or vehicles) to the Purchasers in the Primary Market; and 2) Direct Costs of the Contractor or its affiliates associated with the acquisition price of any Recyclable Materials.

"Recyclable Materials" means those materials specifically identified as acceptable by the MRF/TS for processing in its Paper Sorting Line or Container Sorting Line in the form identified in Schedule 7 (Facility Delivery Standards), including Pre-Sorted Materials and Recyclable Materials sorted from the Solid Waste Sorting Line and including residue material up to the limits specified in Schedule 1 (Performance Guarantees and Testing Procedures) of this Contract.

"Solid Waste Sorting Line" means the processing system for sorting different Recyclable Materials from Solid Waste and for compacting and transferring Solid Waste as described in Schedule 1 (Technical Specifications).

"System" means the Container, Paper and Solid Waste Sorting Lines and appurtenances to be furnished and installed by the Vendor at the Facility to Process Recyclable Materials into Recovered Materials and to compact and transfer Solid Waste.

ARTICLE II: OWNERSHIP, OPERATION AND MAINTENANCE OF THE FACILITY

Section 2.10: Capitalized Renewal and Replacement Fund

(a) The City shall establish a separate investment account for the purpose of accumulating deposits and earnings in a fund reserve as needed equipment renewal or replacement as provided for in this Section. Deposits into this account shall be made based on the following schedule.

(i) Deposits shall be made by the Contractor no later than 30 days after the last day of each month during the entire term of the contract at a rate of \$1.25 (one dollar and twenty five cents) for every ton of recyclable material received at the facility.

(ii) Deposits shall be made by the City no later than 30 days after the last day of each month during the entire term of the contract at a rate of \$1.25 (one dollar and twenty five cents) for every ton of recyclable material received at the facility.

(iii) During any one month period when the City's per ton revenue sharing as provided for in Section 6 falls below \$1.25 then, for non-City of Ann Arbor tons, the Contractor shall make up the difference in their own deposit to account for the full \$1.25 per ton City deposit requirement. Under these circumstances the City shall continue to make the required deposit for City tons only.

(b) The Contractor is obligated to keep all components of the rolling stock, Major Equipment, MRF structure and the MRF site in good condition and working order at all times during the life of the Contract and be in compliance with all aspects of Section 2.04 (Facility Equipment and Spare Parts).

(i) The Contractor shall provide written notice to the City no less than thirty (30) days prior to the renewal or replacement of any component of the MRF/TS in order to obtain the City's consent which shall not be unreasonably withheld. The written notice shall include the following, at a minimum: items to be replaced or renewed, Direct Cost of replacement or renewal, and the new useful life of the item. When a piece of equipment is replaced by the Contractor, the Contractor may either lease or purchase that equipment, provided, however, that at the termination of the Contract the City will have all rights to ownership of that equipment including any modifications made during the course of the Contract absent any ongoing financial obligation, liens or other liabilities.

(ii) If an Acceptance or Performance Test or inspection shall demonstrate that any component of the MRF/TS is missing, not in good repair, in need of replacement, substantially different from that identified in Schedule 2 (Construction Contract) as modified by any Design Changes under Article IX of this Contract, or impairs the Contractor's ability to meet its performance guarantees, including reasonable compaction rates for solid waste, then an Event of Default may be declared as per Section 12.02 (g).

(c) During the first ten years of this Contract, the Contractor shall not be entitled to reimbursement from the account except for renewal, replacement and/or repair of the following major rolling stock items (Skid Steer, Yard Tractor, Forklifts, Wheel Loader) and only upon thirty (30) Days prior written notice to the City of the request in order to obtain the City's permission which shall not be unreasonably withheld. The written notice of request shall include the following, at a minimum: items to be replaced and repaired, Direct Cost of replacement or repair, and the new useful life of the replaced or repaired item. The City shall be entitled to draw upon the account upon ten Days written notice to the Contractor to make reasonable expenditures for the renewal, repair or replacement of any and all components of the MRF/TS or any Capital Repair as defined in this Contract. Funding for expenditures that are covered by the Contractor obligation to keep the MRF/TS in good working order at all times during the life of the Contract, will not be granted except for the aforementioned. Nor will funding requests for repair and replacement of equipment that is leased by the Contractor be granted.

(d) After the first ten years of this Contract, the Contractor shall be entitled to reimbursement from the account for the purpose of funding the renewal, replacement and/or repair of any and all Major Equipment purchased and installed at the MRF/TS that is identified in Schedule 9 (Renewal and Replacement Schedule) upon thirty (30) Days prior written notice to the City of the withdrawal in order to obtain the City's consent which shall not be unreasonably withheld. The written notice shall include the following, at a minimum: items to be replaced and repaired, Direct Cost of replacement or repair, and the new useful life of the replaced or repaired item. The City shall be entitled to draw upon the account upon ten Days written notice to the Contractor to make reasonable expenditures for the renewal, repair or replacement of any and all components of the MRF/TS or any Capital Repair as defined in this Contract. Upon termination or expiration of this Contract, all funds remaining in the account shall become the property of the City.

ARTICLE III: TERM OF CONTRACT

Section 3.01: Life of Contract

This Contract shall commence as of the date it was entered into by the Parties. The Parties' obligations as to delivery, processing and sale or disposal of Recyclable Material and Solid Waste shall be for a period beginning with the Acceptance Date and extending for twenty (20) years thereafter unless terminated earlier in accordance with Article XIII, or renewed in accordance with this Article III.

Should the Contractor have been determined to not be in full compliance with the multi-stage Acceptance Test procedure as provided for in the Construction Contract Schedule 1 (Technical Specifications) and Schedule 3 (Performance Guarantee and Acceptance Testing) then this Contract shall be automatically and immediately limited to ten (10) years from the Acceptance Date unless terminated earlier in accordance with Article XIII, or renewed in accordance with this Article III.

Section 3.02: Five (5) Year Reviews and Renewal Options

The City and Contractor agree to review the status of the Contract and Contractor performance during the fifth year of every five year period from the date this Contract was signed. In addition to Contractor performance the review shall address trends in recycling markets and technology and the need, if any, for changes in this Contract to respond to changing conditions. Any necessary changes agreed to by mutual consent shall be executed in accordance with Section 17.09 (Amendment) of this Contract. If mutual consent between the parties cannot be reached, the Contract will remain unchanged.

The City may exercise its option to extend this Contract for a period of five (5) years, and shall have additional options to extend this Contract for additional periods of five (5) years, provided however, that the City shall give the Contractor at least one (1) year written notice of its intention to exercise its option to renew, and further provided that the components of the Net Service Fee for each renewal period shall be mutually agreed to by the City and the Contractor. If the City fails to provide Contractor with notice pursuant to this section, this Operating Contract shall terminate on the last Day of the then applicable term.

**ARTICLE V: CONTRACTOR GUARANTEES OF FACILITY PERFORMANCE
AND REMEDIES FOR FAILURE TO PERFORM**

Section 5.04: Remedies for Failure of Contractor to Meet Guaranteed

Facility Capacity

(a) If Contractor during any Operating Day, Week, Month or Year fails to accept sufficient Recyclable Material or Solid Waste to meet the respective Guaranteed Facility Capacity during any Operating Month for reasons other than the occurrence of an Uncontrollable Circumstance or the failure of the City to provide sufficient Recyclable Material or Solid Waste, then Contractor is responsible for damages equal to sixty dollars (\$60.00) times the number of tons not accepted. Additionally, if Contractor fails to process at the MRF/TS all accepted Recyclable Materials, it shall pay the City an amount equal to the City's per ton revenue share for all tons sold during the immediately preceding calendar month times the number of tons accepted but not processed at the MRF/TS.

Contractor will guarantee that the compactor will be available to process at least 95% of all annual solid waste tonnage (total solid waste delivered less any materials recovered through the MSW sorting system) from the City. The Contractor will be granted in any given Billing Year a credit earned from the prior Billing Year only if in the prior Billing Year the difference between the percentage of MSW actually compacted and 95% is greater than zero. The credit will be equal to this difference. For any uncompactied tonnage delivered to the designated landfill in excess of the annual maximum, RRS shall reimburse the City an amount equal to the City's additional Landfill Charges over and above the Landfill Charges that would have been paid at the density rates for compacted waste as shown in the fiscal year average billings as provided for in Schedule 8 (Sample Invoice and Tipping Fee Schedule) or at 930 pounds whichever is lower. The City has the option to direct haul its solid waste should the compactor not be operating.

ARTICLE VI: PAYMENTS TO CONTRACTOR AND TO THE CITY

Section 6.02: Net Service Fee

In consideration of the performance by the Contractor of its obligations under this Operating Contract, the City will pay Contractor the Net Service Fee on a monthly basis:

(a) Formula. The City shall pay Contractor a Net Service Fee in accordance with the following formula:

$$\text{NSF} = (\text{LC} + \text{TF} + \text{DF}) - (\text{NR} + \text{DC} + \text{MC}) + \text{PP}$$

Where:

NSF = Net Service Fee
LC = Landfill Charges
TF = Tipping Fees
DF = Diversion Fees
NR = Net Revenue Share
DC = Damages Credit
MC = Merchant Activity Credit
PP = Prior Period Adjustment

(d) Diversion Fee. The Diversion Fee is the Charge per Ton of Recyclable Material removed from the Solid Waste Sorting Line as provided for in Schedule 8 (Sample Invoices and Tipping Fee Schedule) except that no Diversion Fee shall be charged for removal of OCC from the Solid Waste Sorting Line.

(e) Net Revenue Share. The Net Revenue Share for any monthly billing period shall be the City's share of the monthly Net Revenue from the sale of Products determined in accordance with the provisions of Section 6.03 of this Contract.

(f) Damages Credit. Damages Credit for any monthly billing period shall be calculated by adding together any amounts owed or credits due to the City for damages as provided for in Section 5.04 and Section 5.05 of this Contract.

(g) Merchant Activity Credit. A credit will be made to the Net Service Fee to reflect any Merchant Activity Compensation to the City based on contributions to debt retirement in the form of a royalty as identified in Schedule 5 (Contractor's Proposal) for solid waste tipped at the facility only as provided for in Schedule 8 (Sample Invoices and Tipping Fee Schedule) .

(h) Prior Period Adjustment. To the extent that the actual value of any item in a monthly billing statement cannot be accurately determined as of the date of billing, the item shall be billed on an estimated basis, and an adjustment shall be made to reflect the difference between the estimated amount and the actual amount of the item on the next billing statement for the month in which the actual amount is determined. This adjustment shall be known as the Prior Period Adjustment.

Section 6.03: Revenue Sharing.

After Acceptance, Net Revenues received from the sale of all Products shall be shared as follows:

(a) The Contractor shall retain the first \$40 per Ton in Net Revenues from the sale of all Product derived from all Recyclable Materials. This \$40 per Ton trigger price will be escalated annually at the same rate as the Tipping Fees as set forth in Schedule 8 (Sample Invoices and Tipping Fee Schedule)

(b) The Contractor shall credit the City for 35% of the Net Revenues above \$40 per Ton from the sale of Product derived from all Recyclable Materials.

(c) In the case of Negative Revenue the following provisions shall apply:

(ii) If a Product has a Negative Revenue for four (4) consecutive months the Contractor shall market the Product derived from City delivered Tons without charge to the City except for the tipping fees charged for originally receiving the material as provided for in Schedule 8 (Sample Invoices and Tipping Fee Schedule). Notwithstanding the provisions of this Section, mixed broken glass cullet, also known as aggregate, will always be marketed without charge to the City regardless of its Negative Revenue status.

(iii) If after the above period a Product continues to have a Negative Revenue, the Contractor shall market the Product and pay twenty five percent (25%) of the Direct Cost for all Product derived from City delivered Tons. The City shall pay seventy-five percent (75%) of the Direct Cost for all Product derived from City delivered Tons. If the Contractor and the City mutually agree in writing to change the Facility Delivery Standards for the Product earning Negative Revenue, the City will be allowed by the Contractor to continue to deliver that Product commingled with other recyclables. The Contractor will bear the Direct Costs of sorting out the Product at its sole Cost. The Product that is derived from City delivered Tons may be landfilled by Contractor with the Landfill Charges Paid by the City as part of the Net Service Fee. Contractor shall bear all other Direct Costs.

Section 6.07: Landfill Charge Deposit

Contractor shall invoice the City within 15 days prior to the Acceptance Date for a deposit equal to the estimated Landfill Charges for a one month period. The parties agree the amount of the initial Landfill Charge deposit shall not be greater than \$55,000. The Landfill Charge deposit shall be adjusted annually thereafter to equal the average monthly Landfill Charge incurred by the City in the preceding six months. If amount of the deposit needs to be increased, Contractor shall invoice the City for an amount equal to the increase, and if the amount of the deposit needs to be decreased, Contractor shall submit a check to the City equal to the amount of the decrease. Upon termination of this Contract, Contractor shall refund the Landfill Charge deposit to the City.

ARTICLE VIII: MARKETING

Section 8.05: Transportation Costs

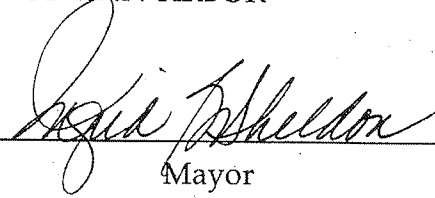
The Contractor shall use reasonable efforts to determine if the transportation costs on a per-load basis will exceed the amount of Product Revenue to be paid for the Product except in the case of mixed cullet made from broken glass, generally known as aggregate.


IN WITNESS of these Amendments #1 and #2:

CITY OF ANN ARBOR

CONTRACTOR


Resource Recovery Systems, Inc.


By 
Mayor

By 
(Signature)

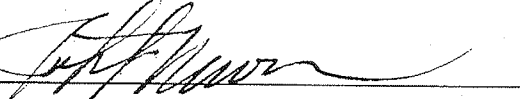
Its President

By 
City Clerk

By 
(Signature)

Its 
(Title of Office)


Approved as to Substance:

By 
Director, Solid Waste

By 
Interim City Administrator

By 
Interim City Administrator

Approved as to Form:

By 
Acting City Attorney

SCHEDULE 1: PERFORMANCE GUARANTEES AND TESTING PROCEDURES

SCHEDULE 1

PERFORMANCE GUARANTEE AND ACCEPTANCE TESTING

A. GENERAL

At minimum, performance testing will occur at the Start-up Date (as provided for in Section 9.02 of the Construction Contract) and at the termination of the Agreement. Testing must occur within 120 days of Substantial Completion and 90 days of Notice of Termination of this Agreement. The City of Ann Arbor reserves the option to request more frequent testing as specified in Article V, Section 5.01, of the Operation and Management Agreement, the costs for which will be borne by either party as determined by the test results and the provisions of Section 5.01.

The initial test will be completed as part of the Acceptance Test to establish the Performance Guarantee. Subsequent tests will be completed to ensure that facility operation meets the terms of the Performance Guarantee.

The initial test, to be completed as part of the Contractor's obligations under this Agreement, is expected to have three phases:

- I: Immediate Acceptance Test of the Paper and Container Sorting Lines using the materials currently being collected by the City through their collection contractor. This Acceptance Test will include Throughput, Process Residue and Product Quality Guarantee measurement only and will be for a shorter period of time than the standard duration identified in this Schedule, covering only two consecutive days with one shift per day.
- II: Delayed Acceptance Test of the Solid Waste Transfer Line and the Solid Waste Sorting Line using materials as collected by the City at that time. This Acceptance Test will include Throughput, Process Residue, Product Quality and Environmental Guarantee measurement for the completed facility and will be for a shorter period of time than the standard duration identified in this Schedule, covering only two consecutive days with one shift per day.
- III: Delayed full Acceptance Test of all lines meeting all measurement protocols identified in this Schedule will take place on the one year anniversary of the first Acceptance Test and will target the full range of materials to be collected and processed as part of the Operating Agreement. The duration will be for the full testing period identified in this Schedule.

Whether the following Performance Guarantees have been satisfied shall be determined by testing in accordance with the Performance Test Plan under the requirements of Part C of this Schedule 1 (Performance Guarantee and Acceptance Testing).

B. FORM OF PERFORMANCE GUARANTEE

The form of such performance guarantee shall be as follows (percentages specified below are based on weight).

1. Container Sorting Line

- a. Guaranteed Facility Capacity for a single 8-hour shift, defined as an 8 consecutive hour processing period: 20 Tons Per Shift of Commingled Container Recyclable Material.
- b. Guaranteed Product Quality: Glass, Ferrous, Aluminum and Plastics shall meet the standards specified in Schedule 1: Section C.2.c.

2. Paper Sorting Line

- a. Guaranteed Facility Capacity for a single 8-hour shift, defined as an 8 consecutive hour processing period: 50 Tons Per Shift of Commingled Paper Recyclable Material.
- b. Guaranteed Product Quality: All paper products shall meet the standards specified in Schedule 1: Section C.2.c.

3. Guaranteed Maximum Process Residue

7 (seven) percent per ton of Commingled Paper Recyclable Material and Commingled Container Recyclable Material meeting the requirements of Schedule 8 (Facility Delivery Standards), as accepted and processed by the Contractor.

4. Solid Waste Transfer Line

- a. Guaranteed Facility Capacity for a single 8-hour shift, defined as an 8 consecutive hour processing period: 250 Tons Per Shift of Solid Waste. The total Tons of material moved over the Solid Waste Sorting Line, including removed recyclables, shall be counted towards this 250 Tons Per Shift measurement.
- b. Measured Product Density: Compacted Solid Waste shall have a targeted density of 930 pounds per cubic yard. Best efforts shall be made by Contractor to meet or exceed this density. Should the Measured Product Density not meet or exceed the targeted density then Contractor shall provide, as part of the written report, a full analysis of the factors affecting the Measured Product Density and the steps to be taken by the Contractor to meet or exceed the Measured Product Density in all future operations. The Measured Product Density shall be defined as the Product Weight in the transfer vehicle divided by the unit of measure which will be used by the landfill in calculating tipping fees at the landfill.

5. Solid Waste Sorting Line

- a. Contractor will operate and staff the Solid Waste Sorting Line at all times that non-residential Solid Waste is being moved through the Transfer Station whether during Acceptance Tests or at other times as provided for during the full term of the Operating and Management Agreement. Contractor will divert all loads or portions of loads that are determined to have percentages of recyclable materials identified below that can reasonably be removed by moving the material over the Solid Waste Sorting Line. For all loads processed over the Solid Waste Sorting Line, Contractor shall make reasonable efforts to remove the following Products:
- All OCC over two square foot in surface area or two feet in length that meets the Guaranteed Product Standard
 - All waste wood over two square foot in surface area or two feet in length that meets the Guaranteed Product Standard
 - All scrap metal that is extracted by the cross belt magnetic conveyor that meets the Guaranteed Product Standard
- b. Guaranteed Product Quality: All removed Products shall meet the standards specified in Schedule 1: Section C.2.c.
- c. Guaranteed Bagged Recyclable Removal: At all times during MRF/TS operation, whether during Acceptance Tests or at other times all Solid Waste tipped at the MRF/TS that contains "Green" bagged recyclables from the City's Commercial Recycling Collection Program will have Green Bags removed for recycling from the material at the tipping floor or will be diverted over the Solid Waste Sorting Line and have Green Bags removed for recycling at the Solid Waste Sorting Line.

5. Equipment Performance Guarantee

The sorting lines shall be capable of operating for 16 hours per day for six days per week.

C. PERFORMANCE TESTING PROCEDURES

The following test procedures are used to establish the initial performance guarantees and for additional testing as outlined in the Contract.

1. Throughput Guarantee Test

As specified in the Construction Contract, the throughput rate must be 90% of the Guaranteed Facility Capacity (Minimum Acceptance Standard).

a. Overall Facility

The Throughput Guarantee Test shall be scheduled so that the Paper and Container Sorting Lines and the Solid Waste Transfer and Sorting Lines are operated at design hourly capacities for an 8 consecutive hour shift on three (3) consecutive days, which shall be called the Throughput Guarantee Test Period (TGTP), except as otherwise provided for in this Schedule. At the Contractor's discretion, the shift may include line stoppages for up to one thirty (30) minute lunch break and two fifteen (15) minute work breaks. At a minimum, however, all line staff must be provided the equivalent of one thirty (30) minute lunch break and two fifteen (15) minute work breaks during the shift. While the MRF is not in operation during the TGTP, maintenance shall be limited to that which would routinely occur during off-hours in accordance with the Operating Plan.

In addition, on one single day within the three-day test period, all equipment constituting the System shall be operated simultaneously for sixteen (16) hours.

System throughput shall be determined by weighing all material inputs for the Paper and Container Sort Lines and the Solid Waste Transfer and Sorting Lines once Recyclable Materials and Solid Waste are delivered. The System throughput for each Line for each day of operation shall then be calculated by taking the sum of the weights of input material for each Line during each testing day. If all of the material on the tip floors for any of the Lines have not been processed the material will be weighed to determine the amount actually processed.

The System Throughput Guarantee for the overall facility shall be deemed to have been demonstrated if the daily average of the total throughput during the TGTP is equal to, or greater than, the standards established in the Performance Guarantee.

The City of Ann Arbor reserves the right to perform inspections during the execution of the throughput guarantee procedure. Inspections will not impair Contractor's ability to perform its duties.

b. Process Equipment

The City of Ann Arbor reserves the right to require the Contractor to demonstrate that any or all processing equipment components of the Paper and Container Sorting Lines and the Solid Waste Transfer and Sorting Lines satisfy the requirements of the Construction Contract including Schedule 1 (Technical Specifications) as modified by any Work Change or Design Change.

If such a request is made, the Throughput Guarantee for the Paper and Container Sorting Lines and for the Solid Waste Transfer and Sorting Lines shall be deemed to have been demonstrated once all of the requested material processing system components have demonstrated conformance with specifications committed to by both the City of Ann Arbor and the Contractor as part of the Construction and Operation and Management Contracts.

2. Product Quality Guarantee Test

The Product Quality Guarantee Tests (PQGT) shall be scheduled to coincide with the Throughput Guarantee Test. The following Product Quality Guarantee Tests shall be performed on daily samples of each of the processed recyclables produced by the MRF during the TGTP.

- Paper: ONP, OCC, Filestock and White Ledger
- Containers: Tin/Steel Cans, Aluminum Cans, Natural and Colored HDPE Bottles (or Mixed HDPE Bottles), Post Consumer Container Glass

-
- Solid Waste: Green Bags, Waste Wood, Scrap Metal and OCC

The average purity of each day's samples from a Product output stream shall meet the Minimum Product Quality Standards as set forth in the specification guarantee tests listed in the following subsections for that Product.

If the average purity of a day's samples from a Product output stream does not meet the Minimum Product Quality Standards then the throughput for the entire processing line shall be deemed to be zero for such day. The throughput for the entire processing line for such day can be reinstated if it can be demonstrated that the total quantity of the excess contamination for all Products not meeting the purity requirements do not result in exceeding the Process Residue Guarantee for the Paper, Container, and Solid Waste Sorting Lines for that day and the Products were able to meet the purity standards on all other days of the TGTP.

It is understood that the moisture content of the end product may be influenced by environmental factors, e.g., rain, snow, etc. However, it is expressly understood that no function of MRF processing, operations or maintenance procedures shall contribute moisture to the Recycled Material.

a: Product Quality Guarantee Test Sampling Procedures

Four (4) gross samples shall be pulled for each Product during each eight hour shift. The schedule for pulling the gross samples shall be developed by assigning a number for each half hour of the eight hour shift with the first half hour being #1, the second half hour being #2 and so on. A random number generator chart with numbers from 1 to 16 shall then be used to identify four half hour periods for that Product during which the four gross samples are to be pulled.

The gross sample can be collected directly from the system outfeed for that Product at the prescribed intervals. Alternatively, pulling a gross sample requires that the surface of the pile of Product from which the sample will be pulled be divided up into a grid of 16 sections. A random number generator chart with numbers from 1 to 16 shall then be used to identify a single location on the grid from which sufficient material will be pulled to fill an eighteen gallon closed bottom container.

Each gross sample is then subdivided into four laboratory samples which are packaged in polyethylene bags, identified by Product, weighed and then numbered from 1 through 4 for gross sample number 1, 5 through 8 for gross sample number 2 and so on. The weight of each laboratory sample is recorded as the "Total as received sample weight".

At the end of the eight hour shift the random number generator chart is then used to select 8 of the sixteen laboratory samples for hand-picking and weighing. The remainder of the 16 laboratory samples are retained until the test is completed.

The analysis is performed on each of the selected samples by spreading a single sample at a time on a clean, flat surface and hand picking the Product or other material from the sample. The Product is then placed in a clean, tare weighted container and all other materials stored in another clean, tare weighted container. The weights of Product and other materials are then recorded as "Total as received Sample weight" and the purity of the stream by weight is then computed for that laboratory sample.

The Product and other materials from the analysis of a particular laboratory sample are then packaged in polyethylene bags, identified by Product, weighed and labeled for inspection and verification by the City or its agent if required.

Should the initial calculated average purity of a day's selected samples from a Product output stream not meet the Minimum Product Quality Standards as set forth in the specification guarantee tests for that Product then the results of up to two laboratory samples included in the average may be replaced with the results of analysis of two additional laboratory samples randomly selected from the eight samples still held in reserve for that day.

b. Organizations that Set Standards for Recyclable Materials

Standards for recyclable materials are determined by a number of industry groups and specification societies. In some cases, more than one set of standards exists for one Product. In these cases, the standards are very similar or the same, and compliance with either standard will be acceptable. To obtain full copies of each set of standards, contact the issuing organization.

Paper

Institute of Scrap Recycling Industries, Inc. (ISRI), *Scrap Specifications Circular 1991, Guidelines for Ferrous Scrap, Nonferrous Scrap, Paper Stock, Plastic Stock*. 1325 G Street, N.W., Suite 1000, Washington, D.C. 20001. (202) 466-4050. FAX (202) 775-9109.

American Society of Testing and Materials (ASTM), 1916 Race Street, Philadelphia, PA 19103.

The American Paper Institute, (202) 463-2420, endorses ISRI's specifications.

Metals

Institute of Scrap Recycling Industries, Inc. (ISRI), *Scrap Specifications Circular 1991, Guidelines for Ferrous Scrap, Nonferrous Scrap, Paper Stock, Plastic Stock*. 1325 G Street, N.W., Suite 1000, Washington, D.C. 20001. (202) 466-4050. FAX (202) 775-9109.

American Society of Testing and Materials (ASTM), 1916 Race Street, Philadelphia, PA 19103.

Steel Can Institute, (800) 876-SCRI and (412) 922-2772 advocate the use of either ISRI or ASTM standards.

Plastics

Institute of Scrap Recycling Industries, Inc. (ISRI), *Scrap Specifications Circular 1991, Guidelines for Ferrous Scrap, Nonferrous Scrap, Paper Stock, Plastic Stock*. 1325 G Street, N.W., Suite 1000, Washington, D.C. 20001. (202) 466-4050. FAX (202) 775-9109.

Standards for plastics were set by The Council for Solid Waste Solutions, but are distributed through ISRI.

Glass

Glass Packaging Institute (GPI), Washington D.C. (202) 887-4850. Natalie Roy, Recycling Director.

Processing Procedures and Testing

American Society of Testing and Materials (ASTM), 1916 Race Street, Philadelphia, PA 19103.

c. Materials Standards

The organizations that issue the following standards update them continuously. It shall be the vendor's responsibility to produce materials that comply with the current quality specifications listed below.

Paper Type: Newspaper (ONP)

Standard: ISRI Domestic Transaction Paper Stock Standard

Category: (6) News

- Consists of baled newspapers, magazines and residential white paper containing less than 2% of other papers
- Prohibitive materials may not exceed 1/2 of 1%
- Total out-throws may not exceed 2%

Paper Type: Corrugated Cardboard (OCC)

Standard: ISRI Domestic Transaction Paper Stock Standard

Category: (11) Corrugated Containers

- Consists of baled corrugated containers having liners of either test liner, jute or kraft
- Prohibitive materials may not exceed 1%
- Total out-throws may not exceed 5%

Paper Type: Filestock

Standard: Fort Howard File Stock Grade

Category: n.a.

- Office file waste. Filestock may contain staples, paper clips, and rubber bands. Contamination must not exceed the levels indicated for the following materials: uncoated copy papers (up to 20% by weight), groundwood (up to 2%), coated copy papers (up to 2%), poly window envelopes (up to 2%), glued forms, kraft folders (up to 1%) carbon paper (up to 1%) and pressure sensitive adhesives (minor amounts).
- Specific exclusions include raw food and cafeteria waste, restroom waste, glass, and hospital records and waste.

Paper Type: White Ledger

Standard: ISRI Domestic Transaction Paper Stock Standard

Category: (40) Sorted White Ledger (post-consumer)

- Consists of printed or unprinted sheets, shavings, guillotined books, quire waste, and cuttings of white sulfite or sulfated ledger, bond, writing, and other papers which have a similar fiber and filler content. This grade must be free of treated, coated, padded or heavily printed stock.
- Prohibitive materials may not exceed 1/2 of 1%
- Total out-throws may not exceed 2%

Metal**Type:** Tin/Steel Cans**Standard:** Tin Cans for Remelting**Category:**

- Flattened, baled or shredded steel cans and steel scrap, tin coated or tin free, may include aluminum tops but must be free of aluminum cans, nonferrous metals except those used in can construction, and non-metallics which are considered outthrows. Labels and contents are allowed. Total outthrows may not exceed 5%.

Metal**Type:** Aluminum Cans and Foil**Standard:** ISRI Guidelines for Nonferrous Scrap: NF-90**Category:** Code Word "Talap" – Old (Aluminum) Can Stock

- Shall consist of clean old aluminum cans, decorated or clear.- Labels and contents are allowed. Total outthrows may not exceed 5%.

Metal**Type:** Scrap Metal**Standard:** Miscellaneous Ferrous Scrap**Category:**

- All ferrous scrap metal removed by cross belt magnet on the Solid Waste Sorting Line

Plastics**Type:** Natural HDPE Bottles**Standard:** ISRI Guidelines for Plastic Scrap: P-91**Category:** Commercial Guideline Baled Recycled Plastic Standard P-201

- Product:
Milk, water, and juice bottles only
Quart, half gallon, and one gallon bottles only
- Bale properties:
72" maximum bale dimension
10 pounds per cubic foot minimum bulk density
Non-rusting strapping material or baling wire
- Total allowable contamination - 5%
- Less than 1 month outdoor storage unless covered with UV protective materials

Plastics**Type:** Colored HDPE Bottles**Standard:** ISRI Guidelines for Plastic Scrap: P-91**Category:** Commercial Guideline Baled Recycled Plastic Standard P-202

- Product:
Mixed pigmented household HDPE bottles, including detergent, shampoo, household products, etc.
- Bale properties:
72" maximum bale dimension
10 pounds per cubic foot minimum bulk density
Non-rusting strapping material or baling wire
- Total allowable contamination - 5%
- Less than 1 month outdoor storage unless covered with UV protective materials

Plastics

Type: Mixed HDPE Bottles

Standard: ISRI Guidelines for Plastic Scrap: P-91

Category: Commercial Guideline Baled Recycled Plastic Standard P-200

- Product:
Mixed pigmented household HDPE bottles, including detergent, shampoo, household products, etc.
- Bale properties:
72" maximum bale dimension
10 pounds per cubic foot minimum bulk density
Non-rusting strapping material or baling wire
- Total allowable contamination - 5%
- Less than 1 month outdoor storage unless covered with UV protective materials

Glass Type: Post-consumer, container glass

Standard: ASTM E 708-79, Section 5

Alternatively, glass must be color separated with permissible color mix levels at:

- Flint glass: 95-100% flint; 0-5% amber; 0-1% green; 0-5% other colors
- Amber glass: 90-100% amber; 0-10% flint; 0-10% green; 0-5% other colors
- Green glass: 80-100% green; 0-20% amber; 0-15% flint or Georgia green; 0-5% other colors

Glass must include consumer glass only. Window glass, glass dishware, Pyrex and non-commercial glass are not allowed. Depending on whether the processing plant has magnetic separation capabilities, metal caps may or may not have to be removed. Contamination may not exceed 1%.

Waste Wood Type: Mulch Feedstock

Standard:

- All clean wood 8" diameter or less, maximum of 10 foot long that is not treated as wolmanized or creosoted, painted, varnished, etc. or contaminated with chemicals, plastic wrap, pieces of metal or drywall, etc..
- Small nails/staples such as in wood pallets, scrap lumber, untreated wood furniture are ok.
- No other contaminants shall be in the wood.
- Unacceptable items include counter tops, laminated wood, railroad ties, telephone poles, pianos, plywood, hardboard, pressed wood, etc.

4. Process Residue Guarantee Test

The Process Residue Guarantee Test shall be scheduled to coincide with the Throughput Guarantee Test. The purpose of this test is to determine the amount of process residue produced by the processing system.

On each test day, the following quantities shall be determined:

PP = The total Weight of Paper Products recorded as output from the Paper Sorting Line

CP = The total Weight of Container Products recorded as output from the Container Sorting Line

RP= The total Process Residue from the Paper Sorting Line after processing

RC = The total Process Residue from the Container Sorting Line after processing

To successfully pass the Process Residue Guarantee Test,

$$(RP + RC)/(PP + RP + CP + RC) \leq \text{Guaranteed Maximum Process Residue (7\%)}$$

The Process Residue Guarantee Test shall be deemed to have been satisfied if the Process Residue Guarantee is demonstrated for all three days of testing.

5. Environmental Guarantee Test

The Environmental Guarantee Test shall be conducted to determine whether the MRF complies with the Contractor's Environmental Guarantee. The MRF shall be deemed to be not in compliance with the Environmental Guarantee if on any day a regulatory agency determines that the MRF is violating any environmental law, ordinance, rule, regulation, license, approval or permit existing at the time of the Environmental Guarantee Test, unless the Contractor is contesting in good faith and with a reasonable probability of success such determination, or if any of the below listed tests (if required by law) are not successfully completed.

The Environmental Guarantee Test shall include the testing of air quality, water quality, and noise levels by a mutually agreed-to testing laboratory. All tests required in connection with any license, approval or permit for the MRF shall also be performed. Monitoring, sampling and testing methods and procedures shall be in compliance with the requirements of all regulatory agencies.

Each of the following listed tests shall be performed on the final day of the TGTP if required by law.

a. Air Quality Test

The following parameters shall be measured and recorded during the test if required by law:

1. Concentration of respirable dust in the air inside the MRF as determined using ASTM Standard Test Method for Respirable Dust in Workplace Atmosphere Designation: D4532-85;
2. Concentration of carbon monoxide inside the MRF; and
3. Particulate Matter emitted from the MRF at ventilation exhaust per EPA Method 5, if required.

The Air Quality Test shall be deemed to have been satisfied if the test results from daily testing samples indicate compliance with all applicable codes and regulations.

b. Wastewater Discharge Quality Guarantee Test

The Wastewater Discharge Quality Test shall be performed during or immediately after the Facility Throughput Guarantee Test. This test shall consist of daily sampling and laboratory analyses of the wastewater stream. A sampling protocol shall be developed by the Contractor in conjunction with the City of Ann Arbor.

The Wastewater Discharge Quality Test shall be deemed to have been demonstrated if discharged wastewater quality complies with all applicable standards relating to wastewater quality.

D. REPORTS

Ninety days prior to a Performance Test(s), the Contractor shall prepare and submit a test plan to the City of Ann Arbor for review and approval. The test plan shall define a test program which will test each objective and procedure described herein and shall set forth in detail:

- The procedure to be used
- The specific measurements to be taken
- Who will perform each test objective and procedure (i.e. the Contractor or an independent test lab) and the company's qualifications to perform the test
- The proposed usage of permanent and temporary instrumentation
- The organization of the test team
- Staffing and monitoring requirements during start-up and testing
- The Performance Test schedule
- The estimated recyclable material quantities and delivery schedules required for such testing.
- The operating and maintenance schedule during such Performance Testing

-
- An outline of the report that will be produced following completion of the Performance Test.

The plan shall also make provision for measuring and determining the processing capability of the facility, and the quality and quantities of recovered materials with the terms and conditions of applicable permits, licenses, laws and regulations. The City of Ann Arbor must approve the test plan before testing can begin. The City of Ann Arbor may require independent testing laboratory verification of tests.

The Contractor shall give the City of Ann Arbor:

- Ninety days prior written notice of the approximate Start-up date in preparation for processing recyclable material, which notice shall include projected delivery schedules and approximate recyclable material quantities necessary for start-up operations.
- At least 30 days prior written notice of the schedules for Performance Test(s), the date and time of the test, and the total recyclable material quantities and the recyclable material delivery schedule necessary for the performance of such testing.

The Contractor may, at its cost and expense, test the facility at any time for its own information and purposes. Such test shall not be treated as a Performance Test.

The Contractor shall commence Performance Testing within 120 days following substantial completion of the facility, at the Contractor's discretion so long as the test plan has been approved, and any permits required for the conduct of such testing have been obtained.

Upon completion of the Performance Test(s), the Contractor shall submit to the City of Ann Arbor a written report. The Performance Test Plan shall specify the contents of such report including but not limited to:

- a. Certification that testing was conducted in accordance with the Performance Test Plan;
- b. A certification of the results of the testing including a determination of the extent to which the Facility complies with the applicable Performance Guarantee(s);
- c. All data measured and recorded during the test(s); and
- d. Any other data reasonably requested by the City of Ann Arbor to be included in such reports.

SCHEDULE 7: FACILITY DELIVERY STANDARDS

SCHEDULE 7: FACILITY DELIVERY STANDARDS

The MRF shall be capable of processing paper and commingled recyclables delivered as described in these Facility Delivery Standards by private and municipal haulers, and producing industry-specified feedstock. This schedule lists the facility delivery standards for:

- Schedule 7 A Commingled Paper
- Schedule 7 B Commingled Containers
- Schedule 7 C Co-collected MSW and Recyclables
- Schedule 7 D Co-collected Paper and Containers
- Schedule 7 E Pre-sorted Materials

Schedule 7 A: Facility Delivery Standards—Commingle Paper

| Category | Material Description | Contaminants |
|-------------------------------|--|---|
| <p>Commingle Paper</p> | <p>Commingle paper materials from residential or commercial sources consisting of:</p> <ul style="list-style-type: none"> • ONP - All loose or bagged newsprint is acceptable except wet or yellowed newsprint, or newsprint that was once wet. • OCC - All loose or bagged old corrugated containers that are flattened and either cut down or folded to sizes no more than 3 by 2 feet and that have liners of kraft, jute, or test liner. Staples and tape with water soluble glues do not have to be removed and corrugated can be damp but not soaked. OCC can be tied with string or twine. • Brown Paper Bags - All loose or bagged kraft paper sacks • High-grade Paper - All dry loose or bagged white and colored uncoated (not glossy) papers from the home or office which may include: ledger and copier papers; computer paper (continuous form perforated white bond or green bar paper); laser ledger and laser computer print-out; non-glossy junk mail; manila folders, tabulating and time cards; white bond adding machine tapes and pamphlets; accounting ledgers; letters, inter-office memos, copy and typing paper; loose-leaf fillers and papers from legal pads, scratch pads; message pads and note pads (no backing); receipts and non-thermal fax paper; blue prints; paperback books; coated freesheet (clay coated high grade stock if identifiable as such) • OMG - All dry loose or bagged magazines and coated glossy papers including stapled catalogs, glossy fillers or mailers with the exception of wet material or material that was once wet. • Textiles - all clean, dry synthetic and natural textiles including clothing, bed linens, drapes, towels and shoes in pairs only. Textiles must be delivered in sealed plastic bags. • Boxboard - Non-corrugated cardboard used in beer and soda cases, cereal boxes and other food containers. Paper egg cartons and notepad backing are acceptable in this category. Boxboard must be bundled or bagged separately from other paper materials. • Phonebooks - All telephone directories including colored pages. | <p>Foil backed and foil embossed papers, waxed freezer boxboard (ice cream cartons, bacon packages, etc.) plastic mailers, pressure reproducing papers (including carbon paper), thermal fax paper, wood, twine, waxed or plastic coated cardboard, asian or rice-based cardboard, groundwood other than ONP, and wet strength paper (grain bags, dog food bags, etc.) are not acceptable. Paperclips and staples are acceptable. Metal and plastic must be removed from folders. Junk mail does not need to be opened.</p> <p>Food, glass, metal (including 3-ring binders, large metal pieces, metal clips of any kind) and plastic of any kind (including polystyrene foam and plastic bags) are prohibitive materials, are not acceptable and should not exceed 0.5% by weight.</p> <p>Textiles must be free of all contaminants including wood, food, plastic, large metal pieces, office paper or polystyrene, foam, handbags and leather goods, single shoes, damp or wet textiles; textiles mixed with papers in bags, stuffed animals, nylons, food mixed with textiles. Textiles mixed with any other products in sealed bags are not acceptable.</p> <p>The level of contamination by materials other than those defined as acceptable should not exceed 4% by weight.</p> |

Schedule 7 B: Facility Delivery Standards—Commingled Containers

| | | |
|-------------------------------------|---|--|
| <p>Commingled Containers</p> | <p>Commingled container materials from residential or commercial sources rinsed and free of food contaminants and consisting of:</p> <ul style="list-style-type: none"> • Steel, tin and bi-metal containers composed of whole of iron or steel. Aerosol cans, #10 cans or smaller and paper labels are acceptable. • Aluminum used beverage containers • Aluminum foil, food trays and wrappers clean of food • Plastic-coated paper and aseptic food cartons including milk cartons, "juice boxes" and other brik-pac or tetra-pac type containers. • Glass - All transparent or translucent food and beverage jars and bottles. Paper labels are acceptable as is a minimal amount of rings and lids on glass containers. • All ceramics, Pyrex and non-container (plate) glass - Ceramic mugs, plates, jars, and other food service materials, Pyrex containers and food preparation materials and window glass, mirror glass and other plate glass. • HDPE Plastic Bottles (SPI code #2) - blow-molded closed mouth natural and colored HDPE containers generally consisting of plastic milk jugs, water bottles, detergent bottles and similar items. One gallon containers or smaller and paper labels are acceptable. Caps do not have to be removed. • PET Plastic Bottles (SPI code #1) - clear blow molded PET containers coded #1 such as dishwashing soap bottles, soda bottles and some shampoo bottles. • PVC containers - blow molded plastic containers made of Polyvinyl Chloride (SPI code #3) and typically used for water and some juice products. • Residential scrap metal - light iron and non-ferrous scrap metal from households such as pots and pans (including those with non-metal handles or teflon coating), utensils, metal coat hangers (including those with greyboard or paperboard attached) and other items less than 20 lbs and smaller than 1 cubic foot. | <p>#2 HDPE wide-mouthed injection-molded containers (such as margarine, cottage cheese and yogurt tubs), #1 PET wide-mouthed injection-molded cups used in hotels and sporting events; plastic motor oil bottles, plastic bags, plastic toys, plastic film, wood, dirt, grease, clay, gravel, limestone chips, asphalt, and concrete, electrical appliances, light bulbs or other glass materials that contain non-glass components and polystyrene are all contaminants and must not be included in the commingled container material. The level of contamination by materials other than those defined as acceptable should not exceed 4% by weight.</p> |
|-------------------------------------|---|--|

Schedule 7 C: Facility Delivery Standards—Co-collected MSW and Recyclables

| Category | Material Description | Contaminants |
|----------------------------------|--|--|
| Co-collected MSW and Recyclables | Consisting of loose and bagged commercial municipal solid waste commingled with loose or tied corrugated containers and Commingled Paper as defined in Schedule 7 A and Commingled Containers as defined in Schedule 7 B both packaged in separate green translucent plastic bags specified by the City of Ann Arbor for its Recycle Plus program. | Allowed contamination levels are only applied to bagged Commingled Paper as defined in Schedule 7 A and Commingled Containers as defined in Schedule 7 B |

Schedule 7 D: Facility Delivery Standards—Co-collected Commingled Materials

| Category | Material Description | Contaminants |
|-----------------------------------|---|--|
| Co-collected Paper and Containers | Consisting of loose Commingled Paper as defined in Schedule 7 A commingled with Commingled Containers as defined in Schedule 7 B and packaged as described below except two gallon plastic containers or less are acceptable in the Commingled Containers. The Commingled Containers will be packaged in transparent vented plastic bags of at least a 6 mil thickness. | <p>The level of contamination of loose Commingled Papers by loose Commingled Containers shall not exceed 0.75% by weight. The level of contamination by materials other than those defined as acceptable and those counted as loose Commingled Containers shall not exceed 4% by weight.</p> <p>The University or City shall be allowed at least 90 days from their Service Date to meet the 0.75% contamination allowance. Subsequently, the University or City shall be allowed up to 60 days to make a good faith effort to correct the level of contamination from commingled containers if it goes above 0.75%.</p> |

Schedule 7 E: Facility Delivery Standards—Pre-sorted Materials

| | Material Description | Contaminants |
|--|--|--|
| PRE-SORTED PAPER MATERIALS | | |
| Old Newspaper (ONP): | All newsprint is acceptable with the exception of wet or yellowed newsprint, or newsprint that was once wet. Advertisements and other material found within individual newspapers are acceptable. Material must be either loose or bagged. | Newsprint must be essentially free of all contaminants including other paper grades such as white ledger papers, glossy fillers, or mailers, and may not contain plastic, wood or twine. |
| Old Corrugated Cardboard (OCC): | Old corrugated containers having liners of kraft, jute, or test liner are acceptable. Old corrugated containers are acceptable if damp but not soaked, and staples are acceptable. | Cardboard must be essentially free of all contaminants including wood, food, plastic, large metal pieces, office paper, or polystyrene foam. Cardboard cannot be waxed or plastic coated. Asian or rice-based OCC is not acceptable. |
| White Ledger/Copier Paper: | White ledger and copier paper, note pads and loose-leaf fillers are acceptable. Material must be either loose or bagged. | Must be essentially free of all contaminants including other papers and non-paper material, and may not contain plastic, wood or twine. |
| Colored Ledger/Copier Paper: | Colored ledger and copier paper, note pads and loose-leaf fillers are acceptable. Material must be either loose or bagged. | Must be essentially free of all contaminants including other papers and non-paper material, and may not contain plastic, wood or twine. |
| Computer Print-out: | Computer paper, including computer paper consists of continuous-form perforated white bond or green-bar paper is acceptable. Material must be either loose or bagged. | Must be essentially free of all contaminants including other papers and non-paper material, and may not contain plastic, wood or twine. |
| High-grade Paper: | White and colored ledger and copier paper, note pads, loose-leaf fillers and computer paper are acceptable. Computer paper consists of continuous-form perforated white bond or green-bar paper. Material must be either loose or bagged. | Must be essentially free of all contaminants including other papers and non-paper material, and may not contain plastic, wood or twine. |
| Old Magazines (OMG): | All magazines and coated glossy papers including stapled catalogs, glossy fillers or mailers are acceptable with the exception of wet material or material that was once wet. Material must be either loose or bagged. | Magazines with glued bindings are not acceptable. Magazines must be essentially free of all contaminants including other paper grades such as newsprint, high-grade papers, and may not contain plastic, wood or twine. |
| Boxboard: | Non-corrugated cardboard used in beer and soda cases, cereal boxes and other food containers. Paper egg cartons and notepad backing are acceptable in this category. | Must be essentially free of all contaminants including other papers and non-paper material, and may not contain plastic, wood, twine or organic materials. |
| Phonebooks: | All telephone directories including colored pages. | Must be essentially free of all contaminants including other papers and non-paper material, and may not contain plastic, wood or twine. |

Schedule 7 E: Facility Delivery Standards—Pre-sorted Materials (continued)

| PRE-SORTED METAL CONTAINERS | | Material Description | Contaminants |
|---|---|----------------------|--|
| Steel, tin and bi-metal containers | All food and beverage containers composed on whole of iron or steel are acceptable including aerosol cans. All materials should be rinsed and free of food contaminants. Paper labels are acceptable but not preferred. | | Must be essentially free of all contaminants including ceramics, glass bottles and jars, plastic bottles and jugs, glass, wood, dirt, grease, plastic lids and caps, plastic bags, plastic toys, polystyrene foam, aseptic food containers, trash and other foreign substances. |
| Light metal scrap | Light iron and non-ferrous scrap metal from households such as pots and pans (including those with non-metal handles or teflon coating), utensils, metal coat hangers (including those with greyboard or paperboard attached) and other items less than 20 lbs and smaller than 1 cubic foot. | | Must be essentially free of all contaminants other than light metal scrap. Electrical appliances are not acceptable. |
| Aluminum used beverage containers (UBC) | All food and beverage containers composed of aluminum. All materials should be rinsed and free of food contaminants. Aluminum can be delivered loose or flattened. | | Must be essentially free of all contaminants including ceramics, glass bottles and jars, aerosol cans, plastic bottles and jugs, glass, wood, dirt, grease, plastic lids and caps, plastic bags, plastic toys, polystyrene foam, aseptic food containers, trash, ferrous metal and other foreign substances. |
| Aluminum foil, food trays and wrappers | All foil, food trays and wrappers composed in whole of aluminum. All materials should be rinsed and free of food contaminants. Aluminum can be delivered loose or flattened. | | Must be essentially free of all contaminants including ceramics, glass bottles and jars, aerosol cans, plastic bottles and jugs, glass, wood, dirt, grease, plastic lids and caps, plastic bags, plastic toys, polystyrene foam, aseptic food containers, trash, ferrous metal and other foreign substances. |
| Paper and aseptic food cartons | All plastic-coated paper and composite layer aseptic beverage cartons are acceptable including milk cartons, "juice boxes" and other brik-pac type containers. All containers must be rinsed and free of food contaminants and should be flattened. | | Must be essentially free of all contaminants. |

Schedule 7 E: Facility Delivery Standards—Pre-sorted Materials (continued)

| | Material Description | Contaminants |
|---|---|--|
| PRE-SORTED GLASS | | |
| Clear (Flint) Glass: | All transparent clear food and beverage jars and bottles. Containers must be rinsed and dry and free of food contaminants and dirt. Paper labels are acceptable as are metallic rings and lids. | Clear glass should be separated from other colors and should contain no more than 2% other colors. Must be essentially free of all contaminants (other than lids, labels and rings) including metallic fragments and objects, paper waste, plastics, clay, gravel, limestone chips, asphalt, and concrete. |
| Brown (Amber) Glass: | All transparent or translucent amber food and beverage jars and bottles. Containers must be rinsed and dry and free of food contaminants and dirt. Paper labels are acceptable as are metallic rings and lids. | Brown glass should be separated from other colors and should contain no more than 5% other colors. Must be essentially free of all contaminants (other than lids, labels and rings) including metallic fragments and objects, paper waste, plastics, clay, gravel, limestone chips, asphalt, and concrete. |
| Green Glass: | All transparent or translucent green food and beverage jars and bottles. Containers must be rinsed and dry and free of food contaminants and dirt. Paper labels are acceptable as are metallic rings and lids. | Green glass should be separated from other colors and should contain no more than 10% other colors. Must be essentially free of all contaminants (other than lids, labels and rings) including metallic fragments and objects, paper waste, plastics, clay, gravel, limestone chips, asphalt, and concrete. |
| Ceramics, Pyrex and non-container (plate) glass: | All ceramics, Pyrex and non-container (plate) glass - Ceramic mugs, plates, jars, and other food service materials, Pyrex containers and food preparation materials and window glass, mirror glass and other plate glass. | Ceramics and non-container (plate) glass should be separated from other container glass and should contain no more than 10% other glass materials. Must be essentially free of all contaminants including light bulbs or other glass materials that contain non-glass components, metallic fragments and objects, paper waste, plastics, clay, gravel, limestone chips, asphalt, and concrete. |

Schedule 7 E: Facility Delivery Standards—Pre-sorted Materials (continued)

| Category | Material Description | Contaminants |
|--|--|--|
| PRE-SORTED PLASTIC CONTAINERS | | |
| Natural HDPE Plastic Bottles (SPI code #2) | Acceptable containers are blow-molded closed mouth natural HDPE containers up to 1 gallon in size that are translucent and cloudy-colored, generally consisting of plastic milk jugs, water bottles, and similar items. They should be rinsed and free of food contaminants. | Wide-mouthed HDPE #2 tubs (such as margarine, cottage cheese and yogurt tubs), containers for motor oil and anti-freeze as well as other plastics are not acceptable. Must contain less than 1/2% other materials by sample weight. |
| Colored HDPE Plastic Bottles (SPI code #2) | Acceptable containers are colored HDPE coded #2 such as laundry detergent bottles. | Wide mouthed HDPE #2 tubs (such as margarine, cottage cheese and yogurt tubs), containers for motor oil and anti-freeze as well as other plastics are not acceptable. Must contain less than 1/2% other materials by sample weight. |
| PET Plastic Bottles (SPI code #1) | Acceptable containers are clear PET soda bottle containers coded #1. | Wide mouthed PET #1 containers (such as hotel and sporting event drink cups) are not acceptable. Must be free of other plastic containers including clear polypropylene bottles and non-plastic materials. Must contain less than 1/2% other materials by sample weight. |
| PVC Plastic Containers (SPI code #3) | Acceptable containers are blow molded PVC plastic containers coded #3 and typically used for water and some juice products.. | Must be free of other plastic containers including clear polypropylene bottles and non-plastic materials. Must contain less than 1/2% other materials by sample weight. |

Schedule 7 E: Facility Delivery Standards—Pre-sorted Materials (continued)

| Category | Material Description | Contaminants |
|-------------------------------------|--|---|
| PRE-SORTED SPECIAL MATERIALS | | |
| Used Motor Oil | Used motor oil from auto, marine, farm, household and snowmobile engines is acceptable. Used motor oil must be delivered in reusable or disposable containers, which are completely leakproof and have a tight fitting cap or sealing mechanism. | Any other liquid including anti-freeze, water, cutting oils, other volatile organic compounds, other toxic or hazardous materials; other fuels all are considered unacceptable. |
| Used Motor Oil Filters | Used motor oil filters from auto, marine, farm, household and snowmobile engines are acceptable. | Any other filters including water, air and gasoline filters are considered unacceptable. |
| Household Batteries | All household batteries are acceptable including AA, AAA, C and D and nickel cadmium cells as well as button batteries of all types. Batteries must be delivered in some type of rigid or flexible container. | Any damaged or cut batteries and all other material are unacceptable. |
| Auto Batteries | Used batteries from auto, marine, farm, household and snowmobile engines are acceptable. | Batteries must be sealed or if not sealed must be emptied of all battery acids. |
| Textiles | All clean, dry synthetic and natural textiles including clothing, bed linens, drapes, towels and shoes in pairs only. Textiles must be delivered in sealed plastic bags. | Must contain essentially free of all contaminants. Textiles must be free of all contaminants including wood, food, plastic, large metal pieces, office paper or polystyrene, foam, handbags and leather goods, single shoes, damp or wet textiles, textiles mixed with papers in bags, stuffed animals, nylons, food mixed with textiles. Textiles mixed with any other products in sealed bags are not acceptable. |

AMENDMENTS #1 AND #2

SCHEDULE 8: SAMPLE INVOICES AND TIPPING FEE SCHEDULE

AMENDMENT #1 TO THE OPERATING AND MANAGEMENT CONTRACT

ARTICLE 1. GENERAL PROVISIONS

SECTION 1.1. PURPOSE AND SCOPE

The purpose of this contract is to provide for the operation and management of the City of Ann Arbor's Municipal Solid Waste (MSW) Transfer Station and Transfer Station Composting Facility (TS/TS-CF) for a period of five (5) years, beginning on the date of execution of this contract and ending on the date specified in Section 1.2. The City of Ann Arbor (City) and the Contractor shall enter into this contract for the purpose of providing the services described herein.

SECTION 1.2. TERM

This contract shall be in full force and effect from the date of execution of this contract for a period of five (5) years, beginning on the date of execution of this contract and ending on the date specified in Section 1.2. The Contractor shall provide the services described herein for the entire term of this contract, unless otherwise specified in writing by the City.

SECTION 1.3. ASSIGNMENT

The Contractor shall not assign, subcontract, or otherwise transfer its obligations under this contract to any third party without the prior written consent of the City.

SECTION 1.4. INDEMNIFICATION

The Contractor shall indemnify and hold the City harmless from and against all claims, damages, losses, and expenses, including reasonable attorneys' fees, arising out of or from the performance of the Contractor's obligations under this contract, whether or not such claims, damages, losses, and expenses are caused in whole or in part by the negligence of the Contractor.

SCHEDULE 8

SAMPLE INVOICES AND TIPPING FEE SCHEDULE

This Schedule contains the following:

A. MATERIAL FLOW DIAGRAM W/FEE AND REVENUE DESIGNATIONS

The enclosed material flow diagram shows the incoming and outgoing material streams to and from the MRF/TS. Abbreviations on each material flow arrow indicate the applicable fees and charges as well as the impact each outgoing material stream has on revenue sharing with the City. The diagram contains references to the exhibits that are part of the Sample Invoices and Tipping Fee Schedules.

B. TIPPING FEE SCHEDULES

Sample Invoice Exhibit 1 consists of 1A) the tipping fee schedule for the Recyclable Materials and 1B) the tipping fee and diversion fee schedule for Solid Waste. These schedules will be updated annually for each new Billing Year as provided for in the Operating and Management Agreement. The date of the first tipping fee update is July 1, 1997. The actual tipping fees charged in any given Billing Month will depend on the incoming volume of material delivered to the MRF/TS. The tipping fee schedules indicate the applicable rates for different tonnage levels.

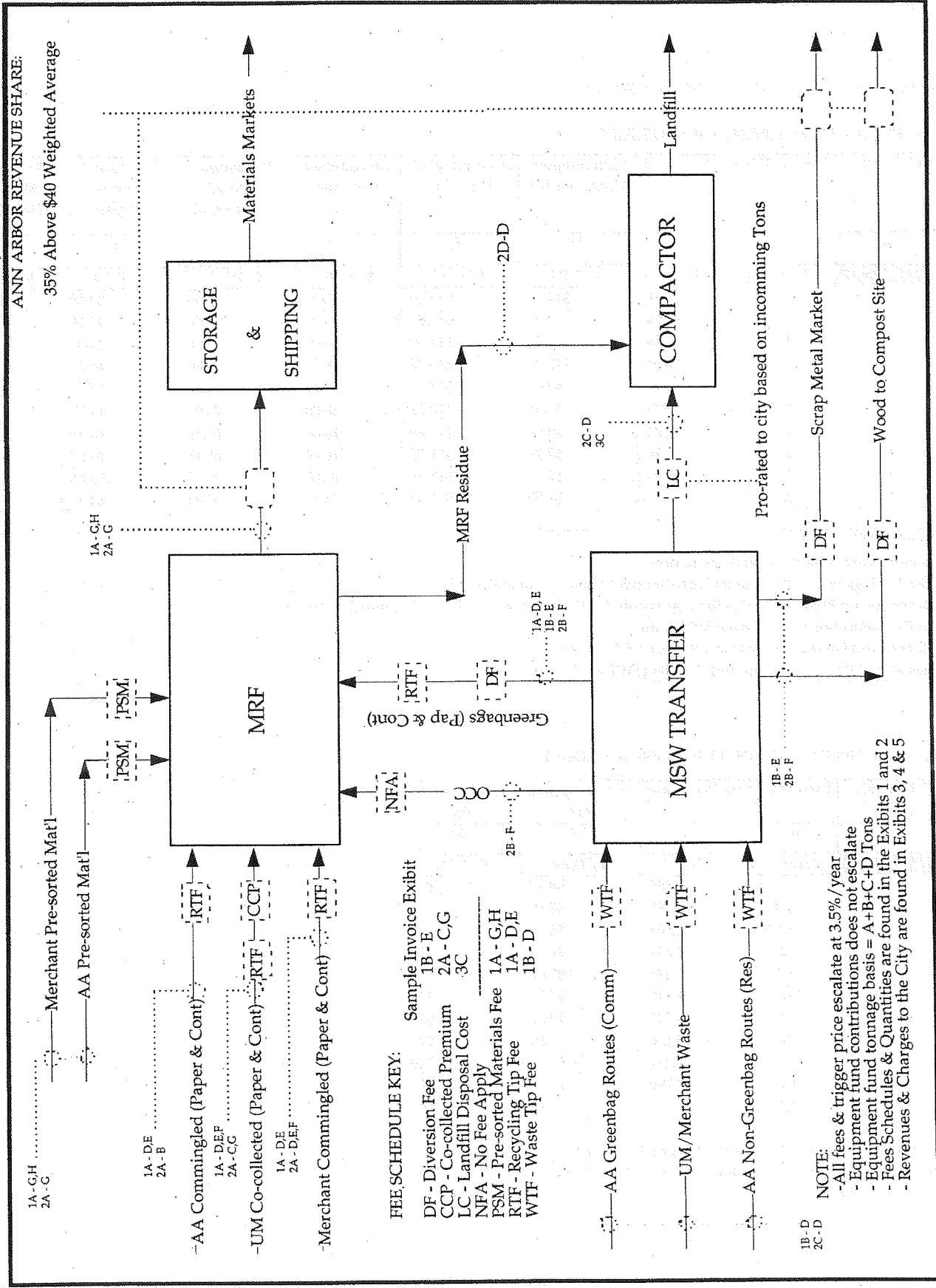
C. SAMPLE INVOICES

Sample Invoice Exhibits 2 through 5 are provided in order to provide for the necessary calculations of the Net Service Fees as described in the Operating and Management Agreement.

- Sample Invoice Exhibit 2 - Recyclables and Solid Waste Delivery Report
- Sample Invoice Exhibit 3 - Tipping, Diversion and Landfill Costs to City
- Sample Invoice Exhibit 4 - Revenue Sharing to City and Replacement Fund Report
- Sample Invoice Exhibit 5 - Monthly Invoice Summary of Net Service Fee

MRF/TS Material Flow Diagram With Fee and Revenue Designations

6/20/95



ANN ARBOR REVENUE SHARE:
35% Above \$40 Weighted Average

FEE SCHEDULE KEY:

- DF - Diversion Fee
- CCP - Co-collected Premium
- LC - Landfill Disposal Cost
- NFA - No Fee Apply
- PSM - Pre-sorted Materials Fee
- RTF - Recycling Tip Fee
- WTF - Waste Tip Fee

Sample Invoice Exhibit

- 1B-E
- 2A-C,G
- 3C
- 1A-G,H
- 1A-D,E
- 1B-D

NOTE:

- All fees & trigger price escalate at 3.5%/year
- Equipment fund contributions does not escalate
- Equipment fund tonnage basis = A+B+C+D Tons
- Fees Schedules & Quantities are found in the Exhibits 1 and 2
- Revenues & Charges to the City are found in Exhibits 3, 4 & 5

SAMPLE INVOICE EXHIBIT 1 - FEE SCHEDULES

1A - RECYCLABLES TIPPING FEE SCHEDULE

| LINE NO. | Total MRF Tons Per Month | | Commingled Container Fee | Commingled Paper Fee | Co-collected Premium | Pre-sorted Material (Containers) | Pre-sorted Material (Paper) | *Pre-sorted Material (Steel Cans) |
|----------|--------------------------|-------|--------------------------|----------------------|----------------------|----------------------------------|-----------------------------|-----------------------------------|
| A | B | C | D | E | F | G | H | I |
| | From | To | \$/TON | \$/TON | \$/TON | \$/TON | \$/TON | \$/TON |
| 1 | 0 | 938 | \$14.00 | \$15.00 | \$6.00 | \$6.50 | \$7.50 | \$10.00 |
| 2 | 939 | 1,104 | \$12.00 | \$15.00 | \$6.00 | \$4.50 | \$7.50 | \$8.00 |
| 3 | 1,105 | 1,299 | \$11.00 | \$14.00 | \$6.00 | \$3.50 | \$6.50 | \$7.00 |
| 4 | 1,300 | 1,494 | \$10.30 | \$13.76 | \$6.00 | \$2.80 | \$6.26 | \$6.30 |
| 5 | 1,495 | 1,718 | \$9.06 | \$12.75 | \$6.00 | \$1.56 | \$5.25 | \$5.06 |
| 6 | 1,719 | 1,976 | \$8.36 | \$12.27 | \$6.00 | \$0.86 | \$4.77 | \$4.36 |
| 7 | 1,977 | 2,273 | \$8.08 | \$11.88 | \$6.00 | \$0.58 | \$4.38 | \$4.08 |
| 8 | 2,274 | 2,614 | \$7.78 | \$11.57 | \$6.00 | \$0.28 | \$4.07 | \$3.78 |
| 9 | 2,615 | 3,006 | \$7.64 | \$11.38 | \$6.00 | \$0.14 | \$3.88 | \$3.64 |
| 10 | 3,007 | + | \$7.50 | \$11.33 | \$6.00 | \$0.00 | \$3.83 | \$3.50 |

From 43 TPD to 135+ TPD

Includes Greenbag Paper and Containers

PSM Savings on Tip Fee = \$7.50/Ton (Subtract From Commingled Tip Fee)

\$7.50

\$7.50

*Exception on PSM - Steel Can Savings is only \$4.00/Ton (Subtract From Commingled Tip Fee)

\$4.00

No Diversion Fee on OCC from MSW Line

All Fees and Savings Escalate at a Rate of 3.5% per Year

Escalation Date is July 1, Starting 7/1/96 (MRF & MSW)

1B - MSW TIPPING AND DIVERSION FEE SCHEDULE

| LINE NO. | Total MRF Tons Per Month | | Waste Tipping Fee | MSW Diversion Fee |
|----------|--------------------------|-------|-------------------|-------------------|
| A | B | C | D | E |
| | From | To | \$/TON | \$/TON |
| 1 | 0 | 1,865 | \$8.97 | \$20 |
| 2 | 1,866 | 2,195 | \$8.68 | \$20 |
| 3 | 2,196 | 2,582 | \$8.43 | \$20 |
| 4 | 2,583 | 3,038 | \$8.21 | \$20 |
| 5 | 3,039 | 3,574 | \$8.02 | \$20 |
| 6 | 3,575 | 4,110 | \$7.86 | \$20 |
| 7 | 4,111 | 4,727 | \$7.72 | \$20 |
| 8 | 4,728 | 5,436 | \$7.60 | \$20 |
| 9 | 5,437 | 6,252 | \$7.50 | \$20 |
| 10 | 6,253 | 7,190 | \$7.73 | \$20 |
| 11 | 7,191 | + | \$7.42 | \$20 |

All Fees and Savings Escalate at a Rate of 3.5% per Year

Escalation Date is July 1, Starting 7/1/96 (MRF & MSW)

SAMPLE INVOICE EXHIBIT 2 - RECYCLABLES AND MSW DELIVERY REPORT

2A - RECYCLING TONS DELIVERED

| Materials Delivered | City of Ann Arbor | U of M | Merchant 1 | Merchant 2 | Merchant 3 | Total Tons |
|--|-------------------|--------|------------|------------|------------|------------|
| A | B | C | D | E | F | G |
| Residential Commingled Containers | 400 | 0 | 0 | 0 | 0 | 400 |
| Commercial Commingled Containers | 0 | 0 | 100 | 0 | 0 | 100 |
| Residential Paper | 800 | 0 | 0 | 0 | 0 | 800 |
| Commercial Paper | 300 | 0 | 300 | 0 | 0 | 600 |
| CO-CC* | 0 | 17.5 | 0 | 0 | 0 | 17.5 |
| CO-CP* | 0 | 333 | 0 | 0 | 0 | 333 |
| PSM-ONP | 5 | 0 | 5 | 0 | 0 | 10 |
| PSM-OCC | 0 | 0 | 100 | 0 | 0 | 100 |
| PSM-White Ledger Paper | 5 | 0 | 5 | 0 | 0 | 10 |
| PSM-Colored Ledger Paper | 5 | 0 | 5 | 0 | 0 | 10 |
| PSM-Computer Print-out | 5 | 0 | 5 | 0 | 0 | 10 |
| PSM-Mixed Office Paper/Filestock | 5 | 0 | 5 | 0 | 0 | 10 |
| PSM-Old Magazines | 5 | 0 | 5 | 0 | 0 | 10 |
| PSM-Boxboard | 5 | 0 | 5 | 0 | 0 | 10 |
| PSM-Phonebooks | 5 | 0 | 5 | 0 | 0 | 10 |
| PSM-Textiles | 5 | 0 | 5 | 0 | 0 | 10 |
| PSM-Flint Glass | 5 | 0 | 5 | 0 | 0 | 10 |
| PSM-Brown Glass | 5 | 0 | 5 | 0 | 0 | 10 |
| PSM-Green Glass | 5 | 0 | 5 | 0 | 0 | 10 |
| PSM-Steel Cans | 5 | 0 | 5 | 0 | 0 | 10 |
| PSM-Ceramics & plate Glass | 5 | 0 | 5 | 0 | 0 | 10 |
| PSM-Aluminum Cans | 5 | 0 | 5 | 0 | 0 | 10 |
| PSM-Aluminum Foil | 5 | 0 | 5 | 0 | 0 | 10 |
| PSM-Aluminum Scrap | 5 | 0 | 5 | 0 | 0 | 10 |
| PSM-HDPE Natural | 5 | 0 | 5 | 0 | 0 | 10 |
| PSM-HDPE Colored | 5 | 0 | 5 | 0 | 0 | 10 |
| PSM-PETE | 5 | 0 | 5 | 0 | 0 | 10 |
| PSM-PVC containers | 5 | 0 | 5 | 0 | 0 | 10 |
| PSM-Aseptic Packaging | 5 | 0 | 5 | 0 | 0 | 10 |
| Co-Collected Sub-total | 0 | 350.5 | 0 | 0 | 0 | 350.5 |
| City PSM Sub-Total (Normal Rev. Share) | 110 | 0 | 210 | 0 | 0 | 320 |
| Total | 1610 | 350.5 | 610 | 0 | 0 | 2570.5 |

2B - DIVERTED TONS

| | RTF | REV. SHARE | EQUIP. REP. FUND | DF | TONS |
|----------------------------|-----|------------|------------------|----|------------|
| A | B | C | D | E | F |
| **OCC Diverted | No | Yes | Y | N | 84 |
| Greenbag Containers | Y | Y | Y | Y | 4 |
| Greenbag Paper | Y | Y | Y | Y | 81 |
| MSW Scrap Metal | N | Y | Y | Y | 27 |
| Wood | N | Y | Y | Y | 22 |
| Total Diverted Tons | | | | | 218 |

| | |
|---------------------------------------|--------|
| Fee Schedule Basis Tons | 2655.5 |
| Equipment Replacement Fund Basis Tons | 2788.5 |
| RTF Schedule Applicable Line Number | 9 |

See 4A for revenue share basis tons (total paid up tons for the period)

2C - MSW TONS - DELIVERED

| | City WTF | City LC | MSW TONS |
|------------------------|----------|---------|--------------|
| A | B | C | D |
| AA Greenbag Routes | Y | Y | 1,000 |
| AA Non-Greenbag Routes | Y | Y | 1,150 |
| UM Waste | N | N | 725 |
| Merchant Waste | N | N | 1,000 |
| TOTAL MSW TONS | | | 3,875 |

| | |
|-------------------------------------|---|
| RTF Schedule Applicable Line Number | 6 |
|-------------------------------------|---|

| | | | |
|------------------------------|---|---|----|
| 2D - TOTAL RECYCLING RESIDUE | N | N | 46 |
|------------------------------|---|---|----|

* CO-CP and CO-CC determined from weigh tickets for CO, and allocated by predetermined predictors

**OCC Diverted =

(Total Incoming MSW + MRF Residue) - (Total Landfilled Tons + Greenbag Tons + Wood + MSW Scrap Metal)

3A - RECYCLING TIPPING FEE

Applicable Rate Schedule Line No.

9

| Materials Delivered | City of Ann Arbor (TONS) | Combined Rate (\$/TON) | TOTAL |
|-----------------------------------|--------------------------|------------------------|-----------------|
| Residential Commingled Containers | 400 | \$7.78 | \$3,112.00 |
| Commercial Commingled Containers | 0 | \$7.78 | \$0.00 |
| Residential Paper | 800 | \$11.57 | \$9,256.00 |
| Commercial Paper | 300 | \$11.57 | \$3,471.00 |
| CO-CC* | 0 | \$13.78 | \$0.00 |
| CO-CP* | 0 | \$17.57 | \$0.00 |
| PSM-ONP | 5 | \$4.07 | \$20.35 |
| PSM-OCC | 0 | \$4.07 | \$0.00 |
| PSM-White Ledger Paper | 5 | \$4.07 | \$20.35 |
| PSM-Colored Ledger Paper | 5 | \$4.07 | \$20.35 |
| PSM-Computer Print-out | 5 | \$4.07 | \$20.35 |
| PSM-Mixed Office Paper/Filestock | 5 | \$4.07 | \$20.35 |
| PSM-Old Magazines | 5 | \$4.07 | \$20.35 |
| PSM-Boxboard | 5 | \$4.07 | \$20.35 |
| PSM-Phonebooks | 5 | \$4.07 | \$20.35 |
| PSM-Textiles | 5 | \$4.07 | \$20.35 |
| PSM-Flint Glass | 5 | \$0.28 | \$1.40 |
| PSM-Brown Glass | 5 | \$0.28 | \$1.40 |
| PSM-Green Glass | 5 | \$0.28 | \$1.40 |
| *PSM-Steel Cans | 5 | \$3.78 | \$18.90 |
| PSM-Ceramics & plate Glass | 5 | \$0.28 | \$1.40 |
| PSM-Aluminum Cans | 5 | \$0.28 | \$1.40 |
| PSM-Aluminum Foil | 5 | \$0.28 | \$1.40 |
| PSM-Aluminum Scrap | 5 | \$0.28 | \$1.40 |
| PSM-HDPE Natural | 5 | \$0.28 | \$1.40 |
| PSM-HDPE Colored | 5 | \$0.28 | \$1.40 |
| PSM-PETE | 5 | \$0.28 | \$1.40 |
| PSM-PVC containers | 5 | \$0.28 | \$1.40 |
| PSM-Aseptic Packaging | 5 | \$0.28 | \$1.40 |
| Total CITY RTF | 1610 | | \$16,058 |

*PSM Savings is \$4.00/Ton - not \$7.50 as is the case for other materials

AMEND 1 JF
7/18/95

3B - MSW TIPPING FEE (Weight Based)

Applicable Rate Schedule Line No. _____

6

| | | |
|---|--------|----------|
| Total MSW Tons Delivered | 3,875 | |
| Applicable Rate Schedule Line No. | 6 | |
| MRF Residue | 46 | |
| Total MSW Tons Delivered + MRF Residue | 3,921 | |
| MRF Residue / Total MSW Tons Delivered | 1.2% | |
| City MSW Tons Delivered | 2,150 | |
| City Portion of MSW Tons Delivered | 55% | |
| Diverted Tons | 218 | |
| City Tons Landfilled | 1,932 | |
| Diversion Fee | \$20 | |
| Waste (Transfer) Tipping Fee | \$7.86 | |
| | | |
| Diversion Charges - DF (Less OCC Portion) | | \$2,680 |
| Waste Transfer Tipping Charges - WTF | | \$16,899 |

3C - LANDFILL CHARGE (Volume Based)

| | | |
|---|--------|----------|
| Total Plant Volume Landfilled - CYDS | 6,760 | |
| Total Plant Weight Landfilled - Tons (From Weigh Tickets) | 3,703 | |
| Acheived Density (Lbs/CYDS) | 1,096 | |
| City Volume Landfilled (City Tons/Acheived Density) | 3,527 | |
| Landfill Tipfee (BFI Contract) | \$9.00 | |
| | | |
| Landfill Charges - LC | | \$31,743 |
| | | |
| Total Tipping and Diversion Charges to City | | \$67,379 |

SAMPLE INVOICE EXHIBIT 4 - REVENUE SHARE REPORT

Current Trigger Price (CTP) \$40
 Current City Share Percent Above Trigger (CSP) 35%

4A - MATERIALS MARKETING REPORT

| MATERIALS SOLD THIS MONTH | Total Paid Up Tons | Average \$/TON | Total Revenue Received |
|------------------------------|-----------------------|-------------------|------------------------------|
| | A | B | C |
| ONP | 45 | \$160 | \$7,200 |
| OCC | 300 | \$200 | \$60,000 |
| White Ledger Paper | 50 | \$400 | \$20,000 |
| Colored Ledger Paper | 25 | \$115 | \$2,875 |
| Computer Print-out | 25 | \$115 | \$2,875 |
| Mixed Office Paper/Filestock | 25 | \$115 | \$2,875 |
| Old Magazines | 25 | \$160 | \$4,000 |
| Boxboard | 25 | \$115 | \$2,875 |
| Phonebooks | 25 | \$115 | \$2,875 |
| Textiles | 95 | \$80 | \$7,600 |
| Flint Glass | 95 | \$50 | \$4,750 |
| Brown Glass | 95 | \$35 | \$3,325 |
| Green Glass | 95 | \$10 | \$950 |
| Steel Cans | 95 | \$20 | \$1,900 |
| Ceramics & plate Glass | 95 | \$0 | \$0 |
| Aluminum Cans | 0 | \$1,300 | \$0 |
| Aluminum Foil | 25 | \$300 | \$7,500 |
| Aluminum Scrap | 25 | \$400 | \$10,000 |
| HDPE Natural | 25 | \$640 | \$16,000 |
| HDPE Colored | 25 | \$420 | \$10,500 |
| PETE | 25 | \$540 | \$13,500 |
| PVC containers | 25 | \$300 | \$7,500 |
| Aseptic Packaging | 95 | \$70 | \$6,650 |
| TOTAL | 1315 | | \$188,550 |

Total Paid Tons is from all paid invoices received in the period

4B - COMMINGLED RECYCLABLES REVENUE SHARE

| | | |
|--|-----------|-----------------|
| Total Revenue Received | \$188,550 | |
| Total Recyclables Aquisition Cost | \$10,000 | |
| Total Marketing/Transportation Cost | \$5,000 | |
| Net Revenue (NR) | \$173,550 | |
| Weighted Average Tons Basis (WATB = Total Paid Tons) | 1,315 | |
| Weighted Average Price Per Ton (WAPPT = TSR / WATB) | \$132 | |
| Weighted Average Sharable Price (WASP = WAPPT - CTP) | \$92 | |
| City Share Price Per Ton (CSPTT = WASP X CSP) | \$32 | |
| City Normal Revenue Share | | \$42,333 |

4C - EQUIPMENT REPLACEMENT FUND REPORT

| | |
|--|----------------|
| Basis Tons | 2,789 |
| Contractor Contributions Rate | \$1.25 |
| City Contribution Rate | \$1.25 |
| Contractor Contribution Current Month | \$3,486 |
| City Contribution Current Month | \$3,486 |
| Contractor Make-up for City Short Fall | \$0 |
| Total Contributions - Current Month | \$6,971 |

| | |
|--------------------------------------|----------------|
| Starting Cumulative Balance | \$0 |
| Approved Withdrawals - Current Month | \$0 |
| Ending Cumulative Balance | \$6,971 |

| | |
|-------------------------------------|------------|
| Approved Withdrawals to Date | \$0 |
|-------------------------------------|------------|

SAMPLE INVOICE EXHIBIT 5 - TS MONTHLY INVOICE SUMMARY

5A - TRANSFER STATION NET SERVICE FEE

| | |
|--------|--|
| NSF-TS | Net Service Fee (City Pays if Fee is Negative) |
| WTF | Waste (Transfer) Tipping Fees |
| DF | Diversion Fee |
| LC | Landfill Charges |
| TSDC | Transfer Station Damages Credit |
| MC | Merchant Activity Credit |
| TSPP | Transfer Station Prior Period Adjustment |

$NSF-TS = (TSDC+MC)-(WTF+DF+LC)+TSPP$

| | | | |
|------------|----------|----------|--|
| WTF | | \$16,899 | |
| DF | | \$2,680 | |
| LC | | \$31,743 | |
| TSDC | \$0 | | |
| MC | \$10,000 | | |
| TSPP | \$0 | | |
| Sub-totals | \$10,000 | \$51,322 | |

| | | | |
|--------------------|--|--|------------|
| TS Net Service Fee | | | (\$41,322) |
|--------------------|--|--|------------|

SAMPLE INVOICE EXHIBIT 5 - MRF MONTHLY INVOICE SUMMARY

5B - MRF NET SERVICE FEE

| | |
|---------|--|
| NSF-MRF | Net Service Fee (City Pays if Fee is Negative) |
| RTF | Recyclables Tipping Fees |
| CRS | City Revenue Share |
| MRFDC | MRF Damages Credit |
| MRFPP | MRF Prior Period Adjustment |

$NSF-MRF = (CRS+MRFDC)-(RTF)+MRFPP$

| | | | |
|------------|----------|----------|--|
| RTF | | \$16,058 | |
| CRS | \$42,333 | | |
| MRFDC | \$0 | | |
| MRFPP | \$0 | | |
| Sub-totals | \$42,333 | \$16,058 | |

| | | | |
|---------------------|--|--|----------|
| MRF Net Service Fee | | | \$26,275 |
|---------------------|--|--|----------|

SCHEDULE 9

EQUIPMENT COVERED BY CAPITAL REPLACEMENT FUND

| 3000 | PROCESSING EQUIPMENT | REPLACEMENT FUND VALUE |
|-------------------------------------|--|---------------------------|
| 3010 | GLASS AND CANS | |
| 3020 | Glass Crusher | \$18,743 |
| 3030 | B&C Air Classifier | \$4,858 |
| 3040 | Glass Air Classifier #1 | \$2,666 |
| 3042 | Glass Trommel B2 | Info in GC |
| 3044 | Glass Trommel A2 | \$8,659 |
| 3050 | B&C Scalping Magnet | \$16,947 |
| 3100 | PAPER | |
| 3101 | Baler | \$367,235 |
| 3200 | SOLID WASTE | |
| 3201 | Trash Compactor | \$211,629 |
| 3300 | MISCELANEOUS | |
| 3301 | Waste oil tank and battery storage equipment | \$17,222 |
| 3500 | CONVEYORS | |
| 3501 | GLASS & CANS | |
| 3505 | Receiving #1 B&C Conveyor | \$13,294 |
| 3510 | Main Feed #1 B&C Conveyor | \$13,491 |
| 3520 | Sorter #1 B&C conveyor | \$7,294 |
| 3525 | Sorter #2 B&C conveyor | \$4,868 |
| 3530 | Glass Cullet conveyor | \$5,114 |
| 3535 | Glass Crusher Feed Conveyor | \$8,883 |
| 3540 | Glass Residue Conveyor | \$3,525 |
| 3550 | Glass Return Conveyor | \$3,522 |
| 3555 | Glass Transfer Conveyor CR-507 | \$2,964 |
| 3560 | Bin Discharge conveyor CR-504 | \$9,443 |
| 3700 | PAPER | |
| 3705 | Receiving #2 Paper Conveyor | \$27,211 |
| 3710 | Sorter #2 Paper Conveyor | \$13,074 |
| 3715 | Baler Feed conveyor #2 | \$25,711 |
| 3720 | Bunker Conveyors (5) | \$62,500 |
| 3725 | Baler Feed conveyor #1 | \$40,611 |
| 3800 | SOLID WASTE | |
| 3801 | Compactor Feed conveyor | \$22,703 |
| 3810 | MSW Receiving Conveyor | \$36,075 |
| 3815 | MSW Sorting conveyor | \$13,320 |
| 3820 | MSW Scalping conveyor | \$13,875 |
| 3825 | MSW Cardboard (1 conv) | \$15,818 |
| 8000 | ROLLING STOCK | |
| 8010 | Payloader | \$117,907 |
| 8020 | Skid Steer | \$25,833 |
| 8030 | Sweeper for skid steer | \$5,741 |
| 8100 | Forklift | \$21,814 |
| 8200 | Lawnmower | \$455 |
| 8300 | Rolloffs (2) | \$6,589 |
| 8400 | 4 cubic yard mobile containers (2) | \$3,444 |
| 8500 | Used yardhorse | \$17,222 |
| TOTAL REPLACEMENT FUND VALUE | | \$1,190,556 |

EXHIBIT A

**AMENDMENT TO
AGREEMENT FOR PROFESSIONAL SERVICES
BETWEEN
RESOURCE RECOVERY SYSTEMS, INC.
AND
THE CITY OF ANN ARBOR**

The MRF Operating and Management Agreement originally executed November 1, 1993, between the City of Ann Arbor, a municipal corporation, 100 N. Fifth Avenue, Ann Arbor, Michigan 48107-8647 ("City") and Resource Recovery Systems, Inc., having its offices at 50 Main Street, Centerbrook, Connecticut 06409 ("Contractor") is hereby amended as follows:

1. The provisions cited below are amended to read as shown in Exhibit A (attached).
2. All provisions of the original agreement between the parties executed in the original agreement dated November 1, 1993 and as amended on June 5, 1995 and August 7, 1995, continue in full force and effect unless specifically changed by this amendment. In the event that there is any inconsistency between this amendment and the 1993 contract as amended on June 5, 1995 and August 7, 1995, this amendment will control.
3. This amendment to the agreement between the parties originally executed November 1, 1993, shall be binding on successors or assigns of the parties.
4. This is the entire agreement of the parties and all other understandings, assurances or statements are void. This agreement may only be modified through a written agreement, signed by both parties.
5. This amendment takes effect July 1, 1998.

**Amendment to Operating Agreement
Between
City of Ann Arbor and Resource Recovery Systems, Inc.
to take effect 7/1/98**

The proposed additions "underlined" and deletions "~~cross-outs~~" to the MRF/TS Operating Contract are highlighted below.

Section 1.01: Definitions

"Acceptance Date" means the date of the MRF/TS acceptance is accepted in accordance with the Construction this Operating Contract which is September 22, 1995.

"Direct Costs" means, in connection with any cost or expense incurred by either Party pursuant to the terms of this Contract, the sum of (A) the product of (i) the costs of the Party's payroll directly related to the performance of any obligation of a Party pursuant to the terms of this Contract, consisting of compensation and fringe benefits, including vacation, sick leave, holidays, retirement, Worker's Compensation Insurance otherwise provided by either Party pursuant to the provisions of Article X, Federal and State unemployment taxes and all medical and health insurance benefits, times (ii) 1.10, plus (B) the product of (i) payments of reasonable costs to subcontractors necessary to and in connection with the performance of the obligation times (ii) 1.075 for supervision of the subcontractors, plus (C) the costs of materials, services, direct rental costs and supplies purchased (equipment manufactured or supplied by the Contractor or its Affiliates shall be considered purchased materials at its actual invoice cost, provided the cost is an arm's length fair market value cost), times (ii) 1.10, plus (D) the costs of travel and subsistence incurred by any employee of the Party.
Summarized, Direct Cost is the sum of

(A) = (Payroll, Benefits & Payroll Taxes) x 110%
(excludes supervision)

(B) = (Subcontractor Costs) x 107.5%

(C) = (Materials, Services, Rental & Supplies) x 110%

(D) = Travel & Subsistence

Items eligible for Direct Cost Payment are:

- Allowed Transportation Deduct from Product Revenues
- Additional Hours of Operation at City Request
- Drawdowns from Capital Repair and Capital Replacement Accounts
- ~~the Equipment Replacement Fund~~
- Determination of non-conforming loads
- Remediation for Unacceptable Waste
- Special Recyclable Material Sorts
- Special Solid Waste Sorts
- Performance Testing
- City share of negative Net Revenues
- Termination
- Delivery to alternative location during shutdown

Design Change when Firm Price Cannot be Agreed on
Freedom of Information Act Requests

"Operating and Maintenance Manuals" means drawings, diagrams, schematics, instructions, parts lists, schedules, procedures, preventative maintenance checklists and other literature and/or protocols provided by equipment suppliers or subcontractors or developed by the Contractor during the term of the Operating and Management Contract to provide guidance in and define minimum performance requirements for operating, maintaining and repairing all major equipment and other mechanical, electrical and instrumentation and control systems installed in the facility and for the building, building site and all other fixtures.

"Pass Through Taxes" means federal, state and local sales, use and value added taxes, personal property taxes, and any land rental or real estate taxes which arise out of and directly from the performance of this Operating and Management Contract or which relate to the MRF/TS or MRF/TS Site or any environmental or other taxes, fee or levies, imposed on the Contractor as a processor or hauler of Recyclable Material or Solid Waste at the MRF/TS. Payroll taxes and taxes on income are not Pass Through Taxes. The Contractor shall not be reimbursed for any Pass Through Tax as defined in this Agreement that are incurred or become due after June 30, 1998.

Section 2.01: Overall Responsibilities

- Schedule 9: Maintenance Log and Renewal/Replacement Schedule

Section 2.07: Operation and Maintenance Manuals

Current versions of the Operations and Maintenance Manuals shall be kept at the MRF/TS site, at the Contractor's Corporate Headquarters and at the City's offices. Revised Operations and Maintenance Manuals, consistent with the requirements of this Contract, shall be filed with the City no later than July 1, 1998. The "As-Built" drawings (both hard copy and electronic CAD files) shall be considered part of the Operations and Maintenance Manuals and, as such, are required to be kept at each of the above specified locations.

Operation and Maintenance Manuals shall include detailed preventative maintenance procedures and protocols that are consistent with manufacturer's recommendations and industry best practices. Operation and Maintenance Manuals shall provide guidance in and define minimum performance requirements for operating, maintaining and repairing all major equipment and other mechanical, electrical and instrumentation and control systems installed in the facility and for the building, building site and all other fixtures.

Section 2.08: Maintenance Logs

The Contractor shall keep daily records of repairs and maintenance performed on all equipment, building, site improvements and fixtures at the MRF/TS Site including all preventative maintenance tasks as specified in the Operations and Maintenance Manuals. The format of the Maintenance Log and associated procedures for its use shall be approved by the City and be substantially in the form identified in Schedule 9 (Maintenance Log and Renewal/Replacement Schedule). A copy of the summary sheets for these records, certified to be true and accurate by the on-site Facility Manager an authorized representative of the Contractor familiar with the operation and maintenance of the MRF/TS, shall be delivered to the City monthly as part of the Monthly Invoice, within seven (7) Days after the last Day of each month.

The Contractor will employ a full time diesel mechanic on-site at the facility for the remaining life of the Contract. If the Contractor does not have a full time diesel mechanic on staff due to vacancy then they shall immediately engage in a hiring process that can reasonably be expected to allow the Contractor to fill that position.

Section 2.10: Capital Repair and Capital Replacement Accounts

Note -- the following section 2.10 has been reorganized due to the scope of revisions. The general organization is a) items common to all b) description of accounts and deposits c) and d) Capital Repair Account; e) Capital Replacement Account and f) reports on the accounts.

(a) ~~former (b)~~ The Contractor is obligated to keep all components of the rolling stock, Major Equipment, MRF structure and the MRF site in good condition and working order at all times during the life of the Contract and be in compliance with all aspects of Section 2.04 (Facility Equipment and Spare Parts).

~~former (b) ii~~ If an Acceptance or Performance Test or inspection shall demonstrate that any component of the MRF/TS is missing, not in good repair, in need of replacement, substantially different from that identified in Schedule 2 (Construction Contract) as modified by any Design Changes under Article IX of this Contract, or impairs the Contractor's ability to meet its performance guarantees, including reasonable compaction rates for solid waste, then an Event of Default may be declared as per Section 12.02 (g).

(b) (a) The City shall establish ~~a two~~ separate investment accounts for the purpose of accumulating deposits and earnings ~~in a fund reserve~~ as needed for equipment ~~repair renewal~~ or replacement as provided for in this Section. The first account shall be known as the Capital Repair Account. The second account shall be known as the Capital Replacement Account. For the life of this contract, money expended from these accounts shall only be released for actual expenses. Deposits into these this accounts shall be made based on the following schedule.

(i) ~~Deposits shall be made by the Contractor into the Capital Repair Fund no later than 30 days after the last day of each month during the entire term of the contract at a rate of \$1.25 (one dollar and twenty five cents) for every ton of recyclable material received at the facility.~~

Effective July 1, 1998, deposits shall be made by the City into the Capital Repair Account no later than 30 days after the date of the invoice submitted for each month during the entire remaining term of the contract at a rate of \$3.00 (three dollars) for every ton of Merchant Solid Waste received at the facility including Merchant Solid Waste loads that are run over the Mixed Waste Sorting Line. The \$3.00 figure shall remain fixed for the remaining term of the Contract.

(ii) ~~Deposits shall be made by the City into the Capital Repair Account no later than 30 days after the last day of date of the invoice submitted for each month during the entire term of the contract at a rate of \$1.25 (one dollar and twenty five cents) for every ton of City recyclable material received at the facility. The \$1.25 figure shall remain fixed for the remaining term of the Contract. The fund balance of the Capitalized Renewal and Replacement Fund as of July 1, 1998 shall be credited to the Capital Repair Account.~~

(iii) — During any one-month period when the City's per ton revenue sharing as provided for in Section 6 falls below \$1.25 then, for non-City of Ann Arbor tons, the Contractor shall make up the difference in their own deposit to the Capital Repair Fund account for the full \$1.25 per ton City deposit requirement. Under these circumstances the City shall continue to make the required deposit for City tons only.

(iii) Effective July 1, 1998, deposits shall be made by the City into the Capital Replacement Account no later than 15 days after the first day of each month during the remaining term of the contract at a rate of \$6,250.00 (six thousand two hundred fifty dollars). This figure shall remain fixed for the remaining term of the Contract.

(iv) The City reserves the right to make additional Deposits in either account at its sole discretion.

(v) The Contractor reserves the right to make additional Deposits in either account at its sole discretion.

(c) During the first ten years of this Contract up until September 21, 2005, the Contractor shall not be entitled to reimbursement from the Capital Repair Account account except for renewal, replacement and/or repair of the following major rolling stock items (Skid Steer, Yard Tractor, Forklift, Wheel Loader) and only upon thirty (30) Days prior written notice of reimbursement request to the City no more than sixty (60) days after incurring the expenses and receiving an invoice for the repair in order for any of these expenses to be eligible for reimbursement from the Capital Repair Account and of the request in order to obtain the required consent of the City. City's permission which shall not be unreasonably withheld. The Contractor may submit proposals for planned Capital Repair Account purchases in order to enable City purchase of these items as long as the procedures described in Section 2.10 (e) are followed as required to access the City procurement process.

In providing its consent the City shall consider the original expected life of the equipment, the status of reported repairs and preventative maintenance on the equipment, the actual versus planned repair for the items, and the actual rate of use of the equipment compared to the original design capacity. The written notice of reimbursement request shall include the following, at a minimum: items to be replaced and repaired, original expected life of the items, repair and preventative maintenance history on the items, actual versus original design capacity for the items, actual versus planned repair for the items, Direct Cost of replacement, or repair, and the new useful life of the replaced, or repaired items.

If these requirements for timing and content of the written notice of reimbursement request are not met then the City is not obligated to act on the request until all required information is provided. The City shall be entitled to draw upon the account upon ten Days written notice to the Contractor to make reasonable expenditures for the renewal repair or replacement of any and all components of the MRF/TS or any Capital Repair as defined in this Contract. Funding for expenditures that are covered by the Contractor obligation to keep the MRF/TS in good working order at all times during the life of the Contract, will not be granted except for the aforementioned. Nor will funding requests for repair and replacement of equipment that is leased by the Contractor be granted unless that equipment is listed in Schedule 9 (Maintenance Log and Renewal/Replacement Schedule).

(d) After the first ten years of this Contract, effective September 22, 2005, the Contractor shall be entitled to reimbursement from the Capital Repair Account account for the purpose of funding the renewal, replacement and/or repair of any and all Major Equipment purchased and installed at the MRF/TS that is identified in Schedule 9 (Maintenance Log and Renewal/Replacement Schedule) only upon thirty (30) Days prior written notice of reimbursement request to the City no more than sixty (60) days after incurring expenses and receiving an invoice for the repair in order for any of these expenses to be eligible for reimbursement from the Capital Repair Account and of the withdrawal in order to obtain the required consent of the City City's consent which shall not be unreasonably withheld. The Contractor may submit proposals for planned Capital Repair Account purchases in order to enable City purchase of these items as long as the procedures described in Section 2.10 (e) are followed as required to access the City procurement process.

In providing its consent the City shall consider the original expected life of the equipment, the status of reported repairs and preventative maintenance on the equipment, the actual versus planned repair for the items, and the actual rate of use of the equipment compared to the original design capacity. The written notice of reimbursement request shall include the following, at a minimum: items to be replaced and-repaired, original expected life of the items, repair and preventative maintenance history on the items, actual versus original design capacity for the items, actual versus planned repair for the items, Direct Cost of replacement or repair, and the new useful life of the replaced or repaired items. The City shall be entitled to draw upon the account upon ten Days written notice to the Contractor to make reasonable expenditures for the renewal repair or replacement of any and all components of the MRF/TS or any Capital Repair as defined in this Contract.

Should the balance of funds in the Capital Repair Account fall to \$0.00 then the City shall halt any further reimbursements from the Account and shall have no obligation for reimbursement of any Contractor requests as specified in this section until such time as sufficient funds are again available in the Capital Repair Account to cover such requests. Upon termination or expiration of this Contract, all funds remaining in the Capital Repair Account account shall become available for unrestricted use by the property of the City.

(e) (i) The Capital Replacement Account shall be used by the City with the advice and recommendation from the Contractor for the purpose of funding replacement of any and all Major Equipment purchased and installed at the MRF/TS and that has a replacement cost budgeted and scheduled in Schedule 9 (Maintenance Log and Renewal/Replacement Schedule). Replacement is defined to include major rebuild of an item that would incorporate a complete overhaul of all components of that item and extend the useful life of that item for a period of time approximately equivalent to the useful life of the original item to be replaced when it was first installed at the MRF/TS.

The Contractor shall provide written notice to the City no less than thirty (30) days prior to incurring expenses for the renewal or replacement of any component of the MRF/TS in order for any of these actual expenditures to be eligible for reimbursement from the Capital Replacement Account, and in order to obtain the required consent of the City City's consent which shall not be unreasonably withheld. The City shall notify the Contractor within fifteen (15) days of receipt of the written notice that the notice is considered to be administratively complete and then shall within fifteen (15) additional days either deny the request or submit the request to City Council or the City Administrator for approval pursuant to regular City procedures as defined below.

In providing its consent the City shall consider the original expected life of the equipment, the status of reported repairs and preventative maintenance on the equipment and the actual rate of use of the equipment compared to the original design capacity. The written notice shall include the following, at a minimum: items to be replaced or renewed, original expected life of the items, repair and preventative maintenance history on the items, actual versus original design capacity for the items, actual versus planned replacement for the items, Direct Cost of replacement or renewal, and the new useful life of the items.

If these requirements for timing and content of the written notice are not met then the City is not obligated to act on the request until all required information is provided. When a piece of equipment identified in Schedule 9 (Maintenance Log and Renewal/Replacement Schedule) is replaced by the Contractor, the Contractor may propose to do so through either a lease/purchase or outright purchase either lease or purchase of that equipment, provided, however, that at the termination of the Contract the City will have all rights to ownership of that equipment including any modifications made during the course of the Contract absent any ongoing financial obligation, liens or other liabilities.

To complete the replacement of any approved items as defined above, the Contractor will prepare technical specifications for the equipment to be replaced (equivalent or better than the original specification for that equipment) subject to City review and approval of content and form. The procurement process shall be the City's procurement process or a process approved by the City. The City may, at its own discretion, procure the specified equipment through the City's own purchasing process. To the extent practical the City will cooperate with the Contractor to have the actual purchase made directly by the City.

Under no circumstances shall the City reimburse the Contractor from the Capital Replacement Account at a rate that is faster than the total annual budgeted amounts identified each year in Schedule 9 (Maintenance Log and Renewal/Replacement Schedule) for the specific line item obligations identified. The Contractor can allocate the total annual budgeted amounts between the line item obligations for that year as it sees fit in fulfilling its obligations for equipment replacement under this section for that year. The total annual budgeted amounts identified in Schedule 9 (Maintenance Log and Renewal/Replacement Schedule) shall accrue to the Account for future use should they not be expended as budgeted. Should these unexpended funds exist, Contractor may propose to the City additional unbudgeted replacement projects for reimbursement from those unexpended funds, approvals of which shall not be unreasonably denied.

The City shall be entitled to draw upon the Capital Replacement Account upon ten days written notice to the Contractor to make reasonable expenditures for the replacement of any and all components of the MRF/TS or any Capital Repair as defined in this Contract. The written notice shall include items to be replaced, shall consider the original expected life of the equipment and its rate of usage and shall provide the City's rationale for the expenditure of the funds. The Contractor may submit proposals for other expenditures outside of the budgeted amounts from the Capital Replacement Fund for the replacement of any and all components of the MRF/TS as defined in this Contract, which proposals the City may consider and either approve or deny at its own discretion. The City understands that these Contractor proposals may include proposals for tipping floor surface replacement, building mechanical system replacement and site pavement resurfacing, approvals of which shall not be unreasonably denied

Any revenues received by the City from the salvage value of replaced equipment and rolling stock shall be placed in the Capital Replacement Account or used to reduce the cost of acquiring the replacement equipment. Upon termination or expiration of this Contract, all funds remaining in the Capital Replacement Account shall become available for unrestricted use by the City.

(f) (e) A quarterly reporting and reconciliation of the fund shall be prepared by the City and provided to the City Administrator and the Contractor within 30 days of the conclusion of each quarter and in annual summary form within 60 days of the conclusion of each fiscal year.

Section 2.12: Records and Reports

The Contractor shall provide the City with monthly reports submitted with the monthly invoice within twenty-one (21) Days of the end of each month, including but not limited to the following operating data: scheduled Operating Days, Days of actual operation, changes in MRF/TS operation, quantity of unprocessed Recyclable Materials delivered and accepted at the MRF/TS, type and quantity of each Recyclable Material accepted, marketed and processed or disposed of, quantity of Product delivered to and identity and address of Purchaser, Product Revenues and Net Product Revenues received (broken down by type of material), maintenance summary including appropriate summary sheets from the full maintenance log, accounts payable report including name of vendor, amount owed, and aging of invoices; and anticipated operating schedule for the next month. All data included in reports to the City shall be broken down into three categories (City of Ann Arbor, University of Michigan and Other).

Section 3.01: Life of Contract

This Contract shall commence as of the date it was entered into by the Parties. The Parties' obligations as to delivery, processing and sale or disposal of Recyclable Material and Solid Waste shall be for a period beginning on the Acceptance Date of September 22, 1995 and extending for twenty (20) years thereafter until September 21, 2015 unless terminated earlier in accordance with Article XIII, or renewed in accordance with this Article III.

Section 5.04: Remedies for Failure of Contractor to Meet Guaranteed Facility

Capacity

If Contractor during any Operating Day, Week, Month or Year fails to accept sufficient Recyclable Material or Solid Waste to meet the respective Guaranteed Facility Capacity during any Operating Month for reasons other than the occurrence of an Uncontrollable Circumstance or the failure of the City to provide sufficient Recyclable Material or Solid Waste, then Contractor is responsible for damages equal to sixty dollars (\$60.00) times the number of tons not accepted. Additionally, if Contractor fails to process at the MRF/TS all accepted Recyclable Materials, it shall pay the City an amount equal to the City's per ton revenue share for all tons sold during the immediately preceding calendar month times the number of tons accepted but not processed at the MRF/TS.

Contractor will guarantee that the compactor will be available to process at least 95% of all annual solid waste tonnage (total solid waste delivered less any materials recovered through the MSW sorting system) from the City and that the achieved compaction density shall be at 930 pounds per cubic yard or greater. Should the Contractor fail to

achieve either or both of these criteria the Contractor shall take all steps necessary to restore the compactor performance as defined above as soon as practicable. The Contractor will be granted in any given Billing Year a credit earned from the prior Billing Year only if in the prior Billing Year the difference between the percentage of MSW actually compacted and 95% is greater than zero. The credit will be equal to this difference. For any uncompactied tonnage delivered to the designated landfill in excess of the annual maximum, RRS shall reimburse the City an amount equal to the City's additional Landfill Charges over and above the Landfill Charges that would have been paid at the density rates for compacted waste as shown in the fiscal year average billings as provided for in Schedule 8 (Sample Invoice and Tipping Fee Schedule) or at 930 pounds whichever is lower. The City has the option to direct haul its solid waste should the compactor not be operating. In the event that the compactor is not available to process at least 95% of all solid waste tonnage delivered by the City then the Contractor will not be liable for the payment of damages to the City for the amount of waste not compacted. In this event, the Contractor will use its best efforts to restore the compactor to servicable conditions as soon as practicable in which the compactor can reasonably be expected to meet the performance conditions described in this section.

Section 5.06: Performance Guarantee

The Surety Bond provided by the Contractor to the City pursuant to Section 6.02 of the Construction Contract shall remain in full force and effect until passage of the Acceptance Test. Upon passage of the Acceptance Test, the amount of the Surety Bond shall be reduced to Nine Hundred Thousand Dollars (\$900,000.00).

The Surety Bond shall be for one year in the form attached as Schedule 6 (Performance Bond or Letter of Credit) and shall be extended annually up until July 1, 1998, for the term of the Contract. The Surety Bond guarantees the Contractor's full and faithful performance of this Operating Contract. At least sixty (60) days prior to its expiration the City and Contractor shall receive an irrevocable commitment from the bonding company to renew the Surety Bond. In the event that such notice is not received the Contractor will have the responsibility and right to pursue remedial action for 30 days. If at the end of thirty (30) days a commitment for a suitable bond or Letter of Credit has not been put in place such event shall constitute an event of default by the Contractor.

~~In the event the Contractor has elected to provide letters of credit in lieu of a Surety Bond subsequent to Substantial Completion and prior to commencement of Acceptance Testing under the Construction Contract, Effective July 1, 1998, the Contractor shall, as of the Acceptance Date, deposit with the City a Letter of Credit letters of credit in the aggregate amount of Nine One Hundred Thousand Dollars (\$9 100,000.00) in the form as set forth in Schedule 6 (Performance Bond or Letter of Credit), which Letter of Credit letters of credit shall guarantee the full and faithful performance of this Operating Contract.~~

~~The Contractor may upon thirty (30) Days notice to the City substitute the letters of credit in the form contained in Schedule 6 (Performance Bond or Letter of Credit) for the Performance Bond required by this Contract and vice versa.~~

Drawing down against letters of credit or the Performance Bond by the City may be done solely and strictly in accordance with the terms and conditions.

Certification by the City as to the conditions precedent for, and/or drawing down against, the letter of credit or the Performance Bond shall not create or give rise to a presumption of breach or default by Contractor in any legal action brought by or against Contractor.

In the event the Contractor shall challenge or dispute the entitlement of the City to draw down against the letters of credit or the Performance Bond or the amount of the drawdown and the challenge or dispute is resolved in favor of the Contractor, the Contractor shall be entitled to repayment in full of the amount of the drawdown that it is finally decided Contractor is entitled to, plus interest thereon computed from the date for the drawing down to the date of repayment at the posted prime rate for Chase Manhattan (Bank) plus one percentage point together with any reasonable court costs, court-awarded damages and attorney fees Contractor may have incurred in disputing or challenging the drawing down; provided, however, that the interest shall not be payable for any drawdowns taken in accordance with the terms of the letters of credit or the Performance Bond as a result of the City not receiving notice that the issuing bank intends to renew the letters of credit or the Performance Bond.

In the event the Contractor shall challenge or dispute the entitlement of the City to damages and the City elects not to draw down on the letter of credit or the Performance Bond and the challenge or dispute is resolved in favor of the City, the City shall be entitled to payment in full of the amount of the drawdown plus interest computed from the date of the breach giving rise to the liability for the damages computed at the posted prime rate for Chase Manhattan (Bank) plus one percentage point together with any court costs, court-awarded damages and attorney fees the City may have incurred in obtaining judgment or an arbitrator's decision supporting the City's claim for the damages.

Section 6.01: Payments to be Made

In consideration of the performance by the Contractor of its obligations under this Operating Contract, the City will pay Contractor:

- (a) the Net Service Fee in accordance with Section 6.02.
- (b) Pass Through Taxes. Contractor shall promptly notify the City of the imposition of, or attempted imposition of, any Pass Through Tax, and the City shall have the right to contest, at its expense, the imposition of any Pass Through Tax. Contractor shall take steps as may be necessary to assure that Contractor and its Subcontractors, suppliers, and major equipment vendors provide any information or data necessary to qualify for any available tax exemption or tax refund or drawback in connection with Pass Through Taxes. The Contractor shall not be reimbursed for any Pass Through Tax as defined in this Agreement that are incurred or become due after June 30, 1998.

The City shall assume all lease payments due after June 30, 1998 for the Compactor and be granted full title to the Compactor by the Contractor subject to the terms of the leasing contract and receipt of all completed and signed assignment documents necessary for the transaction. At that time, the City will indemnify the Contractor for lease payments due after all obligations have been met.

After June 30, 1998, i) the City will become obligated, upon submittal of a monthly invoice and background documentation by the Contractor, for all utilities including water, sewer, gas, electricity as required for the City to operate and provide services in the MRF Education Center for the remaining term of the Contract (all prior City obligations for these costs are waived by the Contractor); ii) the City shall transfer title for the Mack Yard Tractor to the Contractor and costs for renewal, replacement and/or repair of the Yard Tractor will no longer be eligible for reimbursement from the Capital

Repair Fund or the Capital Replacement Fund; and iii) the City agrees to provide for twenty street sweepings of the paved MRF/Transfer Station lot per year at an average of twice per month from March through December with those sweepings exempted from any fees at the MRF/Transfer Station.

Section 6.02: Net Service Fee

In consideration of the performance by the Contractor of its obligations under this Operating Contract, the City will pay Contractor the Net Service Fee on a monthly basis:

(c) **Tipping Fees.** Tipping Fees in the amounts identified for specific quantities of each class of Recyclable Material and Solid Waste identified in Schedule 5 (Contractor's Proposal) as determined by the tipping fees and formulas identified in Schedule 8 (Sample Invoices and Tipping Fee Schedule). These Tipping Fees for the City are determined by the actual quantity of all materials delivered to the facility whether from City trucks or other sources, as set forth in Schedule 5 (Contractor's Proposal) and Schedule 8 (Sample Invoices and Tipping Fee Schedule).

The City and the University shall be the sole beneficiary of the graduated Tipping Fee structure in Schedule 8 (Sample Invoices and Tipping Fee Schedule), and exempt from any Merchant Activity Fees, provided, however, that the University of Michigan Medical Center shall not be exempt from any Merchant Activity Fees. shall have a one year long period, beginning on the Acceptance Date, during which the graduated tip fee schedule will be made available and all Recyclable Materials exempted from the merchant credit fee, if and only if a service contract between the Medical Center and the Contractor is signed during that period with a term that meets or exceeds the City's 10 year contract expiration date.

(d) **Diversion Fee.** The Diversion Fee is the Charge per Ton of Recyclable Material removed from the Solid Waste Sorting Line as provided for in Schedule 8 (Sample Invoices and Tipping Fee Schedule) except that no Diversion Fee shall be charged for removal of OCC from the Solid Waste Sorting Line. The quantity of OCC removed from the Solid Waste Sorting Line shall be determined by actual bale count and average bale weight for purposes of calculating any payments to be made under this Section.

(g) **Merchant Activity Credit.** A credit will be made to the Net Service Fee to reflect any Merchant Activity Compensation to the City based on contributions to debt retirement in the form of a royalty as identified in Schedule 5 (Contractor's Proposal) for solid waste tipped at the facility only as provided for in Schedule 8 (Sample Invoices and Tipping Fee Schedule). Effective July 1, 1998, this Merchant Activity Compensation for solid waste tipped at the facility shall be reduced to \$3/ton. The City shall pay this amount into the Capital Repair Fund as provided for in Section 2.10. Tonnage from all Merchant loads tipped at the Solid Waste tipping area of the Facility shall be used in calculating the Merchant Activity Compensation.

Section 6.03: Revenue Sharing.

After Acceptance, Net Revenues received from the sale of all Products shall be shared as follows:

(a) The Contractor shall retain the first \$40 per Ton in Net Revenues from the sale of all Product derived from all Recyclable Materials. This \$40 per Ton trigger price will be escalated annually at the same rate as the Tipping Fees as set forth in Schedule 8

(Sample Invoices and Tipping Fee Schedule).

(b) The Contractor shall credit the City for 35% of the Net Revenues above \$40-per Ton the Per Ton trigger price from the sale of Product derived from all Recyclable Materials.

(c) In the case of Negative Revenue the following provisions shall apply:

(i) No Product shall be landfilled without specific authorization from the City as provided for below.

(ii) If a Product has a Negative Revenue for four (4) consecutive months the Contractor shall market the any Product derived from City delivered Tons, even if that Product has a Negative Revenue, without charge to the City except for the tipping fees charged for originally receiving the material as provided for in Schedule 8 (Sample Invoices and Tipping Fee Schedule) except as described below in this Section.

Notwithstanding the provisions of this Section, mixed broken glass cullet, also known as aggregate, will always be marketed without charge to the City regardless of its Negative Revenue status.

(iii) If a Product, other than batteries or aggregate, has had a Negative Revenue for six (6) consecutive months or four consecutive full shipments (whichever of these two covers a shorter time period) then If after the above period a Product continues to have a Negative Revenue, the Contractor shall continue to market the Product and pay twenty five percent (25%) of the Direct Cost for all Product derived from City delivered Tons. The City shall pay seventy-five percent (75%) of the Direct Cost for all Product derived from City delivered Tons. If the Contractor and the City mutually agree in writing to change the Facility Delivery Standards for the Product earning Negative Revenue, the City will be allowed by the Contractor to continue to deliver that Product commingled with other recyclables and the Contractor will be allowed to landfill that Product. The Contractor will bear the Direct Costs of sorting out the Product at its sole Cost. The Product that is derived from City delivered Tons may then be landfilled by Contractor with the Landfill Charges Paid by the City as part of the Net Service Fee. Contractor shall bear all other Direct Costs. If the City and the Contractor can not agree upon a revision to the facility delivery standards the City is obligated to pay the Contractor its Direct Cost to market negative net revenue recyclables as defined in this section that are delivered to the MRF/TS by the City.

(iv) If the battery Products have had a Negative Revenue for six (6) consecutive months or four consecutive full shipments (whichever of these two covers a shorter time period) then the Contractor shall continue to market the Product and the City shall pay one hundred percent (100%) of the Direct Cost for all Product derived from City delivered Tons. If the Contractor and the City mutually agree in writing to change the Facility Delivery Standards for the battery Products, the City will be allowed by the Contractor to continue to deliver that Product commingled with other recyclables and the Contractor will be allowed to landfill that Product. The Contractor will bear all the Direct Costs of sorting out the Product. The Product that is derived from City delivered Tons may then be landfilled by Contractor with the Landfill Charges Paid by the City as part of the Net Service Fee. Contractor shall bear all other Direct Costs. If the City and the Contractor can not agree upon a revision to the facility delivery standards the City is obligated to pay the Contractor its Direct Cost to market negative net revenue recyclables as defined in this section that are delivered to the MRF/TS by the City.

Section 6.04: Billing and Payment of Net Service Fee

(a) Contractor shall submit administratively complete invoices to the City for payment in accordance with the procedures set forth in this Section 6.04. All invoices shall be considered administratively complete after ten (10) Days from the date of receipt of the invoice by the City unless the Contractor is notified otherwise in writing prior to that time.

(c) The Net Service Fee statement shall be on an actual cost/revenue basis. The Contractor shall provide each Billing Period statement to the City by the fifteenth (15) calendar day of the month following the Billing Period. The City shall have fifteen (15) days after receipt of an administratively complete statement to make payment on the invoice. The City shall provide two checks for each payment, the first being for Landfill Charges which shall have as a co-payee the landfill designated by the City for delivery of Solid Waste, and the second check being for the balance due to the Contractor. Immediately upon receipt by the Contractor, the Contractor shall endorse the co-payee check and forward by overnight mail to the co-payee. In case of a net credit due the City, the Contractor shall submit a check to accompany the statement.

Section 6.07: Landfill Charge Deposit

Contractor shall invoice the City within 15 days prior to the Acceptance Date for a deposit equal to the estimated Landfill Charges for a one month period. The parties agree the amount of the initial Landfill Charge deposit shall not be greater than \$55,000. The Landfill Charge deposit shall be adjusted annually thereafter to equal the average monthly Landfill Charge incurred by the City in the preceding six months. If amount of the deposit needs to be increased, Contractor shall invoice the City for an amount equal to the increase, and if the amount of the deposit needs to be decreased, Contractor shall submit a check to the City equal to the amount of the decrease. Upon termination of this Contract, The Contractor shall refund the Landfill Charge deposit to the City by accepting a reduction of \$55,000 in the final payment from the City for the Construction Contract and the City shall then deposit the \$55,000 in the Capital Replacement Fund as provided for in Section 2.10 (a) (iv).

Section 8.05: Transportation Costs

The Contractor shall use reasonable efforts to determine if the transportation costs on a per-load basis will exceed the amount of Product Revenue to be paid for the Product except in the case of mixed cullet made from broken glass, generally known as aggregate. The Contractor shall notify the City within two (2) Business Days of the cost differential and the number of loads or total tonnage involved and the projected effect of operations including increased costs. To the extent that the Contractor has become and remains obligated pursuant to contractual arrangements to deliver an agreed-upon number of loads or quantities of particular types of Product (but not to exceed three Days of shipment), the Contractor shall be permitted to complete the deliveries in fulfillment of its obligations.

Upon receipt of notification from the Contractor, the City shall respond by facsimile if possible within one (1) Business Day informing the Contractor as to the City's approval or disapproval of continued transportation of additional quantities or loads of the Products to Purchasers. Failure by the City to provide its response, by facsimile if possible, within one (1) Business Day shall be deemed to be a denial of authorization to continue transporting the additional loads or quantities of Products to Purchasers. Approval of the City, once given, may be withdrawn upon one (1) Day notice, by

facsimile if possible, to the Contractor subject to the right of the Contractor to fulfill its contractual obligations to Purchasers.

In the event that the City fails to authorize the transport of additional loads or quantities of Products to Purchasers after being notified that the transportation costs on a per-load basis will exceed the amount of Product Revenues to be paid for the Products or, in the event that permission, once given, is withdrawn, the City and the Contractor shall jointly confer to determine within 14 Days the most practicable, economically feasible and lawful method for the disposition of the Product.

Section 8.06: All Product Must Be Marketed

Contractor shall be responsible for arranging for the marketing and transportation of all Products in accordance with the Materials Marketing Plan described in Section 8.04. In the event that market conditions of a specific Product for a Net Material Revenue greater than zero dollars (\$0) is not possible, the City and Contractor shall jointly confer to determine within 14 Days the most practicable, economically feasible and lawful method for the disposition of the Product. In no event shall the unmarketed Product be treated or considered as Residue Material under this Contract. Contractor shall also immediately prepare a marketing restoration plan to describe the nature of the market conditions, the potential financial impacts of the conditions, the steps to be taken by Contractor to restore the marketability of the materials and a time frame for the action. Except as otherwise directed by the City, the most financially beneficial strategy for the City must be pursued by Contractor.

In the event of termination of this Contract, Contractor agrees to assign to the City any agreements between Contractor and any third party for the marketing of Products from the MRF/TS which are assignable.

Section 8.07: Reporting Requirements

In addition to the reporting requirements described in Section 2.12 of this Contract, Contractor shall report monthly in writing as part of the Monthly Invoice and weekly monthly by telephone regarding the marketing strategy used during the previous week and month, including any sales commitments for Products. Contractor shall respond to any reasonable inquiry of the City for additional information related to marketing including more frequent telephone marketing reports if requested by the City.

Section 17.06: Notices

All notices, requests and other communications shall be deemed sufficient and properly given if in writing and delivered in person to the following addresses or sent by certified or registered mail, postage prepaid with return receipt requested, at the addresses; provided, if the notices, demands, request, or other communications are sent by mail they shall be deemed as given on the third Day following the mailing which is not a Saturday, Sunday, or Day on which United States Mail is not delivered:

(a) If to the City:

Robert Bauman, Assistant City Administrator
Manager of Resource Recovery
City of Ann Arbor
100 N. Fifth Avenue
Ann Arbor, Michigan 48104

(b) If to the Contractor:

President
Resource Recovery Systems, Inc.
50 Main Street
Centerbrook, CT 06409-1001
36 Plains Road
Essex, CT 06426-1501

SCHEDULE 9 MAINTENANCE LOG AND RENEWAL/REPLACEMENT

See Attached Reprint w/changes marked

SCHEDULE 9

MAINTENANCE LOG AND CAPITAL REPLACEMENT SCHEDULE

REPLACEMENT SCHEDULE

See the attached Capital Replacement Schedule

MAINTENANCE LOG

A. General

The Maintenance Log and Renewal/Replacement Requirements specified in this Schedule will be used to assist the City in determining whether the Contractor is satisfactorily meeting its contractual obligations.

The Maintenance Log must incorporate preventative maintenance procedures as required below. The Maintenance Log must be developed by the Contractor and approved by the City and be consistent with the Operation and Maintenance Manuals and the Manufacturers' recommended maintenance schedules. The Maintenance Log must comply with the following requirements as outlined in this Schedule including the sample sheets provided. The sample sheets identify the level of detail required to demonstrate that maintenance of all kinds including preventative maintenance is properly completed. The Contractor may propose use of comprehensive computerized maintenance log and preventative maintenance software as a substitute for the format and forms described below.

B. Maintenance Log Format

The Maintenance Log shall take the form of separate Preventative Maintenance Logs that must be kept in a set of notebooks for each major piece of equipment, as well as the building, site improvements and fixtures such that it allows maintenance staff to record work as it is completed. Six separate notebooks are required at a minimum: B&C line, Fiber line, Glass line, SW line/compactor, rolling stock, and building/site/fixtures. Each notebook must contain the following sections:

I. Line Equipment List

List of all equipment on the line, identified by name and number

II. Line Layout Drawing

Drawing that assures identification of equipment location, each item referenced by name and number

III. Lubrication Key

Chart of all standard lubricants (and available equivalents) with code letters to assure staff that right product is used for application

IV. PM Schedule and Maintenance Log Section

A. Equipment Item #1

1. Equipment Item #1 PM Schedule

See sample sheet. This sheet lists PM dates for 6 months, specifies PM actions and provides maintenance staff a checklist that references more detailed actions on repair log

2. Equipment Item #1 Repair Log

See sample sheet. This sheet dates all actions not covered on the PM schedule. If action is completed during regular PM service this sheet would list parts replaced and other repair actions. If work is not completed during PM, a work order would be initiated and the problem would be described here and the WO number recorded. When the WO is completed the completion date would be entered.

B. Equipment Item #2

1. Equipment Item #2 PM Schedule

2. Equipment Item #2 Repair Log

C. Equipment Item #3 etc.

V. Blank Weekly Status Report for Line

For Submission to City. This sheet is similar to the Line Equipment List (Section I), but includes a check box for each item to indicate that PM was completed and a Description Box for each item for summary of repair actions.

VI. Blank Work Order Forms

VII. Blank Equipment and Building Damage Report Forms

For Submission to City. These sheet are to be used to report any damage or equipment repair that will not be corrected within 24 hours of occurrence.

VIII. Blank Repair Log Forms

C. Sample Forms

This Schedule includes the following supporting documents:

- Sample Sheet for PM Schedule
- Sample Sheet for Equipment Repair Log
- Capital Equipment Replacement Schedule

Sample Sheet for PM Schedule

B&C
 B&C Sort Conveyor #5012
 January 1, 1997

LINE:
 EQUIPMENT ITEM:
 Starting Date of this Sheet:

| WEEK # | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 | 21 | 22 | 23 | 24 | 25 | 26 |
|--|---|---|---|---|---|---|---|---|---|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|
| WEEKLY TASKS | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Clear debris from tail pulley | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Clear debris from head and tail shafts | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Inspect head and tail shaft bearings | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Lube head and tail shaft bearings [A] | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Inspect belt support rollers (16) | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Replace faulty belt support rollers | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Inspect belt return rollers (5) | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Replace faulty belt return rollers | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Inspect gearbox for oil leaks | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Check drive chain alignment/tension | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Check conveyor belt tension/alignment | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 4 WEEK TASKS | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Check/fill gearbox oil level [B, C] | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Lube drive chain [D] | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Check conveyor belt for wear | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Check head pulley lagging for wear | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 6 MONTH TASKS | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Change gear oil [B, C] | | | | | | | | | | | | | | | | | | | | | | | | | | |

Entry Codes: OK = Inspection or check revealed no problem
 NA = No action required
 1 (or other number) = Reference to entry in Repair Log describing action taken
 Lubrication Codes [A,B,C...] = Appropriate lubricant code from Lubrication Key (Section III)

Sample Sheet for Equipment Repair Log

B&C
B&C Sort Conveyor
January 1, 1997

#5012

LINE:
EQUIPMENT ITEM:
Starting Date of this Sheet:

| Line # | START DATE | COMPLETE DATE | ACTION OR WORK ORDER # | DETAILS |
|--------|------------|---------------|------------------------|---------|
| 1 | | | | |
| 2 | | | | |
| 3 | | | | |
| 4 | | | | |
| 5 | | | | |
| 6 | | | | |
| 7 | | | | |
| 8 | | | | |
| 9 | | | | |
| 10 | | | | |
| 11 | | | | |
| 12 | | | | |
| 13 | | | | |
| 14 | | | | |
| 15 | | | | |
| 16 | | | | |
| 17 | | | | |
| 18 | | | | |
| 19 | | | | |
| 20 | | | | |
| 21 | | | | |
| 22 | | | | |
| 23 | | | | |
| 24 | | | | |
| 25 | | | | |

Use as many lines as needed. List all prts used. All work not completed during PM requires completion of a Work Order Form.

EXHIBIT B

CONSTRUCTION SETTLEMENT AGREEMENT

In consideration of the mutual promises set forth below, Resource Recovery Systems and the City of Ann Arbor agree to forgo all claims regarding the Construction Contract for the City of Ann Arbor Materials Recovery Facility/Transfer Station entered into on the First day of November, 1993 as amended on June 5, 1995 upon execution of a final payment of \$144,895 less RRS's repayment of \$55,000 to the City for the landfill charge deposit, for a net final payment to RRS of \$89,895 (Eighty nine thousand, eight hundred and ninety five dollars) which includes the waiving of any liquidated damages previously claimed by the City. The Contractor agrees to waive any interest due prior to executing this Settlement Agreement.

exhbt2.wpd

For Contractor

By Matthew McCauley
Its Vice President

For City of Ann Arbor

By Ingrid B. Sheldon
Ingrid B. Sheldon, Mayor

By Winifred W. Northcross
Winifred W. Northcross, City Clerk

Approved as to form and content

Abigail Elias 6-22-98
Abigail Elias, City Attorney
TJB 6/22/98

Approved as to substance

1732 6.23.98

Neal G. Berlin, City Administrator

John Newman 6-17-98
John Newman, Director of Solid Waste
(mrfamend.wpd)

CAPITAL REPLACEMENT SCHEDULE

**SCHEDULE 9
CAPITAL EQUIPMENT REPLACEMENT SCHEDULE**

ANN ARBOR MATERIAL RECOVERY FACILITY/TRANSFER STATION

| EQUIPMENT ITEM | Adjusted Replacement Fund Value | Expected Life, Single Shift @ 20,000 TPY | Year | | | | | | | | | | | | | | | | | | | TOTALS FOR FISCAL YEAR | | | | |
|---|---------------------------------|--|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------------------------|------|------|------|--|
| | | | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 | | | | | | | |
| GLASS AND CANNS | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Glass Chiller | \$ 18,743 | 10 | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | |
| Glass Air Classifier #1 | \$ 2,665 | 10 | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | |
| Glass Transfer #2 | \$ 8,659 | 10 | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | |
| PAPER | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Belt | \$ 399,235 | 10 | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | |
| SOLID WASTE | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Train Conveyor | \$ 216,380 | 10 | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | |
| WAGGON EXHAUSTS | | | | | | | | | | | | | | | | | | | | | | | | | | |
| CONVEYORS - 1 Railway Storage Equipment | \$ 17,232 | 20 | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | |
| CONVEYORS - GLASS & CANNS | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Receiver #1 BGC Conveyor CR-501 | \$ 19,800 | 10 | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | |
| Main Field #1 BGC Conveyor CR-502 | \$ 28,981 | 10 | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | |
| BGC Scrapper Magnet CR-511 | \$ 16,947 | 10 | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | |
| Skidder #1 BGC Conveyor CR-503 | \$ 14,587 | 10 | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | |
| Skidder #2 BGC Conveyor CR-504 | \$ 17,766 | 10 | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | |
| Glass Output Frame Conveyor CR-505 | \$ 7,050 | 10 | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | |
| Glass Transfer Conveyor CR-508 | \$ 7,044 | 10 | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | |
| Glass Transfer Conveyor CR-507 | \$ 5,928 | 10 | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | |
| Belt Discharge Conveyor CR-504 | \$ 18,895 | 10 | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | |
| CONVEYORS - PAPER | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Receiving Paper Conveyor CR-607 | \$ 48,634 | 10 | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | |
| Sorter #2 Sort Conveyor CR-608 | \$ 51,441 | 10 | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | |
| Belt-Feed Conveyor CR-601 | \$ 28,913 | 10 | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | |
| Belt-Feed Conveyor #1 CR-605 | \$ 81,221 | 10 | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | |
| CONVEYORS - SOLID WASTE | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Compressor Feed Conveyor CR-703 | \$ 33,300 | 10 | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | |
| MSW Receiver Conveyor CR-701 | \$ 72,130 | 10 | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | |
| MSW Sorting Conveyor CR-702 | \$ 29,430 | 10 | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | |
| MSW Scrapper Conveyor CR-704 | \$ 31,658 | 10 | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | |
| RECYCLERS | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Wheel Loader | \$ 117,907 | 7 | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | |
| Skid Steer | \$ 26,833 | 6 | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | |
| Skid Steer for Skid Steer | \$ 5,741 | 6 | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | |
| Forklift | \$ 21,814 | 7 | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | |
| Forklift | \$ 4,952 | 7 | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | |
| Lawnmower | \$ 3,454 | 6 | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | |
| 4 Coker Yard Machine Combines (2) | \$ 9,444 | 5 | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | |
| EQUIPMENT LIST TOTALS | \$ 1,381,116 | | | | | | | | | | | | | | | | | | | | | | | | | |
| RING BALANCE ANALYSIS | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Annual Total Expected Draw | \$ - | | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | |
| Cumulative Total Expected Draw | \$ - | | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | |

**AMENDMENT NUMBER 4 TO
OPERATING AND MANAGEMENT CONTRACT DOCUMENTS FOR THE CITY OF
ANN ARBOR MATERIAL RECOVERY FACILITY AND TRANSFER STATION
BETWEEN
RESOURCE RECOVERY SYSTEMS, INC. (NOW FCR INC.)
AND
THE CITY OF ANN ARBOR**
Approved by City Council 9-7-04

The City of Ann Arbor, a municipal corporation, 100 N. Fifth Avenue, Ann Arbor, Michigan 48107-8647 ("City") and Resource Recovery Systems, Inc, since purchased by FCR/Casella Waste Systems having its offices at 809 West Hill Street, Charlotte, NC 28208 ("Contractor") agree to amend the Operating and Management Contract for the City of Ann Arbor Material Recovery Facility and Transfer Station, ("the Agreement") made and entered into by the parties on the 1st day of November, 1993 and amended by Amendment #1 effective June5, 1995, Amendment #2 effective August 7, 1995 and Amendment #3 effective June15, 1998.

WITNESSETH

WHEREAS, the City and Contractor desire to modify its agreement for operating of the City owned MRF and Transfer Station; and

WHEREAS, As provided for below, the City and the Contractor have mutually agreed to the revisions as shown below, modifying the Agreement to meet the needs of the City as they currently stand.

NOW, THEREFORE, In consideration of the mutual promises set forth below, the Contractor and the City agree that the following sections shall be substituted for like numbered Sections of the original Operating and Management Contract Documents for the City of Ann Arbor Material Recovery Facility and Transfer Station:

**ARTICLE I:
AMENDMENT TO SECTION I OF AGREEMENT:
Definitions**

The following definition is amended to read:

"Capital Repair" means any renewal, repair or replacement, greater than Four Thousand Dollars (\$4,000.00) in value, of a capital asset that is part of the MRF/TS which either extends or enhances the useful life of the asset in accordance with generally accepted accounting principles.

The following definitions are added to the Agreement:

"ACR/Ton or Aggregate Commodity Revenue per Ton" means the Net Revenue of the Facility divided by the total Tons of Recyclable Material shipped by the Facility for that month.

"Capital Replacement" means the replacement of an item or a major rebuild of an item that would incorporate a complete overhaul of all components of that item and

extend the useful life of that item for a period of time approximately equivalent to the useful life of the original item to be replaced when it was first installed at the MRF/TS.

"City Delivered Tons" means any tons of Solid Waste and/or Recyclable Materials that are delivered by or caused to be delivered by or on behalf of the City, the financial transactions for which are covered in the Contractor's monthly invoice to the City.

"Design Change – Phase I" means the planned baler upgrade, container/glass line upgrade and eddy current separator installation along with associated engineering and acceptance testing when completed and all components formally accepted by the City targeted for completion no later than the first calendar quarter of 2005.

"Design Change – Phase II" means the transfer station relocation, OCC screen installation and conveyor modifications, maintenance shop relocation, rework of the paving, concrete floor, push walls, ceiling and roof, and all associated permitting, engineering and acceptance testing when completed and all components formally accepted by the City.

**ARTICLE II:
AMENDMENT TO SECTION 2.10 OF AGREEMENT:
Capitalized Renewal and Replacement Fund**

The following amendments are made to Section 2 of the Agreement: Ownership, Operation and Maintenance of the Facility. Part 10, Equipment Repair and Replacement Accounts.

Section 2.10(b): Equipment Repair and Replacement Accounts

(b) The City shall establish two separate investment reserve accounts for the purpose of accumulating deposits and earnings as needed for equipment repair or replacement as provided for in this Section. The first account shall be known as the Capital Repair Account. The second account shall be known as the Capital Replacement Account. For the life of this contract, money expended from these accounts shall only be released for actual expenses. Deposits into these accounts shall be made based on the following schedule.

- (i) Effective July 1, 1998, deposits shall be made by the City into the Capital Repair Account no later than 30 days after the date of the invoice submitted for each month during the entire remaining term of the contract at a rate of \$3.00 (three dollars) for every ton of Merchant Solid Waste received at the facility including Merchant Solid Waste loads that are run over the Mixed Waste Sorting Line. The \$3.00 figure shall remain fixed for the remaining term of the Contract.
- (ii) Deposits shall be made by the City into the Capital Replacement Account no later than 30 days after the date of the invoice submitted for each month during the entire term of the contract at a rate of \$1.25 (one dollar and twenty five cents) for every ton of City recyclable material received at the facility. The \$1.25 figure shall remain fixed for the remaining term of the Contract. The fund balance of the

Capitalized Renewal and Replacement Fund as of July 1, 1998 shall be credited to the Capital Repair Account.

- (iii) Effective July 1, 1998, deposits shall be made by the City into the Capital Replacement Account no later than 15 days after the first day of each month during the remaining term of the contract at a rate of \$6,250.00 (six thousand two hundred fifty dollars). This figure shall remain fixed for the remaining term of the Contract.
- (iv) The City reserves the right to make additional Deposits in either account at its sole discretion.
- (v) The Contractor reserves the right to make additional Deposits in either account at its sole discretion.
- (vi) *City One Time Contribution into a Dedicated Solid Waste Enterprise Fund Capital Project Account Upon Execution of Amendment #4:* Within 30 days of execution of Amendment #4, the City will transfer \$2,500,000 from the Environmental Bond into the MRF/TS Capital Replacement Account of the Solid Waste Enterprise Fund to cover the cost of Phase I and Phase II Design Changes referenced in Article IV of Contract Amendment #4,
- (vii) *City Dissolution of the Capital Repair Account Upon Execution of Contract Amendment #4:* Effective October 1, 2004, the City will cease to use the MRF/TS Capital Repair Fund as provided for in the Agreement and transfer the remaining balance of that MRF/TS Capital Repair Account (approximately \$30,000) to the MRF/TS Capital Replacement Account. The City will continue contributing \$1.25 per City Delivered Tons of Recyclable Material to the Capital Replacement Account and the Contractor will continue to contribute \$3/ton of Merchant Solid Waste to the Capital Replacement Account as provided in Article 2, Section 1.10 (b) 1, until the Phase II Design Changes referenced in Article IV of Contract Amendment #4 are complete as specified in item xi below.
- (ix) *Contractor Contributions to the Account After Completion of Phase I Design Change:* Section 2.10. Capital Replacement Account, Part a of the Agreement will use the following schedule after the Phase I Design Changes referenced in Article IV of Contract Amendment #4 effective date of acceptance .

| MATERIAL | CONTRACTOR CONTRIBUTION TO FUND | ANNUAL ESCALATOR |
|------------------------|---------------------------------|------------------|
| Solid Waste – City | None | None |
| Solid Waste – Non-City | \$3/Ton | None |
| Recyclables - City | None | None |
| Recyclables – Non-City | \$2/Ton | None |

- (x) *Contractor Contributions to the Fund After Completion of Phase II Design Change:* Section 2.10. Capital Replacement Account, Part a of the Agreement will use the following schedule after the Phase II Design Changes referenced in Article IV of Contract Amendment #4 effective date of acceptance .

| MATERIAL | CONTRACTOR CONTRIBUTION TO FUND | ANNUAL ESCALATOR |
|------------------------|---------------------------------|------------------|
| Solid Waste – City | None | None |
| Solid Waste – Non-City | None | None |
| Recyclables - City | \$4/Ton | None |
| Recyclables – Non-City | \$4/Ton | None |

(xi) *City Contributions to the Account After Completion of Phase I Design Change:* Section 2.10. Capital Replacement Account, Part a of the Agreement will use the following schedule after the Phase I Design Changes referenced in Article IV of Contract Amendment #4, effective date of acceptance .

| MATERIAL | CITY CONTRIBUTION TO FUND | ANNUAL ESCALATOR |
|------------------------|---------------------------|------------------|
| Solid Waste – City | \$6,250/Month | None |
| Solid Waste – Non-City | None | None |
| Recyclables - City | \$1.25/Ton | None |
| Recyclables – Non-City | None | None |

(xii) *City Contributions to the Account After Completion of Phase II Design Change:* Section 2.10. Capital Replacement Account, Part a of the Agreement will use the following schedule after the Phase II Design Changes referenced in Article IV of Contract Amendment #4, effective date of acceptance .

| MATERIAL | CITY CONTRIBUTION TO FUND | ANNUAL ESCALATOR |
|------------------------|---------------------------|------------------|
| Solid Waste – City | None | None |
| Solid Waste – Non-City | None | None |
| Recyclables - City | None | None |
| Recyclables – Non-City | None | None |

(c) Prior to September 21, 2005, the Contractor shall not be entitled to reimbursement from the Capital Repair Account except for repair of the following major rolling stock items (Skid Steer, Forklift, Wheel Loader) and only upon written notice of reimbursement request to the City no more than sixty (60) days after incurring the expenses and receiving an invoice for the repair in order for any of these expenses to be eligible for reimbursement from the Capital Repair Account and in order to obtain the required consent of the City which shall not be unreasonably withheld. The Contractor may submit proposals for planned Capital Repair Account purchases in order to enable City purchase of these items as long as the procedures described in Section 2.10 (e) are followed as required to access the City procurement process.

In providing its consent the City shall consider: the original expected life of the equipment, the status of reported repairs and preventative maintenance on the equipment, the actual versus planned repair for the items, and the actual rate of use of the equipment compared to the original design capacity. The written notice of reimbursement request shall include the following, at a minimum: items to be repaired, original expected life of the items, repair and preventative maintenance history on the

items, actual versus original design capacity for the items, actual versus planned repair for the items, Direct Cost of repair, and the new useful life of the repaired items.

The City is not obligated to act on the request until all required information is provided. Funding for expenditures that are covered by the Contractor obligation to keep the MRF/TS in good working order at all times during the life of the Contract will not be granted except for the aforementioned. Nor will funding requests for repair and replacement of equipment that is leased by the Contractor be granted unless that equipment is listed in Schedule 9 (Maintenance Log and Renewal/Replacement Schedule).

(d) Effective the date of this Amendment but no later than October 1, 2004, the MRF/TS Capital Replacement Account shall be used to reimburse Contractor solely for the purpose of funding the Renewal, Replacement or Major Repair of any and all portions of the MRF/TS identified as being owned by the City (including rolling stock). The City shall not make any reimbursements that overdraw the fund beyond its cash status at the time of the request. Schedule 9 (Renewal/ Replacement Fund Forecast and Status), provided in this Amendment as Attachment A-1 to Amendment 4, shall be used as a forecasting and fund status tool only. All purchases made shall become City property and title shall be transferred to the City upon installation.

(e) The Capital Replacement Account disbursements shall be made in accordance with the following procedures. Contractor shall be provided with an annual opportunity to comment on the procedures and planned disbursement before expensed.

The Contractor shall provide written notice to the City prior to incurring expenses for the replacement of any component of the MRF/TS in order for any of these actual expenditures to be eligible for reimbursement from the Capital Replacement Account, and in order to obtain the required consent of the City that shall not be unreasonably withheld. The City shall notify the Contractor within fifteen (15) days of receipt of the written notice that the notice is considered to be administratively complete and then shall within fifteen (15) additional days from the date of the notice either deny the request or submit the request to City Administrator or designee or City Council as required for approval, pursuant to regular City procedures as defined below.

In providing its consent the City shall consider the original expected life of the equipment, the status of reported repairs and preventative maintenance on the equipment and the actual rate of use of the equipment compared to the original design capacity. The written notice shall include the following, at a minimum: items to be replaced, original expected life of the items, repair and preventative maintenance history on the items, actual versus original design capacity for the items, actual versus planned replacement for the items, Direct Cost of replacement, and the new useful life of the items.

The City is not obligated to act on the request until all required information is provided. When a piece of equipment is recommended for replacement by the Contractor, the Contractor may propose to do so through either a lease/purchase, including any recommended trade-in or disposal agreement, or outright purchase of the new equipment. At the termination of this Contract, the City will have all rights to ownership of that equipment including any modifications made during the course of the Contract absent any ongoing financial obligation, liens or other liabilities.

To complete the replacement of any approved items as defined above, the Contractor will prepare technical specifications for the equipment to be replaced (equivalent or better than the original specification for that equipment) subject to City review and approval of content and form. The procurement process may be the City's procurement process or a procurement process established by the contractor and overseen and approved by the City.

Any revenues received by the City from the salvage value of replaced equipment and rolling stock shall be placed in the Capital Replacement Account or used to reduce the cost of acquiring the replacement equipment. Upon termination or expiration of this Contract, all funds remaining in the Capital Replacement Account shall become available for unrestricted use by the City.

**ARTICLE III:
AMENDMENT TO SECTION VI OF AGREEMENT:
Payments to Contractor and to the City**

The following amendments are made to Section VI of the Agreement, Payment to Contractor and to the City:

III.A Section 6.02(c):Net Service Fee

(c) Tipping Fees. Tipping Fees in the amounts identified for specific quantities of each class of Recyclable Material and Solid Waste identified in Schedule 5 (Contractor's Proposal) as modified below and replacing Schedule 8 (Sample Invoices and Tipping Fee Schedule) adopted with Contract Amendment #4 as Attachment B which shall supercede all prior versions of Schedule 8.

(i) *Tipping Fees After Completion of Phase I Design Change:* Contractor and City agree to use the following tipping fee schedule after the Phase I Design Changes referenced in Article IV of the Contract Amendment #4 effective date of acceptance .

| MATERIAL | TIPPING FEE | ANNUAL ESCALATOR |
|-------------|-------------|-----------------------------|
| Solid Waste | \$10.25/Ton | 3.5% Escalator in Agreement |
| Recyclables | \$12.00/Ton | 3.5% Escalator in Agreement |

(ii) *Tipping Fees After Completion of Phase II Design Change:* Contractor and City agree to use the following tipping fee schedule after the Phase II Design Changes referenced in Article IV of the Contract Amendment #4 effective date of acceptance .

| MATERIAL | TIPPING FEE | ANNUAL ESCALATOR |
|-------------|-------------|-----------------------------|
| Solid Waste | \$9.50/Ton | 3.5% Escalator in Agreement |
| Recyclables | \$11.00/Ton | 3.5% Escalator in Agreement |

(g) Merchant Activity Credit. A credit will be made to the Net Service Fee to reflect any Merchant Activity Compensation to the City based on contributions to debt retirement in the form of a royalty as identified in Schedule 5 (Contractor's Proposal) for

solid waste tipped at the facility only as provided for in Schedule 8 (Sample Invoices and Tipping Fee Schedule). Effective July 1, 1998, this Merchant Activity Compensation for solid waste tipped at the facility shall be reduced to \$3/ton. The City shall pay this amount into the Capital Repair Account as provided for in Section 2.10. Tonnage from all Merchant loads tipped at the Solid Waste tipping area of the Facility shall be used in calculating the Merchant Activity Compensation. This Merchant Activity Credit will not be applied after Completion of the Phase II Design Changes referenced in Article IV of the Amendment #4 effective date of acceptance.

III.A Section 6.03: Revenue Sharing

After Acceptance, Net Revenues received from the sale of all Products shall be shared as follows:

(a) *Revenue Share After Completion of Phase I Design Change:* Contractor and City agree to use the following schedule after the Phase I Design Changes referenced in Article IV of the Contract Amendment #4 effective date of acceptance

| MATERIAL | TRIGGER PRICE FOR REVENUE SHARING | PERCENTAGE SHARED TO CITY ABOVE TRIGGER PRICE |
|---------------------------------|-----------------------------------|---|
| City Delivered Recyclables | \$47/Ton – no Escalator | 35% |
| All Other Delivered Recyclables | \$47/Ton – no Escalator | 35% |

(b) *Revenue Share after Completion of Phase II Design Change* Contractor and City agree to use the following schedule after the Phase II Design Changes referenced in Article IV of the Contract Amendment #4 effective date of acceptance .

| MATERIAL | TRIGGER PRICE FOR REVENUE SHARING | PERCENTAGE SHARED TO CITY ABOVE TRIGGER PRICE |
|---------------------------------|-----------------------------------|---|
| City Delivered Recyclables | \$42/Ton – no Escalator | 70% |
| All Other Delivered Recyclables | \$42/Ton – no Escalator | 10% |

**ARTICLE IV:
AMENDMENT TO SECTION IX OF AGREEMENT:
Changes to the Facility**

As provided for in Section IX, the City is authorizing the Contractor to undertake Phase I and Phase II Design Changes to the MRF and Transfer Station, in accordance with procedures provided for in the Agreement and design requirements provided by the City, that include relocation of the transfer station and expansion of the recycling facility to include an OCC sort line, modified from the existing waste sort line. The City shall be responsible for Site Plan approval by Pittsfield Township and county and state approvals required for plan consistency and construction/operating permits, using detailed engineering information and drawings to be supplied by the Contractor.

The Phase I and Phase II Design Changes shall be considered complete, for the purposes of this Amendment, upon satisfaction of the acceptance testing procedures outlined in Schedule 1 (Performance Guarantees and Testing Procedures) of the Agreement, as modified by the City's Engineer to match the performance characteristics

of the Phase I and Phase II Design Changes. The City and Contractor shall mutually agree in writing to revise the Acceptance Test Plan, if necessary, prior to its initiation.

ARTICLE V:
AMENDMENT TO SECTION IV OF AGREEMENT:
Delivery, Processing and Disposition of Material

Section 4.01: Guaranteed Facility Capacity

During each Operating Day, Month and Year, Contractor shall receive and process Recyclable Material and Solid Waste delivered to the facility by or on behalf of the City, up to the Guaranteed Facility Capacity, into Products, of at least the quality specified in the Schedule 1 (Performance Guarantees and Testing Procedures). Contractor is permitted and encouraged to seek other Recyclable Material and Solid Waste delivered (a) by any party other than the City, or (b) not on behalf of the City, as long as the acceptance of such Recyclable Material and Solid Waste does not in any way prevent the Contractor from remaining in compliance with this Agreement and as long as Contractor reports in list form such proposed agreements (verbal or written) to receive such Recyclable Material and Solid Waste and the basic parameters of such agreements to the City for approval by the City Contract Manager, which shall not be unreasonably withheld. The City's scalehouse operator will be authorized to make on-site interpretations of current City policies with regard to non-City users should any dispute arise. If Contractor fails to fulfill its obligation in accepting and processing Recyclable Material or Solid Waste, Contractor shall pay the City damages in accordance with Section 5.04.

EXECUTION OF THE AGREEMENT

All terms, conditions, and provisions of the original agreement between the parties executed November 1, 1993 and amended by Amendment #1 effective June 5, 1995, Amendment #2 effective August 7, 1995, and Amendment #3 effective June 15, 1998.

Unless specifically amended above, all terms and conditions of the contract, as amended, are to apply to this amendment and are made a part of this amendment as though expressly rewritten, incorporated, and included herein.

This amendment to the agreement between the parties shall be binding on the heirs, successors and assigns of the parties.

Dated this September 7, 2004

IN WITNESS WHEREOF, the authorized representatives of the Parties hereto have fully executed this instrument on the day and year first above written.

FOR CONTRACTOR

By [Signature]

Its: Vice President

FOR THE CITY OF ANN ARBOR

By [Signature]
John Hieftje, Mayor

By [Signature]
Jayne Miller Acting City Clerk

Approved as to Substance

By [Signature]
Sue McCormick
Public Services Area Administrator

By [Signature]
Roger W. Fraser, City Administrator

Approved as to Form

By [Signature]
Stephen K. Postema, City Attorney

**ATTACHMENT A TO AMENDMENT #4
RENEWAL REPLACEMENT FUND FORECAST AND STATUS**

**OPERATING AND MANAGEMENT CONTRACT DOCUMENTS FOR THE CITY OF
ANN ARBOR MATERIAL RECOVERY FACILITY AND TRANSFER STATION**

The attached Renewal Replacement Fund Forecast and Status supercedes **and replaces** Schedule 9 of the Agreement, Maintenance Log and Renewal/Replacement Fund,

**ATTACHMENT B TO AMENDMENT #4
SAMPLE INVOICE AND TIPPING FEE SCHEDULE**

**OPERATING AND MANAGEMENT CONTRACT DOCUMENTS FOR THE CITY OF
ANN ARBOR MATERIAL RECOVERY FACILITY AND TRANSFER STATION**

The attached Sample Invoice and Tipping Fee Schedule supercedes **and replaces** Schedule 8 of the Agreement, Sample Invoice and Tipping Fee Schedule

COPY

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RESOLUTION TO APPROVE CONTRACT AMENDMENT #5 WITH RESOURCE RECOVERY SYTEMS, INC. CONCERNING LIVING WAGE PROVISIONS AT THE CITY'S MATERIALS RECOVERY FACILITY (\$48,000)

Whereas, On May 16, 2005, City Council authorized the City Administrator to negotiate an amendment to the City's contract with Resource Recovery Sytems, Inc., a wholly owned subsidiary of FCR, Inc. (RRS) and appropriate the necessary funding to implement a living wage protocol at the City's materials recovery facility (MRF);

Whereas, The City's contract with RRS was in effect prior to the City's adoption of the living wage ordinance (Chapter 23) and therefore did not include living wage provisions;

Whereas, The current contract with RRS extends to 2015 and requires amendment by mutual agreement of the City and RRS to add a living wage provision;

Whereas, City Council regards the continued situation of a large number of workers receiving less than a living wage to process city materials as unacceptable;

Whereas, The City and RRS were able to reach agreement on implementation of a living wage at the MRF related to the processing of City tonnage;

Whereas, The additional cost to RRS of implementing a living wage provision will result in wage, payroll taxes and worker's compensation costs of up to \$48,000 for the remainder of fiscal 2005/06 and approximately \$89,000 in 2006/07; and

Whereas, Sufficient funds exist in the Solid Waste Enterprise Fund to reimburse RRS for these costs;

RESOLVED, That City Council approves Contract Amendment #5 with RRS to provide for implementation of living wage provisions for processing all City of Ann Arbor tons delivered to the Materials Recovery Facility;

RESOLVED, That the Mayor and City Clerk are authorized and directed to execute this agreement after approval as to substance by the City Administrator and approval as to form by the City Attorney;

RESOLVED, That funding for this amendment will be provided through the approved 2005/06 solid waste operating budget and subsequently through the dedicated solid waste millage and annual operating budget as approved by City Council; and

RESOLVED, That the City Administrator is authorized to take any other necessary administrative actions to implement this resolution.

Submitted by: Public Services Area
Date: November 10, 2005
Approved by: City Attorney

APPROVED
BY ANN ARBOR CITY COUNCIL

CITY CLERK
ANN ARBOR, MI

AMENDMENT NUMBER 5 TO
OPERATING AND MANAGEMENT DOCUMENTS FOR THE CITY OF
ANN ARBOR MATERIAL RECOVERY FACILITY AND TRANSFER STATION
BETWEEN
RESOURCE RECOVERY SYSTEMS, A WHOLLY OWNED SUBSIDIARY OF FCR, INC.
AND
THE CITY OF ANN ARBOR

The City of Ann Arbor, a Michigan municipal corporation, with offices at 100 N. Fifth Avenue, Ann Arbor, Michigan 48107-8647 ("City") and Resource Recovery Systems, a Wholly Owned Subsidiary of FCR, Inc., having its offices at 809 West Hill Street, Charlotte, North Carolina 28208 ("Contractor"), agree to amend the Operating and Management Documents for the City of Ann Arbor Material Recovery Facility and Transfer Station ("the Agreement"), made and entered into by the parties on the 1st day of November, 1993, and amended by Amendment #1 effective June 5, 1995, Amendment #2 effective August 7, 1995, Amendment #3 effective June 15, 1998, and Amendment #4 dated September 7, 2004, as follows:

1. **Amendment to Article VI – Payments to Contractor and to the City, Section 6.01: Payments to be Made**

Article VI – Payments to Contractor and to the City, Section 6.01: Payments to be Made, is amended by adding a new subsection (c) that shall read:

(c) Living Wage Differential and Related Adjustments in accordance with Section 6.08.

2. **Amendment to Article VI – Payments to Contractor and to the City**

Article VI – Payments to Contractor and to the City, is amended by adding a new Section 6.08: Living Wage Differential and Living Wage Impact Amounts that shall read:

6.08: Living Wage Differential and Living Wage Impact Amounts

(a) Effective December 5, 2005, the Contractor will pay to its employees a living wage differential and other wage adjustments for work done by Contractor's employees on the City's share of the recycling tonnage processed at the facility and the City will reimburse to Contractor the amount of the living wage differential and other wage adjustments that Contractor paid. The amounts of the payments to be made will be calculated and paid as follows:

- For Contractor's employees currently below the living wage (primarily material sorters), the "living wage differential" will be the difference between the Contractor's current wages and the City's established living wage (currently \$9.68/hour). For certain employees in material sorter positions with longevity, the "living wage differential" also includes a longevity amount to maintain their higher pay rate above employees with less longevity. The existing and adjusted wage rates and the amount of the living wage differential for the material sorters

for FY 2005/06 are set forth in Attachment A to Amendment #5, which is attached and incorporated by reference.

- In order to maintain a reasonable wage differential between material sorters and other employees working at the Materials Recovery Facility, new base wages are established for the administrative assistant, forklift and skid steer operators (\$11.00/hour), baler operator (\$11.50/hour), loader operator (\$12.00/hour), and an operations supervisor (\$13.50/hour). For the foregoing employees, the amount of the "living wage differential" will be the difference between the wages paid by Contractor prior to December 5, 2005, and the wages listed above, as set forth in Attachment A to Amendment #5.
- The living wage differential will apply to both straight time and overtime, but will be paid on a pro-rated basis for all City of Ann Arbor recycling tons processed at the facility, calculated as the number of City tons pro rated against the total of all tons. The calculation for Contractor's payment to its employees is set forth more specifically in Attachment A to Amendment #5 as the "Calculation for Total Living Wage Differential Payment to Employees."
- The pro-rated tonnage will be based on the previous fiscal year's ratio of City to total tons. In FY 2005/06 the pro-rated tonnage is 43%, based on the tonnage in FY 2004/05.
- Contractor also will adjust and pay increases in payroll taxes and workers compensation contribution amounts that result from the Contractor's payment of the "living wage differential" to its employees. The increases in these amounts are referred to herein as "living wage impact amounts" and are set forth for each position on Attachment A to Amendment #5.
- Contractor will pay to its employees the "total living wage differential" on a weekly basis, but one week later than the paycheck for a given week.
- The City will reimburse Contractor on a monthly basis for all living wage differentials and living wage impact amounts paid during a given calendar month, as part of Contractor's monthly invoice submittal to the City.
- Contractor will submit payroll documentation with its invoice to the City, including (independent) ADP payroll verification.
- For purposes of this Contract, as amended, the annually updated living wage rate (usually published in March each year) will not be applied at the time it otherwise takes effect for other City contractors and grantees, but will be applied starting on July 1 of the same year, the same time other escalators take effect within this Contract. The percentage increase in the living wage rate will be applied to all the eligible Contractor positions for which a "living wage differential" is calculated, as identified above and as set forth in Attachment A to Amendment #5.

(b) Based on information provided by the Contractor, the parties understand and agree that the expected amount of the reimbursement by the City to Contractor for living wage differential and living wage impact amounts for the period December 5, 2005, through June 30, 2006, will be approximately \$48,000.

All terms, conditions, and provisions of the original Agreement between the parties, as amendment by Amendments #1, #2, #3 and #4, unless specifically amended above, are to apply to this amendment and are made a part of this amendment as though expressly rewritten, incorporated, and included herein.

This amendment to the Agreement between the parties shall be binding on the heirs, successors and assigns of the parties.

Dated this December 1, 2005.

For Resource Recovery Systems, a wholly owned subsidiary of FCR, Inc.

By *Sam P. Hoff*
Its Vice Pres. *SAH*

For City of Ann Arbor

By *John Heiftje*
John Heiftje, Mayor

By *Jacqueline Beaudry*
Jacqueline Beaudry, City Clerk

Approved as to substance

Roger W. Fraser
Roger W. Fraser, City Administrator

Sue F. McCormick
Sue F. McCormick, Public Service Area Administrator

Approved as to form

Stephen K. Postema
Stephen K. Postema, City Attorney

ATTACHMENT A TO AMENDMENT #5
Ann Arbor Living Wage Calculation
Employee Bonus Payment - Ann Arbor Reimbursement to FCR

| Description | Current Wage | Longevity Adj. | Living Wage Differential | | LW Impact Amounts | | Total Reimbursable Amount | Notes |
|-----------------------|--------------|----------------|--------------------------|--------------|----------------------|-----------|---------------------------|--|
| | | | New* | Differential | Payroll Tax Increase | WC Impact | | |
| OPERATIONS SUPER** | \$ 16.00 | | \$ 16.00 | \$ 0.50 | \$ 0.04 | \$ 0.03 | \$ 0.56 | |
| OPERATIONS SUPERVISOR | \$ 13.00 | | \$ 13.50 | \$ 0.50 | | | | Minimum Rate with Living Wage Differential |
| MAINTENANCE** | \$ 15.00 | | \$ 15.00 | | | | | |
| BALER | \$ 17.30 | | \$ 17.30 | | | | | Sorter \$ 9.68 |
| FORKLIFT | \$ 10.00 | | \$ 11.50 | \$ 1.50 | \$ 0.11 | \$ 0.08 | \$ 1.69 | Fork lift |
| LOADER | \$ 8.25 | | \$ 9.75 | \$ 1.50 | \$ 0.21 | \$ 0.14 | \$ 3.10 | Skid Steer |
| CLEANER/SORTER | \$ 8.80 | | \$ 10.30 | \$ 1.50 | \$ 0.24 | \$ 0.12 | \$ 2.67 | Pay loader |
| ADMIN. ASST. | \$ 7.31 | | \$ 8.81 | \$ 1.50 | \$ 0.18 | \$ 0.12 | \$ 1.13 | Baler |
| TOLEDO DRIVER** | \$ 10.00 | | \$ 11.00 | \$ 1.00 | \$ 0.08 | \$ 0.05 | \$ 1.13 | Operations Supervisor |
| SKID STEER | \$ 15.97 | | \$ 16.97 | \$ 1.00 | \$ 0.21 | \$ 0.14 | \$ 3.10 | Admin Assist |
| 1 F SORTER | \$ 9.50 | \$1.00 | \$ 10.68 | \$ 1.18 | \$ 0.09 | \$ 0.06 | \$ 1.33 | |
| 2 F SORTER | \$ 9.00 | \$0.85 | \$ 10.53 | \$ 1.53 | \$ 0.12 | \$ 0.08 | \$ 1.73 | |
| 3 F SORTER | \$ 7.35 | | \$ 9.68 | \$ 2.33 | \$ 0.18 | \$ 0.12 | \$ 2.63 | |
| 4 F SORTER | \$ 7.70 | \$0.35 | \$ 10.03 | \$ 2.33 | \$ 0.18 | \$ 0.12 | \$ 2.63 | |
| 5 F SORTER | \$ 8.50 | \$0.65 | \$ 10.33 | \$ 1.83 | \$ 0.14 | \$ 0.09 | \$ 2.06 | |
| 6 F SORTER | \$ 7.10 | | \$ 9.68 | \$ 2.58 | \$ 0.20 | \$ 0.13 | \$ 2.91 | |
| 7 F SORTER | \$ 7.32 | | \$ 9.68 | \$ 2.36 | \$ 0.18 | \$ 0.12 | \$ 2.66 | |
| 8 F SORTER | \$ 7.10 | | \$ 9.68 | \$ 2.58 | \$ 0.20 | \$ 0.13 | \$ 2.91 | |
| 9 F SORTER | \$ 7.10 | | \$ 9.68 | \$ 2.58 | \$ 0.20 | \$ 0.13 | \$ 2.91 | |
| 10 F SORTER | \$ 7.10 | | \$ 9.68 | \$ 2.58 | \$ 0.20 | \$ 0.13 | \$ 2.91 | |
| 1 C SORTER | \$ 7.10 | | \$ 9.68 | \$ 2.58 | \$ 0.20 | \$ 0.13 | \$ 2.91 | |
| 2 C SORTER | \$ 7.31 | | \$ 9.68 | \$ 2.37 | \$ 0.18 | \$ 0.12 | \$ 2.67 | |
| 3 C SORTER | \$ 7.10 | | \$ 9.68 | \$ 2.58 | \$ 0.20 | \$ 0.13 | \$ 2.91 | |
| 4 C SORTER | \$ 7.10 | | \$ 9.68 | \$ 2.58 | \$ 0.20 | \$ 0.13 | \$ 2.91 | |
| 5 C SORTER | \$ 7.31 | | \$ 9.68 | \$ 2.37 | \$ 0.18 | \$ 0.12 | \$ 2.67 | |
| 6 C SORTER | \$ 7.10 | | \$ 9.68 | \$ 2.58 | \$ 0.20 | \$ 0.13 | \$ 2.91 | |
| 7 C SORTER | \$ 7.10 | | \$ 9.68 | \$ 2.58 | \$ 0.20 | \$ 0.13 | \$ 2.91 | |
| 8 C SORTER | \$ 7.10 | | \$ 9.68 | \$ 2.58 | \$ 0.20 | \$ 0.13 | \$ 2.91 | |
| 9 C SORTER | \$ 7.10 | | \$ 9.68 | \$ 2.58 | \$ 0.20 | \$ 0.13 | \$ 2.91 | |
| 10 C SORTER | \$ 7.10 | | \$ 9.68 | \$ 2.58 | \$ 0.20 | \$ 0.13 | \$ 2.91 | |
| 11 C SORTER | \$ 7.10 | | \$ 9.68 | \$ 2.58 | \$ 0.20 | \$ 0.13 | \$ 2.91 | |
| 12 C SORTER | \$ 7.10 | | \$ 9.68 | \$ 2.58 | \$ 0.20 | \$ 0.13 | \$ 2.91 | |
| 13 C SORTER | \$ 7.10 | | \$ 9.68 | \$ 2.58 | \$ 0.20 | \$ 0.13 | \$ 2.91 | |
| 1 Dirty OCC Sort | \$ 7.10 | | \$ 9.68 | \$ 2.58 | \$ 0.20 | \$ 0.13 | \$ 2.91 | |
| 2 Dirty OCC Sort | \$ 7.10 | | \$ 9.68 | \$ 2.58 | \$ 0.20 | \$ 0.13 | \$ 2.91 | |
| 3 Dirty OCC Sort | \$ 7.10 | | \$ 9.68 | \$ 2.58 | \$ 0.20 | \$ 0.13 | \$ 2.91 | |
| 4 Dirty OCC Sort | \$ 7.10 | | \$ 9.68 | \$ 2.58 | \$ 0.20 | \$ 0.13 | \$ 2.91 | |

Calculation for Ann Arbor reimbursement to FCR for specified time period:

- 1 Calculate the "Living Wage Differential" per hour for each employee
- 2 Calculate the total "Living Wage Impact Amounts" per hour for each employee
- 3 Add line 1 + line 2 to calculate the "Total Living Wage Adjustment" per hour for each employee
- 4 Use this rate as a base rate and apply it to all straight time hours worked
- 5 Use this rate as a base rate time 1.5 and apply it to all overtime time hours worked
- 6 Add line 4 + line 5 to get total Living Wage impact for each employee
- 7 Apply % of Ann Arbor recycling tons from total recycling tons delivered for prior FY
- 8 Multiply line 6 x line 7 to get actual gross payment Ann Arbor pays FCR for each employee

Calculation for Total Living Wage Differential Payment to Employee:

- 1 Calculate the "Wage Increase" per hour for each employee
- 2 Use this rate as a base rate and apply it to all straight time hours worked
- 3 Use this rate as a base rate time 1.5 and apply it to all overtime time hours worked
- 4 Add line 2 + line 3 to get total Living Wage Differential for each employee
- 5 Apply % of Ann Arbor recycling tons from total recycling tons delivered for prior FY
- 6 Multiply line 4 x line 5 to get actual gross payment FCR adds to employee paycheck

**The pay for these positions is not subject to adjustment.

**AMENDMENT NUMBER 6 TO
OPERATING AND MANAGEMENT CONTRACT DOCUMENTS FOR THE CITY OF
ANN ARBOR MATERIAL RECOVERY FACILITY AND TRANSFER STATION
BETWEEN
RESOURCE RECOVERY SYSTEMS, INC. (NOW FCR INC.)
AND
THE CITY OF ANN ARBOR**

The City of Ann Arbor, a municipal corporation, 100 N. Fifth Avenue, Ann Arbor, Michigan 48107-8647 ("City") and Resource Recovery Systems, Inc, since purchased by FCR/Casella Waste Systems having its offices at 809 West Hill Street, Charlotte, NC 28208 ("Contractor") agree to amend the Operating and Management Contract for the City of Ann Arbor Material Recovery Facility and Transfer Station, ("the Agreement") made and entered into by the parties on the 1st day of November, 1993 and amended by Amendment #1 effective June 5, 1995, Amendment #2 effective August 7, 1995, Amendment #3 effective June 15, 1998, Amendment #4 dated September 7, 2004 and Amendment #5 dated December 1, 2005.

WITNESSETH

WHEREAS, the City and Contractor desire to modify its agreement for operating of the City owned MRF and Transfer Station; and

WHEREAS, As provided for below, the City and the Contractor have mutually agreed to the revisions as shown below, modifying the Agreement to meet the needs of the City as they currently stand.

NOW, THEREFORE, In consideration of the mutual promises set forth below, the Contractor and the City agree that the following sections shall be substituted for like numbered Sections of the original Operating and Management Contract Documents for the City of Ann Arbor Material Recovery Facility and Transfer Station:

**ARTICLE I:
AMENDMENT TO SECTION I OF AGREEMENT:
Definitions**

"Design Change – Phase II" means the compost equipment storage building construction, the water main loop, the transfer station relocation, OCC screen installation and conveyor modifications, maintenance shop relocation, rework of the paving, concrete floor, push walls, ceiling and roof, and all associated permitting, engineering and acceptance testing when completed and all components formally accepted by the City.

**ARTICLE II:
AMENDMENT TO SECTION 2.01 OF AGREEMENT:
Ownership, Operation and Maintenance of the Facility**

The following subsection (d) is added at the end of Section 2.01, Overall Responsibilities, as previously amended by Amendments #1, #2 & #3 Approved by City Council on 6/5/95, 8/7/95 & 6/15/98 respectively, Amendment #4 effective September 7,

2004, and Amendment #5 effective December 1, 2005:

(d) The Contractor (FCR) will construct, manage and oversee the construction of a compost equipment storage building and related water main loop.

- (1) The Contractor (FCR) will review and approve all shop drawings by the construction contractor and its subcontractors.
- (2) Contractor (FCR) will visit the site to ascertain that construction is proceeding as per contract, change orders and drawings.
- (3) Contractor (FCR) will attend twice-monthly construction meetings. The City Consultant, RRSI, will be responsible for managing the meetings and preparing meeting agenda and minutes as part of their existing contract with the City.
- (4) Contractor (FCR) will copy the City of Ann Arbor RRSI on all communications between the Contractor (FCR) and the construction contractor.
- (5) Contractor (FCR) will prepare monthly invoices for each of the following and forward to RRSI for review and approval:

Transfer Station
Compost Equipment Storage Building
Water Main Loop

The requirements for the construction of the compost equipment storage building and related water main loop assume that it coincides with the construction of the new Transfer Station.

**ARTICLE III:
AMENDMENT TO SECTION 2.10 b OF AGREEMENT:
Capitalized Renewal and Replacement Fund**

The following amendments are made to Section 2 of the Agreement: Ownership, Operation and Maintenance of the Facility. Part 10, (b), Equipment Repair and Replacement Accounts, item (vi) City One Time Contribution to the Account Upon Execution of Contract Amendment #4:

- (vi) *City One Time Contribution to the Account Upon Execution of Contract Amendment #4:* Within 30 days of execution of this Amendment, the City will transfer \$2,500,000 into a separate MRF and Transfer Station Capital Account(s) of the Solid Waste Enterprise Fund and with Amendment #6, will transfer \$600,000 from the MRF/TS Capital Replacement Account of the Solid Waste Enterprise Fund to this same MRF and Transfer Station Capital Account(s) to cover the cost of Phase I and Phase II Design Changes referenced in Article IV of Contract Amendment #4. Further, within thirty (30) days of execution of Amendment #6, the City will transfer \$759,453 from its Solid Waste Fund (fund balance) into this same separate MRF and Transfer Station Capital Account(s) of the Solid Waste Enterprise Fund to cover the additional Design Changes referenced in Article I at costs not to exceed those set forth in Attachment A to

Contract Amendment #6: \$82,300 for MRF Phase II Upgrades, \$619,118 for Transfer Station Improvements, \$193,697 for Water Main Looping, \$429,942 for Compost Equipment Storage Building and \$34,396 for Compost Equipment Storage Building Construction Management Services.

**ARTICLE IV:
AMENDMENT TO SECTION 2.10 b OF AGREEMENT:
Capitalized Renewal and Replacement Fund**

The following amendments are made to Section 2 of the Agreement: Ownership, Operation and Maintenance of the Facility. Part 10, (b), Equipment Repair and Replacement Accounts, item (xii) City Contributions to the Account After Completion of Phase II Design Change:

- (xii) *City Contributions to the Account After Completion of Phase II Design Change:* Section 2.10. Capital Replacement Account, Part a of the Agreement will use the following schedule after the Phase II Design Changes referenced in Article IV of Contract Amendment #4, effective date of acceptance. See revised Schedule 9 in Attachment B to this Amendment #6, replacing all prior versions of Schedule 9 as provided for in the Contract and Amendment #4.

| MATERIAL | CITY CONTRIBUTION TO FUND | ANNUAL ESCALATOR |
|------------------------|---------------------------|------------------|
| Solid Waste – City | None | None |
| Solid Waste – Non-City | None | None |
| Recyclables – City | \$2.00/Ton | None |
| Recyclables – Non-City | None | None |

**ARTICLE V:
AMENDMENT TO SECTION 6, PART 2 OF AGREEMENT:
Payments to Contractor and to the City**

The following amendments are made to Section 6 of the Agreement, Payment to Contractor and to the City, Part 2 (b), Net Service Fee – Tipping Fees, Part (ii) Tipping Fees After Completion of Phase II Design Change:

- (ii) *Tipping Fees After Completion of Phase II Design Change:* Contractor and City agree to use the following tipping fee schedule after the Phase II Design Changes referenced in Article IV of the Contract Amendment #4 effective date of acceptance.

| MATERIAL | TIPPING FEE | ANNUAL ESCALATOR |
|-------------|-------------|-----------------------------|
| Solid Waste | \$10.25/Ton | 3.5% Escalator in Agreement |
| Recyclables | \$11.00/Ton | 3.5% Escalator in Agreement |

Annual Adjustments for Fuel: Effective July 1, 2006, the Solid Waste Tipping Fee Identified above in part (ii), Tipping Fees After Completion of Phase II Design Changes and in part (i) of Contract Amendment #4, Tipping Fees After Completion of Phase I Design Changes, shall be subject to an Annual Fuel Cost

Adjustment for 5% of the Tipping Fee with the remaining 95% of the Tipping Fee subject to the 3.5% Annual Escalator in the Agreement. The Fuel Cost Adjustment (FCA) will be based on the fuel index from the US Department of Energy website Midwest PADD 2 for "No. 2 Diesel Fuel – Sales to End Users, Average" for Michigan. The FCA will be based upon diesel fuel price changes as published on the Internet (presently at http://tonto/eia.doe.gov/oil_gas/petroleum/info_glance/distillate.html) measured from the June index of the past year to the June index of the current year immediately prior to the July 1 period for which the FCA shall be applied. This adjustment will not be limited and will float up or down as the fuel index changes and accumulates from year to year, and that portion of the contract price shall be established for the next Contract Year beginning on July 1 of each year. An example application of the FCA and Annual Escalator follows that calculates the increase from the \$10.25 per ton Solid Waste Tip Fee based on the actual DOE index reading for June 2005 and a hypothetical DOE index readings for June 2006, resulting in the hypothetical Adjusted Tip Fee as shown below.

| | Tip Fee Breakdown | Fuel Cost Adjustment - See Note #1 | Annual Escalator | Change to Tip Fee | Adjusted Tip Fee |
|------|-------------------|------------------------------------|------------------|-------------------|------------------|
| 5% | \$ 0.51 | 12.02% | 0.00% | \$ 0.06 | \$ 0.57 |
| 95% | \$ 9.74 | 0.00% | 3.50% | \$ 0.34 | \$ 10.08 |
| 100% | \$ 10.25 | | | | \$ 10.65 |

Note #1: June 2005 Escalator Index @ 183.00, June 2006 index hypothetically @ 205, so $205-183=22$ as the fuel cost adjustment index increase and $22/183=12.02\%$ as the actual Fuel Cost Adjustment Factor for this period.

**ARTICLE VI:
AMENDMENT TO SECTION 6, PART 5 OF AGREEMENT:
Payments to Contractor and to the City**

The following amendments are made to Section 6 of the Agreement, Payment to Contractor and to the City, Part 5, Billing and Payment of Other Fees, Direct Costs or Charges:

Section 6.05: Billing and Payment of Other Fees, Direct Costs or Charges

If payments are owed to either Party under the terms of this Contract (other than for Net Service Fee), that Party shall submit an invoice along with documentation of any applicable fees, Direct Costs or charges to the other Party within fifteen (15) days after said fees, Direct Costs or charges are incurred by that Party. In addition, Contractor shall submit an invoice for tasks detailed in Section 2.01 (d) associated with the construction of the compost equipment storage building and related water main loop. The invoice will reflect an 8% management fee for each the compost equipment storage buildings and water main loop capital costs. The invoice, or Application for Payment, shall follow the AIA Document G702 and G703 format with partial and final contractor waivers attached (see Attachment A to Amendment #6 for required forms). Invoices shall be sent to the Engineer for review and approval, who will then forward to the City within 7 days. Payment shall be made within 30 days after the receipt of the invoices.

ARTICLE VII:
AMENDMENT TO SECTION 9 OF AGREEMENT:
Changes to the Facility

As provided for in Section 9, the City is authorizing the Contractor to undertake Phase I and Phase II Design Changes to the MRF and Transfer Station, and construct the Compost Equipment Storage Building and related water main loop in accordance with procedures provided for in the Agreement and design requirements provided by the City, and at costs not to exceed those set forth in Attachment A to Contract Amendment #6 that include a new compost equipment storage building, relocation of the transfer station and expansion of the recycling facility to include an OCC sort line, modified from the existing waste sort line. The City shall be responsible for Site Plan approval by Pittsfield Township and county and state approvals required for plan consistency and construction/operating permits, using detailed engineering information and drawings to be supplied by the Contractor.

The Phase I and Phase II Design Changes shall be considered complete, for the purposes of this Amendment, upon satisfaction of the acceptance testing procedures outlined in Schedule 1 (Performance Guarantees and Testing Procedures) of the Agreement, as modified by the City's Engineer to match the performance characteristics of the Phase I and Phase II Design Changes. The City and Contractor shall mutually agree in writing to revise the Acceptance Test Plan, if necessary, prior to its initiation.

EXECUTION OF THE AGREEMENT

All terms, conditions, and provisions of the original agreement between the parties executed November 1, 1993 and amended by Amendment #1 effective June 5, 1995, Amendment #2 effective August 7, 1995, Amendment #3 effective June 15, 1998, Amendment #4 dated September 7, 2004, and Amendment #5 dated December 1, 2005.

Unless specifically amended above, all terms and conditions of the contract, as amended, are to apply to this amendment and are made a part of this amendment as though expressly rewritten, incorporated, and included herein.

This amendment to the agreement between the parties shall be binding on the heirs, successors and assigns of the parties.

Dated this April 18, 2006

IN WITNESS WHEREOF, the authorized representatives of the Parties hereto have fully executed this instrument on the day and year first above written.

FOR CONTRACTOR

By [Signature]

Its: VICE President

FOR THE CITY OF ANN ARBOR

By [Signature]
John Hieftje, Mayor

By [Signature]
Jacqueline Beaudry, City Clerk

Approved as to Substance

By [Signature]
Sue McCormick
Public Services/Area Administrator

By [Signature]
Roger W. Fraser, City Administrator

Approved as to Form

By [Signature]
Stephen K. Postema, City Attorney

ATTACHMENT A TO AMENDMENT #6 TO AGREEMENT

**OPERATING AND MANAGEMENT CONTRACT DOCUMENTS FOR THE CITY OF
ANN ARBOR MATERIAL RECOVERY FACILITY AND TRANSFER STATION**

**ATTACHMENT A
DESIGN CHANGE DOCUMENTS**

The attached forms become Attachments to the Contract:

- 1) Schedule of Values
- 2) AIA Document G702
- 3) AIA Document G703
- 4) partial contractor waiver
- 5) final contractor waiver

SWIFT RUN PROJECT-FCR Work Scope
MRF Phase II, Solid Waste Transfer Station (TS) and Compost Equipment Storage Building (CESB)
Schedule of Values -- SCHEDULE A1
February-06

| Division | MRF Ph II | TS | | CESB | |
|---------------------------------------|-----------|---------------|-----------------|---------------|---------------|
| MCI Site Plan | | \$ 44,000.00 | \$ 44,000.00 | | \$ - |
| General Conditions | | | \$ 86,255.00 | | \$ 34,911.00 |
| Architectural/Engineering | | \$ 15,052.00 | | \$ 5,616.00 | |
| Supervision | | \$ 14,416.00 | | \$ 6,912.00 | |
| Permits/Fees | | \$ 26,182.00 | | \$ 8,748.00 | |
| Testing | | \$ 12,720.00 | | \$ 5,400.00 | |
| Temporary Facilities | | \$ 3,392.00 | | \$ 1,782.00 | |
| Miscellaneous | | \$ 9,875.81 | | \$ 3,477.60 | |
| Insurance | | \$ 1,696.00 | | \$ - | |
| Clean Up | | \$ 2,920.30 | | \$ 2,975.40 | |
| Site Work | | | \$ 806,322.00 | | \$ 111,688.00 |
| Earthwork/Berm | | \$ 120,966.14 | | \$ 28,928.88 | |
| Site Utilities Increase Due to Delays | | \$ 21,041.00 | | \$ 7,408.80 | |
| Electric Service | | \$ 4,155.20 | | \$ 2,143.80 | |
| Gas Service | | \$ 11,448.00 | | \$ 4,147.20 | |
| Sanitary Sewer | | \$ 24,348.20 | | \$ 27,140.40 | |
| Storm Water System | | \$ 47,440.30 | | \$ - | |
| Water Service | | \$ 257,900.60 | | \$ 23,738.40 | |
| | N | | | | |
| | O | | | | |
| Roads/Walkways Increase Due to Delays | | \$ 4,536.80 | | \$ - | |
| Asphalt Paving | | \$ 4,952.32 | | \$ 6,372.00 | |
| Concrete Paving | | \$ 251,686.40 | | \$ - | |
| Sidewalks | | \$ 2,361.15 | | \$ 2,394.90 | |
| Landscaping Increase Due to Delays | | \$ 3,010.40 | | \$ 388.80 | |
| Fencing | | \$ 38,690.00 | | \$ - | |
| Lawns | | \$ 8,315.70 | | \$ - | |
| Plantings | | \$ 5,469.60 | | \$ 9,024.48 | |
| Concrete | | | \$ 298,441.00 | | \$ 36,699.00 |
| Foundations | | \$ 236,019.60 | | \$ 12,420.00 | |
| Flatwork | | \$ 62,421.28 | | \$ 24,278.40 | |
| Masonry | | | \$ 4,786.00 | | \$ 5,400.00 |
| Block Work | | \$ 4,785.90 | | \$ 5,400.00 | |
| Steel | | | \$ 189,062.00 | | \$ 89,133.00 |
| Steel Building | | \$ 173,331.20 | | \$ 81,464.80 | |
| Miscellaneous Metals | | \$ 15,730.40 | | \$ 7,668.00 | |
| Wood and Plastics | | | \$ 2,064.00 | | \$ 2,884.00 |
| Rough Carpentry | | \$ 2,063.82 | | \$ 2,883.60 | |
| Doors/Windows | | | \$ 56,837.00 | | \$ 28,070.00 |
| Doors | | \$ 6,752.20 | | \$ 5,864.40 | |
| Overhead Doors | | \$ 50,083.94 | | \$ 22,204.80 | |
| Finishes | | | \$ 7,442.00 | | \$ 4,784.00 |
| Walls | | \$ 1,445.84 | | \$ 1,274.40 | |
| Ceilings | | \$ 733.10 | | \$ 842.40 | |
| Flooring | | \$ 181.47 | | \$ 161.78 | |
| Painting | | \$ 5,080.94 | | \$ 2,504.52 | |
| Specialties | | | \$ 615.00 | | \$ 584.00 |
| Signage | | \$ 127.20 | | \$ 86.40 | |
| Bath Accessories | | \$ 487.60 | | \$ 496.80 | |
| Mechanical | | | \$ 104,285.00 | | \$ 71,357.00 |
| Plumbing | | \$ 48,336.00 | | \$ 33,750.00 | |
| HVAC | | \$ 21,308.12 | | \$ 23,588.28 | |
| Fire Protection | | \$ 34,640.80 | | \$ 14,018.40 | |
| Electrical | | | \$ 66,404.00 | | \$ 44,432.00 |
| General Electrical | | \$ 66,403.70 | | \$ 44,431.20 | |
| SUB-TOTAL | | | \$ 1,666,513.00 | | \$ 429,942.00 |
| FCR Mgmt Fee (8%) | | | \$ - | | \$ 34,396.00 |
| Excavator | | | \$ 233,145.00 | | \$ - |
| TOTAL | | \$ 550,000.00 | \$ 1,899,658.00 | \$ 464,338.00 | |

Profit and overhead imbedded in each line item.
The entries in BOLD are the division types. The A1A billings will reflect these divisions.

| | | | | TOTAL FCR CONTRACT INCREASE | |
|--|---------------|---------------------------------|-------------------------------------|-----------------------------|--------------|
| ORIGINAL FCR CONTRACT BUDGET (FALL 2004) | \$ 467,700.00 | \$ 1,086,844.00 | \$ - | | |
| FCR CONTRACT INCREASE | \$ 82,300.00 | \$ 812,814.00 | \$ 464,338.00 | \$ | 1,359,452.00 |
| | | (\$812,814 includes water main) | (\$464,338 includes Management Fee) | | |

APPLICATION AND CERTIFICATION FOR PAYMENT

AIA DOCUMENT G702

PAGE ONE OF _____ PAGES

TO OWNER:

PROJECT:

APPLICATION NO:

Distribution to:

| | |
|--------------------------|------------|
| <input type="checkbox"/> | OWNER |
| <input type="checkbox"/> | ARCHITECT |
| <input type="checkbox"/> | CONTRACTOR |
| <input type="checkbox"/> | |
| <input type="checkbox"/> | |

FROM CONTRACTOR:

VIA ARCHITECT:

PERIOD TO:

PROJECT NOS:

CONTRACT FOR:

CONTRACT DATE:

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract Continuation Sheet, AIA Document G703, is attached.

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

- ORIGINAL CONTRACT SUM \$ _____
- Net change by Change Orders \$ _____
- CONTRACT SUM TO DATE (Line 1 + 2) \$ _____
- TOTAL COMPLETED & STORED TO DATE (Column G on G703) \$ _____

- RETAINAGE:
 - % of Completed Work (Column D + E on G703) \$ _____
 - % of Stored Material (Column F on G703) \$ _____
 Total Retainage (Lines 5a + 5b or Total in Column I of G703) \$ 0.00

- TOTAL EARNED LESS RETAINAGE (Line 4 Less Line 5 Total) \$ 0.00
- LESS PREVIOUS CERTIFICATES FOR PAYMENT (Line 6 from prior Certificate) \$ 0.00
- CURRENT PAYMENT DUE (Line 3 less Line 6) \$ 0.00
- BALANCE TO FINISH, INCLUDING RETAINAGE (Line 3 less Line 6) \$ _____

| CHANGE ORDER SUMMARY | ADDITIONS | DEDUCTIONS |
|--|-----------|------------|
| Total changes approved in previous months by Owner | | |
| Total approved this Month | \$0.00 | \$0.00 |
| TOTALS | \$0.00 | \$0.00 |
| NET CHANGES by Change Order | \$0.00 | |

CONTRACTOR:

By: _____ Date: _____

State of: _____ County of: _____
 Subscribed and sworn to before me this _____ day of _____
 Notary Public: _____
 My Commission expires: _____

ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising the application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED \$ _____

(Attach explanation if amount certified differs from the amount applied. Initial all figures on this Application and on the Continuation Sheet that are changed to conform with the amount certified.)
 ARCHITECT:

By: _____ Date: _____

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

THE AMERICAN INSTITUTE OF ARCHITECTS, 1735 NEW YORK AVE., N.W., WASHINGTON, DC 20006-5292

AIA DOCUMENT G702 - APPLICATION AND CERTIFICATION FOR PAYMENT - 1992 EDITION - AIA © 1992
Users may obtain validation of this document by requesting a completed AIA Document D401 - Certification of Document's Authenticity from the Licensee.

CONTINUATION SHEET

AIA DOCUMENT G703

PAGE OF PAGES

AIA Document G702, APPLICATION AND CERTIFICATION FOR PAYMENT, containing Contractor's signed certification is attached

APPLICATION NO:
APPLICATION DATE:

In tabulations below, amounts are stated to the nearest dollar.

PERIOD TO:
ARCHITECT'S PROJECT NO:

Use Column I on Contracts where variable retainage for line items may apply.

| A ITEM NO. | B DESCRIPTION OF WORK | C SCHEDULED VALUE | D WORK COMPLETED | | E THIS PERIOD | F MATERIALS PRESENTLY STORED (NOT IN D OR E) | G TOTAL COMPLETED AND STORED TO DATE (D+E+F) | H BALANCE TO FINISH (C - G) | I RETAINAGE (IF VARIABLE RATE) |
|---------------------|--------------------------|-------------------------|---|-------------|------------------|---|---|--------------------------------------|---|
| | | | FROM PREVIOUS APPLICATION (D + E) | THIS PERIOD | | | | | |
| GRAND TOTALS | | \$0.00 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | |

Users may obtain validation of this document by requesting of the license a completed AIA Document D401 - Certification of Document's Authenticity

Confirmation of Payment Received
(Partial Waiver)

_____ have a contract with _____ to provide

_____ for the _____

_____ project as shown on P.O. _____.

In fulfillment of our contract with _____ we have provided the goods/services as outlined in the contract and the outlined schedule of payment.

We verify that we have received payment # _____ of the total specified payment as set forth in the contract schedule of payments. The sum of \$ _____ as shown on the attached invoice has been received by _____

in fulfillment of the contract terms.

Company name _____

Signature _____

Print Name _____

Title _____

Date _____

Section 44

CONTRACTOR'S AFFIDAVIT

The undersigned Contractor, _____, represents that on _____, 200_, it was awarded a contract by the City of Ann Arbor, Michigan to _____ under the terms and conditions of a Contract titled _____.

The Contractor represents that all work has now been accomplished and the Contract is complete.

The Contractor warrants and certifies that all of its indebtedness arising by reason of the Contract has been fully paid or satisfactorily secured; and that all claims from subcontractors and others for labor and material used in accomplishing the project, as well as all other claims arising from the performance of the Contract, have been fully paid or satisfactorily settled. The Contractor agrees that, if any claim should hereafter arise, it shall assume responsibility for it immediately upon request to do so by the City of Ann Arbor.

The Contractor, for valuable consideration received, does further waive, release and relinquish any and all claims or right to lien which the Contractor now has or may acquire upon the subject premises for labor and material used in the project owned by the City of Ann Arbor.

This affidavit is freely and voluntarily given with full knowledge of the facts.

Contractor

By _____
(Signature)

Its _____
(Title of Office)

Subscribed and sworn to before me, on this _____ day of _____, 200_,

_____, _____ County, Michigan
Notary Public

My commission expires on:

ATTACHMENT B TO AMENDMENT #6 TO AGREEMENT
OPERATING AND MANAGEMENT CONTRACT DOCUMENTS FOR THE CITY OF
ANN ARBOR MATERIAL RECOVERY FACILITY AND TRANSFER STATION

ATTACHMENT B
RENEWAL REPLACEMENT FUND FORECAST AND STATUS

The attached Renewal Replacement Fund Forecast and Status supercedes and replaces Schedule 9 of the Agreement.

| Year | Forecast | Status |
|------|----------|---------|
| 2006 | 1000000 | 1000000 |
| 2007 | 1000000 | 1000000 |
| 2008 | 1000000 | 1000000 |
| 2009 | 1000000 | 1000000 |
| 2010 | 1000000 | 1000000 |

| Year | Forecast | Status |
|------|----------|---------|
| 2011 | 1000000 | 1000000 |
| 2012 | 1000000 | 1000000 |
| 2013 | 1000000 | 1000000 |
| 2014 | 1000000 | 1000000 |
| 2015 | 1000000 | 1000000 |

Contract Amendment #6: \$82,300 for MRF Phase II Upgrades, \$619,118 for Transfer Station Improvements, \$193,697 for Water Main Looping, \$429,942 for Compost Equipment Storage Building and \$34,396 for Compost Equipment Storage Building Construction Management Services.

**ARTICLE IV:
AMENDMENT TO SECTION 2.10 b OF AGREEMENT:
Capitalized Renewal and Replacement Fund**

The following amendments are made to Section 2 of the Agreement: Ownership, Operation and Maintenance of the Facility. Part 10, (b), Equipment Repair and Replacement Accounts, item (xii) City Contributions to the Account After Completion of Phase II Design Change:

- (xii) *City Contributions to the Account After Completion of Phase II Design Change:* Section 2.10. Capital Replacement Account, Part a of the Agreement will use the following schedule after the Phase II Design Changes referenced in Article IV of Contract Amendment #4, effective date of acceptance. See revised Schedule 9 in Attachment B to this Amendment #6, replacing all prior versions of Schedule 9 as provided for in the Contract and Amendment #4.

| MATERIAL | CITY CONTRIBUTION TO FUND | ANNUAL ESCALATOR |
|------------------------|---------------------------|------------------|
| Solid Waste – City | None | None |
| Solid Waste – Non-City | None | None |
| Recyclables – City | \$2.00/Ton | None |
| Recyclables – Non-City | None | None |

**ARTICLE V:
AMENDMENT TO SECTION 6, PART 2 OF AGREEMENT:
Payments to Contractor and to the City**

The following amendments are made to Section 6 of the Agreement, Payment to Contractor and to the City, Part 2 (b), Net Service Fee – Tipping Fees, Part (ii) Tipping Fees After Completion of Phase II Design Change:

- (ii) *Tipping Fees After Completion of Phase II Design Change:* Contractor and City agree to use the following tipping fee schedule after the Phase II Design Changes referenced in Article IV of the Contract Amendment #4 effective date of acceptance.

| MATERIAL | TIPPING FEE | ANNUAL ESCALATOR |
|-------------|-------------|-----------------------------|
| Solid Waste | \$10.25/Ton | 3.5% Escalator in Agreement |
| Recyclables | \$11.00/Ton | 3.5% Escalator in Agreement |

Annual Adjustments for Fuel: Effective July 1, 2006, the Solid Waste Tipping Fee Identified above in part (ii), Tipping Fees After Completion of Phase II Design Changes and in part (i) of Contract Amendment #4, Tipping Fees After Completion of Phase I Design Changes, shall be subject to an Annual Fuel Cost

**AMENDMENT NUMBER 7 TO
OPERATING AND MANAGEMENT CONTRACT DOCUMENTS FOR THE CITY OF ANN
ARBOR MATERIAL RECOVERY FACILITY AND TRANSFER STATION
BETWEEN
RESOURCE RECOVERY SYSTEMS, INC. (NOW FCR INC.)
AND
THE CITY OF ANN ARBOR**

The City of Ann Arbor, a municipal corporation, 100 N. Fifth Avenue, Ann Arbor, Michigan 48107-8647 ("City") and Resource Recovery Systems, Inc, since purchased by FCR/Casella Waste Systems having its offices at 809 West Hill Street, Charlotte, NC 28208 ("Contractor") agree to amend the Operating and Management Contract for the City of Ann Arbor Material Recovery Facility and Transfer Station, ("the Agreement") made and entered into by the parties on the 1st day of November, 1993 and amended by Amendment #1 effective June 5, 1995, Amendment #2 effective August 7, 1995, Amendment #3 effective June 15, 1998, Amendment #4 dated September 7, 2004, Amendment #5 dated December 1, 2005 and Amendment #6 dated April 10, 2006.

WITNESSETH

WHEREAS, the City and Contractor desire to modify its agreement for operating of the City owned MRF and Transfer Station; and

WHEREAS, As provided for below, the City and the Contractor have mutually agreed to the revisions as shown below, modifying the Agreement to meet the needs of the City as they currently stand.

NOW, THEREFORE, In consideration of the mutual promises set forth below, the Contractor and the City agree that the following sections shall be substituted for like numbered Sections of the original Operating and Management Contract Documents for the City of Ann Arbor Material Recovery Facility and Transfer Station:

**ARTICLE I:
AMENDMENT TO SECTION 2.10 b OF AGREEMENT:
Capitalized Renewal and Replacement Fund**

The following amendments are made to Section 2 of the Agreement: Ownership, Operation and Maintenance of the Facility. Part 10, (b), Equipment Repair and Replacement Accounts, item (vi) City One Time Contribution to the Account Upon Execution of Contract Amendment #7:

- (vi) *City One Time Contribution to the Account Upon Execution of Contract Amendment #4:* Within 30 days of execution of this Amendment, the City will transfer \$2,500,000 into a separate MRF and Transfer Station Capital Account(s) of the Solid Waste Enterprise Fund and with Amendment #6, will transfer \$600,000 from the MRF/TS Capital Replacement Account of the Solid Waste Enterprise Fund to this same MRF and Transfer Station Capital Account(s) to cover the cost of Phase I and Phase II Design Changes referenced in Article IV of Contract Amendment #4. Further, within thirty (30) days of execution of Amendment #6, the City will transfer \$759,453 from its Solid Waste Fund (fund balance) into this same separate MRF and Transfer Station Capital Account(s) of the Solid Waste Enterprise Fund to cover the additional Design Changes

referenced in Article I at costs not to exceed those set forth in Attachment A to Contract Amendment #6: \$82,300 for MRF Phase II Upgrades, \$619,118 for Transfer Station Improvements, \$193,697 for Water Main Looping, \$429,942 for Compost Equipment Storage Building and \$34,396 for Compost Equipment Storage Building Construction Management Services. Further, within thirty (30) days of execution of Amendment #7, the City will transfer \$227,843 from its Solid Waste Fund (fund balance) into this same separate MRF and Transfer Station Capital Account(s) of the Solid Waste Enterprise Fund to cover additional Building and Equipment Design Changes for MRF Phase II costs (above the \$550,000 previously approved in Contract Amendment #6) not to exceed those set forth in Attachment A to Contract Amendment #7: \$777,843 for MRF Phase II Upgrades.

EXECUTION OF THE AGREEMENT

Unless specifically amended above, all terms, conditions, and provisions of the original agreement between the parties executed November 1, 1993 and as amended by Amendment #1 effective June 5, 1995, Amendment #2 effective August 7, 1995, Amendment #3 effective June 15, 1998, Amendment #4 dated September 7, 2004, Amendment #5 dated December 1, 2005 and Amendment #6 dated April 10, 2006, are to apply to this amendment and are made a part of this amendment as though expressly rewritten, incorporated, and included herein.

This amendment to the agreement between the parties shall be binding on the heirs, successors and assigns of the parties.

Dated this Sept 17, 2007

IN WITNESS WHEREOF, the authorized representatives of the Parties hereto have fully executed this instrument on the day and year first above written.

FOR CONTRACTOR

By Sean P. Kelly
Its: Vice President

FOR THE CITY OF ANN ARBOR

By John Hieftje
John Hieftje, Mayor

By Jaqueline Beaudry
Jaqueline Beaudry, City Clerk

Approved as to Substance

By Roger W. Fraser
Roger W. Fraser, City Administrator

By Sue McCormick
Sue McCormick
Public Services Area Administrator

Approved as to Form

By Stephen K. Postema
Stephen K. Postema, City Attorney

**ATTACHMENT A TO AMENDMENT #7 TO AGREEMENT
OPERATING AND MANAGEMENT CONTRACT DOCUMENTS FOR THE CITY OF ANN
ARBOR MATERIAL RECOVERY FACILITY AND TRANSFER STATION**

**ATTACHMENT A
DESIGN CHANGE DOCUMENTS**

The attached forms become Attachments to the Contract:

- 1) Sample Application for Payment & Schedule of Values (AIA G702 and G703)
- 2) FCR MRF Phase II Commingled Line Cover Memo
- 3) FCR Quote for MRF Phase II Commingled Line Building Modifications
 - Signed Quote Form
 - Quote Cost Breakdown
 - Detailed Quotes
- 4) CP Quote for MRF Phase II Equipment

**AMENDMENT NUMBER 8 TO
OPERATING AND MANAGEMENT CONTRACT DOCUMENTS FOR THE CITY OF
ANN ARBOR MATERIAL RECOVERY FACILITY AND TRANSFER STATION
BETWEEN
FCR LLC d/b/a RRS, INC.
AND
THE CITY OF ANN ARBOR**

The City of Ann Arbor, a municipal corporation, 100 N. Fifth Avenue, Ann Arbor, Michigan 48107-8647 ("City") and FCR LLC d/b/a RRS, Inc. having its offices at 809 West Hill Street, Charlotte, NC 28208 ("Contractor") agree to amend the Operating and Management Contract for the City of Ann Arbor Material Recovery Facility and Transfer Station, ("the Agreement") made and entered into by the parties on the 1st day of November, 1993 and amended by Amendment #1 effective June 5, 1995, Amendment #2 effective August 7, 1995, Amendment #3 effective June 15, 1998, Amendment #4 dated September 7, 2004, Amendment #5 dated December 1, 2005, Amendment #6 dated April 18, 2006, and Amendment #7 dated September 17, 2007.

WITNESSETH

WHEREAS, developments in recycling collection and processing technology have created opportunities for both the City and Contractor to improve operations and lower costs; and

WHEREAS, improving operations and lowering costs will require design changes to the MRF and adjustments in the business arrangements between the two parties that are part of the agreement; and

WHEREAS, the City and Contractor desire to modify the agreement; and

THEREFORE, the Contractor and the City agree to amend the agreement, as previously amended, as follows:

**ARTICLE I
AMENDMENT TO SECTION 1 OF AGREEMENT
Definitions**

Section 1 of the Agreement, Definitions, is amended to read as follows:

Section 1.01: Definitions

For purposes of this Contract, the following words and phrases shall be given the following respective meanings:

"Container Sorting Line" means the processing system for sorting glass, plastic and metal containers as described in the Construction Contract. Effective at the Single Stream Recycling Processing Line Acceptance Date, all references to the Container Sorting Line shall refer to the Single Stream Recycling Processing Line.

"Design Change – Single Stream" means the Single Stream Recycling Processing Line equipment installation and conveyor modifications including modifications to floors and doors as required to accommodate the equipment and all associated permitting, engineering and acceptance testing when completed and all components formally accepted by the City.

"Design Change – MRF West Addition" means the construction of the addition to the western elevation of the MRF including addition of new loading docks to the northern elevation of the new addition and expansion of the paving apron directly to the north of the new addition to accommodate the loading dock usage and all associated permitting, engineering and acceptance testing when completed and all components formally accepted by the City.

"Guaranteed Maximum Process Residue" Defined as 7% for the combined Process Residue of the container processing line and paper processing line as calculated by the Residual Material Test described in Schedule 1 (Performance Guarantees and Testing Procedure). Effective at the Single Stream Recycling Processing Line Acceptance Date, all the Guaranteed Maximum Process Residue shall be defined as 10% for the Single Stream Recycling Processing Line as calculated by the Residual Material Test described in Schedule 1 (Performance Guarantees and Testing Procedure).

"Major Equipment" means the Container Sorting Line, Paper Sorting Line, Solid Waste Sorting Line, Single Stream Recycling Processing Line, Solid Waste Compaction and Transfer Line and all related equipment.

"Paper Sorting Line" means the processing system for sorting different paper products as described in the Construction Contract. Effective at the Single Stream Recycling Processing Line Acceptance Date, all references to the Paper Sorting Line shall refer to the Single Stream Recycling Processing Line.

"Recyclable Materials" means those materials specifically identified as acceptable by the MRF/TS for processing in its Paper Sorting Line or Container Sorting Single Stream Recycling Processing Line in the form identified in Schedule 7 (Facility Delivery Standards), including Pre-Sorted Materials and Recyclable Materials sorted from the Solid Waste Sorting Line and including residue material up to the limits specified in Schedule 1 (Performance Guarantees and Testing Procedures) of this Contract.

"Single Stream Recycling Processing Line" means the processing system for sorting different paper products, glass, plastic and metal containers as described in Exhibit D to Change Order #8, Conceptual Design for Design Change – Single Stream and Design Change – West Addition.

"Single Stream Recycling Processing Line Acceptance Date" means the date of acceptance of the Design Change – Single Stream in accordance with this Operating Contract.

"System" means the Container, Paper, Single Stream Recycling Processing and Solid Waste Sorting Lines and appurtenances to be furnished and installed by the Vendor at the Facility to Process Recyclable Materials into Recovered Materials and to compact and transfer Solid Waste.

ARTICLE II
AMENDMENT TO SECTION 2.01 OF AGREEMENT
Ownership, Operation and Maintenance of the Facility – Overall Responsibilities

Section 2.01 of the Agreement, Ownership, Operation and Maintenance of the Facility - Overall Responsibilities, is amended to read as follows:

Section 2.01: Overall Responsibilities

(a) Contractor shall, at its sole cost and expense, provide all management, supervision, personnel, materials, equipment, services, and supplies (other than Recyclable Materials and Solid Waste after Acceptance) necessary to operate, maintain, and repair the MRF/TS and MRF/TS Site in accordance with the terms and provisions of this Operating Contract and the following schedules which are incorporated as part of this Contract:

- Schedule 1: Performance Guarantees and Testing Procedures
- Schedule 2: Construction Contract
- Schedule 3: Full Parent Guarantee
- Schedule 4: City of Ann Arbor Materials Recovery Facility/Transfer Station Construction and Operation: Request for Proposals
- Schedule 5: Contractor's Proposal (including Proposal Forms and Letters of Clarification)
- Schedule 6: Performance Bond or Letter of Credit
- Schedule 7: Facility Delivery Standards
- Schedule 8: Sample Invoices and Tipping Fee Schedule
- Schedule 9: Maintenance Log and Renewal/Replacement Schedule

This Contract, together with the Schedules, constitutes the entire Contract between the Contractor and the City with respect to the operation and maintenance of the MRF/TS. The Request for Proposals (RFP) and the Contractor's Proposal are incorporated as Schedules 4 and 5, except that any conflicts between the documents and the terms of the Contract shall be controlled by this Contract.

In case of a conflict among the documents in any requirement(s), the requirement(s) of the document highest on the list below shall prevail over any conflicting requirement(s) of a document lower on the list.

- (1) Schedules
- (2) Contract
- (3) Addenda in reverse chronological order

- (4) Proposal
- (5) RFP document (sections not previously listed above)

The City will maintain the entrance and entrance roads on the City's property up to the MRF/TS Site unless maintenance is required because of the negligent act or omission of Contractor, reasonable wear and tear excepted.

- (b) Contractor shall, at its sole cost and expense, market or cause to be marketed all Products in accordance with the terms and provisions of this Operating Contract.
- (c) The City shall deliver or cause to be delivered Recyclable Material and Solid Waste collected by City forces or contractors, after Acceptance of the MRF/TS at no cost to Contractor.
- (d) The Contractor will construct, manage and oversee the installation and building modifications associated with Design Change – Single Stream and Design Change – West Addition, as provided for in Exhibit D to this Contract Amendment #8.

- (1) The Contractor will secure final Design Change approval of the procurement documents for each Design Change project from the City and the Engineer prior to soliciting pricing and proposals from equipment and construction contractors.
- (2) The Contractor will complete a competitive procurement of the equipment and construction contractors with at least three vendors solicited for each Design Change project.
- (3) The Contractor will review the pricing and proposals of the responding equipment and construction contractors with the City and Engineer and secure approval of the selected equipment and construction contractors and a Best and Final Project Estimate and Timeline from the City and the Engineer prior to authorizing work.
- (4) The Contractor will review and approve all shop drawings by the equipment and construction contractor(s) and subcontractors.
- (5) The Contractor will visit the site to ascertain that construction is proceeding as per contract, change orders and drawings.
- (6) The Contractor will attend twice-monthly construction meetings. The City Consultant and Engineer, currently RRSI, will be responsible for managing the meetings and preparing meeting agenda and minutes.
- (7) The Contractor will copy the City of Ann Arbor and the Engineer on all communications between the Contractor and the equipment and construction contractor(s).
- (8) The Contractor will prepare monthly invoices for each of the following and forward to the Engineer for review and approval:

Design Change – Single Stream
Design Change – West Addition

The requirements for Design Change - Single Stream assume that work will be initiated

at the time of Change Order approval and completed within sixty (60) days of July 1, 2010 with the final deadline determined as part of the City approval to begin construction of Design Change – Single Stream.

The requirements for Design Change – West Addition assume that work will be initiated no later than January 1, 2011 and completed within sixty (60) days of December 31, 2011 with the final deadline determined as part of the City approval to begin construction of Design Change – West Addition.

ARTICLE III
AMENDMENT TO SECTION 2.10 b OF AGREEMENT
Capitalized Renewal and Replacement Fund

Section 2 of the Agreement: Ownership, Operation and Maintenance of the Facility. Part 10, (b), Equipment Repair and Replacement Accounts is amended to add the following:

- (vii) *City One Time Contribution to the Account Upon Execution of Contract Amendment #8:* Within 30 days of execution of this Amendment, the City will transfer \$3,250,000 into a separate MRF and Transfer Station Capital Account(s) of the Solid Waste Enterprise Fund to cover the cost of Design Change – Single Stream referenced in Article VII of this Contract Amendment #8.
- (viii) *Contractor One Time Contribution to the Account Effective January 1, 2011:* No later than January 1, 2011 the Contractor will transfer \$550,000 into a separate MRF and Transfer Station Capital Account(s) of the Solid Waste Enterprise Fund to cover the cost of Design Change – West Addition referenced in Article VII of this Contract Amendment #8.
- (ix) *One Time Adjustment to Contractor Contribution to the Account Effective Upon Completion of Design Change – West Addition:* Within thirty (30) days after completion of the Design Change – West Addition, the difference between the Contractor One Time Contribution to the Account of \$550,000 and the final Direct Cost for the Design Change shall be calculated and the amount either reimbursed to the Contractor from the MRF and Transfer Station Capital Account (if the Direct Cost is less) or paid to the MRF and Transfer Station Capital Account by the Contractor (if the Direct Cost is more).

ARTICLE IV
AMENDMENT TO SECTION 3 OF AGREEMENT
Term of Contract

Section 3 of the Agreement, Term of Contract, Part 1, Life of Contract, is amended to read as follows:

Section 3.01: Life of Contract

This Contract shall commence as of the date it was entered into by the Parties. The Parties' obligations as to delivery, processing and sale or disposal of Recyclable-Material and Solid Waste shall be for a period beginning on the Acceptance Date of September 22, 1995 and extending for twenty-six (2026) years thereafter until September 21,

20152021 unless terminated earlier in accordance with Article XIII, or renewed in accordance with this Article III.

ARTICLE V
AMENDMENT TO SECTION 6 OF AGREEMENT
Payments to Contractor and to the City

Section 6 of the Agreement, Payment to Contractor and to the City, Part 2 (b), Net Service Fee – Tipping Fees, is amended to add the following:

- (iii) *Tipping Fees After Completion of Design Change-Single Stream*: Contractor and City agree to use the following tipping fee schedule after the Design Change-Single Stream Recycling Processing Line Acceptance Date,

| MATERIAL | TIPPING FEE | ANNUAL ESCALATOR |
|-------------|-------------------------------------|--|
| Solid Waste | \$10.34/Ton (as of July 1, 2009) | 3.5% Escalator in Agreement |
| Recyclables | \$11.09/Ton (as of July 1, 2009) | 3.5% Escalator times \$54.00 added to Tipping Fee |

Net Negative Recyclables Tipping Fee: When Net Revenue per Ton for a month drops below the Trigger Price for Revenue Sharing, the difference between the Trigger Price for Revenue Sharing and the Net Revenue per Ton for that month shall be added to the Recyclables Tip Fee for that month. For example, if the monthly Net Revenue is \$45.00, the Tip Fee for that month would be \$20.09 (\$54.00 - \$45.00 + \$11.09)

Annual Adjustments for Fuel: The Solid Waste Tipping Fee Identified above in part (ii), Tipping Fees After Completion of Design Change - Single Stream and in part (i) of Contract Amendment #8, Tipping Fees After Completion of Design Changes – Single Stream, shall be subject to an Annual Fuel Cost Adjustment for 33% of the Tipping Fee with the remaining 67% of the Tipping Fee subject to the 3.5% Annual Escalator in the Agreement. The Fuel Cost Adjustment (FCA) will be based on the fuel index from the US Department of Energy website Midwest PADD 2 for "No. 2 Diesel Fuel – Sales to End Users, Average" for Michigan. The FCA will be based upon diesel fuel price changes as published on the Internet (presently at http://tonto/eia.doe.gov/oil_gas/petroleum/info_glance/distillate.html) measured from the June index of the past year to the June index of the current year immediately prior to the July 1 period for which the FCA shall be applied. This adjustment will not be limited and will float up or down as the fuel index changes and accumulates over a 12-month calendar year period, and that portion of the contract price shall be established for the next Contract Year beginning on July 1 of each year.

An example application of the FCA and Annual Escalator follows that calculates the increase from the \$10.34 per ton Solid Waste Tip Fee based on a hypothetical DOE index reading for June 2010 and a hypothetical

DOE index readings for June 2011, resulting in the hypothetical Adjusted Tip Fee as shown below.

| | Tip Fee Breakdown | Fuel Cost Adjustment – See Note #1 | Annual Escalator | Change to Tip Fee | Adjusted Tip Fee |
|------|-------------------|------------------------------------|------------------|-------------------|------------------|
| 33% | \$ 3.41 | 12.02% | 0.00% | \$ 0.41 | \$ 3.82 |
| 67% | \$ 6.93 | 0.00% | 3.50% | \$ 0.24 | \$ 7.17 |
| 100% | \$ 10.34 | | | | \$ 10.99 |

Note #1: example: June 2010 Escalator index @\$183.00, June 1011 index @ 205, so 205-183=22 as the fuel cost adjustment index increase and 22/183=12.02% as the actual Fuel Cost Adjustment Factor for this period

ARTICLE VI
AMENDMENT TO SECTION 6 OF AGREEMENT
Payments to Contractor and to the City

Section 6 of the Agreement, Payment to Contractor and to the City, Part 3 (b), Revenue Sharing, is amended to add the following:

(c) *Revenue Share after Completion of Design Change – Single Stream Contractor and City agree to use the following schedule after the Single Stream Recycling Processing System Acceptance Date.*

| MATERIAL | TRIGGER PRICE FOR REVENUE SHARING | PERCENTAGE SHARED TO CITY ABOVE TRIGGER PRICE |
|---------------------------------|--|---|
| City Delivered Recyclables | \$54/Ton – no Escalator | 80% |
| City Delivered Recyclables | \$70/Ton – no Escalator When Net Revenue per Ton equals or exceeds \$70.00 for that month | 90% |
| All Other Delivered Recyclables | \$54/Ton – no Escalator | 30% |

Contractor Agrees to cause to be directed to the MRF/TS, and not to any other MRF controlled by the Contractor or its affiliates or subcontractors, all other delivered recyclables that the Contractor or its affiliates or subcontractors processes that are sourced from locations west of a line drawn north and south from the border shared by Wayne and Washtenaw Counties, south of I-96 and north of the Ohio border, excluding all of Oakland County. The City, upon written request from the Contractor, may elect to grant the Contractor an exemption to this restriction in unique specific situations where a public agency has requested that its recyclables go to a different MRF controlled by the Contractor or its affiliates or subcontractors.

ARTICLE VII
AMENDMENT TO SECTION 6 OF AGREEMENT
Payments to Contractor and to the City

Section 6 of the Agreement, Payment to Contractor and to the City, Part 5, Billing and Payment of Other Fees, Direct Costs or Charges, is amended to read as follows:

Section 6.05: Billing and Payment of Other Fees, Direct Costs or Charges

If payments are owed to either Party under the terms of this Contract (other than for Net Service Fee), that Party shall submit an invoice along with documentation of any applicable fees, Direct Costs or charges to the other Party within fifteen (15) days after said fees, Direct Costs or charges are incurred by that Party. In addition, Contractor shall submit an invoice for tasks detailed in Article II Section 2.04 of Amendment # 68 associated with the Design Change – Single Stream and Design Change – West Addition, ~~construction of the compost equipment storage building and related water main loop.~~ The invoice will reflect Direct Costs as provided for in the Agreement for all costs associated with Design Change – Single Stream and Design Change – West Addition. ~~an 8% management fee for each the compost equipment storage buildings and water main loop capital costs.~~ The invoice, or Application for Payment, shall follow the AIA Document G702 and G703 format with partial and final contractor waivers attached (see Attachment A to Contract Amendment #8 for required forms). Invoices shall be sent to the Engineer for review and approval, who will them forward to the City within 7 days. Payment shall be made within 30 days after the receipt of the invoices.

ARTICLE VIII
AMENDMENT TO SECTION 9 OF AGREEMENT
Changes to the Facility

Section 9 of the Agreement, Changes to the Facility, is amended to add the following:

As provided for in Section 9, Changes to the Facility, the City is authorizing the Contractor to undertake Design Change – Single Stream and Design Change – West Addition to the MRF and Transfer Station in accordance with procedures provided for in the Agreement and design requirements provided by the City, represented at the time of Execution of this Contract Amendment by the documents included herein as Attachment D, Conceptual Design for Design Change – Single Stream and Design Change – West Addition.

The Design Change – Single Stream and Design Change – West Addition shall be considered complete, for the purposes of this Amendment, upon satisfaction of the acceptance testing procedures outlined in Schedule 1 (Performance Guarantees and Testing Procedures) of the Agreement, as modified by the City's Engineer to match the performance characteristics of the Design Change – Single Stream and Design Change – West Addition. The City and Contractor shall mutually agree in writing to revise the Acceptance Test Plan, if necessary, prior to its initiation.

EXECUTION OF THE AGREEMENT

All terms, conditions, and provisions of the original agreement between the parties executed November 1, 1993 and amended by Amendment #1 effective June 5, 1995, Amendment #2 effective August 7, 1995, Amendment #3 effective June 15, 1998, Amendment #4 dated September 7, 2004, Amendment #5 dated December 1, 2005, Amendment #6 dated April 18, 2006, and Amendment #7 dated September 17, 2007.

Unless specifically amended above, all terms and conditions of the contract, as amended, are to apply to this amendment and are made a part of this amendment as though expressly rewritten, incorporated, and included herein.

This amendment to the agreement between the parties shall be binding on the heirs, successors and assigns of the parties.

Dated this _____, 2009

IN WITNESS WHEREOF, the authorized representatives of the Parties hereto have fully executed this instrument on the day and year first above written.

FOR CONTRACTOR

By *Ken P. [Signature]*

Its: vice president

FOR THE CITY OF ANN ARBOR

By *[Signature]*
John Hieftje, Mayor

By *[Signature]*
Jacqueline Beaudry, City Clerk

Approved as to Substance

By *[Signature]*
Sue McCormick
Public Services Area Administrator

By *[Signature]*
Roger W. Fraser, City Administrator

Approved as to Form

By *[Signature]*
Stephen K. Postema, City Attorney

**ATTACHMENT A TO CONTRACT AMENDMENT #8 TO AGREEMENT
OPERATING AND MANAGEMENT CONTRACT DOCUMENTS FOR THE CITY OF
ANN ARBOR MATERIAL RECOVERY FACILITY AND TRANSFER STATION**

**ATTACHMENT A
DESIGN CHANGE DOCUMENTS**

The attached forms become Attachments to the Contract:

- 1) AIA Document G702
- 2) AIA Document G703
- 3) partial contractor waiver
- 4) final contractor waiver

ATTACHMENT B TO CONTRACT AMENDMENT #8 TO AGREEMENT
OPERATING AND MANAGEMENT CONTRACT DOCUMENTS FOR THE CITY OF
ANN ARBOR MATERIAL RECOVERY FACILITY AND TRANSFER STATION

ATTACHMENT B
RENEWAL REPLACEMENT FUND FORECAST AND STATUS

The attached Renewal Replacement Fund Forecast and Status supersedes and replaces Schedule 9 of the Agreement effective upon the Single Stream Recycling Processing System Acceptance Date.

ATTACHMENT C TO CONTRACT AMENDMENT #8 TO AGREEMENT
OPERATING AND MANAGEMENT CONTRACT DOCUMENTS FOR THE CITY OF
ANN ARBOR MATERIAL RECOVERY FACILITY AND TRANSFER STATION

ATTACHMENT C
FACILITY DELIVERY STANDARDS

The attached Facility Delivery Standards supersedes and replaces Schedule 7 of the Agreement effective upon the Single Stream Recycling Processing System Acceptance Date.

FACILITY DELIVERY STANDARDS FOR SINGLE STREAM RECYCLABLES

SINGLE STREAM RECYCLABLES consist of the following commingled materials:

- Glass, transparent and translucent food and beverage bottles and containers. Paper labels are acceptable as are rings and lids on glass containers.
- Tin/Steel cans, tin plated, food and beverage containers, all sizes; paper labels are acceptable.
- Household scrap metal including metal pots and pans, metal trays, metal bakeware, toasters, metal utensils, etc.
- Aluminum used beverage containers and foil clean of food
- All plastic bottles – including but not limited to:
 - HDPE plastic bottles (SPI Code #2) - blow-molded (bottle-necked) - natural and colored HDPE containers, including plastic milk jugs, water jugs, detergent bottles, and similar items; caps and labels are acceptable. Motor oil and anti-freeze containers are not acceptable. Tubs, pots, and trays are not acceptable.
 - PET plastic bottles (SPI Code #1) blow-molded (bottle-necked) clear and green PET containers, such as soda bottles, dishwashing soap bottles, and some shampoo bottles. Tubs, pots, and trays are not acceptable.
- Household plastic containers #1, #2 and #4 through #7 excluding Styrofoam and #3.
- Bulky HDPE - defined as large HDPE items (buckets, crates, toys, trays, furniture, bins, barrels etc.). This category is often referred to as "Injection HDPE".
- Multi-coated/plastic coated paper beverage cartons including milk and juice cartons also known as aseptic containers.
- ONP - old newspapers and advertisement inserts, loose or placed in Kraft (brown) paper bags. Old newspaper that contains incidental moisture from rain on collection days is acceptable. Soaked paper or yellowed newsprint is unacceptable.

- OMG - old magazines containing glossy coated paper, including catalogues, glossy fillers or mailers, loose or placed in Kraft (brown) paper bags, with the exception of wet material or material that was once wet.
- OCC - old corrugated containers (cardboard) that are flattened that have liners of Kraft, jute, or test liner. Staples and tape with water-soluble glues do not have to be removed. OCC can be damp but not soaked. Pizza boxes free of food are acceptable. Wax-coated old corrugated containers are not acceptable.
- Kraft (brown) paper bags - all sizes of loose, bundled or bagged Kraft paper grocery sacks.
- Junk mail - all dry, loose or bagged bulk mail consisting of paper or cardboard. All unopened junk mail and envelopes with window are acceptable.
- Office paper and household writing paper - all types and sizes of dry, loose or bagged white and colored ledger and copier paper, note pad paper (no backing), loose leaf fillers, computer paper (continuous-form perforated white bond or green-bar paper).
- Boxboard - all non-corrugated cardboard, commonly used in dry food and cereal boxes, shoe boxes, and other similar packaging. Boxboard with wax or plastic coating and boxboard that has been contaminated by food is not acceptable.
- Telephone books
- Gift wrapping paper

Maximum allowable contamination rate: 10%.

DELIVERY RULES AND REGULATIONS

- Residents and businesses are encouraged to discard containers' contents, labels, caps, and rings, and to rinse containers; but there is no requirement for these to be removed from Recyclable Materials.
- Recyclables will not be delivered in bags, however, it is acknowledged that the Contractor will process the contents of the bags as necessary for insignificant amounts of bagged recyclables in a load. If the Contractor determines that significant amounts of Recyclables are received in bags, the City will be notified and a mutually agreeable plan implemented that remedies the situation up to and including determination of loads considered non-conforming as stated below. Contractor acknowledges that up to 10% of loads delivered by the University of Michigan is delivered bagged and Contractor will continue to accept those loads from the University.
- Loads will be considered non-conforming to Facility Delivery Standards if:
 - They are found to be contaminated with Hazardous or Infectious Waste and/or is unprocessable.
 - A load contains more than the maximum allowable contamination of materials that are not acceptable as Recyclables, but are not Hazardous or Infectious Waste

**ATTACHMENT D TO CONTRACT AMENDMENT #8 TO AGREEMENT
OPERATING AND MANAGEMENT CONTRACT DOCUMENTS FOR THE CITY OF
ANN ARBOR MATERIAL RECOVERY FACILITY AND TRANSFER STATION**

**ATTACHMENT D
CONCEPTUAL DESIGN FOR DESIGN CHANGE – SINGLE STREAM AND DESIGN
CHANGE – WEST ADDITION**

The attached conceptual design documents for Design Change – Single Stream and Design Change – West Addition represent the intended Design Change projects at the time of execution of this Agreement.

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**AMENDMENT NUMBER 9 TO
OPERATING AND MANAGEMENT CONTRACT DOCUMENTS FOR THE CITY OF
ANN ARBOR MATERIAL RECOVERY FACILITY AND TRANSFER STATION
BETWEEN
FCR LLC d/b/a RRS, INC.
AND
THE CITY OF ANN ARBOR**

The City of Ann Arbor, a municipal corporation, 100 N. Fifth Avenue, Ann Arbor, Michigan 48107-8647 ("City") and FCR LLC d/b/a RRS, Inc. having its offices at 809 West Hill Street, Charlotte, NC 28208 ("Contractor") agree to amend the Operating and Management Contract for the City of Ann Arbor Material Recovery Facility and Transfer Station ("the Agreement"), made and entered into by the parties on the 1st day of November, 1993 and amended by Amendment #1 effective June 5, 1995, Amendment #2 effective August 7, 1995, Amendment #3 effective June 15, 1998, Amendment #4 dated September 7, 2004, Amendment #5 dated December 1, 2005, Amendment #6 dated April 18, 2006, Amendment #7 dated September 17, 2007, and Amendment #8 dated December 16, 2009.

WITNESSETH

WHEREAS, the parties entered into Amendment #8 for the modification of the Material Recovery Facility for single stream recycling;

WHEREAS, the parties entered into Amendment #8 before all designs for the modifications were finalized and before the Contractor received bids for all of the work;

WHEREAS, some changes to the designs covered by Amendment #8 are required for safety and/or operational reasons and for some unanticipated additional work;

WHEREAS, FCR has received bids for all of the work, including the changes in the work, which have resulted in both decreases and increases in the costs of components of the work; and

WHEREAS, the City and Contractor desire to modify the Agreement;

THEREFORE, the Contractor and the City agree to amend the Agreement, as previously amended, as follows:

**ARTICLE III
AMENDMENT TO SECTION 2.10 b OF AGREEMENT
Capitalized Renewal and Replacement Fund**

Section 2 of the Agreement: Ownership, Operation and Maintenance of the Facility. Part 10, (b), Equipment Repair and Replacement Accounts is amended to add the following:

- (vii) *City One Time Contribution to the Account Upon Execution of Contract Amendment #9*: Within 30 days of execution of this Amendment, the City will transfer \$250,000 into the previously established MRF and Transfer Station Capital Account(s) of the Solid Waste Enterprise Fund, of which \$227,397 shall be used to cover the additional costs of the Design Change – Single Stream

referenced in Article VII of Contract Amendment #8 as set forth in attached Exhibit A. The remaining \$22,603 shall be reserved for use as a contingency for change orders in the event other changes are required, subject to approval by the City Administrator. When the work authorized by Amendments #8 and #9 are completed, the City may return the remaining balance of the \$250,000 to the City's Solid Waste Fund Balance.

EXECUTION OF THE AGREEMENT

All terms, conditions, and provisions of the original agreement between the parties executed November 1, 1993 and amended by Amendment #1 effective June 5, 1995, Amendment #2 effective August 7, 1995, Amendment #3 effective June 15, 1998, Amendment #4 dated September 7, 2004, Amendment #5 dated December 1, 2005, Amendment #6 dated April 18, 2006, Amendment #7 dated September 17, 2007, and Amendment #8 dated December 16, 2009.

Unless specifically amended above, all terms and conditions of the contract, as amended, are to apply to this amendment and are made a part of this amendment as though expressly rewritten, incorporated, and included herein.

This amendment to the agreement between the parties shall be binding on the heirs, successors and assigns of the parties.

Dated this August 25, 2010.

IN WITNESS WHEREOF, the authorized representatives of the parties hereto have fully executed this instrument on the day and year first above written.

FOR CONTRACTOR

By [Signature]
Its: Vice President

FOR THE CITY OF ANN ARBOR

By [Signature]
John Hieftje, Mayor

By [Signature]
Jacqueline Beaudry, City Clerk

Approved as to Substance:

By [Signature]
Sue McCormick
Public Services Area Administrator

By [Signature]
Roger W. Fraser, City Administrator

Approved as to Form:

By [Signature]
Stephen K. Postema, City Attorney



City of Ann Arbor

100 N. Fifth Avenue
Ann Arbor, MI 48104
<http://a2gov.legistar.com/Calendar.aspx>

Master

File Number: 10-0590

File ID: 10-0590

Type: Resolution

Status: Passed

Version: 1

Reference:

Controlling Body: City Council

File Created Date : 07/06/2010

* File Name: 7/6/10 FCR Amendment #9

Final Action: 07/06/2010

Title: Resolution to Appropriate Funds and Approve Contract Amendment #9 with FCR LLC for MRF Single Stream Recycling Upgrades and Processing Changes (\$250,000.00) (8 Votes Required)

Notes:

Sponsors:

Enactment Date: 07/06/2010

Attachments:

Enactment Number: R-10-251

Drafter/Contact: Tom McMurtrie

Hearing Date:

* Admin/Mgr: Sue F. McCormick, Public Services Administrator

Effective Date:

History of Legislative File

| Ver- sion: | Acting Body: | Date: | Action: | Sent To: | Due Date: | Return Date: | Result: |
|---------------|--------------|------------|----------|----------|-----------|-----------------|---------|
| 1 | City Council | 07/06/2010 | Approved | | | | Pass |

Text of Legislative File 10-0590

Resolution to Appropriate Funds and Approve Contract Amendment #9 with FCR LLC for MRF Single Stream Recycling Upgrades and Processing Changes (\$250,000.00) (8 Votes Required)

Whereas, Implementation of upgrades to the Material Recovery Facility (MRF) to accept single stream recycling provides a number of benefits to the City, including a cleaner community, greater operating efficiencies, overall increases in recycling and rewards to City's residents for recycling;

Whereas, City Council previously approved Contract Amendment #8 with FCR LLC, d/b/a RRS, Inc. (FCR), for single stream MRF upgrades;

Whereas, the \$250,000.00 represents 7.7 percent of the original \$3,250,000.00 project budget, which is within the range of a typical project contingency;

Whereas, the project will lengthen the original calculated 6.7 year payback by .4 years, for a total of 7.1 years;

Whereas, Funds for these upgrades are available in the Solid Waste Fund Balance; and

Whereas, FCR received HR approval on June 3, 2010;

RESOLVED, That \$250,000.00 be appropriated from the Solid Waste Fund Balance to the FY2011 Solid Waste Capital Budget for the purpose of Single Stream Recycling upgrades and be available for the life of the project;

RESOLVED, That Council approve contract amendment #9 with FCR in the amount of \$250,000.00 to complete the upgrade of the MRF for single stream recycling, which includes \$22,603.00 for contingencies approved by the City Administrator;

RESOLVED, That the Mayor and City Clerk be authorized and directed to execute each contract after approval as to form by the City Attorney and approval as to substance by the City Administrator; and

RESOLVED, That the City Administrator be authorized to take the necessary administrative actions to implement this resolution.

**AMENDMENT NUMBER 10 TO
OPERATING AND MANAGEMENT CONTRACT DOCUMENTS FOR THE CITY OF
ANN ARBOR MATERIAL RECOVERY FACILITY AND TRANSFER STATION
BETWEEN
FCR LLC d/b/a RRS, INC.
AND
THE CITY OF ANN ARBOR**

The City of Ann Arbor, a municipal corporation, 100 N. Fifth Avenue, Ann Arbor, Michigan 48107-8647 ("City") and FCR LLC d/b/a RRS, Inc. having its offices at 809 West Hill Street, Charlotte, NC 28208 ("Contractor") agree to amend the Operating and Management Contract for the City of Ann Arbor Material Recovery Facility and Transfer Station ("the Agreement"), made and entered into by the parties on the 1st day of November, 1993 and amended by Amendment #1 effective June 5, 1995, Amendment #2 effective August 7, 1995, Amendment #3 effective June 15, 1998, Amendment #4 dated September 7, 2004, Amendment #5 dated December 1, 2005, Amendment #6 dated April 18, 2006, Amendment #7 dated September 17, 2007, Amendment #8 dated December 16, 2009, and Amendment #9 dated August 25, 2010.

WITNESSETH

WHEREAS, the parties entered into Amendments #8 and #9 for the modification of the Material Recovery Facility for single stream recycling;

WHEREAS, after the parties entered into Amendment #8 and #9, an evaluation of the sprinkler system indicated that additional work beyond the scope of the original bid needed to be completed;

WHEREAS, FCR has received pricing to complete work on the sprinkler system; and

WHEREAS, the City and Contractor desire to modify the Agreement;

THEREFORE, the Contractor and the City agree to amend the Agreement, as previously amended, as follows:

**ARTICLE III
AMENDMENT TO SECTION 2.10 b OF AGREEMENT
Capitalized Renewal and Replacement Fund**

Section 2 of the Agreement: Ownership, Operation and Maintenance of the Facility. Part 10, (b), Equipment Repair and Replacement Accounts is amended to add the following:

- (vii) *City One Time Contribution to the Account Upon Execution of Contract Amendment #10*: Within 30 days of execution of this Amendment, the City will transfer \$102,000.00 into the previously established MRF and Transfer Station Capital Account(s) of the Solid Waste Enterprise Fund, which shall be used to cover the additional costs of the Design Change – Single Stream referenced in Article VII of Contract Amendment #8 as set forth in the memorandum dated September 28, 2010, from Michael McGann to Nicole Chardoul, attached as Exhibit A. The Contractor will be responsible for any labor costs incurred for the installation of lighting under this Amendment. When the work authorized by

Amendments #8, #9, and #10 are completed, the City may return the remaining balance of the \$102,000.00 to the City's Solid Waste Fund Balance.

EXECUTION OF THE AGREEMENT

All terms, conditions, and provisions of the original agreement between the parties executed November 1, 1993 and amended by Amendment #1 effective June 5, 1995, Amendment #2 effective August 7, 1995, Amendment #3 effective June 15, 1998, Amendment #4 dated September 7, 2004, Amendment #5 dated December 1, 2005, Amendment #6 dated April 18, 2006, Amendment #7 dated September 17, 2007, Amendment #8 dated December 16, 2009, and Amendment #9 dated August 25, 2010.

Unless specifically amended above, all terms and conditions of the contract, as amended, are to apply to this amendment and are made a part of this amendment as though expressly rewritten, incorporated, and included herein.

This amendment to the agreement between the parties shall be binding on the heirs, successors and assigns of the parties.

Dated this Dec. 20, 2010.

IN WITNESS WHEREOF, the authorized representatives of the parties hereto have fully executed this instrument on the day and year first above written.

FOR CONTRACTOR

By Jan P. [Signature]
Its: Vice President

FOR THE CITY OF ANN ARBOR

By [Signature]
John Hieftje, Mayor
By [Signature]
Jacqueline Beaudry, City Clerk
Approved as to Substance:

By [Signature]
Sue McCormick
Public Services Area Administrator

By [Signature]
Roger W. Fraser, City Administrator

Approved as to Form:
By [Signature]
Stephen K. Postema, City Attorney



809 West Hill Street
Charlotte, NC 28208
Phone 704-697-2000
Fax 704-376-1625

Sep 28, 2010

To: Nicole Chardoul, RRSI
CC: Tom McMurtrie, Ann Arbor

From: Michael McGann, FCR

RE: Change Order #2 for MRF Single Stream Retrofit

Tom:

As you already know, the first change order established a contingency of \$22,603.

This contingency has been depleted due to four changes seen in the project over the last month and a half. These four changes were:

- Installation of new concrete apron on Door #10 (\$1,054)
- Additional T&M work to cut and cap piping during demo of existing sprinkler system (\$1,149)
- Integration of new system to existing sprinkler system (\$14,139)
- Fabrication and Installation of Rail Stop Guides for Compactors (\$2,760)

When all the changes above are added they result in \$19,102 being applied towards the contingency. This leaves roughly \$3,501 in the contingency for lighting and additional electrical which have been identified as needs for the MRF during various reviews and inspections.

Therefore, FCR is requesting approval for a change order. The change order is to cover costs associated with all the final costs after receiving all the final designs and competitive bids for all the remaining work to complete this fire suppression system at the MRF and Inbound and Outbound door modifications for safe and efficient movement of vehicles and shipments. The cost of this change order is \$102,000.

Breakout of the Change Order Requested:

Item 1 – Building Code Compliance

CO#2-1 Install additional sprinkler heads required to bring entire system up to code. Tie into existing lines. The cost of this change is \$16,263

CO#2-2 Install sprinkler lines in the mezzanine area of the MRF. Tie into existing lines. This CO# is partially offset by a credit from FCR in the amount of \$2,000. The cost of this change is \$6,600 minus \$2,000 or \$4,600.

CO#2-3 Install sprinkler lines in the new area (Baler Pit) of the MRF. Tie into existing lines. This CO# is partially offset by a credit from FCR in the amount of \$3,000. The cost of this change is \$3,500 minus \$3,000 or \$500.

Item 2 – Existing System Upgrade

CO#2-4 Replace corroded black iron pipe in existing system. The total cost of this change is \$9,800

CO#2-5 Completion of the lighting for the Single Stream System. Labor for this change shall be absorbed by FCR. The total cost of this change is estimated at \$4,417

Item 3 – Outbound Door #4 Relocation

CO#2-6 Relocate current dock#4 for outbound shipments adjacent to new building addition docks. Create new dock leveler pit and relocate dock leveler from current position. Excavate additional square feet for truck well with drainage. The cost to relocate a 4th outbound dock for the Ann Arbor MRF is \$31,520.

Item 4 – Inbound Door #3 Addition

CO#2-7 Add a Door #3 for inbound tipping using space adjacent to other inbound openings in order to alleviate congestion on tip floor. Fill in existing outbound truckwell and fill in dock leveler pit. Frame new inbound door opening and pave surface outside new door with concrete. The cost to add a 3rd door for the inbound tip floor is \$34,900.

Change Order # 2 Summary Table

| <u>Change Order Item #</u> | <u>CO #</u> | <u>Cost</u> |
|----------------------------|-------------|-------------|
| Code Compliance-1 | 2-1 | \$16,263 |
| Code Compliance-1 | 2-2 | \$4,600 |
| Code Compliance-1 | 2-3 | \$500 |
| Existing Upgrade-2 | 2-4 | \$9,800 |
| Lighting/Electrical-2 | 2-5 | \$4,417 |
| OB Door#4 Relocate | 2-6 | \$31,520 |
| IB Door#3 Addition | 2-7 | \$34,900 |

| | |
|--------------|------------------|
| Total | \$102,000 |
|--------------|------------------|

As shown above the total of the requests are \$102,000. Please do not hesitate to contact me if you have a need for further information relating to this Change Order Request.

Sincerely,

Michael McGann
Division Controller

CC: John Watkins, FCR Director of Engineering