

INTERGOVERNMENTAL AGREEMENT BETWEEN
SOUTHEASTERN OAKLAND COUNTY RESOURCE RECOVERY AUTHORITY AND
CITY OF ROCHESTER HILLS FOR RECYCLABLE PROCESSING SERVICES

This Intergovernmental Agreement (“Agreement”) is made as of _____, 2019, between the Southeastern Oakland County Resource Recovery Authority (“SOCRRA”), with offices at 955 Coolidge Highway, Troy, Michigan 48084, and the City of Rochester Hills (“City”), with offices at 1000 Rochester Hills Drive, Rochester Hills, Michigan 48309. SOCRRA and City may be referred to in this Agreement collectively as the “Parties” and singularly as “Party.”

RECITALS

Whereas, SOCRRA operates a recyclable materials recovery facility (“MRF”) located at 955 Coolidge Highway, Troy, Michigan; and

Whereas, SOCCRRA and City have executed a Letter of Intent setting forth the Parties’ intent to allow the City or its designated waste hauler to deliver commingled recyclables collected in the City to SOCRRA’s MRF for processing; and

Whereas, this Agreement is intended to fully set forth the Parties’ understanding and agreement.

Therefore, pursuant to MCL 124.1 et seq and MCL 124.501 et seq, authorizing intergovernmental contracts between municipal corporations and public agencies, and in consideration of the mutual covenants contained in this Agreement, the Parties agree as follows:

1. DEFINITIONS

The following definitions apply in this Agreement:

“Commingled Recyclables” or “Recyclables” means recyclable material separated from waste but collected together (a/k/a “single stream”) that includes recyclable glass, metal, plastic and other recyclables from residential, commercial, and institutional sources, limited by the Material Acceptance Protocol provisions of this Agreement.

“Tipping Fee” means the fee per ton to be paid by the City to SOCRRA for the acceptance and processing of Recyclables.

2. PURPOSE

The purpose of this Agreement is to set forth the terms and conditions by which SOCRRA will, at its MRF, accept, process and market Recyclables delivered by the City or its designated waste hauler.

3. RESPONSIBILITIES AND OBLIGATIONS OF THE PARTIES

A. The City will deliver or cause to be delivered to SOCRRA’s MRF, and SOCRRA shall accept, all Commingled Recyclables that the City or its designated waste hauler collects in

the City. SOCRRA will process and market all Commingled Recyclables delivered to the MRF by the City or its designated waste hauler.

- (1) SOCRRA will have and operate a working scale and Recyclables tipping floor at the MRF for receiving during the MRF's hours of operation.
- (2) The scale and Recyclables tipping floor operation must:
 - a. Generate reports, invoices, and charges or revenues and provide such information to the City consistent with this Agreement for all City Recyclables delivered to the MRF; and
 - b. Accommodate tipping of City Recyclables at a rate such that City tipping delivery vehicles are able to approach and enter the MRF, weigh in, tip all materials, and depart with a turn-around time of less than 30 minutes.

B. SOCRRA will record all deliveries by the City or its designated waste hauler and generate and provide upon request reports for the City regarding Recyclables delivered to the MRF according to the following:

- (1) In electronic format, weight ticket information shall be provided for each incoming load showing, at a minimum, the chronological ticket number, date, time, driver name, truck number, type of Recyclables collected, and weight of Recyclables in pounds and tons; and
- (2) Monthly calculations shall be provided, with supporting data accounting for any revenue sharing arrangement formulas.

C. SOCRRA will provide all management, supervision, personnel, materials, services, and supplies necessary to provide the services required in this Agreement, and SOCRRA shall promptly notify the City about any major equipment failure or damage at the MRF that may limit SOCRRA's ability to provide those services.

D. SOCRRA warrants that its MRF currently meets, and will be operated and maintained to continue to meet, all applicable federal, state, and local laws, regulations, rules and ordinances.

E. The City and its designated waste hauler will make best efforts to adhere to the Materials Acceptance Protocol and to minimize contamination of loads by non-recyclables in accordance with the Materials Acceptance Protocol hereunder. Specifically, the City and/or its designated waste hauler will communicate to City residents the steps required to properly prepare and set-out Commingled Recyclables, using communications content and material that SOCRRA will provide.

F. The City will make reasonable efforts to eliminate curbside scavenging of Commingled Recyclables

G. Material Acceptance Protocol

- (1) The City and its designated waste hauler shall use reasonable efforts to deliver or cause to be delivered to the MRF only Recyclables that conform to this Materials Acceptance Protocol. However, an inadvertent delivery of Recyclables that does not conform to Materials Acceptance Protocol shall not constitute a breach of the City’s obligations.
- (2) Commingled Recyclables includes recyclable paper and containers from City residential, commercial, and institutional sources that are consistent with and identical to the list of Commingled Recyclables SOCCRRA processes from its member communities.
 - a. City Commingled Recyclables may contain all of the items listed in proportions and in a condition that can be reasonably expected from a municipal curbside recycling collection program.
 - b. Commingled Recyclables will not be delivered in plastic bags.
 - c. Commingled Recyclables that contain more than fifteen percent (15%) by weight of non-recyclable material, such as garbage, and trash, may be rejected by SOCCRRA.
- (3) Any delivered Commingled Recyclables that do not conform to this Protocol or are contaminated with trash, garbage, or animal or human waste, shall not constitute a breach of the City’s obligations, but may be downgraded by SOCCRRA.
- (4) SOCCRRA’s may inspect each vehicle load. If during any vehicle inspection, SOCCRRA determines that the vehicle is delivering Recyclables that do not conform to the Materials Acceptance Protocol, above, SOCCRRA shall notify the City of any downgrade, stating the date and time of the downgraded, the vehicle number and driver's name, the point of origin and the reason for downgrading and shall follow this with a report in writing of the same information to be delivered within five (5) business days to the City.

H. SOCCRRA will charge the City a tipping fee for each ton of Recyclables accepted at the MRF from the City or its designated waste hauler. That tipping fee will be according to the following annual schedule:

SOCCRRA Per Ton MRF Tipping Fee Schedule				
Year 1 April 1, 2019 to March 31, 2020	Year 2 April 1, 2020 to March 31, 2021	Year 3 April 1, 2021 to March 31, 2022	Year 4 April 1, 2022 to March 31, 2023	Year 5 April 1, 2023 to March 31, 2024

\$65.00	\$66.95	\$68.96	\$71.03	\$73.16
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I. SOCRRA will submit monthly invoices to the City for the tipping fee, and the City shall pay SOCRRA's invoices net 30 days.

J. To the extent that the actual value of any item in a monthly invoice cannot be accurately determined as of the date of invoice, the item shall be billed or credited 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 a subsequent invoice.

K. For all Commingled Recyclables that are delivered by the City or its designated waste hauler and downgraded by SOCRRA, SOCRRA and City shall review and consult about the reports each month in a good faith effort to mutually agree on the amount that shall be invoiced to the City to offset SOCRRA's costs of further handling, transfer and disposal of the downgraded loads.

L. SOCRRA will market or cause to be marketed all marketable components of Commingled Recyclables delivered by the City or its designated waste hauler. The Parties shall share the revenue received from the marketing and sale of Recyclables, as follows: SOCRRA will be entitled to the first \$60 per ton of consideration received from the sale of the City's Recyclables and also 50% of the consideration received from the sale of the City's Recyclables above the \$60 per ton threshold. The City will be entitled to receive the remaining 50% share of the consideration received from sales above the \$60 per ton threshold. Whenever any recyclables revenue share has been earned by the City, SOCRRA will issue payment to the City for the City's revenue share amount, together with supporting documentation accounting for the revenue share calculation.

M. SOCRRA will make available its education and outreach resources to enable the City and its designated waster hauler to communicate with the City's residents about what to recycle, how to recycle, etc. – including access to MRF tours for residents and students when such tours are available.

N. SOCRRA will provide the City's residents with access to SOCRRA's household hazardous waste and e-waste appointment services, for which SOCRRA shall charge the City by means of a monthly invoice, with appropriate accounting of City residents served. The City shall pay SOCRRA's invoices net 30 days.

O. SOCRRA will allow City residents to have access to SOCRRA's drop-off station for other recyclables (e.g., Styrofoam, paper shredding, plastic film, cardboard, traditional recyclables, etc.) at no additional charge to the City or its residents.

P. SOCRRA will allow City residents to tip waste and any other accepted-for-fee materials at SOCRRA's small vehicle waste tip wall. Fees for this service shall be charged according to the published fee structure applicable to SOCRRA-member residents.

Q. SOCRRA will make finished compost available to City residents at the same limits, logistics and cost arrangements available to SOCRRA-member communities and their residents.

4. EFFECTIVE DATE AND TERM

This Agreement shall commence and become effective on April 1, 2019 and shall continue in effect for five (5) years through March 31, 2024, unless sooner terminated by either Party pursuant to this Agreement. This Agreement may be extended upon terms mutually agreeable to the Parties.

5. TERMINATION

A. Both Parties acknowledge that if SOCRRA, for any reason, terminates any of the above services for SOCRRA-member communities, those services shall no longer be available to the City and its residents. Additionally, if SOCRRA, for any reason, is no longer able to accept and process recyclables at the MRF, SOCRRA may immediately, upon written notice to the City, suspend or terminate delivery of recyclables to the MRF by the City's designated waste hauler.

B. Notwithstanding the stated term of agreement, this Agreement may be terminated by either Party at any time, for any reason, by giving 120 days prior written notice of termination to the other Party; provided, however, that termination of this Agreement for any reason and by any means shall not relieve either Party from any liabilities or obligations already accrued under this Agreement.

6. NOTICES

Unless otherwise specified, any notice or other communication required or permitted to be given under this Agreement must be in writing and sent to the address given below for the party to be notified:

If to SOCRRA:

Mr. Jeff McKeen, General Manager
SOCRRA
995 Coolidge Highway
Troy, MI 48084

If to City:

Mr. Bryan Barnett, Mayor
City of Rochester Hills
1000 Rochester Hills Drive
Rochester Hills, MI 48309

7. **AUTHORITY TO CONTRACT**

Each Party represents and warrants that it has full power and authority to enter into this Agreement and perform its obligations under this Agreement and has taken all required acts or actions to authorize the same.

8. **INTEGRATION; MODIFICATION**

The Parties acknowledge and agree that they did not rely upon any statements, representations, agreements or warranties, except as expressed in this Agreement, and that this Agreement constitutes their entire agreement with respect to the matters addressed in this document. All prior or contemporaneous agreements and understandings, oral or written, with respect to such matters are superseded and merged in this Agreement. This Agreement may be modified or amended only by written agreement signed by both Parties, and any modification or amendment will become effective on the date so specified.

9. **DISPUTE RESOLUTION**

A. Negotiation

The City and SOCRRA will attempt to settle any claim or controversy arising from this Agreement through consultation and negotiation in good faith and a spirit of mutual cooperation.

B. Mediation

In the event the Parties are unable to resolve their dispute through consultation and negotiation, the parties shall submit to mediation any controversy or claim arising out of or relating to this Agreement or the breach of the Agreement that the Parties are unable to resolve themselves. The Parties shall mutually agree upon a mediator to conduct the mediation. The cost of mediation will be shared equally by the Parties; however, each party shall bear its own attorney fees and expenses.

C. Arbitration/Litigation

In the event mediation is unsuccessful, the Parties may seek appropriate remedies at law or in equity through binding arbitration (if they mutually agree to arbitrate) or litigation.

10. **FORCE MAJEURE**

Neither Party will be liable to the other for failure to comply with any of the terms and conditions of this Agreement where any failure to comply is caused by an act of God, court order, government regulation or requirement, strike or labor difficulty, fire, flood, storm, breakdown or other damage to equipment, or any other cause beyond the reasonable control of the party at fault.

11. **SEVERABILITY**

In the event that a court of competent jurisdiction holds any part or provision of this Agreement void or of no effect, the remaining provisions of this Agreement will remain in full force and effect, to the extent that the continued enforcement of the remaining terms continues to reflect substantially the intent of the Parties.

12. WAIVER

No failure to enforce any condition or covenant of this Agreement will imply or constitute a waiver of the right of a party to insist upon performance of the condition or covenant, or any other provision of this Agreement, nor will any waiver by either party of any breach of any condition or covenant of this Agreement constitute a waiver of any succeeding or other breach under this Agreement.

13. GOVERNING LAW

This Agreement will be governed, interpreted and enforced in accordance with the laws of the State of Michigan. Oakland County shall be the venue for any mediation, arbitration, or litigation out of this Agreement.

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

SOCRRA

CITY OF ROCHESTER HILLS

By: _____
Jeff McKeen, General Manager

By: _____
Bryan K. Barnett, Mayor

Date: _____, 2019

Date: _____, 2019