



**Rewards Program Services Agreement**

Draft

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Draft

### Client Information Form

Please complete this form in full. Each party will promptly notify the other in writing if any of the information below changes.

Client Information				
Name of Entity:	City of Rochester Hills			
1000 Rochester Hills Drive		Rochester Hills	MI	48309
Street Address	Suite/Room	City	State	Zip Code
Contact Name:	Lisa Cummins	Phone Number:	248-841-2537	
e-mail Address:	cumminsl@rochesterhills.org	Fax Number:	248-608-8178	

Client Billing Contact				
Name of Entity:	City of Rochester Hills Attn: Accounts Payable			
1000 Rochester Hills Drive		Rochester Hills	MI	48309
Street Address	Suite/Room	City	State	Zip Code
Contact Name:	Debby Hoyle	Phone Number:	248-841-2532	
e-mail Address:	hoyle@rochesterhills.org	Fax Number:	248-608-8178	

Duplicate or additional agreement notification				
Name of Entity:	City of Rochester Hills			
1000 Rochester Hills Drive		Rochester Hills	MI	48309
Street Address	Suite/Room	City	State	Zip Code
Contact Name:	Purchasing Division	Phone Number:	248-841-2533	
e-mail Address:	purchasing@rochesterhills.org	Fax Number:	248-608-8178	

Notices to Recyclebank should be sent to:				
RECYCLEREWARDS PBC, INC., 401 Park Avenue S , New York, NY 10016				

By signing below, the Parties agree to be bound by the terms of this Client Information Form, the Service Overview and the Terms and Conditions which together comprise the Rewards Program Services Agreement, and you represent and warrant that you have read, understood and agree to be bound by the Rewards Program Services Agreement, you are authorized to sign on behalf of the party identified below and further all the information you provide as part of this Agreement is true and accurate.

City of Rochester Hills, MI		RecycleRewards PBC, Inc.	
Name:	Bryan K. Barnett	Name:	
Signature:		Signature:	
Printed Title:	Mayor	Printed Title:	
Date:		Date:	
<b>Effective Date: April 1, 2019</b>			

## SERVICE OVERVIEW

### I. General Overview

Recyclebank, as defined in the Terms and Conditions, offers a rewards and loyalty program that encourages individuals to take every day environmentally-preferred actions, such as recycling at their homes, and in turn earn reward points (“**Recyclebank Points**” or “**Points**”) that can be redeemed for various rewards through Recyclebank with national brand companies or local retailers (the “**Rewards Program**”).

The Rewards Program is offered by Recyclebank in conjunction with its vast network of partnerships - municipalities, waste collectors, recycling companies, manufacturers, national and local retailers, and other third parties. The Rewards Program is accessible to registered participants (the “**Recyclebank Member(s)**” or “**Member(s)**”) via our website, [www.recyclebank.com](http://www.recyclebank.com) (the “**Site**”). To become a Member, an individual must contact Recyclebank either online or by telephone and complete the membership registration. Recyclebank Membership is provided in accordance with the **Recyclebank Membership Agreement** (<https://www.recyclebank.com/about-us/membership-agreement1>) and **Recyclebank’s Privacy Policy** (<https://www.recyclebank.com/about-us/privacy>). The Rewards Program includes a “**Home Recycling Program**” available in select communities wherein the community’s recycling program is provided to local residents along with Recyclebank’s Rewards Program intended to incentivize them to recycle. In order to participate in a Home Recycling Program, an individual on behalf of his/her household must subscribe to the specific Home Recycling Program available in that individual’s community. Subscription is required for participation in a local Home Recycling Program and is deemed membership to the Rewards Program under the Recyclebank Membership Agreement and Recyclebank’s Privacy Policy. For purposes of this Agreement, the term Rewards Program and Home Recycling Program herein will have the same meaning.

You, the Client, enter this Rewards Program Services Agreement with Recyclebank in order for Recyclebank to provide the Rewards Program to you and the “**Eligible Households**”, understood to be the individual resident households located within the geographic region identified in Schedule A (the “**Municipality**”) who are eligible to participate. Recyclebank will provide the management of the Rewards Program in accordance with this Agreement. Recyclebank will commence its services under the Agreement by assisting you with community outreach efforts to a) inform residents on their local recycling program and thereby b) drive participation through subscription to Recyclebank’s Home Recycling Program, and c) ensure that all residents within the Municipality who recycle and are subscribed to participate in the Home Recycling Program with Recyclebank are rewarded for doing so through Recyclebank Points that they can redeem for rewards with Recyclebank.

To participate in the Home Recycling Program, an individual residing in an Eligible Household within the Municipality must subscribe to the Home Recycling Program either through the Site or by contacting Recyclebank’s Customer Service Department by telephone. Each Eligible Household is limited to one (1) subscription. Individuals within the household, however, may register as Members directly with Recyclebank to engage in the Rewards Program separately from the Home Recycling Program. Subscription allows earning Points for the recycling conducted in the household and can also include additional Points earned by actively engaging through the Site which offers additional Point-earning opportunities, for example but not limited to, taking educational quizzes or pledging to do certain green action(s). All subscribed households receive a “**Recyclebank Account**” administered by Recyclebank. Those subscribed online can access their Recyclebank Account through the Site, view their Points, engage in Recyclebank’s eCommerce platform as described herein for additional Points and redeem earned Points. Those subscribed outside of the Site can access their Recyclebank Account by calling the Customer Service Department or by other methods which may be made available at that time with notice to You and the subscribed households.

Each subscribed household will have access to Recyclebank's network of retailers and brand manufacturers (the "Reward Partners") offering rewards in exchange for earned Points through Recyclebank's "Reward Catalog". A complete listing of Reward Partners can be found at <http://www.Recyclebank.com/rewards>. This list is subject to change from time to time in Recyclebank's sole discretion. Recyclebank is responsible for all reward fulfillment services.

## **II. Home Recycling Program Specifications**

Under the Home Recycling Program, the Municipality's designated trash hauler, GFL Environmental USA, LLC will collect and provide data to Recyclebank the net weight of the recycled materials collected in each Route within the Municipality during each collection period. A "Route" is defined as a pick-up of recyclables within the Municipality conducted and completed within one (1) calendar day by a single truck. In the event you require amending the collection period(s) and/or the Route(s) during the Term, you will provide Recyclebank five (5) business days' prior notice of the changes and any information necessary to support Recyclebank in updating its records to ensure subscribed household experience continuity and accurate reporting.

### **Participation Data and Technology**

If you are using Radio Frequency Identification ("RFID") technology to record recycling participation, you must provide Recyclebank the RFID tag information for each Eligible Household prior to commencement of the Program, and thereafter, periodically update Recyclebank using the location add/delete form process as part of the weekly updates for location/RFID container changes. During the Term, you will provide Recyclebank RFID collection information within five (5) business days of the collection date. Collection information should include: a) the RFID information recorded for each Eligible Household, b) the Route designation, c) the truck number for each Route, and d) the date and time of each collection. Reporting may include additional information but will not be used by Recyclebank for purposes of administering the Program. If recycling collections are tracked using a third party technology provider (such as, for example, AMCS Group or Sonrai Systems), the collection reporting produced by your third party technology provider will be delivered to Recyclebank in its original form as received from the third party technology provider.

Upon receiving net weight and participation data for a specific collection period for each Route, Recyclebank will determine the amount of Points earned within that Route and credit a portion of the Route's collective Points to each Participating Household within that Route.

## **III. Recyclebank Responsibilities:**

Recyclebank will administer the Home Recycling Program in keeping with this Agreement by providing the following services:

### **1. Recyclebank Points**

Recyclebank will track Recyclebank Points through the administration of the Rewards Program. Recyclebank will calculate and credit Recyclebank Points on a scheduled basis. Calculations will be based on the route based weight of the recyclables collected when available, or using a best estimate determined solely at Recyclebank's discretion. The "Participating Household", understood to mean an Eligible Household which has subscribed to the Home Recycling Program and has received a recycling cart, will receive the appropriate Points corresponding to the recycling activity in accordance with the Rewards Program specifications of this Agreement. The method of calculation of Recyclebank Points under the Home Recycling Program and generally the Rewards Program is proprietary to Recyclebank, determined solely by Recyclebank, and for purposes of the Home Recycling Program available in the Municipality calculated in accordance to the specifications detailed in this Agreement. The Municipality will work with

Recyclebank to coordinate data collection from the City's contracted hauler to gather routing data using GPS data that will include routing data matching truck number to route/addresses and service schedule, verified pick-up data, and weight data.

2. Reward Partner Set-up and Relations

Recyclebank will provide Participating Households access to rewards through its Rewards Catalog which may be redeemed by using accrued Points and in turn received from the Reward Partners. Recyclebank will be responsible for contacting and setting up all Reward Partners including organizing and developing Reward parameters with each Reward Partner as follows:

- a. Recyclebank will determine potential third party retailers to include in Recyclebank's Reward Catalog as Reward Partners; and
- b. Recyclebank will prepare and execute the required agreement to on-board those Reward Partners and their respective reward offers in the Reward Catalog; and, when applicable,
- c. If the Municipality has 10,000 or more Eligible Households, Recyclebank will include local Reward Partners specifically tailored to the Municipality. Recyclebank will work in coordination with the City to hire a local Community Outreach representative to establish reward/redemptions with local businesses, community retailers, restaurants, entertainment and cultural venues. This will be accomplished within a reasonable timeframe (3-6 months) after contract execution.

3. Marketing Material

- a. Registration Mailer. At a time mutually agreed to between Recyclebank and Municipality, Recyclebank will work with the Municipality to do a relaunch of the Rewards Program, via a mailing to all Rochester hills households, that would include information such as new non-profit donation opportunities, new coupons, and reminder on how to register. Recyclebank will pay for this mailing, and will work with the Municipality in coordinating the mailing. As part of the relaunch, Recyclebank will provide registration instructions which include a registration code intended to simplify the registration process for those households that may not be registered. Alternatively, Recyclebank each year thereafter during the Term, conduct additional notifications (e.g. a letter or postcard) to remind unregistered Eligible Households to subscribe.
- b. E-newsletter & e-mail notifications. Recyclebank will provide Participating Households a monthly e-newsletter and weekly account updates via e-mail notifications to the e-mail address used to subscribe. Weekly e-mail updates may be transactional in nature indicating recent Point earning(s) and redemption, or informative regarding new Point earning opportunities available on the Site and recent efforts by Recyclebank.
- c. Marketing Material. Recyclebank will provide the Municipality with mutually designed marketing templates, including approved artwork and copy ("**Marketing Material**") for you to use in conducting additional communication campaigns within the Municipality independently of Recyclebank's efforts under this Agreement. Any use of the Marketing Materials by you or your agent in any marketing campaign will require Recyclebank's prior approval.
- d. Additional Marketing Support. If you require additional customization and marketing support in addition to the standard Marketing Materials, you may request for additional services, other than what is currently specified in this agreement. Upon review, Recyclebank will communicate whether it will be able to provide the requested additional marketing services and if there will be a fee for the service. The fee will be at a mutually agreed to cost between Recyclebank and Municipality. Upon Municipality approval, Recyclebank will commence providing these agreed upon additional marketing services and include the Marketing Fee (if applicable) in the monthly invoice(s) to you. Recyclebank does not guarantee personnel availability for additional customization beyond the standard materials provided

within the Marketing Materials. You will be held accountable for only those additional costs and expenses, under this or any other provision of this Agreement, expressly authorized by you in writing.

- e. Final Approval. You may consult with Recyclebank on specific marketing methods, programs or community outreach ideas which may be available to promote the Rewards Program. Recyclebank expressly reserves the right to review and provide final approval on all marketing methods and materials used to promote the Rewards Program if its company name, registered trademark(s), trade dress, logo or any part of the Marketing Materials, in whole or in part, is included.

4. Account Management.

- a. Training. Recyclebank will provide training to your designated personnel on the Rewards Program, its process and procedures and all related materials. This designated personnel shall be identified and agreed upon by the Parties before training commences.
- b. Customer Service. Recyclebank will provide customer service made available to Participating Households via e-mail, internet and telephone.

5. Reporting.

Recyclebank will provide you on a quarterly basis during the Term of this Agreement standard reporting that reflects the performance of the Rewards Program in the Municipality under this Agreement. The reporting will be in the format provided under Schedule B herein which is provided strictly for informational purposes. All Participating Household data contained in the reporting is the exclusive property of Recyclebank and is provided to you under a limited, non-exclusive, non-transferable, revocable license during the Term of this Agreement. You will maintain all such data strictly confidential in keeping with this Agreement and will use the data for internal purposes only, to the extent that Michigan FOIA permits. Michigan FOIA requires disclosure under Section 13 of the Act, which are subject to disclosure under the Act. Therefore, confidentiality of information provided to the City is not assured. You will not be entitled to receive, nor will Recyclebank be required to provide, any additional information Participating Households submit to Recyclebank which Recyclebank collects through its standard business practice in keeping with the Recyclebank Membership Agreement and its Privacy Policy. Recyclebank may from time to time update or modify its standard reporting provided under Schedule B at its sole discretion without any requirement to provide prior notification or seek prior approval. Reporting may at times be delayed due to system updates, reporting updates, the late reception of data from you or your agent (e.g. hauler), or otherwise. Recyclebank will communicate outages or scheduled reporting updates within a reasonable time and use best commercial efforts to minimize disruption in the reporting delivery and availability. If you wish to receive further information in addition to the information provided as part of the standard reporting, or amend the standard reporting to tailor to your specific qualifications, you may submit a detailed request to Recyclebank for prior review and approval. Upon review, Recyclebank will communicate whether it will be able to accommodate the reporting request.

6. Program Promotion and Material.

You will work with Recyclebank to develop a joint marketing plan which may utilize joint resources to promote the Rewards Program. This effort will include, but not be limited to, developing promotional materials and participation in media and community events. Where Recyclebank secures a third party corporate sponsor for the Home Recycling Program under this Agreement, you agree to include the corporate sponsor of the Rewards Program in your promotional efforts and acknowledge and agree all references to such corporate sponsors and use of their respective trade names, trademarks, trade dress (collectively "**Corporate Sponsor IP**") is subject to those third parties' prior review and approval. When a

third party sponsorship becomes available, it does not affect your Service Fee. The corporate sponsorship is intended to provide additional resources to promote the Home Recycling Program without any cost to you, the Client. If the corporate sponsorship requires certain engagement and/or effort by you, Recyclebank will seek your prior approval.

The Municipality will actively promote the Rewards Program throughout the year which may include but not be limited to the following methods: newsletters, e-mails, social media and internet properties within the Municipality in an effort to inform Eligible Households. Recyclebank will work in cooperation with the Municipality to design and approve all promotional material to support this effort.

7. Customer Service Support.

You will make available to Recyclebank all of your necessary personnel, programs and materials for Recyclebank to provide adequate training to your designated personnel to allow them to in turn provide accurate information on the Rewards Program as part of your customer service, if applicable. You or your agent agree to promptly and courteously handle customer calls originating from Participating Households relating to the Rewards Program. You will cooperate with Recyclebank in connection with providing Eligible Households a copy of Recyclebank's Membership Agreement upon request.

**IV. Client Responsibilities**

The Municipality is responsible for requiring your contracted hauler to collect and share the recycling and trash (at a time that the Municipality determines they want to track these events) weight data within the Municipality and communicating it to Recyclebank in a timely manner in order for Recyclebank to administer the Rewards Program.

1. Eligible Household Address Information.

- a. Moves/Additions/Changes. You or your agent is responsible for communicating to Recyclebank's Customer Service Department during the Term on a weekly basis any and all new and terminated Eligible Households within the Municipality and any changes regarding recycling containers and their respective RFID tag data. The weekly report shall be provided in a FTP transfer with header values for United States Postal Service standard, formatted address fields, Route ID / value per address.
- b. Route changes. In furtherance of sub-section above, you will promptly notify Recyclebank if there are any anticipated recycling pick-up Route changes following the launch of the Rewards Program or at any time during the Term of the Agreement to allow for proper administration of the Program.

2. Refuse & Recycling Data.

- a. Total Verified Weight. You agree to provide Recyclebank with certain refuse and recycling data collected within the Municipality by a third party, such as a hauler. You previously have provided Recyclebank the total refuse and recycling tons collected within the Municipality for the fiscal year prior to the commencement of the Program ("**Total Verified Weight**"). You are hereinafter required to provide Recyclebank on the fifth (5<sup>th</sup>) business day of each calendar month during the Term the preceding calendar month's total refuse and recycling tons collected within the Municipality ("**Monthly Total Verified Weight**"). The Total Verified Weight should be provided in a manner whereby the information is presented on a month to month basis similar to Monthly Total Verified Weight.
- b. Platform Weight. In addition to the above, you will provide Recyclebank all recycling truck's activity per each Route and collection ("**Platform Weight**") conducted (weekly, biweekly, etc.) used to pick-up recycling in the Municipality. You will provide the Platform Weight within five (5) business days from the actual pick-up date.



- c. The Total Verified Weight, Monthly Total Verified Weight and Platform Weight will be delivered to Recyclebank in .csv, .xls, or .txt file format via FTP transfer.
- d. GPS Pick up data: You agree to require your contracted hauler to provide Recyclebank with pick-up data for specific containers placed on routes within the community. You will provide the data within five (5) business days from the actual pick-up date. The data format may be changed based upon mutual agreement between the parties, but it is anticipated that the following will be required for successful implementation of GPS Pick-up Data Collection:
  - e. Routing data matching truck number to route/addresses and service schedule
    - a. A list of recycling routes to include the collection day and route number and frequency of collection (weekly, Bi-Weekly, etc...)
    - b. Truck numbers or other unique identifier
  - f. Verified Pick-Up Data
    - a. For pickup file data we usually access the daily data via FTP. We would need to know how they capture the pickup files and if uploaded to an FTP we would need the log in info. Preferred format for pickup files would be a notepad doc either column or comma delineated; see examples for the different technologies.
  - g. Weight Data
    - a. For weight data we would need to know how they capture and store the tickets. Depending on the method they could either email the tickets to data1@recyclebank.com or offer a way for us to access it remotely. Preferred format for weights, if emailing, would be the attached excel file; columns in red are required. If any other way as long as the data in the red columns are included.
  - h. Data Reconciliation. You shall provide Recyclebank with all data reflecting the recycling activity during the preceding month as detailed under subsection (a), (b) and (c) above. In addition to the data, you will provide Recyclebank copies of all tickets associated with the Platform Weights entered by you or your agent(s). Recyclebank shall use Platform Weights to credit Participating Households' Accounts reflecting their participating in the Home Recycling Program. Recyclebank reserves the right to use Monthly Total Verified Weight to credit participation provided this will not negatively impact the Participating Households.
- i. No or missing data. In the event that Recyclebank receives incomplete, inaccurate, or undeterminable refuse and recycling data due to a technical issue, or does not receive any data from you under this provision, Recyclebank will (i) promptly notify you to immediately address the issue and (ii) proceed to credit Points to Participating Households to make-up for recycling that is not recorded due to any operational or maintenance issue outside of Recyclebank's control.
- 22. Sub-contracting. You or your agent cannot subcontract any Recyclebank related-work described herein without prior written approval by Recyclebank. In turn, This contract shall not be assigned, delegated or subcontracted by Recyclebank without the prior written consent of the Municipality, which consent shall not be unreasonably withheld. For purposes of this contract, a transfer of more than ten (10%) percent of the stock of the corporation or interest in a limited liability company or partnership, or the sale or transfer of more than fifty (50%) percent of the assets of Recyclebank to any person without the prior written consent of the Municipality shall be considered to be an assignment. Notwithstanding anything to the contrary in this Contract, the Municipality's consent will not be required if the ultimate parent of Recyclebank is merged with and into another entity or if Recyclebank assigns this Contract to an Affiliate of Recyclebank. "Affiliate of Contractor. "Affiliate" shall mean, with respect to Recyclebank, any other entity that directly, or indirectly through one or more intermediaries, controls is controlled by, or is under common control with Recyclebank.

3.

### Terms and Conditions

1. These Terms and Conditions along with the Client Information Form and Service Overview collectively form the “**Rewards Program Services Agreement**” or the “**Agreement**” setting forth the terms and conditions governing the business arrangement between RecycleRewards PBC, Inc., a Delaware corporation with a principal office located at 401 Park Avenue South, New York, New York 1016 along with its wholly-owned subsidiary, Recyclebank, LLC, (“**Recyclebank**”) and the party first indicated under the Client Information Form (“the **Client**”) whereby Recyclebank shall provide its Rewards Program to the Client. Recyclebank and the Client may be hereinafter referred to individually as a “**Party**” and collectively as the “**Parties**”.

2. **Definitions.** As used in this Agreement, “**you**” or “**Client**” refers to the party that is identified in the Client Information Form and signs this Agreement with Recyclebank, and “**we**” or “**us**” refer to Recyclebank. All other terms capitalized in the Services Overview and the Terms and Conditions shall have the meaning set forth herein.

3. **Effective Date.** The “**Effective Date**” of this Agreement shall be the effective date indicated on the Client Information Form upon both Parties having signed.

4. **Term.** This Agreement will commence on the Effective Date and shall continue for five (5) years (“**Initial Term**”) unless sooner terminated pursuant to the provisions of this Agreement, by operation of law, or otherwise. You will have the option to renew for an additional five (5) year term (“**Renewal Term**”) following completion of the Initial Term. Recyclebank reserves the right, in its sole discretion, to review and amend the Service Fee following completion of the Initial Term for any subsequent Renewal Term to be agreed upon by the Parties in a separate writing signed by both Parties. The Initial Term singularly and thereafter if applicable any Renewal Term shall collectively be referred to as the “**Term**”. We will provide you with written notice 9 months prior to expiration of the Initial Term advising you of your option to extend with any service fee amendments. To be effective, any extension must be executed in writing by both Parties hereto. In the event that the Initial Term expires without a signed writing in place between the Parties evidencing renewal, the Parties agree the Agreement will remain in effect until the Parties execute a signed writing or alternatively agree to terminate pursuant to the termination provisions herein.

5. **Fees.**

6. The service fee payable by the Client to Recyclebank during the Term shall be \$0.50 per Eligible Household per month during the Term of the Agreement (the “**Service Fee**”). Recyclebank will invoice you on a monthly basis. Payment of the Service Fee in addition to any applicable fee which may arise in accordance with the Agreement shall be made to Recyclebank within thirty (30) days of the date of the invoice. **Confidentiality; Rights in Data.**

A. Each Party, to the extent the Michigan FOIA permits, shall keep confidential and not disclose to any third party and will not use, except for the purposes of this Agreement, all business, financial, technical, customer, pricing and other proprietary information, and data (including customer data) that it receives or has received from the other Party (“**Confidential Information**”). For any information to be deemed “**Confidential Information,**” the same must be in written form and appropriately marked “**CONFIDENTIAL**” at the time of disclosure to the receiving party or, alternatively, if the information is disclosed orally, the same must be summarized in writing and marked “**CONFIDENTIAL**” by the disclosing party within ten (10) days after such disclosure. Notwithstanding the foregoing, all data that is gathered and stored by Recyclebank about Eligible Households and Participating Households is subject to Recyclebank’s Privacy Policy and all applicable state and federal laws and, as such, no such data regarding recycling or online activities of Participating Households need to be specifically marked as “**Confidential**” to be considered “**Confidential**”. The Client

hereby expressly acknowledges Recyclebank's Privacy Policy prior to deploying the Rewards Program to any Participating Household.

B. The obligation set forth in Section 6(A) does not apply to any materials or information of the types specified above to the extent that a Party can document that such materials or information: (i) are known to the Party prior to the receipt of such materials or information from the other Party; (ii) are in the public domain other than as a result of a breach of this Agreement; (iii) were furnished to a third party by the disclosing party with no restriction on disclosure; or (iv) information which the receiving Party developed independently of any disclosures of such information by the disclosing Party.

C. Each party will own all right, title, and interest, including any copyrights or other intellectual property rights, in and to any data or information that it collects, compiles or creates regarding Participating Households. As between the Parties, the owner of such rights will have the right to use as it wishes any such information, subject to applicable law and its own privacy policy, with no duty to give the other party notice, gain the other party's consent, account to the other party or share royalties with the other party.

7. **Recyclebank IP.**

A. **Grant of License.** The Client acknowledges that Recyclebank owns certain valuable intellectual property used in connection with, relating to, and/or derived from the Rewards Program. Such intellectual property includes without limitation all of Recyclebank's sales, marketing, informational and other materials relating to the Program and all copyrights therein, all resident, and other data derived from operation of the Rewards Program, all Recyclebank know-how, trade secrets, and technology relating to the Program, including without limitation as may be disclosed in Recyclebank's patent applications or patents and those Recyclebank trademarks, service marks and logos on the Site, Marketing Material or marketing efforts (said trademarks, service marks and logos and the goodwill associated therewith are referred to collectively herein as the "**Marks**"). The foregoing is collectively referred to herein as the "**Recyclebank IP.**" Subject to the terms and conditions of this Agreement, Recyclebank hereby grants to Client a limited, nonexclusive, nontransferable license during the Term to use the Recyclebank IP within the Municipality solely in connection with the promotion and implementation of the Rewards Program. The Client shall have no right to sublicense any of the Recyclebank IP.

B. **Ownership of Recyclebank IP.** The Client acknowledges that Recyclebank is the sole owner of the Recyclebank IP and agrees that it will do nothing inconsistent with such ownership. The Client further agrees that nothing in this Agreement shall give the Client any right, title or interest in the Recyclebank IP other than the right to use the Recyclebank IP in accordance with this Agreement, and that all use by you and all goodwill associated therewith shall inure to the benefit of Recyclebank. The Client agrees that it will not at any time during the Term of this Agreement or after its termination (i) register or use any mark or other term confusingly similar to the Marks, or (ii) challenge the title of Recyclebank to any of the Recyclebank IP.

C. **Quality Standards.** The Client agrees that the nature and quality of all services rendered by you in connection with the Marks; all services provided and goods sold by you under the Marks; and all related advertising, promotional and other related uses of the Marks by you (together, the "**Uses**") shall conform to quality standards set by and under the control of Recyclebank.

D. **Quality Maintenance.** The Client agrees to cooperate with Recyclebank in facilitating Recyclebank's control of the nature and quality of Municipality's Uses, and further agrees that Recyclebank shall have the right to request, review, and approve or disapprove copies or samples of all written materials and

demonstrations of all other Uses, at any time, and shall be entitled to require that Municipality modify any of the Uses to conform to Recyclebank's quality standards.

E. Form of Use. The Client agrees that it will not use the Recyclebank IP for any purpose whatsoever, other than as contemplated herein in connection with the Rewards Program. The Client further agrees to use the Marks only in the form and manner and with appropriate legends as prescribed from time to time by Recyclebank in accordance with customary trademark practices, and not to use any other trademark or service mark in combination with the Marks without prior written approval of Recyclebank.

F. Infringement Proceedings. The Client agrees to notify Recyclebank of any unauthorized use by others of the Recyclebank IP as soon as such use comes to the Client's attention. The Client shall also forward any evidence it obtains of any unauthorized use to Recyclebank. Recyclebank shall have the sole right and discretion (but not the obligation) to bring infringement or unfair competition proceedings involving the Recyclebank IP. The Client agrees to assist Recyclebank with all such proceedings upon request by Recyclebank.

G. No Modification. The Client agrees and acknowledges that, except as expressly permitted herein, it has no right to, and that it will not (and will not permit any third party to (i) use, modify, copy, or otherwise reproduce the Recyclebank IP in whole or in part, (ii) reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code form or structure of the Recyclebank IP, (iii) distribute, sublicense, assign, timeshare, sell, rent, lease, grant a security interest in, or otherwise transfer the Recyclebank IP or the Client's rights hereunder, or (iv) remove any Recyclebank proprietary notices embedded in or placed on any Rewards Program materials, except as expressly provided herein. Any attempted distribution, sublicense, assignment, timesharing, sale, renting, lease, or other transfer the Recyclebank IP or any of Client's rights hereunder in breach of the terms of this Agreement shall be null and void and shall be deemed a material breach by the Client hereunder. The Client will limit access to the Recyclebank IP to its employees who require such access in connection with the permitted use hereunder and who have agreed in writing to observe the Client's obligations hereunder.

**Recyclebank Indemnification.** To the fullest extent permitted by law, Contractor expressly agrees to indemnify, defend and hold the City harmless against all claims, suits, damages, expenses, costs, attorney fees, losses and liabilities arising out of bodily injury or property damage, pollution, contamination of or adverse effects on the environment or any violation of governmental laws, regulations or orders resulting from Contractor's performance of this Contract or collection, transportation or disposal of materials, based upon any act or omission, negligent or otherwise, of Contractor or any employee, subcontractor or other person acting on Contractor's behalf in connection with or incident to this contract or the work to be performed hereunder.

Recyclebank's obligation to indemnify, hold harmless and defend the City shall survive the expiration or termination of this Contract. By entering the Contract, the parties do not waive any immunities provided by law.

8. **Disclaimer of Warranties.** ALL RIGHTS, GOODS, AND SERVICES PROVIDED BY RECYCLEBANK HEREUNDER ARE PROVIDED "AS IS." EXCEPT AS EXPRESSLY PROVIDED HEREIN, THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, BY OPERATION OF LAW OR OTHERWISE, REGARDING OR RELATING TO THE REWARDS PROGRAM, THE RECYCLEBANK IP OR TO ANY OTHER MATERIALS, GOODS OR SERVICES FURNISHED TO CLIENT HEREUNDER OR IN CONNECTION HERewith. RECYCLERE BANK SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION THOSE OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. NO REPRESENTATION OR OTHER AFFIRMATION OF FACT, INCLUDING BUT

NOT LIMITED TO STATEMENTS REGARDING CAPACITY, SUITABILITY FOR USE OR PERFORMANCE OF THE REWARDS PROGRAM, WHETHER MADE BY RECYCLEBANK REPRESENTATIVES OR OTHERWISE, WHICH IS NOT CONTAINED IN THIS AGREEMENT, SHALL BE DEEMED TO BE A WARRANTY BY RECYCLEBANK FOR ANY PURPOSE OR GIVE RISE TO ANY LIABILITY OF RECYCLEBANK WHATSOEVER. MUNICIPALITY HEREBY ASSUMES ALL RESPONSIBILITY FOR THE SELECTION OF THE REWARDS PROGRAM AS APPROPRIATE TO ACHIEVE THE RESULTS INTENDED BY CLIENT.

9. **Limitation of Remedies and Liabilities.** CLIENT'S SOLE REMEDY AND RECYCLEBANK'S SOLE OBLIGATION WITH RESPECT TO ANY CLAIMS, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE AND PRODUCT LIABILITY) OR OTHERWISE, ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM THIS AGREEMENT SHALL BE GOVERNED BY THIS AGREEMENT, AND IN ALL CASES CLIENT'S REMEDY SHALL BE LIMITED TO MONEY DAMAGES NOT EXCEEDING THE UNAMORTIZED PORTION, IF ANY, OF SERVICE FEES PAID TO RECYCLEBANK PRIOR TO THE DATE OF SUCH CLAIM. WITHOUT LIMITING THE FOREGOING, IT IS EXPRESSLY AGREED THAT IN NO EVENT SHALL RECYCLEBANK OR ITS SUPPLIERS OR ANYONE ELSE WHO HAS BEEN INVOLVED IN THE PERFORMANCE OF THIS AGREEMENT ON BEHALF OF RECYCLEBANK, INCLUDING ITS EMPLOYEES, AGENTS, REPRESENTATIVES, SHAREHOLDERS, DIRECTORS, OR SUBCONTRACTORS, BE LIABLE FOR ANY (I) INDIRECT, INCIDENTAL, SPECIAL, RELIANCE, EXEMPLARY, COVER OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOST PROFITS OR REVENUE, LOST BUSINESS OPPORTUNITIES, LOST SAVINGS, LOST DATA, LOSSES CAUSED BY DELAY OR THE DOWNTIME OF COMPUTERS OR SERVERS, OR LOSSES FROM INTERRUPTION, TERMINATION, OR FAILED OPERATION OF THE INTERNET OR THIRD-PARTY TELECOMMUNICATION SERVICES, EVEN IF RECYCLEBANK HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, (II) CLAIMS AGAINST CLIENT BY ANY THIRD PARTY EXCEPT AS PROVIDED IN SECTION 8 ABOVE, OR (III) DAMAGES, INCLUDING PRODUCT LIABILITY DAMAGES, CAUSED BY ANY NON-RECYCLEBANK PRODUCT. THE FOREGOING LIMITATIONS SHALL NOT APPLY TO RECYCLEBANK'S DUTY OF INDEMNIFICATION UNDER SECTION 8 ABOVE.

**Insurance.**

Recyclebank shall not commence work under this contract until evidence of the required insurance has been secured and provided as detailed under this section. All coverages shall be placed with insurance companies licensed and admitted to do business in the State of Michigan and with insurance carriers acceptable to the City. A new certificate of insurance shall be provided to the City of Rochester Hills each year at the time of policy renewal. New certificates shall be delivered to the City of Rochester Hills in the same format and language as outlined in the sample certificate. The purchase of insurance and the furnishing of a certificate of insurance shall not be construed to be fulfillment of the Contractor's indemnification obligation to the City.

The Contractor shall not allow for any lapse of insurance coverage in the amounts shown below. Failure of the Vendor to maintain the required insurance shall be grounds for contract cancellation.

**Workers' Compensation Insurance.** The Vendor 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.

**Commercial General Liability Insurance.** The Vendor shall procure and maintain during the life of the blanket purchase order, Commercial General Liability Insurance on an "Occurrence Basis" with limits of liability not less than \$1,000,000 per occurrence and/or aggregate combined single limit, Personal Injury, Bodily Injury, Bodily Injury and Property Damage. Coverage shall include the following extensions: (A) Contractual Liability; (B) Products and

Completed Operations Liability; C) Independent Contractors Coverage; (D) Broad Form General Liability Extensions or equivalent; (E) Deletion of all Explosion, Collapse and Underground (XCU) Exclusions, if applicable.

Motor Vehicle Liability. The Vendor shall procure and maintain during the life of this contract Motor Vehicle Liability Insurance, including Michigan No-Fault Coverage's, with limits of liability of not less than \$1,000,000 per occurrence combined single limit Bodily Injury and Property Damage. Coverage shall include all owned vehicles, all non-owned vehicles, and all hired vehicles.

Umbrella Liability Insurance: The vendor shall procure and maintain during the life of this contract Umbrella Liability Insurance with limits of liability of not less than \$1,000,000 per occurrence.

Additional Insured. Commercial General Liability and Motor Vehicle Liability Insurance, as described above, shall include an endorsement stating the following shall be Additional Insured's: "The City of Rochester Hills, all elected and appointed officials, all employees and volunteers, all boards, commissions and/or authorities and board members, including employees and volunteers thereof. This coverage shall be primary to the Additional Insured's, and not contributing with any other insurance or similar protection available to the Additional Insured's, whether other available coverage be primary, contributing or excess.

Proof of Insurance Coverage: The Contractor shall provide the City of Rochester Hills, at the time that the contracts are returned by him/her for execution, a Certificate of Insurance as well as the required endorsements. In lieu of required endorsements, if applicable, a copy of the policy sections where coverage is provided for additional insured and cancellation notice would be acceptable. Copies or certified copies of all policies mentioned above shall be furnished, if so requested.

Cancellation Notice. Compensation Insurance, Commercial General Liability Insurance and Motor Vehicle Liability Insurance, as described above, shall include an endorsement stating the following: "It is understood and agreed that Sixty (60) days Advance Written Notice of Cancellation, Non-Renewal, Reduction and/or Material Change shall be sent to City of Rochester Hills, 1000 Rochester Hills Drive, Rochester Hills, Michigan 48309.

If any of the above coverage's expire during the term of the contract, the Vendor shall deliver renewal certificates and/or policies to the City of Rochester Hills at least ten (10) days prior to the expiration date.

10. **Expenses; Disbursements.** Except as otherwise expressly provided herein, both Parties agree to pay all of its own expenses incurred and all disbursements made as a result of complying with the terms and conditions of and performing its obligations under this Agreement.

11. **Force Majeure.** Any delay or inability of Recyclebank in complying with the terms hereof arising from unforeseeable causes or events beyond Recyclebank's control, including, without limitation, Client's failure to supply necessary information or assistance, acts of God, acts of public enemy, acts of the government in either

sovereign or contractual capacity, terrorism, fires, floods, internet failure or acts of a third party, shall excuse any resulting or related delay or failure in the performance by Recyclebank. In such event, the date of performance shall be extended for a reasonable period of time following the resolution of the cause of such delay or failure.

12. **Termination.** In addition to other express termination provisions in this Agreement, this Agreement may be terminated as follows:

A. at any time by mutual agreement of the Parties, granted that no less than nine (9) months prior written notice is provided to the other party.

B. by Recyclebank, immediately upon notice to Client, in the event Client violates Sections 6 or 7 hereof.

C. by either Party with sixty (60) days' prior written notice provided if the termination is commenced by the Client, the Client must provide payment in the amount of eighty percent (80%) of the remaining Service Fee due for the remainder of the Term of the Agreement and any actual fees incurred by Recyclebank in furtherance of this Agreement within thirty (30) days following effective termination. For purposes of this provision, the remaining Service Fee under the Term shall be determined by using the preceding monthly invoice issued by Recyclebank prior to the Client's notice of termination.

D. By either Party in the event (i) of a breach of this Agreement by the other Party (the "**Breaching Party**") that is not cured within thirty (30) days for failure to pay the Service Fees or any other additional fee incurred under the Agreement, or thirty (30) days for other breaches, after delivery of notice of such breach to the Breaching Party, or (ii) that the other Party ceases doing business, is the subject of a voluntary bankruptcy, insolvency or similar proceeding, is the subject of an involuntary state or federal bankruptcy, insolvency, or similar proceeding that is not dismissed within sixty (60) days of filing, makes an assignment for the benefit of creditors, becomes unable to pay its debts when due, or enters into an agreement with its creditors providing for the extension or composition of debt. Nothing contained herein shall prevent or otherwise limit a Party from obtaining injunctive or other equitable relief pursuant to Section 17 hereof.

E. Termination shall be without prejudice to any rights and obligations of the Parties that have vested prior to the effective date of termination.

13. **Effect of Termination.** Upon termination of this Agreement:

A. Client's rights, licenses, and privileges granted under this Agreement shall automatically terminate;

B. Client shall promptly pay to Recyclebank any amounts accrued and/or due and owing hereunder;

C. Client shall immediately cease using any and all Recyclebank IP and Recyclebank Confidential Information (including customer data) in its possession and all tangible embodiments thereof;

D. Client agrees and acknowledges Recyclebank retains all right to the Eligible Households and Members under this Agreement; and

E. The Service Overview and Sections 6, 7B, 8 through 13, 16, 17, 19, 23 through 27 of the Terms and Conditions and all provisions herein relating to the confidentiality of customer data will survive termination of this Agreement.

14. **Injunctive Relief.** Client understands and agrees that Recyclebank shall suffer irreparable harm in the event that of a breach by Client of any obligations under this Agreement and that monetary damages shall be inadequate to compensate Recyclebank for such breach. Accordingly, Client agrees that, in the event of a breach or threatened breach of any of the provisions of this Agreement, in addition to and not in limitation of any other rights, remedies or damages available at law or in equity, Recyclebank shall be entitled to a temporary restraining order, preliminary injunction and permanent injunction in order to prevent or restrain any such breach.

15. **Authority.** Each Party hereby represents and warrants to the other that it has full power and authority to enter into this Agreement, and that this Agreement has been duly authorized, executed and delivered by, and constitutes a valid, binding and legally enforceable agreement of, such Party.

16. **Notices.** All notices, requests, waivers, demands or other communication required hereunder shall be in writing and shall be deemed to have been duly given if delivered by postage pre-paid certified or registered air mail, return receipt requested, or sent by telefax and addressed to the proper party at the address provided in the Client Information Form or such other address as shall be specified from time to time in writing by the Party entitled to receive such notices. Any notice sent by telefax shall be deemed to have been given on the date the fax was dispatched or in case of registered mail, return receipt requested, upon the date appearing on the postal receipt of registration witnessing the receipt of the notice.

17. **No Joint Venture.** Nothing contained herein shall be construed to place the Parties in the relationship of partners or joint venturers or principal and agent or employer and employee, and no Party shall have the power to obligate or bind the other Party in any manner whatsoever.

18. **Successors.** This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

19. **Waiver and Modification.** The waiver of a breach of any of the terms hereof or of any default hereunder shall not be deemed a waiver of any subsequent breach or default, whether of the same or similar nature, and shall not in any way affect the other terms hereof. No waiver, change, alteration, modification or addition to this Agreement shall be effective unless in writing and properly executed by both Parties.

20. **Governing Law.** This Agreement and any disputes relating to this Agreement shall be construed under the laws of the State of Michigan, without regard to Michigan conflicts of laws principles. For purposes of any legal action or proceeding arising out of this Agreement, Client submits and consents to the non-exclusive jurisdiction of the federal and state courts in Michigan.

21. **Entire Agreement.** This Agreement constitutes the entire agreement and understanding between the Parties with respect to the subject matter hereof and terminates and supersedes any prior agreement or understanding, oral or written, between the Parties with respect thereto. The Parties acknowledge and agree that neither of them has made any representation with respect to the subject matter of the Agreement or any representations inducing its execution and delivery except those specifically set forth. Each of the Parties acknowledges that such party has relied on its own judgment in entering into the Agreement.

22. **Headings.** The headings in this Agreement are for convenience only and are in no way intended to describe, interpret, define, or limit the scope, extent, or intent of this Agreement or any of its provisions.



23. **Rights and Remedies Cumulative.** The rights and remedies provided by this Agreement are cumulative and the use of any right or remedy by either Party shall not preclude or waive the right to use any or all other remedies. Said rights and remedies are given in addition to any other rights the Parties may have by law, statute, relevance or otherwise.

24. **Severability.** Should any paragraph or portion thereof of this Agreement be found invalid or unenforceable by any court of competent jurisdiction, it is the intent of the Parties that the validity of the remaining paragraphs of the Agreement shall not be affected thereby.

25. **Counterparts.** This Agreement and any amendments hereto may be executed in several counterparts, and all of such executed documents shall constitute one agreement binding on all the Parties hereto.

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**SCHEDULE A**

**Municipality**

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## City of Rochester Hills Requirements

In execution of this Agreement, Recyclebank agrees to the following additional terms and performance requirements. These requirements are being provided in order to effectively assist each party in monitoring performance of the contract and to ensure that stated milestones are being met during the term of this Agreement:

1. Recyclebank agrees to provide a dedicated Account Manager to the City. The Account Manager will work in coordination with the Mayor's Chief Assistant, or other designated representative on a regular basis regarding promotion of the Recyclebank Rewards Program and its offerings including but not limited to: Green Schools, non-profit donation campaigns, local rewards, etc.
2. Recyclebank agrees that within three (3) to six (6) months they will hire a local Community Outreach Representative to work in coordination with the City's designated Account Manager and the Mayor's Chief Assistant, or designated representative to further the program offerings within the community.
3. Recyclebank agrees that there will be consistent communication provided to the City and will come on site and conduct period check-ins to update on the local reward opportunities, program growth, and reporting, etc. It is expected that the City's Designated Account Manager will come on-site for these updates and will do this at a minimum quarterly (every 3 months), or otherwise as mutually agreed to by both parties (e.g. it may be determined after the relaunch maybe visits are only needed every six (6) months, etc). It is expected that Recyclebank's CEO will come on-site at a minimum once (1) per year to meet with the Mayor to provide updates as it relates to the program, future outlook of Recyclebank, new program offerings, options available for the City to take advantage of, etc.).
4. Recyclebank agrees to enhance the City's current program and update the City's program to the new features as were presented to the City in the presentation provided on February 12, 2019. Some of these features include but are not limited to focus on educational components to community, overhaul of incentive offerings including giving residents the option and potentially running campaigns to allow points to be donated (with maybe the exception of February (Green Schools) to non-profits as mutually agreed to between the City and Recyclebank. Recyclebank as part of this effort would work closely with the City to identify campaigns for city designated initiatives such as non-profits (New Day Foundation, Rochester Neighborhood House), or City fundraising efforts (Museum, Innovation Hills, etc.) This list is not meant to be all-inclusive but is meant to demonstrate the commitment of the City to partner with Recyclebank to expand its current program.
5. Recyclebank agrees, that at a time that is mutually agreeable to the City and Recyclebank, that it will fund a mailing regarding the relaunch of Recyclebank to all Rochester Hills households that would include information regarding the new non-profit donation program, and a strong message showing that Recyclebank is still here and committed to the community with coupon offerings that will continue and improve. This mailing will be done in a coordinated effort between both parties to ensure the message communicated is clear and consistent.
6. Recyclebank agrees to conduct a series of refresh communications and resident sign-up recruitment needs to clearly be part of this. This could be accomplished in a manner in which there could be a six month sign-up period with incentives (bonus points, etc.) Additionally, Recyclebank agrees that annually it will have a sign-up campaign with incentives to engage new residents.

7. Recyclebank agrees that it will conduct targeted marketing campaigns annually to those neighborhoods that the data shows are low in participation and/or low in quality compliance. The City wants to be able to start leveraging the data and all that Recyclebank has to offer to further the power of the participation in the program, and increase Recycling efforts within the community establishing the City as one of the best in the nation when it comes to diverting trash.
8. Recyclebank will continue to offer their newest, latest and greatest approaches to the City. If some other City is doing a new innovative Recyclebank then Rochester Hills wants to be briefed and this can be accomplished through the relationship of the City's designated Account Manager and the Mayor's Chief Assistant. The City wants to be given the opportunity to implement these program offerings. Additionally, the City wants the partnership with Recyclebank to be strong, and it encourages Recyclebank to come to the City with new, innovative ideas it has regarding program offerings and allow the City to be a "beta" for these program offerings.
9. It is expected that Recyclebank working in coordination with the City will establish a relationship with the City's designated MRF Processing Center Southeastern Oakland County Resource Recycling Authority (SOCRRA) and work with their team to help communicate and educate residents about recycling (e.g. what happens to recycling when picked up, coordinated efforts to assist with making sure correct materials are being recycled, etc).
10. From the Start Date through termination, Recyclebank agrees that pricing for the program will be based on a "Most Favored Nation" basis. That is, in the event market conditions cause any reduction only of prices for similar services to similarly sized areas that RecycleBank offers to a similar third party; then Recyclebank shall adjust contracted rate to the City to reflect the lowest rates contracted by Recyclebank to any similar customer of RecycleBank. The "Most Favored Nation" pricing in RecycleBank contract with applies to geographic areas of no more than 20,000 households. There is no guarantee that RecycleBank does not offer better pricing in geographic areas of greater than 20,000 households. This does not apply to any rate increases.