

## LAND AND BUILDING LEASE

THIS LAND AND BUILDING LEASE (“Lease”) is entered into by and between the CITY OF ANN ARBOR, a Michigan municipal corporation (“City” or “Landlord”), 301 E. Huron Street, Ann Arbor, Michigan, and RECYCLE ANN ARBOR, a Michigan Nonprofit Corporation (“RAA” or “Tenant”), 2420 South Industrial Highway, Ann Arbor, Michigan, on the terms and conditions set forth below.

### RECITALS

WHEREAS, Landlord is the owner of certain property located at 4150 Platt Road, Ann Arbor, Michigan as more fully depicted on Exhibit A-1 (the “Property”) on which are located a building and other improvements. The Property is part of a larger group of City-owned parcels which also contains the City’s former landfill, the City’s Wheeler Center, its solid waste transfer station, its compost facilities, open vacant space and other land.

WHEREAS, from the early 1990’s to 2016 the Property and building and improvements thereon was the site of the City’s now-defunct materials recovery facility (“MRF”) which involved significant City investment. After closing the facility for safety and other reasons, the City pursued a short-term interim transloading operation. Following the interim operator, the City contracted with Recycle Ann Arbor for transloading services, and since then, Recycle Ann Arbor has used and operated the City’s former MRF as a recyclable materials transloading facility wherein recyclable materials collected by the City are delivered to the site, re-loaded into trucks, and hauled for processing at a materials recovery facility located outside the City. The City’s contract with Recycle Ann Arbor expires on June 30, 2021.

WHEREAS, in a rapidly changing recycling market, the City is striving to optimize use of the Property, minimize risk and cost to the City’s solid waste customers and taxpayers, and maximize the recovery of recyclable materials locally.

WHEREAS, in anticipation of the end of the current RAA transloading contract, and informed by the City’s draft Solid Waste Resource Management Plan (“SWRMP”), in August 2019, the City issued Request for Proposals #19-28 which invited submissions of work plans and cost proposals on two options: 1) to continue the current transloading operation; and 2) to modify, as needed, and re-equip the building for use and operation as a recyclable materials recovery facility.

WHEREAS, the City selected RAA’s proposal to redevelop, modify, and re-equip the building and transition it from use as a transloading facility to use as a recyclable materials recovery facility which will result in investment in the City and community, optimize use of an existing City asset, provide a needed public service locally, promote local recovery of recyclable materials, create local jobs, and encourage and continue cooperation with a long-standing community nonprofit organization with the experience and capabilities to accomplish the revitalization and operation of a MRF at the Property.

WHEREAS, the City desires to revitalize the building and Property and to promote and facilitate its use as a MRF, and RAA desires to occupy the building and Property and modify and

re-equip it for use as a MRF and to operate it as a MRF, and the parties desire to enter into this Lease and a separate Recyclable Materials Transloading, Redevelopment and Re-Equipping of the Materials Recovery Facility, and Recyclables Material Recovery Processing Services Agreement (the "Services Agreement") to accomplish their respective objectives.

NOW THEREFORE, in consideration of the mutual promises and covenants, terms and conditions stated herein, Landlord and Tenant (each a "Party" and, collectively, the "Parties") agree as follows:

1. **EFFECTIVE DATE.** The Effective Date of this Lease will be the effective date of the Services Agreement.

2. **LEASE.** The Landlord hereby leases to Tenant and Tenant hereby leases from the Landlord those premises described herein and shown in Exhibit A-2 attached hereto, including all buildings, structures, and improvements, together with all rights, easements, servitudes, privileges, rights-of-way, and appurtenances (the "Premises"), subject to the following exclusions and common, shared and non-exclusive portions of the Premises.

a. **Scale Excluded from the Premises.** The Parties agree the existing truck scale located adjacent to the MRF building is excluded from the Premises and shall remain subject to the City's exclusive use and operation in its public works activities including, but not limited to, ongoing recyclables transloading and solid waste operations ("Public Works") until completion of the City's scale and gatehouse relocation project under ITB 4618 and the contract awarded by Council on April 20, 2020 by Resolution R-20-134. The scale relocation project generally involves the City's construction of two new truck scales and a gatehouse closer to Platt Road, and upon completion of that project which the City shall promptly and diligently pursue to completion, the City will cease use of the scale on the Premises. Upon completion of the scale relocation project, the City will provide Tenant a written Notice of Completion stating the scale and gatehouse relocation project is complete, at which time the scale exclusion shall terminate and the scale, and its associated rights and obligations, which shall be fully functional and operate properly and be certified and approved by the State's Department of Commerce, Weights and Measures Division and have a valid approved decal indicating such certification, reasonable wear and tear excepted, shall become part of the Premises (the "Scale Transfer"). Until the Scale Transfer, the City and its contractors shall have the exclusive right to operate and use the scale for the City's Public Works operations, and otherwise complete the scale relocation project and the City shall be responsible for all maintenance, repairs, and replacement of the scale, including performing all routine calibrations at its sole cost and expense. Tenant shall not unreasonably interfere with or interrupt the City's use and operation of the scale or the scale relocation project. The City shall not unreasonably interfere with or interrupt the Tenant's use and operation of Premises. Nothing herein shall prohibit Tenant from use of the scale as a City contractor in connection with recycling operations, for any purposes contemplated by the Services Agreement, or with the City's consent.

b. **Common, Shared & Non-Exclusive Portions of the Premises.** The Parties agree portions of the office area within the building (office, restroom, kitchen break area), paved parking and driveway areas around the building, areas necessary for completion of the scale relocation project ("Non-Exclusive Areas") shall be subject to common, shared, non-exclusive use by Tenant, the City, its contractors, and customers, which may include, but is not limited to, use of the office

area for operation and use of the scale, use of the first floor office facilities by scale operator staff, trucks and vehicles traveling onto and across the Premises for use of the scale, ingress and egress, and vehicles traveling around the building. The City shall not unreasonably interfere with or interrupt the Tenant's use and operation of Premises. Upon Tenant's receipt of the Notice of Completion provided for in Section 2(a) above, the City's right to use of the Non-Exclusive Areas shall terminate and those areas shall become part of the Premises.

c. Reservations.

- i. The City reserves the right to deliver collected recyclable materials to the Premises for transloading and/or materials recovery processing in accordance with the Services Agreement.
- ii. Subject to Section 17, the City reserves the right to access and enter on to the Premises to inspect, maintain, repair, replace and perform any other work on any improvements, equipment or portion of the Premises it is responsible for, including, but not limited to: the storm sewer system, groundwater monitoring wells.
- iii. As provided for in this Section, the City reserves the right to access and use the non-exclusive areas of the Premises to complete the scale relocation process.

3. **INGRESS AND EGRESS.** Landlord agrees that Tenant and third parties using the Premises with Tenant's consent and approval shall have access as necessary to the Premises over other areas of the Property owned or controlled by the City to the extent reasonably necessary in connection with Tenant's permitted uses (as defined in Section 8 below) of the Premises which access shall include, without limitation, the right to ingress and egress to the Premises from public roads.

4. **CONDITION OF PREMISES.** The Premises is being leased and delivered "AS IS" and "WHERE IS" in its present condition and Landlord disclaims any, and makes no further, warranty or representation as to the Premises including as to the condition of any buildings, improvements, fixtures, soil conditions, or any environmental conditions on or under the Premises except as expressly stated in this Section. Tenant acknowledges and agrees that Tenant has been allowed to enter upon the Premises for such inspections, tests and other studies as Tenant considers appropriate or desirable with respect to the condition of the Premises. Tenant has determined that the Premises is in a condition satisfactory to it, and Tenant has accepted the Premises, including the buildings, improvements and fixtures, in its present condition, "AS IS" and "WHERE IS" and acknowledges the Premises is in the condition called for in this Lease and is fit for use as a transloading and/or materials recovery processing facility for recyclable materials. This section shall not be construed to make Tenant liable for environmental conditions that Tenant did not cause and Tenant shall only be liable for environmental conditions arising on or after the Effective Date and which directly arise out of result from Tenant's acts or omissions.

5. **TITLE.** Tenant, at its expense, may obtain a leasehold title policy from a title company acceptable to Tenant insuring Tenant's leasehold title in the Premises in an amount deemed

appropriate by Tenant. Tenant's entry into possession of the Premises shall constitute approval of the condition of title to the Premises and all matters affecting said title which would be disclosed by an accurate title insurance policy.

6. **TERM.** The term of this Lease shall commence on the Effective Date and terminate one hundred twenty (120) days following the expiration or earlier termination of the Services Agreement, unless terminated earlier as herein provided or extended pursuant to the Services Agreement. This Lease may but shall not be required to be extended in writing signed by the Parties for a period consistent with the term of the Services Agreement. In the event the Services Agreement is terminated early by the City due to non-appropriation, Tenant may elect in writing to continue the term of this Lease through December 31, 2030 at the applicable monthly rental rate provided for in Exhibit B – Monthly Rent which shall be due and payable on the first day of each month.

7. **RENT.** Upon the Effective Date, Tenant shall pay rent of One Hundred and No/100 Dollars (\$100.00) per year to Landlord for use of the Premises. Annual rental payments shall be paid in advance each year on the Effective Date and each anniversary thereafter through the term of the Lease and any extension period. Any rent due under this Lease, but not timely paid, shall accrue interest at ten percent (10%) per annum. Any rental payments for a partial year or month shall be prorated.

8. **PERMITTED USES.** Subject to the City's right to use the scale and Non-Exclusive Areas, as specified herein, Tenant shall have the right to use the Premises as follows, and for no other use without Landlord's written consent:

- a. As a recyclable materials transloading facility, whether pursuant to an existing or other contract with the City;
- b. Consistent with Tenants' plans for transition from transloading to a MRF, including modifications, alterations, and changes to the Premises;
- c. Uses permitted and consistent with the Services Agreement;
- d. Nothing herein shall prohibit Tenant from accepting and processing recyclable materials from third parties at the Premises or for providing education to the public at the Premises.

9. **COMPLIANCE WITH APPLICABLE LAWS.** Tenant shall comply with all building, use and zoning restrictions on the Premises, if any, and all applicable laws, ordinances and regulations affecting the Premises, uses and activities occurring thereon.

10. **HAZARDOUS MATERIALS.** Neither Tenant nor Tenant's agents, employees, invitees or guests shall generate, release, store or dispose of hazardous materials ("Hazardous Materials") as defined or regulated by federal, state or local environmental statutes, ordinances, rules or regulations ("Environmental Laws"), at, upon, under or within the Premises or any portion thereof except in accordance with Environmental Laws. Tenant shall comply strictly and in all respects with the requirements of any Environmental Laws, and shall notify Landlord immediately in the event of any discharge or discovery of Hazardous Materials at, upon, under, or within Premises.

Tenant shall hold Landlord harmless, indemnify Landlord, and at Landlord's option, defend Landlord, from and against any damage, loss, expense or liability resulting from the violation of this paragraph, including all attorneys' fees and costs incurred as a result thereof; provided, however, Tenant shall only be liable for environmental conditions arising on or after the Effective Date and which directly arise out of result from Tenant's acts or omissions. Neither Landlord nor Landlord's agents, employees, invitees or guests shall generate, release, store or dispose of Hazardous Materials at, upon, under or within the Premises or any portion thereof except in accordance with Environmental Laws. Landlord shall comply strictly and in all respects with the requirements of any Environmental Laws, and shall notify Tenant immediately in the event of any discharge or discovery of Hazardous Materials at, upon, under, or within Premises.

11. **TAXES AND ASSESSMENTS.** The parties agree the Premises is not currently subject to real property taxes or assessments. But, in the event the Premises is deemed taxable or is subject to other assessments, whether special assessments or otherwise, during the term of this Lease, Tenant shall pay or cause to be paid, before becoming delinquent, all taxes and assessments levied against the Premises which taxes and assessments are allocable to the term of this Lease, or any portion thereof.

12. **UTILITIES.** Tenant shall pay, or cause to be paid, when due all bills for water, sewer, stormwater, gas, electricity, solid waste, and other utilities and services for the Premises, whether public or private, during the term of this Lease. Tenant shall be responsible for all utilities as of the Effective Date, and the parties agree to prorate such utility bills for the number of days between the Effective Date and the utility bill due dates.

13. **MAINTENANCE, REPAIR AND CARE.** Tenant shall, at its expense, maintain and keep the Premises, including buildings, improvements, roof, walls, floors, foundation, HVAC, electrical system, plumbing, fire suppression system, scale (after completion of the Scale Transfer), stormwater system and filters, sanitary sewer grinder pumps, collection and discharge lines, water lines, paved areas and fence in as good condition, repair, and appearance as of the Effective Date, normal wear and tear excepted. Tenant agrees to operate and keep the Premises in a commercially reasonable condition, in compliance with applicable laws and ordinances. Landlord shall provide reasonable assistance and information with respect to maintenance history and needs of the systems servicing the Premises. Except as otherwise provided herein, Landlord shall not be obligated to make any maintenance, repairs, replacements, or renewals of any kind, nature or description whatsoever to the Premises or the building now or hereafter located thereon. Tenant shall not injure or damage the Premises, or create a nuisance or menace to anyone near the Premises. Tenant shall keep the Premises clean and free from rubbish and dirt, snow and ice, including by keeping all grass reasonably mowed and landscaping, if any, properly maintained. In the event Tenant breaches any of these obligations, then Landlord, after 7 days' written notice, if Tenant has not begun to cure the breach, Landlord may enter the Premises and cure Tenant's breach, in which case Tenant shall reimburse the Landlord on demand for its costs, plus administrative costs, arising from or related to such cure.

14. **IMPROVEMENTS, MODIFICATIONS AND ALTERATIONS.** During the term of the Lease, Tenant shall have the right, at its own cost and expense, to construct improvements upon or to the Premises and to modify, change, alter, renovate, or add to the building and/or other improvements upon the Premises as Tenant may deem desirable and in accordance with applicable

laws, ordinances, codes and regulations, and subject to the Landlord's advance written consent which shall not be unreasonably withheld, conditioned, or delayed. For avoidance of doubt, Landlord shall be deemed to have consented to all improvements, modifications, alterations, and renovations contemplated by this Lease and the Services Agreement. Tenant and Landlord acknowledge and agree Tenant is permitted to modify and alter the building to enable the transition from a transloading operation to a recyclable materials recovery processing facility, which may include building alterations and removal and/or demolition of existing equipment and machines, and installation of new materials recovery equipment and machines and systems. Tenant must obtain Landlord's written consent for material changes to the Plans and other or subsequent modifications, alterations and changes to the Premises which consent shall not be unreasonably withheld, conditioned, or delayed. The Parties agree that this section does not pertain to the City's scale relocation project. Tenant's modifications and alterations shall not unreasonably interfere with or interrupt the City's ongoing use of the scale for its other Public Works operations and City's ongoing use of the scale for its other Public Works operations shall not unreasonably interfere with or interrupt Tenant's permitted uses of the Premises pursuant to Section 8.

15. IMPROVEMENTS AND FIXTURES. Notwithstanding any other provisions in this Lease, except for all equipment installed by Tenant to facilitate the processing of recyclable materials and other trade fixtures ("Trade Fixtures"), all buildings, improvements, and fixtures constructed or installed by Tenant which are attached or affixed to the building or Premises or its systems, including but not limited to, air conditioning or heating systems, air circulation or fan systems, floor tile or covering, walls, partitions, plumbing, fire suppression, electrical and lighting systems, scale, and expressly excluding Trade Fixtures shall become the sole property of the Landlord upon expiration of the Lease term. Tenant shall not encumber the applicable Premises in any way beyond the Lease term.

16. SURRENDER. Upon expiration or early termination of the Lease, Tenant shall restore the Premises so that it is substantially the same as before Tenant took possession of the Premises under this Lease, normal wear and tear excepted, which shall include removal all of Tenant's personal property, Trade Fixtures, goods and effects and repair any damage caused by such removal; and peaceably yield up the Premises, clean and in good order, repair and condition; provided, however, that Tenant shall not be obligated to revert any work completed to address physical deficiencies in the Premises, including, without limitation, repairs and replacements to the building, scale, and regrading of surfaces. Upon surrender, the scale must be fully functional and operate properly and be certified and approved by the State's Department of Commerce, Weights and Measures Divisions and have a valid approval decal indicating such certification, or the scale must be removed and the area it was located must be re-graded and paved. Subject to the terms of this Section, Tenant agrees that all personal property other than Trade Fixtures remaining in or on the Premises after Landlord takes re-possession is conclusively deemed to be abandoned by Tenant and shall become the Landlord's property. Tenant waives its rights, if any, under any statutes or other legal doctrines requiring Landlord to remove, store, return or auction such property and acknowledges and agrees that Landlord may dispose of such property as it sees fit, free of any claims of Tenant or others claiming through Tenant. If the Premises is not so surrendered at the expiration or earlier termination of this Lease in the condition required herein, Tenant shall be liable to Landlord for all costs incurred by Landlord in returning the Premises to the required condition and shall indemnify Landlord against any and all loss, damage, or liability resulting from

delay by Tenant in surrendering the Premises, and from the time which is necessary for Landlord to return the Premises to the required condition, including without limitation, claims made by any succeeding tenant and Landlord's lost or delayed rental opportunities; provided, however, that if this Lease is terminated prior to its expiration, Tenant shall be permitted an additional one hundred twenty (120) days grace period to remove its Trade Fixtures.

17. ACCESS AND INSPECTION. Landlord may enter and inspect the Premises, for any purpose, at all reasonable hours after providing at least 24 hours advance written notice to Tenant. In the case of an emergency, Landlord may enter the Premises at its discretion. If Landlord reasonably deems appropriate, and demands, any repairs to the Premises required to be made by Tenant under this Lease, and if Tenant fails to commence and complete them within a reasonable period, Landlord may make or cause to be made the repairs without any liability to Tenant for any loss that may accrue as a result, in which case Tenant shall, upon receipt of an invoice from Landlord, reimburse Landlord for its costs arising from or related to such repairs.

18. CONSTRUCTION LIENS. Tenant shall not suffer or permit any construction liens or other liens to be filed against the Premises, nor against Tenant's leasehold interest in the Premises, nor against Tenant's interest in any improvements, by reason of any work, labor, services, or materials supplied or claimed to have been supplied to Tenant or anyone holding the Premises or any part hereof through or under Tenant. Notwithstanding the foregoing, if any such construction liens or materialmen's lien shall be recorded against the Premises, or any improvements thereon, Tenant shall cause the same to be removed; provided, however, that Tenant may in good faith contest any such construction lien. If Tenant shall fail to discharge or secure such lien as herein provided, Landlord shall have the right to file a bond securing such lien and Tenant shall pay the cost of such bond to Landlord within 30 days. The filing of any such lien claim against the interest of Landlord in the Premises shall also be an event of default hereunder subject to the cure period in provided Section 26. Tenant hereby agrees to indemnify, defend and save Landlord harmless from all costs, loss and liability arising from the lien, including reasonable attorney's fees.

19. INSURANCE.

a. Tenant shall procure and keep in effect during the term of this Lease such insurance policies, including those set forth below, as will protect itself and the City from all claims for bodily injuries, death or property damage that may arise under this Lease; whether the act(s) or omission(s) giving rise to the claim were made by the Tenant, any subcontractor, or anyone employed by them directly or indirectly Tenant shall provide to the Landlord documentation satisfactory to the Landlord, through City-approved means (currently myCOI), demonstrating it has obtained the required insurance policies and endorsements. The certificates of insurance endorsements and/or copies of policy language shall document that Tenant satisfies the following minimum requirements. Tenant shall add registration@mycoitracking.com to its safe sender's list so that it will receive necessary communication from myCOI. When requested, Tenant shall provide the same documentation for its subcontractor(s) (if any). Required insurance policies include:

- i. Worker's Compensation Insurance in accordance with all applicable state and federal statutes. Further, Employers Liability Coverage shall be obtained in the following minimum amounts:

Bodily Injury by Accident - \$500,000 each accident  
Bodily Injury by Disease - \$500,000 each employee  
Bodily Injury by Disease - \$500,000 each policy limit

- ii. Commercial General Liability Insurance equivalent to, as a minimum, Insurance Services Office form CG 00 01 04 13 or current equivalent. The City of Ann Arbor shall be named as an additional insured. There shall be no added exclusions or limiting endorsements specifically for the following coverages: Products and Completed Operations, Explosion, Collapse and Underground coverage or Pollution. Further there shall be no added exclusions or limiting endorsements that diminish the City's protections as an additional insured under the policy. The following minimum limits of liability are required:

\$1,000,000	Each occurrence as respect Bodily Injury Liability or Property Damage Liability, or both combined.
\$2,000,000	Per Project General Aggregate
\$1,000,000	Personal and Advertising Injury
\$2,000,000	Products and Completed Operations Aggregate
\$2,000,000	Pollution

- iii. Motor Vehicle Liability Insurance, including Michigan No-Fault Coverages, equivalent to, as a minimum, Insurance Services Office form CA 00 01 10 13 or current equivalent. Coverage shall include all owned vehicles, all non-owned vehicles and all hired vehicles. The City of Ann Arbor shall be named as an additional insured. There shall be no added exclusions or limiting endorsements that diminish the City's protections as an additional insured under the policy. Further, the limits of liability shall be \$1,000,000 for each occurrence as respects Bodily Injury Liability or Property Damage Liability, or both combined.
- iv. Umbrella/Excess Liability Insurance shall be provided to apply excess of the Commercial General Liability, Employers Liability and the Motor Vehicle coverage enumerated above, for each occurrence and for aggregate in the amount of \$2,000,000.

b. Insurance required under subsection (a)(ii) and (iii) above shall be considered primary as respects any other valid or collectible insurance that the Landlord may possess, including any self-insured retentions the Landlord may have; and any other insurance the Landlord does possess shall be considered excess insurance only and shall not be required to contribute with this insurance. Further, Tenant agrees to waive any right of recovery by its insurer against the Landlord for any insurance listed herein.

c. Insurance companies and policy forms are subject to approval of the City Attorney, which approval shall not be unreasonably withheld. Documentation must provide and demonstrate an unconditional and un-qualified 30-day written notice of cancellation in favor of the City of Ann Arbor. Further, the documentation must explicitly state the following: (a) the policy number(s);

name of insurance company(s); name and address of the agent(s) or authorized representative(s); name(s), email address(es), and address of insured; project name; policy expiration date; and specific coverage amounts; (b) any deductibles or self-insured retentions which may be approved by the City, in its sole discretion; (c) that the policy conforms to the requirements specified Tenant shall furnish the Landlord with satisfactory certificates of insurance and endorsements prior to commencement of any work. Upon request, Tenant shall provide within 30 days a copy of the policy(ies) and all required endorsements to Landlord. If any of the above coverages expire by their terms during the term of this Lease, Tenant shall deliver proof of renewal and/or new policies and endorsements to Landlord at least ten days prior to the expiration date.

d. Any Insurance provider of Tenant shall be authorized to do business in the State of Michigan and shall carry and maintain a minimum rating assigned by A.M. Best & Company's Key Rating Guide of "A-" Overall and a minimum Financial Size Category of "V". Insurance policies and certificates issued by non-authorized insurance companies are not acceptable unless approved in writing by Landlord.

e. Upon completion of the transition to an operating MRF, the required insurance policies and coverage amounts shall be subject to review and adjustment to reflect the change in the value of the Premises and MRF equipment if mutually agreed by the Parties.

20. **FIRE AND CASUALTY INSURANCE.** During the term of this Lease, Tenant shall procure fire and extended coverage insurance insuring the Premises, including all leasehold improvements, for their full replacement value which the Parties agree is \$2,150,000.00. The insurance policy shall show Landlord, any mortgagee of Landlord or Tenant, regarding the Premises, and Tenant as named insureds. The insurance policy shall carry an endorsement requiring that Landlord shall be given 30 days written notice before any change in or any cancellation of the policy. Certificates of all insurance policies shall be delivered to Landlord. Landlord and Tenant and all parties claiming under them mutually waive any right of recovery against each other for any loss occurring to the Premises or as a result of activities conducted on the Premises, which is covered by insurance, regardless of the cause of the damage or loss. Each insurance policy covering the Premises shall contain an endorsement recognizing this mutual release by Landlord and Tenant and waiving all rights of subrogation by their respective insurers.

21. **INDEMNIFICATION.** To the fullest extent permitted by law, Tenant shall indemnify, defend and hold Landlord, its officers, employees and agents harmless from all suits, claims, judgments and expenses including attorney's fees resulting or alleged to result, in whole or in part, from any act or omission by Tenant or its officials, employees, contractors, or agents, which is in any way connected or associated with this Lease, the Premises, or Tenant's rights or obligations related to either, by the Tenant or anyone acting on its behalf under this Lease. Tenant shall not be responsible to indemnify Landlord for losses or damages caused by or resulting from Landlord's negligence or willful misconduct or the negligence or willful misconduct of anyone acting on its behalf under this Lease. To the fullest extent permitted by law, the Landlord shall indemnify and hold Tenant, its officers, employees and agents harmless from all suits, claims, judgments and expenses including attorney's fees resulting or alleged to result, in whole or in part, from any act or omission by Landlord or its officials, employees, contractors, or agents, which is in any way connected or associated with this Lease, the Premises, or Landlord's rights or obligations related to either, by the Landlord or anyone acting on its behalf under this Lease. Landlord shall not be

responsible to indemnify Tenant for losses or damages caused by or resulting from Tenant's negligence or willful misconduct or the negligence or willful misconduct of anyone acting on its behalf under this Lease. The provisions of this section shall survive the expiration or earlier termination of this Lease for any reason.

22. **DAMAGE TO OR DESTRUCTION OF PREMISES, BUILDING OR IMPROVEMENTS.** Landlord acknowledges that Tenant is insuring the Premises and its personal property and Trade Fixtures under the same insurance policies and that specific amounts therein are allocable to the Trade Fixtures and personal property of Tenant which proceeds shall be payable to Tenant in the event of any casualty damage to the Premises, Tenant's personal property, or the Trade Fixtures (collectively, the "Tenant Proceeds"). In the event of damage to the Premises or improvements caused by fire or other casualty, Tenant shall promptly rebuild the Premises to the condition it was in before the casualty. The insurance proceeds carried by Tenant to cover casualty damage to the Premises shall be available for the reconstruction except for Tenant Proceeds which shall be paid to Tenant. If the improvements constructed by Tenant on the Premises are rendered unleaseable by fire or other casualty during the term of the Lease to the extent that the building(s) must be demolished and rebuilt, and the casualty insurance proceeds for the building available for payment by the insurance company and the Premises (but specifically excluding the Tenant Proceeds) and such insurance proceeds are not subject to any lien, Tenant may, at Tenant's option, to be evidenced by notice given to Landlord within 30 days after the occurrence of the damage or destruction, elect to terminate this Lease as of the date of the damage or destruction. In that event, Landlord shall be entitled to all insurance proceeds for the damage to improvements on the Premises except for the Tenant Proceeds which shall be paid to Tenant.

23. **CONDEMNATION.** In the event all of the Premises shall be taken through condemnation, or so much of the Premises shall be taken that it is not feasible for Tenant to continue to operate on the Premises, then Tenant shall have the option of terminating this Lease. Such termination shall be without prejudice to the rights of either Landlord and Tenant to recover compensation from the condemning authority for any loss or damage caused by such condemnation. Neither Landlord nor Tenant shall have any right in or to any award made to the other by the condemning authority, and Tenant shall have the specific right to make a separate claim with the condemning authority for the value of Tenant's property, the loss of all or any portion of the leasehold interest herein, and Tenant's moving and relocating expenses.

24. **TENANT'S REPRESENTATIONS AND WARRANTIES.** Tenant represents and warrants to Landlord that:

a. Tenant has examined the Premises and finds that it is fit for use and operation as a recyclable materials recovery processing facility subject to completion of its transition and re-equipping plan, and accepts the Premises AS IS.

b. Tenant shall expeditiously and diligently pursue and complete its plans for transition and re-equipping the Premises and building for use as a MRF, and Tenant shall at all times comply with and adhere to applicable laws, codes and regulations affecting the use and transition and re-equipping of the Premises and building.

c. Upon completion of the transition and re-equipping plan and prior to the expiration or termination of the Services Agreement, Tenant shall continuously operate the Premises as a MRF under the terms of the Lease in conjunction with the Services Agreement, and Tenant shall obtain and maintain in force at all times all licenses and permits, whether federal, state, or local, necessary for Tenant to operate at the Premises.

d. There are no actions, causes of action, or claims pending or threatened against Tenant, and there currently exist no grounds for any such actions, causes of action, or claims relating to Tenant, or which challenge the right of Tenant to execute this Lease or perform its obligations hereunder.

e. Tenant has the right, power, and authority to enter into this Lease and to perform all the obligations hereunder.

f. Tenant agrees that, without prior written consent of the City, the Premises shall not be occupied by any other person, entity or firm, its agents, employees, contractors, vendors, supplies, except in accordance with the provisions hereof with respect to the transition and re-equipping and use and operation of the Premises as a transloading and subsequently as a MRF facility consistent with the Services Agreement or for providing education to the public at the Premises.

g. Tenant shall obtain and maintain in force at all times all insurances policies and coverages required hereunder, and it shall neither do, nor permit, any act or thing which may increase the casualty risk, fire hazard, or insurance coverages on the Premises, except with the prior written consent of Landlord, and Tenant acknowledges that in that event, Landlord reserves the right to require additional insurance coverage.

h. Tenant shall not unreasonably interfere with or interrupt the City's ongoing use of the scale while the scale relocation project is ongoing.

25. LANDLORD'S REPRESENTATIONS AND WARRANTIES. Landlord represents and warrants to Tenant that:

a. Landlord has the power, authority and legal right to grant the leasehold interest in the Premises, and to enter into and perform its obligations in this Lease, and the execution, delivery, and performance of this Lease has been duly authorized by the City Council.

b. No person other than Landlord has a present or future right to possession of all or any part of the Premises.

c. As long as Tenant is not in default subject to all applicable notice and cure periods under this Lease, Tenant shall be entitled to quiet possession of the Premises during the term of this Lease subject to the exclusions and Non-Exclusive Areas.

d. Landlord shall not unreasonably interfere with or interrupt Tenant's use of the Premises.

26. DEFAULT, RIGHTS AND REMEDIES.

a. Default. Any one or all of the following which remains uncured after 30 days written notice to Tenant, unless a shorter period is specified in this Section, shall constitute a default:

- i. Failure to pay rent, taxes, assessments, utilities, or other sums or amounts required to be paid under this Lease, and said amount is not paid within 30 days after the due date;
- ii. Failure or breach in the performance of any covenant, term or condition contained in this Lease other than payment of rent or other sums of money required to be paid under this Lease, and, if any said default is not remedied within 30 days after written notice thereof by Landlord provided that if such default is not capable of being cured within 30 days Tenant shall not be deemed to be in default if Tenant commences to cure within such 30 days and thereafter diligently pursues the same to completion;
- iii. Failure by Tenant to obtain or maintain any policy of insurance or to pay when due any insurance premiums required by the terms of this Lease to be paid by Tenant;
- iv. Abandonment or vacation of the Premises by Tenant for a period of six consecutive months;
- v. Any default subject to all applicable notice and cure periods under, breach or violation of, abandonment, or termination of the Service Agreement; subject to the continuation of the Lease term under Section 6 of this Lease if the Services Agreement is terminated due to non-appropriation;
- vi. An assignment for the benefit of Tenant's creditors, or the appointment of a receiver for any property of Tenant in or upon the Premises in any action, suit or proceeding by or against Tenant;
- vii. The appointment or taking possession by any receiver, liquidator, assignee, trustee, creditor or other similar official of Tenant or any assignee, or of any substantial part of the Premises, or the ordering or winding up or liquidation of Tenant's affairs and the continuance of the decree or order unstayed and in effect for a period of 60 days or more, whether or not consecutive, or Tenant's consent to the foregoing;
- viii. The commencement by Tenant of a voluntary proceeding under the Federal Bankruptcy Code or any other applicable state or federal law or consent by Tenant to the entry of any order for relief in an involuntary case under any such law.

b. Right to Terminate and Re-Enter. If Tenant fails to cure any default subject to all applicable notice and cure periods within the period required, then Landlord may terminate this Lease, or, without terminating this Lease, may re-enter the Premises, with or without process of

law and take possession thereof and Landlord shall not be liable for damages by reason of such re-entry or forfeiture, and re-let the Premises. No re-entry or taking possession of the Premises by Landlord shall be construed as an election to terminate this Lease unless a written notice of such intention is given to Tenant or unless the termination thereof is decreed by a court of competent jurisdiction. Notwithstanding any re-letting without termination because of any default by Tenant, Landlord may at any time after such re-letting elect to terminate this Lease for any such default. For avoidance of doubt, Tenant shall be permitted to remove all Trade Fixtures.

c. **Rent Still Due.** Notwithstanding such default and re-entry by Landlord, Tenant shall remain liable for all Rent as it becomes due and all costs, expenses and attorney fees to enforce this Lease; provided, however, that Landlord shall be obligated to mitigate damages.

d. **Cure.** If Tenant fails to perform any of its obligations under this Lease, after Landlord provides the written notice and subject to all applicable notice and cure periods, Landlord shall have the right, but not the obligation, to perform the obligation for the account and at the expense of Tenant. Reasonable and necessary costs incurred by Landlord shall be paid by Tenant to Landlord upon demand. If Tenant fails or refuses to reimburse Landlord for the expenses, the reasonable and necessary costs of cure shall be added to the next installment of Rent. Landlord may elect, but shall not be obligated, to cure at any time and without notice any default of Tenant under this Lease. Whenever Landlord so elects, Tenant shall immediately, upon demand, pay to Landlord, all reasonable costs and expenses thereby incurred by Landlord, plus interest on all amounts advanced by Landlord. In addition, in the event that Landlord requires the services of any attorneys to enforce against Tenant any of the provisions or rights under this Lease, Tenant shall pay to Landlord all reasonable attorneys' fees and costs incurred by Landlord.

e. **Effect of Waiver.** One or more waivers of any covenant, obligation or requirement of the Lease by either party shall not be construed as a waiver of a subsequent breach of same and the consent or approval by Landlord to or of any act by Tenant requiring Landlord's consent or approval shall not be deemed a waiver of Landlord's consent or approval to or of any subsequent similar act by Tenant.

f. **Notice of Landlord's Default, Tenant's Waiver.** If Landlord fails to perform any of the terms, conditions, or agreements provided for in this Lease which are to be performed by Landlord, and, if the failure is not remedied within 30 days after written notice of the failure is given by Tenant to Landlord or if more than 30 days will be reasonably required to cure the failure, and Landlord does not commence to cure the failure within the 30 days or later does not proceed diligently to cure the failure, then in such event the Landlord will be deemed to be in default and Tenant may pursue any remedies available at law or in equity.

g. **Remedies Cumulative and Not Exclusive.** To the fullest extent permitted by law, Landlord's rights, remedies and benefits provided by this Lease shall be cumulative and shall not be exclusive of any other rights, remedies and benefits allowed by law.

27. **HOLDING OVER WITH CONSENT.** In the event Tenant shall holdover or remain in possession of the Premises with the written consent of Landlord after the expiration or early termination of this Lease, such tenancy shall be on a month-to-month basis on the same terms and conditions in effect at the time the holding over first occurs or such other agreed upon terms.

28. **HOLDING OVER WITHOUT CONSENT.** In the event Tenant shall holdover or remain in possession of the Premises, or any part thereof, after the expiration or early termination of this Lease without the express written consent of Landlord, such occupancy shall be a tenancy on a month-to-month basis at a monthly rent of \$16,000.00 and upon all terms and conditions applicable to a month-to-month tenancy subject to the Landlord's rights to terminate the Lease and re-take possession of the Premises and other remedies.

29. **NON-DISCRIMINATION.** Tenant shall not discriminate against any person or class of persons by reason of race, color, creed, national origin, marital status, age, condition of pregnancy, religion, physical limitations, source of income, family responsibilities, educational association, or sexual orientation or sex and shall be bound by the non-discriminatory provisions as required by all applicable law.

30. **NON-WAIVER.** Rights arising from this Lease are not waived unless the party to whom the rights belong expressly waives them in a writing (a) that it signs, and (b) that specifically identifies the waived rights. Any such waiver by the Landlord shall not be construed as a waiver of any other rights. Consent by the Landlord to any act requiring its consent does not constitute a waiver of the requirement of the Landlord's consent with respect to any similar or subsequent act.

31. **MEMORANDUM OF LEASE.** The parties may, upon request, execute, in recordable form, a written Memorandum of Lease in a form agreed upon by the Parties which may be recorded in the Washtenaw County Register of Deeds.

32. **ASSIGNMENT.** This Lease shall not be assigned, delegated, transferred, encumbered, or otherwise conveyed or sublet, except by a written approval signed by Tenant and Landlord.

33. **FORCE MAJEURE.** Neither party shall be deemed to be in default or otherwise responsible for delays or failures in performance resulting from acts of God; acts of war, terrorism or civil disturbance; epidemic; federal, state, county, or municipal governmental action or inaction; fires; earthquakes; unavailability of labor; or other causes beyond the party's reasonable control. An act of Force Majeure shall be a temporary impossibility to perform and suspends the party's duty to perform while the impracticability exists but does not discharge its duty or prevent it from arising unless its performance after the cessation of the impracticability would be materially more burdensome than if there had been no impracticability.

34. **AMENDMENTS.** This Lease may only be modified or amended, in writing, signed by both Tenant and Landlord. There may be no oral modification or amendment of this Lease, whether or not supported by consideration.

35. **CONSTRUCTION, INTERPRETATION AND SEVERABILITY.** This Lease shall be construed, governed, and enforced in accordance with the laws of the State of Michigan. By executing this Lease, the Tenant and Landlord agree to venue in a court of appropriate jurisdiction sitting within Washtenaw County for purposes of any action arising under this Lease. Whenever possible, each provision of this Lease will be interpreted in a manner as to be effective and valid under applicable law. However, if any provision of this Lease or the application of any provision to any party or circumstance will be prohibited by or invalid under applicable law, that provision will be ineffective to the extent of the prohibition or invalidity without invalidating the remainder

of the provisions of this contract or the application of the provision to other parties or other circumstances.

36. **SUCCESSORS AND ASSIGNS.** This Lease shall be binding on and shall inure to the benefit of the parties to this Lease and their permitted successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer on any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Lease.

37. **NOTICES.** All notices, demands and requests required or permitted to be given under the provisions of this Lease shall be in writing and shall be deemed given: (i) when personally delivered to the party to be given such notice or other communication; (ii) on the business day that such notice or other communication is sent by facsimile or similar electronic device, fully prepaid, which facsimile or similar electronic communication shall promptly be confirmed by written notice; (iii) on the third business day following the date of deposit in the United States mail if such notice or other communication is sent by certified or registered mail with return receipt requested and postage thereon fully prepaid; or (iv) on the business day following the day such notice or other communication is sent by reputable overnight courier, to the following:

If to Landlord: City of Ann Arbor  
Attn: Public Services Area Administrator  
301 E. Huron Street  
Ann Arbor, MI 48104

With a copy to: City of Ann Arbor  
Attn: Resource Recovery Manager  
W.R. Wheeler Service Center  
4251 Stone School Road  
Ann Arbor, MI 48108

With a copy to: City of Ann Arbor  
Attn: Office of the City Attorney  
301 E. Huron Street, 3<sup>rd</sup> Floor  
Ann Arbor, MI 48103

If to Tenant: Recycle Ann Arbor  
Attn: Bryan Ukena, CEO  
2420 S. Industrial Highway  
Ann Arbor, MI 48104  
[bryanukena@recycleannarbor.org](mailto:bryanukena@recycleannarbor.org)

With a copy to: Recycle Ann Arbor  
Attn: Board Chair  
2420 S. Industrial Highway  
Ann Arbor, MI 48104

With a copy to: Hooper Hathaway, P.C.

Attn: William M. Beuche, Esq.  
126 S. Main St.  
Ann Arbor, MI 48104  
wbeuche@hooperhathaway.com

or to such other person, address, or email as the parties may designate in writing.

38. **BROKERS COMMISSION.** Landlord and Tenant each represent and warrant that there are no claims for broker's commissions or finder's fees in connection with the execution of this Lease and each of the parties agrees to indemnify the other against all liabilities arising from any such claim.

39. **ENTIRE AGREEMENT.** This Lease represents the entire understanding and agreement between the parties with respect to the leasing of the Premises and it supersedes all prior representations, negotiations, agreements, or understandings whether written or oral. Neither party has relied on any prior representations in entering into this Lease.

40. **MUTUAL DRAFTING.** The Parties agree that for purposes of interpretation, this Lease was negotiated and mutually agreed upon and shall be considered as having been drafted jointly by the parties. No provision of this Lease shall be construed against or interpreted to the disadvantage of one party against the other party by reason of any determination or assertion that one party was chiefly or primarily responsible for having drafted, dictated and/or structured such provision.

41. **COUNTERPARTS AND ELECTRONIC SIGNATURES.** This Lease may be executed in counterparts by the undersigned and all such counterparts so executed shall together be deemed to constitute one final agreement, as if one document had been signed by all parties hereto; and each such counterpart shall be deemed to be an original, binding the party subscribed thereto, and multiple signature pages (including facsimiles of signature pages) affixed to a single copy of this Lease shall be deemed to be a fully executed original Lease. Further, Landlord and Tenant agree that signatures on this Lease may be delivered electronically in lieu of an original signature and agree to treat electronic signatures as original signatures that bind them to this Lease. This Lease may be executed and delivered by facsimile and upon such delivery, the facsimile signature will be deemed to have the same effect as if the original signature had been delivered to the other party.

[SIGNATURES ON NEXT PAGE]

LANDLORD  
CITY OF ANN ARBOR

TENANT  
RECYCLE ANN ARBOR

By \_\_\_\_\_  
Christopher Taylor, Mayor

By \_\_\_\_\_  
Name:  
Title:

Date: \_\_\_\_\_

Date: \_\_\_\_\_

By \_\_\_\_\_  
Jacqueline Beaudry, City Clerk

By \_\_\_\_\_  
Name:  
Title:

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to substance:

By \_\_\_\_\_  
Tom Crawford, Interim City Administrator

By \_\_\_\_\_  
Craig Hupy,  
Public Services Area Administrator

Approved as to form:

\_\_\_\_\_  
Stephen K. Postema, City Attorney